

HOUSE JOURNAL

SEVENTY-EIGHTH LEGISLATURE, REGULAR SESSION

PROCEEDINGS

EIGHTY-FIRST DAY — THURSDAY, MAY 29, 2003

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

The roll of the house was called and a quorum was announced present (Record 807).

Present — Mr. Speaker; Allen; Alonzo; Bailey; Baxter; Berman; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Burnam; Callegari; Campbell; Canales; Capelo; Casteel; Castro; Chavez; Chisum; Christian; Coleman; Cook, B.; Cook, R.; Corte; Crabb; Crownover; Davis, J.; Davis, Y.; Dawson; Delisi; Denny; Deshotel; Driver; Dukes; Dunnam; Dutton; Edwards; Eiland; Eissler; Elkins; Ellis; Escobar; Farabee; Farrar; Flores; Flynn; Gallego; Garza; Gattis; Geren; Giddings; Goodman; Goolsby; Griggs; Grusendorf; Guillen; Gutierrez; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Heflin; Hegar; Hilderbran; Hill; Hochberg; Hodge; Homer; Hopson; Howard; Hughes; Hunter; Hupp; Isett; Jones, D.; Jones, E.; Jones, J.; Keel; Keffer, B.; Keffer, J.; King; Kolkhorst; Krusee; Kuempel; Laney; Laubenberg; Lewis; Luna; Mabry; Madden; Marchant; Martinez Fischer; McCall; McClendon; McReynolds; Menendez; Mercer; Merritt; Miller; Moreno, J.; Moreno, P.; Morrison; Mowery; Naishtat; Nixon; Noriega; Oliveira; Olivo; Paxton; Peña; Phillips; Pickett; Pitts; Puente; Quintanilla; Raymond; Reyna; Riddle; Ritter; Rodriguez; Rose; Seaman; Smith, T.; Smith, W.; Smithe; Solis; Solomons; Stick; Swinford; Talton; Taylor; Telford; Thompson; Truitt; Turner; Uresti; Van Arsdale; Villarreal; West; Wilson; Wise; Wohlgemuth; Wolens; Wong; Woolley; Zedler.

Absent, Excused — Hope.

The invocation was offered by Reverend Seth Deleery, pastor, St. Richard's Episcopal Church, Round Rock.

CAPITOL PHYSICIAN

The speaker recognized Representative Merritt who presented Dr. Michael McShan of Kilgore as the "Doctor for the Day."

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

(Miller in the chair)

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).

HCR 265 - ADOPTED
(by Hupp)

Representative Hupp moved to suspend all necessary rules to take up and consider at this time **HCR 265**.

The motion prevailed without objection.

The following resolution was laid before the house:

HCR 265, Honoring John Arthur Martinez of Marble Falls for his successful musical career.

HCR 265 was adopted without objection.

On motion of Representative Elkins, the names of all the members of the house were added to **HCR 265** as signers thereof.

INTRODUCTION OF GUEST

The chair recognized Representative Hupp who introduced John Arthur Martinez.

HR 1442 - ADOPTED
(by Gattis)

Representative Gattis moved to suspend all necessary rules to take up and consider at this time **HR 1442**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 1442, In memory of Judge Robert "Skip" Morse of Georgetown.

HR 1442 was unanimously adopted by a rising vote.

On motion of Representative Hodge, the names of all the members of the house were added to **HR 1442** as signers thereof.

INTRODUCTION OF GUESTS

The chair recognized Representative Gattis who introduced the family of Judge Robert "Skip" Morse.

HR 1592 - ADOPTED
(by Merritt)

Representative Merritt moved to suspend all necessary rules to take up and consider at this time **HR 1592**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 1592, Congratulating Miranda Lambert of Lindale for placing third in the Nashville Star television competition.

HR 1592 was adopted without objection.

On motion of Representative Flynn, the names of all the members of the house were added to **HR 1592** as signers thereof.

INTRODUCTION OF GUEST

The chair recognized Representative Merritt who introduced Miranda Lambert.

LEAVE OF ABSENCE GRANTED

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

Laney on motion of Goolsby.

**HCR 268 - ADOPTED
(by Uresti)**

Representative Uresti moved to suspend all necessary rules to take up and consider at this time **HCR 268**.

The motion prevailed without objection.

The following resolution was laid before the house:

HCR 268, Honoring Hector V. Barreto, national administrator of the U.S. Small Business Administration.

HCR 268 was adopted without objection.

INTRODUCTION OF GUEST

The chair recognized Representative Uresti who introduced Joseph Montes.

INTRODUCTION OF GUESTS

The chair recognized Representative Hill who introduced John DeMattia and his wife.

**HR 1595 - ADOPTED
(by Y. Davis)**

Representative Y. Davis moved to suspend all necessary rules to take up and consider at this time **HR 1595**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 1595, Honoring Eric Lynn Johnson of Dallas for his many achievements.

HR 1595 was adopted without objection.

**HR 1596 - ADOPTED
(by Y. Davis)**

Representative Y. Davis moved to suspend all necessary rules to take up and consider at this time **HR 1596**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 1596, Recognizing May 2003 as National Military Appreciation Month.

HR 1596 was adopted without objection.

HR 1660 - ADOPTED

(by Wohlgemuth)

Representative Wohlgemuth moved to suspend all necessary rules to take up and consider at this time **HR 1660**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 1660, Honoring Carrie and George Walls on the birth of their son, George Samuel Walls IV.

HR 1660 was adopted without objection.

HR 907 - READ

HR 907, in memory of Dr. Robert "Bob" Lorenz of Lago Vista, having been previously adopted, was read.

LEAVE OF ABSENCE GRANTED

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

Eiland on motion of McCall.

HCR 274 - ADOPTED

(by Homer)

Representative Homer moved to suspend all necessary rules to take up and consider at this time **HCR 274**.

The motion prevailed without objection.

The following resolution was laid before the house:

HCR 274, In memory of Quentin Miller of Cooper.

HCR 274 was unanimously adopted by a rising vote.

HR 1656 - ADOPTED

(by Thompson)

Representative Thompson moved to suspend all necessary rules to take up and consider at this time **HR 1656**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 1656, Congratulating Blair Haley on the completion of his Bachelor of Arts degree and graduating from Xavier University.

HR 1656 was adopted without objection.

HR 1661 - ADOPTED
(by Luna)

Representative Luna moved to suspend all necessary rules to take up and consider at this time **HR 1661**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 1661, In memory of Judge James Allen Wood.

HR 1661 was unanimously adopted by a rising vote.

HB 2292 - PRINTING RULE SUSPENDED

Representative Wohlgeomuth moved to suspend House Rule 12, Section 1(a)(2) to permit the senate amendments to **HB 2292** to be printed without the house engrossment text.

The motion prevailed without objection.

HB 2292 - 24 HOUR LAYOUT RULE SUSPENDED

Representative Wohlgeomuth moved to suspend House Rule 13, Section 10 to allow the house to consider the senate amendments to **HB 2292** which were ineligible for consideration at this time.

The motion prevailed without objection.

**HB 2292 - HOUSE REFUSES TO CONCUR
IN SENATE AMENDMENTS
CONFERENCE COMMITTEE APPOINTED**

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

HB 2292, A bill to be entitled an Act relating to the provision of health and human services in this state, including the powers and duties of the Health and Human Services Commission and other state agencies; providing penalties.

Representative Wohlgeomuth moved that the house not concur in the senate amendments and that a conference committee be requested to adjust the differences between the two houses on **HB 2292**.

The motion prevailed without objection.

The chair announced the appointment of the following conference committee, on the part of the house, on **HB 2292**: Wohlgeomuth, chair; Ellis; J. Davis; Truitt; and Gutierrez.

**PROVIDING FOR A CONGRATULATORY
AND MEMORIAL CALENDAR**

Representative Edwards moved to suspend all necessary rules to set a congratulatory and memorial calendar for 10 a.m. tomorrow.

The motion prevailed without objection.

HR 1487 - ADOPTED
(by Hilderbran)

Representative Hilderbran moved to suspend all necessary rules to take up and consider at this time **HR 1487**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 1487, Congratulating Bob Hope on his 100th birthday.

HR 1487 was adopted without objection.

On motion of Representative Hamric, the names of all the members of the house were added to **HR 1487** as signers thereof.

HCR 273 - ADOPTED
(by Keel)

The following privileged resolution was laid before the house:

HCR 273

WHEREAS, **HB 2192** 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 78th Legislature of the State of Texas, That the enrolling clerk of the house be instructed to correct **HB 2192** by striking SECTION 15 of the bill, as added by Committee Amendment No. 1 by Van de Putte, and substituting the following SECTIONS, appropriately numbered:

SECTION __. Section 431.002(8), Health and Safety Code, is amended to read as follows:

(8) "Consumer commodity," except as otherwise provided by this subdivision, means any food, drug, device, or cosmetic, as those terms are defined by this chapter or by the federal Act, and any other article, product, or commodity of any kind or class that is customarily produced or distributed for sale through retail sales agencies or instrumentalities for consumption by individuals, or for use by individuals for purposes of personal care or in the performance of services ordinarily rendered within the household, and that usually is consumed or expended in the course of the consumption or use. The term does not include:

(A) a meat or meat product, poultry or poultry product, or tobacco or tobacco product;

(B) a commodity subject to packaging or labeling requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136), or The [Section 8,] Virus-Serum-Toxin Act (21 U.S.C. 151 et seq. ~~[158]~~);

(C) a drug subject to the provisions of Section 431.113(c)(1) ~~[or 431.112(e),]~~ or Section 503(b)(1) ~~[or 506]~~ of the federal Act;

(D) a beverage subject to or complying with packaging or labeling requirements imposed under the Federal Alcohol Administration Act (27 U.S.C. 205(e)); or

(E) a commodity subject to the provisions of Chapter 61, Agriculture Code, relating to the inspection, labeling, and sale of agricultural and vegetable seed.

SECTION __. Section 431.112, Health and Safety Code, is amended to read as follows:

Sec. 431.112. MISBRANDED DRUG OR DEVICE. A drug or device shall be deemed to be misbranded:

(a)(1) if its labeling is false or misleading in any particular; or

(2) if its labeling or packaging fails to conform with the requirements of Section 431.181.

(b) if in a package form unless it bears a label containing (1) the name and place of business of the manufacturer, packer, or distributor; and (2) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count; provided, that under Subdivision (2) reasonable variations shall be permitted, and exemptions as to small packages shall be allowed in accordance with regulations prescribed by the secretary under the federal Act;

(c) if any word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

~~(d) [if it is for use by man and contains any quantity of the narcotic or hypnotic substance alpha-eucaine, barbituric acid, betacucaine, bromal, cannabis, carbromal, chloral, coca, cocaine, codeine, heroin, marihuana, morphine, opium, paraldehyde, peyote, or sulphonmethane, or any chemical derivative of such substance, which derivative, after investigation, has been found to be designated as habit forming, by regulations issued by the secretary under Section 502(d) of the federal Act, unless its label bears the name and quantity or proportion of such substance or derivative and in juxtaposition therewith the statement, "Warning: May be habit forming";~~

~~(e)~~ (1) if it is a drug, unless:

(A) its label bears, to the exclusion of any other nonproprietary name (except the applicable systematic chemical name or the chemical formula):

(i) the established name (as defined in Subdivision (3)) of the drug, if any; and

(ii) in case it is fabricated from two or more ingredients, the established name and quantity of each active ingredient, including the quantity, kind, and proportion of any alcohol, and also including, whether active or not, the established name and quantity or proportion of any bromides, ether, chloroform, acetanilid, acetphenetidin, amidopyrine, antipyrine, atropine, hyoscine, hyoscyamine, arsenic, digitalis, digitalis glucosides, mercury, ouabain, strophanthin, strychnine, thyroid, or any derivative or preparation of any such substances, contained therein; provided, that the requirement for stating the quantity of the active ingredients, other than the quantity of those specifically named in this subparagraph shall apply only to prescription drugs; and

(B) for any prescription drug the established name of the drug or ingredient, as the case may be, on the label (and on any labeling on which a name for such drug or ingredient is used) is printed prominently and in type at least half as large as that used thereon for any proprietary name or designation for such drug or ingredient; and provided, that to the extent that compliance with the requirements of Paragraph (A)(ii) or this paragraph is impracticable, exemptions shall be allowed under regulations promulgated by the secretary under the federal Act;

(2) if it is a device and it has an established name, unless its label bears, to the exclusion of any other nonproprietary name, its established name (as defined in Subdivision (4)) prominently printed in type at least half as large as that used thereon for any proprietary name or designation for such device, except that to the extent compliance with this subdivision is impracticable, exemptions shall be allowed under regulations promulgated by the secretary under the federal Act;

(3) as used in Subdivision (1), the term "established name," with respect to a drug or ingredient thereof, means:

(A) the applicable official name designated pursuant to Section 508 of the federal Act; or

(B) if there is no such name and such drug, or such ingredient, is an article recognized in an official compendium, then the official title thereof in such compendium; or

(C) if neither Paragraph (A) nor Paragraph (B) applies, then the common or usual name, if any, of such drug or of such ingredient; provided further, that where Paragraph (B) applies to an article recognized in the United States Pharmacopoeia National Formulary, the official title used in the United States Pharmacopoeia National Formulary shall apply;

(4) as used in Subdivision (2), the term "established name" with respect to a device means:

(A) the applicable official name of the device designated pursuant to Section 508 of the federal Act;

(B) if there is no such name and such device is an article recognized in an official compendium, then the official title thereof in such compendium; or

(C) if neither Paragraph (A) nor Paragraph (B) applies, then any common or usual name of such device;

(e) [~~(f)~~] unless its labeling bears:

(1) adequate directions for use; and

(2) such adequate warnings against use in those pathological conditions or by children where its use may be dangerous to health, or against unsafe dosage or methods or durations of administration or application, in such manner and form, as are necessary for the protection of users unless the drug or device has been exempted from those requirements by the regulations adopted by the secretary;

(f) ~~[(g)]~~ if it purports to be a drug the name of which is recognized in an official compendium, unless it is packaged and labeled as prescribed therein unless the method of packing has been modified with the consent of the secretary. Whenever a drug is recognized in the United States Pharmacopoeia National Formulary, it shall be subject to the requirements of the United States Pharmacopoeia National Formulary with respect to packaging and labeling. If there is an inconsistency between the requirements of this subsection and those of Subsection (d) ~~[(e)]~~ as to the name by which the drug or its ingredients shall be designated, the requirements of Subsection (d) ~~[(e)]~~ prevail;

(g) ~~[(h)]~~ if it has been found by the secretary to be a drug liable to deterioration, unless it is packaged in such form and manner, and its label bears a statement of such precautions, as the secretary shall by regulations require as necessary for the protection of public health;

(h) ~~[(i)]~~ if:

(1) it is a drug and its container is so made, formed, or filled as to be misleading; or

(2) it is an imitation of another drug; or

(3) it is offered for sale under the name of another drug;

(i) ~~[(j)]~~ if it is dangerous to health when used in the dosage, or manner or with the frequency or duration prescribed, recommended, or suggested in the labeling thereof;

~~[(k) if it is, or purports to be, or is represented as a drug composed wholly or partly of insulin, unless:~~

~~[(1) it is from a batch with respect to which a certificate or release has been issued pursuant to Section 506 of the federal Act; and~~

~~[(2) such certificate or release is in effect with respect to such drug;~~

~~[(l) if it is, or purports to be, or is represented as a drug (except a drug for use in animals other than man) composed wholly or partly of any kind of penicillin, streptomycin, chlortetracycline, chloramphenicol, bacitracin, or any other antibiotic drug, or any derivative thereof, unless:~~

~~[(1) it is from a batch with respect to which a certificate or release has been issued pursuant to Section 507 of the federal Act; and~~

~~[(2) the certificate or release is in effect with respect to the drug; provided, that this subdivision shall not apply to any drug or class of drugs exempted by regulations promulgated under Section 507(e) or (d) of the federal Act;]~~

(j) ~~[(m)]~~ if it is a color additive, the intended use of which is for the purpose of coloring only, unless its packaging and labeling are in conformity with such packaging and labeling requirements applicable to such color additive, as may be contained in rules issued under Section 431.161(b);

(k) ~~[(n)]~~ in the case of any prescription drug distributed or offered for sale in this state, unless the manufacturer, packer, or distributor thereof includes in all advertisements and other descriptive printed matter issued or caused to be issued by the manufacturer, packer, or distributor with respect to that drug a true statement of:

(1) the established name as defined in Subsection (d) ~~[(*)]~~, printed prominently and in type at least half as large as that used for any trade or brand name;

(2) the formula showing quantitatively each ingredient of the drug to the extent required for labels under Subsection (d) ~~[(*)]~~; and

(3) other information in brief summary relating to side effects, contraindications, and effectiveness as required in regulations issued under Section 701(e) of the federal Act;

(l) ~~[(*)]~~ if it was manufactured, prepared, propagated, compounded, or processed in an establishment in this state not registered under Section 510 of the federal Act, if it was not included in a list required by Section 510(j) of the federal Act, if a notice or other information respecting it was not provided as required by that section or Section 510(k) of the federal Act, or if it does not bear symbols from the uniform system for identification of devices prescribed under Section 510(e) of the federal Act as required by regulation;

(m) ~~[(*)]~~ if it is a drug and its packaging or labeling is in violation of an applicable regulation issued under Section 3 or 4 of the federal ~~[Federal]~~ Poison Prevention Packaging Act of 1970 (15 ~~[24]~~ U.S.C. 1472 or 1473);

(n) ~~[(*)]~~ if a trademark, trade name, or other identifying mark, imprint or device of another, or any likeness of the foregoing has been placed thereon or on its container with intent to defraud;

(o) ~~[(*)]~~ in the case of any restricted device distributed or offered for sale in this state, if:

(1) its advertising is false or misleading in any particular; or

(2) it is sold, distributed, or used in violation of regulations prescribed under Section 520(e) of the federal Act;

(p) ~~[(*)]~~ in the case of any restricted device distributed or offered for sale in this state, unless the manufacturer, packer, or distributor thereof includes in all advertisements and other descriptive printed matter issued by the manufacturer, packer, or distributor with respect to that device:

(1) a true statement of the device's established name as defined in Section 502(e) of the federal Act, printed prominently and in type at least half as large as that used for any trade or brand name thereof; and

(2) a brief statement of the intended uses of the device and relevant warnings, precautions, side effects, and contraindications and in the case of specific devices made subject to regulations issued under the federal Act, a full description of the components of such device or the formula showing quantitatively each ingredient of such device to the extent required in regulations under the federal Act;

(q) ~~[(*)]~~ if it is a device subject to a performance standard established under Section 514 of the federal Act, unless it bears such labeling as may be prescribed in such performance standard; or

(r) ~~[(*)]~~ if it is a device and there was a failure or refusal:

(1) to comply with any requirement prescribed under Section 518 of the federal Act respecting the device; or

(2) to furnish material required by or under Section 519 of the federal Act respecting the device.

SECTION __. Section 431.113(c)(2), Health and Safety Code, is amended to read as follows:

(2) Any drug dispensed by filling or refilling a written or oral prescription of a practitioner licensed by law to administer such drug shall be exempt from the requirements of Section 431.112, except Sections 431.112(a)(1), (h)(2), and (h)(3), [~~(i)(2), (i)(3), (k), and (l),~~] and the packaging requirements of Sections 431.112(f), (g), and (m) [~~431.112(g), (h), and (p),~~] if the drug bears a label containing the name and address of the dispenser, the serial number and date of the prescription or of its filling, the name of the prescriber, and, if stated in the prescription, the name of the patient, and the directions for use and cautionary statements, if any, contained in such prescription. This exemption shall not apply to any drugs dispensed in the course of the conduct of business of dispensing drugs pursuant to diagnosis by mail, or to a drug dispensed in violation of Subdivision (1).

SECTION __. To the extent of any conflict between Sections 431.002(8), 431.112, and 431.113(c)(2), Health and Safety Code, and those provisions as amended by Sections 1, 4, and 5 of **SB 1400**, Acts of the 78th Legislature, Regular Session, 2003, this Act prevails.

HCR 273 was adopted without objection.

HCR 276 - ADOPTED
(by Garza)

Representative Garza moved to suspend all necessary rules to take up and consider at this time **HCR 276**.

The motion prevailed without objection.

The following resolution was laid before the house:

HCR 276, Proclaiming Tieman H. Dippel, Jr., the Texas Prophet on Conscience.

HCR 276 was adopted without objection.

INTRODUCTION OF GUEST

The chair recognized Representative Garza who introduced Tieman H. Dippel, Jr. Mr. Dippel briefly addressed the house.

HB 2004 - HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS

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

HB 2004, A bill to be entitled An Act relating to allowing the commissioners court of certain counties to deliberate in a closed meeting regarding business and financial considerations of a contract being negotiated.

On motion of Representative Marchant, the house concurred in the senate amendments to **HB 2004** by (Record 808): 139 Yeas, 1 Nay, 2 Present, not voting.

Yeas — Allen; Alonzo; Bailey; Baxter; Berman; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Burnam; Callegari; Campbell; Canales; Casteel; Castro; Chavez; Chisum; Christian; Coleman; Cook, B.; Cook, R.; Corte; Crabb; Crownover; Davis, J.; Davis, Y.; Dawson; Delisi; Denny; Deshotel; Driver; Dukes; Dunnam; Dutton; Edwards; Eissler; Elkins; Ellis; Escobar; Farabee; Farrar; Flores; Flynn; Garza; Gattis; Geren; Goodman; Goolsby; Griggs; Guillen; Gutierrez; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Heflin; Hegar; Hilderbran; Hill; Hochberg; Hodge; Homer; Hopson; Howard; Hughes; Hunter; Hupp; Isett; Jones, D.; Jones, E.; Jones, J.; Keel; Keffer, B.; Keffer, J.; King; Kolkhorst; Krusee; Kuempel; Laubenberg; Lewis; Luna; Mabry; Madden; Marchant; Martinez Fischer; McCall; McClendon; McReynolds; Mercer; Merritt; Moreno, J.; Moreno, P.; Morrison; Mowery; Naishtat; Nixon; Noriega; Oliveira; Olivo; Paxton; Peña; Phillips; Pickett; Pitts; Puente; Quintanilla; Raymond; Reyna; Riddle; Ritter; Rodriguez; Rose; Seaman; Smith, T.; Smith, W.; Smithee; Solis; Solomons; Stick; Swinford; Talton; Taylor; Telford; Thompson; Truitt; Turner; Uresti; Van Arsdale; West; Wilson; Wise; Wohlgemuth; Wolens; Wong; Woolley; Zedler.

Nays — Villarreal.

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

Absent, Excused — Eiland; Hope; Laney.

Absent — Capelo; Gallego; Giddings; Grusendorf; Menendez.

Senate Committee Substitute

HB 2004. A bill to be entitled An Act relating to allowing a commissioners court to deliberate in a closed meeting regarding business and financial considerations of a contract being negotiated.

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

SECTION 1. Subchapter D, Chapter 551, Government Code, is amended by adding Section 551.0725 to read as follows:

Sec. 551.0725. COMMISSIONERS COURTS: DELIBERATION REGARDING CONTRACT BEING NEGOTIATED; CLOSED MEETING. The commissioners court of a county may conduct a closed meeting to deliberate business and financial issues relating to a contract being negotiated if, before conducting the closed meeting:

(1) the commissioners court votes unanimously that deliberation in an open meeting would have a detrimental effect on the position of the commissioners court in negotiations with a third person; and

(2) the attorney advising the commissioners court issues a written determination that deliberation in an open meeting would have a detrimental effect on the position of the commissioners court in negotiations with a third person.

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, 2003.

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

Amend **CSHB 2004** (committee printing) as follows:

1. On page 1, line 10, by inserting "with a population of 400,000 or more" between "county" and "may"; and

2. On page 1, line 22, by adding new subsection (3) as follows:

(3) Notwithstanding Government Code Section 551.103(a), the commissioners court must make a tape recording of the proceedings of a closed meeting to deliberate the information.

(Capelo in the chair)

**SJR 30 - REQUEST OF SENATE GRANTED
CONFERENCE COMMITTEE APPOINTED**

On motion of Representative Callegari, the house granted the request of the senate for the appointment of a conference committee on **SJR 30**.

The chair announced the appointment of the following conference committee, on the part of the house, on **SJR 30**: Callegari, chair; Hegar; Olivo; T. Smith; and Hilderbran.

**HJR 68 - HOUSE REFUSES TO CONCUR
IN SENATE AMENDMENTS
CONFERENCE COMMITTEE APPOINTED**

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

HJR 68, A joint resolution proposing a constitutional amendment authorizing the Veterans' Land Board to make certain payments on revenue bonds and to use assets in certain funds to provide for veterans homes.

Representative Hupp moved that the house not concur in the senate amendments and that a conference committee be requested to adjust the differences between the two houses on **HJR 68**.

The motion prevailed without objection.

The chair announced the appointment of the following conference committee, on the part of the house, on **HJR 68**: Hupp, chair; Heflin; Pitts; Corte; and Luna.

**HB 752 - HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS**

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

HB 752, A bill to be entitled An Act relating to the administration of public retirement systems for police officers in certain municipalities.

On motion of Representative Woolley, the house concurred in the senate amendments to **HB 752**.

Senate Committee Substitute

HB 752, A bill to be entitled An Act relating to the administration of public retirement systems for police officers in certain municipalities.

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

SECTION 1. Section 1, Article 6243g-4, Revised Statutes, is amended to read as follows:

Sec. 1. PURPOSE. The purpose of this article is to restate and amend the provisions of former law creating and governing a police officers pension system in each city in this state having a population of 1.5 million or more, according to the most recent federal decennial census, and to reflect changes agreed to by the city and the board of trustees of the pension system under Section 27 of this article. The pension system shall continue to operate regardless of whether the city's population falls below 1.5 million [~~permit the consolidation of the terms of certain pension plans~~].

SECTION 2. Section 2, Article 6243g-4, Revised Statutes, is amended by amending Subdivisions (1), (2), (7), (11), (14), and (23), adding Subdivisions (4-a), (14-a), and (22-a), and renumbering Subdivision (19) as Subdivision (17-a) to read as follows:

(1) "Active member" means a person employed as [~~an employee who holds~~] a classified police officer by the [~~position in a~~] police department of a city subject to this article, except for a person [~~an employee~~] who is a part-time, seasonal, or temporary employee or a person who elected to remain a member of a pension system described by Chapter 88, Acts of the 77th Legislature, Regular Session, 2001 (Article 6243h, Vernon's Texas Civil Statutes). The term does not include a person who is a member of another pension system of the same city, except to the extent provided by Section 15(j) or 18 of this article.

(2) "Average total direct pay" means an amount determined by dividing the following sum by 12:

(A) the highest biweekly pay received by a member for any single pay period in the last 26 pay periods in which the member worked full-time, considering only items of total direct pay that are included in each paycheck, multiplied by 26; plus

(B) the total direct pay, excluding all items of the type included in Paragraph (A) received during the same last 26 biweekly pay periods [~~a member's total direct pay for the 26 pay periods immediately preceding the date of separation from service or the date of entry into DROP, if earlier, divided by 12~~].

(4-a) "Catastrophic injury" means a sudden, violent, life-threatening, duty-related injury sustained by an active member that is due to an externally caused motor vehicle accident, gunshot wound, aggravated assault, or other external event or events and results, as supported by evidence, in one of the following conditions:

(A) loss of sight in one or both eyes;

(B) loss of one or both feet at or above the ankle;

(C) loss of one or both hands at or above the wrist;

(D) injury to the spine that results in permanent and complete paralysis of both arms, both legs, or one arm and one leg; or

(E) an externally caused physical traumatic injury to the brain rendering the member physically or mentally unable to perform the member's duties as a police officer.

(7) "Dependent child" means a deceased member's unmarried natural or adopted child who:

(A) has not attained age 18;

(B) has attained age 18 but not age 24 [~~22~~] and is attending school on a full-time basis; or

(C) has attained age 18 and is permanently disabled as the result of a disability that began before the child attained age 18.

(11) "Former member" means a person who was once an active member, vested or not, but who [~~has~~] terminated active member status and received a refund of member contributions.

(14) "Member" means [~~includes~~] an active member, inactive member, or retired member, as the context may require. The term [~~, but~~] does not include a former member.

(14-a) "Normal retirement age" means the earlier of:

(A) the age at which the member attains 20 years of service; or

(B) the age at which the member first attains both the age of at least 60 and at least 10 years of service.

(17-a) [~~(19)~~] "Retired member" means a member who has separated from service and who is eligible to receive an immediate service or disability pension under this article.

(22-a) "Survivor" means a surviving spouse, a dependent child, or a dependent parent.

(23) "Total direct pay" means wages as defined by Section 3401(a) of the code, plus any amounts that are not included in gross income by reason of workers' compensation claims under Section 104(a)(1), 125, 402(g)(2), or 457 of the code, [~~and~~] member contributions picked up pursuant to Section 414(h)(2) of the code, and any portion of a motorcycle allowance that is not considered wages, less any pay received for overtime work. The term does not include nontaxable payments not expressly described by this subdivision. However, the compensation included in applying the limits under Sections 26(c) and (d) of this article shall include overtime pay and exclude any amount that is excluded from gross income under Section 104(a)(1) of the code and the portion of any motorcycle allowance that is excluded from gross income by any other provision of the code not mentioned in this subdivision.

SECTION 3. Section 3, Article 6243g-4, Revised Statutes, is amended by amending Subsections (a)-(d), (f), and (g) and adding Subsection (h) to read as follows:

(a) The board of trustees of the pension system that was created under Chapter 76, Acts of the 50th Legislature, Regular Session, 1947 (Article 6243g-1, Vernon's Texas Civil Statutes), and that operates under Section 67, Article XVI,

Texas Constitution, continues to be responsible for the general administration, management, and operation of the pension system, including the direction of investment and oversight of the fund's assets.

(b) The board is composed of seven members as follows:

(1) the administrative head of the city or the administrative head's authorized representative;

(2) three employees of the police department having membership in the pension system, ~~and~~ elected by the active, inactive, and retired members of the pension system ~~[in the manner determined at a one-time election held for the pension system before October 1, 1999];~~

(3) two retired members ~~[elected in the manner determined at a one-time election held for the pension system before October 1, 1999,]~~ who are receiving pensions from the system and are not officers or employees of the city, elected by the active, inactive, and retired members of the pension system; and

(4) the treasurer of the city or the person discharging the duties of the city treasurer.

(c) The terms of office of the board members elected as described by Subsection (b)(2) of this section shall be three years, beginning on January 1 and ending on December 31, with one board member being elected every year at an election called by the board and held in December. If a vacancy occurs among the three elected active board members, the board shall hold an election within 60 days after the date the vacancy occurred. At that election, an active member shall be elected to serve for the remainder of the term of the vacant position or for a full term if the term of the board member that caused the vacancy would have ended in that year.

(d) The terms of office of the board members elected as described by Subsection (b)(3) of this section shall be three years, beginning on January 1 and ending on December 31. Beginning in 1999, and each third succeeding year, one board member shall be elected at an election called by the board and held in December. Beginning in 2000, and each third succeeding year, a second board member shall be elected at an election called by the board and held in December. If a vacancy occurs among the two elected retired members of the board, the board shall hold an election within 60 days after the date the vacancy occurred. At that election, a retired member shall be elected to serve for the remainder of the term of the vacant position or for a full term if the term of the board member that caused the vacancy would have ended in that year. A board member who is a retired member and who was appointed to the board before January 1999 shall serve the remainder of the board member's term. On expiration of the appointed term, the appointed board member is eligible to run for the board position described by Subsection (b)(3) of this section in the same manner as any other retired member.

(f) ~~An individual who is [If it is so determined at a one-time election held for the pension system before October 1, 1999,]~~ an officer or employee of any employee organization or retiree organization or an employee of the pension system is prohibited from being elected to the board, appointed to the board, or in any other way serving as ~~[becoming]~~ a member of the board.

(g) Each board member shall, within 30 days after taking office [~~the date of appointment or election~~], take an oath of office:

(1) to diligently and honestly administer the affairs of the pension system by:

(A) being loyal exclusively to all members;

(B) being prudent in protecting and managing the trust's property;

(C) defending the trust's assets; and

(D) acting under the terms of the plan; and

(2) to not knowingly violate, or willingly permit to be violated, this article.

(h) Notwithstanding any other provision in this section, if a candidate for an elected trustee position is unopposed in an election, the election may not be held for that position. The board shall certify the candidate as elected to the board on the executive director's certification that the candidate is eligible to be a trustee under this section and is unopposed for election. The certified candidate shall take the oath of office as soon as practicable in January, after being declared elected in December.

SECTION 4. Section 4(a), Article 6243g-4, Revised Statutes, is amended to read as follows:

(a) Elected members of the board who are employees of the city's police department are entitled to leave from their employer to attend to the official business of the pension system and are not required to report to the city or any other governmental entity regarding travel or the official business of the pension system, except when on city business.

SECTION 5. Section 5, Article 6243g-4, Revised Statutes, is amended by amending Subsection (d) and adding Subsection (b-1) to read as follows:

(b-1) The board may hire an executive director. The executive director, acting under the direction of the board, shall handle the operations of the plan and shall perform other duties as the board may assign. The executive director shall also serve as the plan administrator for purposes of complying with Subchapter A, Chapter 804, Government Code.

(d) The board may employ one or more actuaries, legal counsel, accountants, or other professionals [~~an actuary, legal counsel, an accountant, or another professional~~] and pay the compensation for these services from the fund.

SECTION 6. Section 6, Article 6243g-4, Revised Statutes, is amended by adding Subsections (e-1), (g), and (h) and amending Subsection (f) to read as follows:

(e-1) The board may sue on behalf of the pension system in any court with proper subject matter jurisdiction regardless of location. The board has sole authority to litigate matters on behalf of the pension system.

(f) The board has full discretion and authority to administer the pension system, to construe and interpret this article, and to do all other acts necessary to carry out the purpose of this article in a manner and to the extent that the board considers expedient to administer this article for the greatest benefit of all members. All decisions of the board are final and binding on all affected parties.

(g) The board, if reasonably necessary in the course of performing a board function, may subpoena a witness or the production of a book, record, or other document. The presiding officer of the board may issue, in the name of the board, a subpoena only if a majority of the board approves. The presiding officer of the board, or the presiding officer's designee, shall administer an oath to each witness. A peace officer shall serve a subpoena issued by the board. If the person to whom a subpoena is directed fails to comply, the board may bring suit to enforce the subpoena in a district court of the county in which the person resides or in the county in which the book, record, or other document is located. If the district court finds that good cause exists for issuance of the subpoena, the court shall order compliance. The district court may modify the requirements of a subpoena that the court finds are unreasonable. Failure to obey the order of the district court is punishable as contempt.

(h) The board is not subject to Title 6, Property Code.

SECTION 7. Sections 7(d) and (f), Article 6243g-4, Revised Statutes, are amended to read as follows:

(d) On the date the board makes a declaration under Subsection (c) of this section, the board shall call a special election to be held not earlier than the 20th or later than the 60th ~~30th~~ day after that date to fill the vacancy for the unexpired term of the person who was removed. The person who was removed is not eligible to run in the special election but is eligible to run in all subsequent board elections.

(f) The hearing must begin as soon as the hearing examiner can be scheduled but not later than the 60th day after the date the board votes to remove the board member. In a hearing conducted under this subsection, the hearing examiner may issue subpoenas. The parties may agree to an expedited hearing procedure. Unless otherwise agreed by the parties, in an expedited procedure, the hearing examiner must issue a decision not later than the 10th day after the date the hearing ends. Unless operating under an expedited hearing procedure, the hearing examiner shall make a reasonable effort to issue a decision not later than the 30th day after the date the hearing ends. The hearing examiner's inability to meet the time requirements imposed by this subsection does not affect the hearing examiner's jurisdiction or final decision. The final decision of the hearing examiner may be either to remove the board member or not to remove the board member from the board. ~~[A decision may be made to remove the board member from the board only if the hearing examiner determines that the board member violated Subchapter A, Chapter 121, Property Code.]~~ The hearing examiner's fees and expenses shall be paid by the pension system. The costs of a witness shall be paid by the party who calls the witness.

SECTION 8. Section 8(a), Article 6243g-4, Revised Statutes, is amended to read as follows:

(a) Each active member of the pension system shall pay into the system each month $8\frac{3}{4}$ percent of the member's total direct pay. The payments shall be deducted by the city from the salary of each active member each payroll period ~~monthly~~ and paid to the pension system. Except for the repayment of withdrawn contributions under Section 17(f) or 18(c)(3) of this article and rollovers

permitted by Section 17(h) of this article, a person may not be required or permitted to make any payments into the pension system after the person separates from service.

SECTION 9. The heading to Section 9, Article 6243g-4, Revised Statutes, is amended to read as follows:

Sec. 9. CONTRIBUTIONS [MONTHLY PAYMENT] BY THE CITY.

SECTION 10. Section 9(a), Article 6243g-4, Revised Statutes, is amended to read as follows:

(a) The city shall make substantially equal contributions to the fund as soon as administratively feasible after each payroll period. For each fiscal year ending after June 30, 2005, the city's minimum contribution shall be the greater of 16 percent of the members' total direct pay or the level percentage of salary payment required to amortize the unfunded actuarial liability over a constant period of 30 years computed on the basis of an acceptable actuarial reserve funding method approved by the board. However, for the fiscal year ending June 30, 2002, the city's contribution shall be \$32,645,000, for the fiscal year ending June 30, 2003, the city's contribution shall be \$34,645,000, for the fiscal year ending June 30, 2004, the city's contribution shall be \$36,645,000, and for the fiscal year ending June 30, 2005, the city's contribution shall be 16 percent of the members' total direct pay. ~~[For fiscal years ending before June 30, 2002, the city shall make contributions to the fund after each payroll period in an amount previously agreed to by the city and the board. For the fiscal year ending June 30, 2002, the city's contribution rate shall be composed of the normal cost plus the level percentage of salary payment required to amortize the actuarial liability over a period of 40 years from January 1, 1983, computed on the basis of an acceptable actuarial reserve funding method approved by the board. For each fiscal year ending after June 30, 2002, the city's contribution shall be the sum of (1) an amount computed in the manner provided for the contribution for the fiscal year ending June 30, 2002, plus (2) \$2 million multiplied by the number of fiscal years that have ended since June 30, 2002, but not more than 16 percent of the aggregate total direct pay of all active members for the fiscal year. If the amount described by (1) in the preceding sentence is greater than 16 percent of the aggregate total direct pay of all active members for the year, the amount described by (1) shall be contributed.]~~

SECTION 11. Section 11(a), Article 6243g-4, Revised Statutes, is amended to read as follows:

(a) A member who returns to service after an interruption in service is entitled to credit for the previous service to the extent provided by Section 19 of this article. ~~[In addition, a member who is retiring shall receive one half day of service for each day for which the city is required to make contributions with respect to the member's unused sick leave, vacation pay, or accumulated overtime under Section 9(b) of this article, except to the extent that the member elects to have the amounts credited to the member's DROP account. Under no circumstances may payments for the same days of unused sick leave, vacation pay, or accumulated overtime be used to both increase a member's service and credit the member's DROP account.]~~

SECTION 12. Section 12, Article 6243g-4, Revised Statutes, is amended by amending Subsections (a), (b), (d), (f), and (g) and adding Subsections (h) and (i) to read as follows:

(a) A member who separates from service after earning 20 or more years of service is eligible to receive a monthly service pension, beginning in the month of separation from service. A member who separates from service with the city after November 23, 1998, after earning 10 or more but less than 20 years of service in any of the city's pension systems and who complies with all applicable requirements of Section 19 of this article is eligible to receive a monthly service pension, beginning in the month the individual attains 60 years of age. An individual may not receive a pension under this article while still an active member, except as provided by Subsection (f) of this section. All service pensions end with the month in which the retired member dies. The city shall supply all personnel, financial, and payroll records necessary to establish the member's eligibility for a benefit, the member's credited service, and the amount of the benefit. The city must provide those records in the format specified by the pension system.

(b) Except as otherwise provided by this section, the monthly service pension of a member that becomes due after May 1, 2001 [~~who separates from service after November 23, 1998~~], is equal to 2.75 [2.5] percent of the member's average total direct pay or, if the member retired before November 24, 1998, 2.75 percent of the member's base salary, for each of the member's first 20 years of service, plus an additional two percent of the member's average total direct pay for each of the member's subsequent years of service, computed to the nearest one-twelfth of a year. A member who separates from service after November 23, 1998, including a member who was a DROP participant, and begins to receive a monthly service pension shall also receive a one-time lump-sum payment of \$5,000 at the same time the first monthly pension payment is made. The lump-sum payment under this subsection is not available to a member who has previously received a \$5,000 payment under this section or Section 16 of this article.

(d) A retired member who receives a service pension under this article is entitled to receive an additional amount each month equal to \$150 [~~\$88.05~~], beginning on the later of the date the retired member's pension begins or the date the first monthly payment becomes due after June 18, 2001, and continuing until the end of the month in which the retired member dies. This amount is intended to defray the retired member's group medical insurance costs and will be paid directly by the fund to the retired member for the retired member's lifetime.

(f) Notwithstanding anything to the contrary in this article, an active or inactive member who is eligible to participate in the executive official pension plan established by Chapter 358, Acts of the 48th Legislature, Regular Session, 1943 (Article 6243g, Vernon's Texas Civil Statutes), or a successor statute, may, while continuing employment with the police department, participate in the executive official pension plan and elect:

(1) if an active member:

(A) to begin receiving an immediate pension benefit and be considered a retired member eligible for all rights and privileges afforded any other retired member under this article, if the member has 20 years or more of service and is eligible for retirement under this section except for the continuing employment; or

(B) to enter DROP if the member satisfies all requirements of this article for DROP membership; or

(2) if an inactive member, to begin receiving an immediate pension benefit equal to 2.75 [~~2.5~~] percent of the member's average total direct pay at the time the member became inactive for the member's first 20 years of service and be entitled to all rights and privileges afforded a retired member under this article.

(g) Notwithstanding anything to the contrary in this article, service pensions that began before May 1, 2001 [~~September 1, 1999~~], shall continue to be paid in accordance with applicable prior law, subject only to the adjustments that are specifically provided by this section.

(h) Average total direct pay for a member who retires after participating in a phase-down program in which the member receives a periodic payment that is generated from the member's accumulated sick time, vacation time, and overtime balances shall be based on the highest pay period, excluding any pay for overtime work, in the periods during which the member worked full-time before participating in the phase-down program.

(i) The computation of average total direct pay shall be made in accordance with procedures and policies adopted by the board.

SECTION 13. Section 14, Article 6243g-4, Revised Statutes, is amended by amending Subsections (b)-(g), (j), and (l) and adding Subsections (f-1) and (m) to read as follows:

(b) An active member who has at least 20 years of service with the police department may file with the pension system an [~~irrevocable~~] election to participate in DROP and receive a DROP benefit instead of the standard form of pension provided by this article. The election may be made, under procedures established by the board, by an active member who has attained the required years of service. A DROP election that is made and accepted by the board may not be revoked before the member's separation from service.

(c) The monthly service pension and death benefits of an active member who becomes a DROP participant will be determined as if the active member had separated from service and begun receiving a pension on the effective date of the DROP election. The active member does not retire but does not accrue additional service credit beginning on the effective date of the election, and increases in pay that occur on or after that date may not be used in computing the active member's monthly service pension, except as provided by Subsection (l) of this section, but cost-of-living adjustments that occur on or after that date and that otherwise would be applicable to the pension will be made.

(d) The member's DROP benefit is determined as provided by this subsection and Subsection (e) of this section. Each month an amount equal to the monthly service pension the active member would have been entitled to receive if the active member had separated from service on the effective date of entry into

DROP, less any amount that is intended to help defray the active member's group medical insurance costs as described by Section 12(d) of this article, shall be credited to a notional DROP account for the active member, and each month an amount equal to the monthly contributions the active member makes to the fund on and after the effective date of entry into DROP also shall be credited to the same notional DROP account. In any year in which a 13th payment is made to retired members under Section 12(e) of this article, an amount equal to the amount of the 13th payment that would have been made to the DROP participant if the DROP participant had retired on the date of DROP entry will be credited to the DROP account. ~~[In addition, any amount that is contributed by the city under Section 9(b) of this article with respect to the active member's unused sick leave, vacation pay, or accumulated overtime, and that is not required to be used to provide 10 or 20 years of service to the member under Section 11 of this article or used to repay withdrawn contributions under Section 18(e) of this article shall be credited to the DROP account as of the end of the month in which it is contributed.]~~

(e) As of the end of each month an amount is credited to each active member's notional DROP account at the rate of one-twelfth of a hypothetical earnings rate on amounts in the account. The hypothetical earnings rate is determined for each calendar year based on the average of the aggregate annual rate of return on investments of the pension system for the five consecutive fiscal years ending June 30 preceding the calendar year to which the earnings rate applies. The rate may not be less than zero. ~~[The board may lower any future rate below the rate otherwise prescribed by this subsection to the extent necessary to ensure that the DROP does not adversely affect the financial condition of the fund.]~~

(f) At the time of a DROP participant's separation from service, the DROP participant or, if separation from service was due to the DROP participant's death, the person entitled to receive benefits under Sections 16 and 16A of this article shall be afforded a one-time election to revoke the DROP election and substitute either the annuity that would have been paid if the member had never elected DROP or an annuity and notional DROP account equal to the annuity and notional DROP account that would have been received if the member had entered DROP on a date elected by the member or survivor. The date elected by the member or survivor may not be earlier than the earliest date the member could have elected to enter DROP or later than the date of the member's death or other separation from service. The computation of the value of the annuity and DROP account of a member or survivor who makes a Back DROP election shall be subject to the policies and procedures adopted by the board. For purposes of this subsection, "Back DROP" means the option to make this one-time election ~~[If a DROP participant separates from service because of disability or death, the member or the member's spouse or, if there is no eligible spouse, any other person eligible to receive benefits under Section 16 of this article, as applicable, may either receive an amount equal to the member's DROP account or revoke the member's DROP election and elect to receive benefits as provided by this article without regard to this section. A revocation and election under this subsection~~

~~must be made at the time and in the manner provided in a procedure that the board may adopt from time to time. Alternatively, the retired member, a deceased member's spouse, or, if there is no spouse, the person entitled to receive benefits under Section 16 of this article may elect to receive a distribution that is equal to the member's DROP account and benefits as described by Subsection (c) of this section].~~

(f-1) If a DROP participant separates from service due to death and the person entitled to receive benefits under Sections 16 and 16A of this article does not revoke the DROP election, the DROP benefit may be received in the form of an additional annuity over the life expectancy of the surviving spouse.

(g) In lieu of receiving a lump-sum DROP benefit on separation from service, a retired member who has been a DROP participant or, if separation from service was due to the DROP participant's death, the surviving spouse may leave the retired member's DROP account with the pension system, in which case interest will be credited to the DROP account in the manner described by Subsection (e) of this section [this subsection]. [The interest credited for any month shall be at the applicable annual interest rate as defined by Section 417(e)(3)(A)(ii)(II) of the code and published by the Internal Revenue Service for June of the year preceding the calendar year in which the interest is credited.]

(j) A retired member who is a DROP participant, or a surviving spouse, may elect to receive distribution of the DROP account in a one-time lump-sum payment or in any other form of distribution that is approved by the board and satisfies the requirements of Section 401(a)(9) of the code. [Distributions to a deceased member's survivors, as described by Subsection (f) of this section, shall be made in a lump sum as soon as administratively feasible after the deceased member's death.]

(l) The DROP account of each DROP participant who was an active member on May 1, 2001, shall be recomputed and adjusted, effective on that date, to reflect the amount that would have been credited to the account if the member's pension had been computed based on 2.75 percent of the member's average total direct pay, or base pay if applicable, for each of the member's first 20 years of service. The DROP account adjustment shall also include the assumed earnings that would have been credited to the account if the 2.75 percent multiplier for the first 20 years of service had been in effect from the time the member became a DROP participant [If DROP causes any unanticipated actuarial costs, the board may take action as necessary to mitigate the unanticipated actuarial cost, including discontinuing acceptance of additional elections to participate in the DROP, but the pension system shall continue to administer DROP for the members participating before the date of discontinuance of enrollment].

(m) The DROP monthly service pension, as described by Subsection (c) of this section, of each DROP participant who retires after May 1, 2001, shall be recomputed as of the date of retirement, based on the DROP participant's average total direct pay at the time of retirement and changes to the benefit formula in Section 12(b) of this article that have occurred since the member's DROP entry

date. If this recomputation would result in a greater monthly service pension, as described by Subsection (c) of this section, the DROP participant's monthly service pension shall be adjusted to the greater amount.

SECTION 14. Section 15, Article 6243g-4, Revised Statutes, is amended by amending Subsections (a)-(d) and adding Subsections (h)-(k) to read as follows:

(a) An active member who becomes totally and permanently incapacitated for the performance of the member's duties as a result of a bodily injury received in, or illness caused by, the performance of those duties shall, on presentation to the board of proof of total and permanent incapacity, be retired and shall receive an immediate duty-connected disability pension equal to the greater of 55 ~~50~~ percent of the member's average total direct pay at the time of retirement or the member's accrued service pension. If the injury or illness involves a traumatic event that directly causes an immediate cardiovascular condition resulting in a total disability, the member is eligible for a duty-connected disability pension. A disability pension granted by the board shall be paid to the member for the remainder of the member's life or for as long as the incapacity remains. If a member is a DROP participant at the commencement of the member's disability, the member shall have the option of receiving the DROP balance in any manner that is approved by the board and that satisfies the requirements of Section 401(a)(9) of the code and Treasury Regulation Section 1.104-1(b) (26 C.F.R. Section 1.104-1) and is otherwise available to any other member under this article.

(b) A member with 10 years or more of credited service who becomes totally and permanently incapacitated for the performance of the member's duties and is not eligible for either an immediate service pension or a duty-connected disability pension is eligible for an immediate monthly pension computed in the same manner as a service retirement pension but based on average total direct pay and service accrued to the date of the disability. The pension under this subsection may not be less than 27.5 percent of the member's average total direct pay.

(c) A member who becomes entitled to receive a disability pension after November 23, 1998, is entitled to receive a one-time lump-sum payment of \$5,000 at the same time the first monthly disability pension payment is made, but only if the member has not previously received a \$5,000 payment under this section or Section 12 of this article. The retired member ~~person~~ shall also receive an additional amount each month equal to \$150 ~~[\$88.05]~~, beginning on the later of the date the pension begins or the date the first monthly payment becomes due after June 18, 2001, and continuing as long as the disability pension continues, to help defray the cost of group medical insurance. ~~[A retired member whose disability pension continues and was in pay status on November 23, 1998, is entitled to receive a one-time lump-sum payment of \$5,000 as soon as administratively feasible after November 23, 1998. This payment has no effect on the amount of the retired member's monthly pension.]~~ For any year in which a

13th payment is made to retired members under Section 12(e) of this article, a 13th payment, computed in the same manner, shall also be paid to members who have retired under this section.

(d) A person may not receive a disability pension unless the person files with the board an application for a disability pension not later than 180 days after the date of separation from service, at which time the board shall have the person examined by a physician chosen and compensated by the board. The physician shall make a report and recommendations to the board regarding the extent of any disability and whether any disability that is diagnosed is a duty-connected disability. Except as provided by Subsection (j) of this section, a [A] person may not receive a disability pension for an injury received or illness incurred after separation from service.

(h) As soon as administratively feasible after the later of June 18, 2001, or the date of the member's retirement because of disability, an additional monthly disability benefit may be provided to the member. The additional monthly benefit shall be equal to the difference between the monthly benefit the member is receiving under Subsection (a) or (b) of this section, whichever is applicable, and 100 percent of the member's average total direct pay at the time of retirement because of disability. The additional benefit will end on the earlier of the fourth anniversary of the date the benefit is first paid, the end of the last month the member is engaged in an education or training program approved in accordance with procedures adopted by the board, or the date the member is approved to return to active duty. This additional monthly benefit is not reduced by any DROP account distributions the member receives unless the member elects to receive the DROP distributions in the form of an annuity. This additional benefit is not available to a member who is receiving a disability benefit under Subsection (j) of this section.

(i) Effective for payments that become due after April 30, 2000, and instead of the disability benefit provided by Subsection (a), (b), or (h) of this section, a member who suffers a catastrophic injury shall receive a monthly benefit equal to 100 percent of the member's average total direct pay determined as of the date of retirement.

(j) A member who transfers from the police department of a city subject to this article to another department of the same city, or who separates from service and is rehired in another department, and who subsequently terminates employment with the city due to a duty-connected injury incurred while working as a non-police employee, shall be entitled to receive an immediate proportional nonduty-connected disability benefit computed in the same manner as provided by Subsection (b) of this section, but the benefit shall be based only on service earned as an employee of the police department. For purposes of this proportional disability benefit only, the 180-day application filing requirement in Subsection (d) of this section begins at the time of separation from the department that employed the member at the time the disability was incurred. A person may not receive a disability pension for an injury incurred after termination from service with the city or for a nonduty disability incurred after separation from service

with the police department. This proportional nonduty-connected disability benefit is not available to a person who is already receiving a service retirement pension or disability pension under this article.

(k) A benefit payment that becomes due under this section is effective on the later of the first day the disabled member leaves the payroll of the city or the date the member signs the application for a disability pension.

SECTION 15. Sections 16(a), (c), and (f)-(h), Article 6243g-4, Revised Statutes, are amended to read as follows:

(a) For purposes of this article, a marriage is considered to exist only if the marriage is recorded in the records of the recorder's office in the county in which the marriage ceremony was performed. In [or, in] the case of a [declaration of] common-law marriage, a marriage declaration must be [if the declaration is] signed by the member and the member's common-law spouse before a notary public and recorded in the records of the county clerk's office in the county in which the couple resides at the commencement of the marriage [filed with the board]. In addition, a marriage that is evidenced by a declaration of common-law marriage signed before a notary public after December 31, 1999, may not be treated as effective earlier than the date on which it was signed before the notary public.

(c) If a member of the pension system who has not completed 10 years of service in the police department is killed or dies from any cause growing out of or in consequence of any act clearly not in the actual performance of the member's official duty, the member's surviving spouse, dependent child or children, or dependent parent or parents are entitled to receive an immediate benefit. The benefit is computed in the same manner as a service retirement pension but is based on the deceased member's service and average total direct pay at the time of death. The monthly benefit may not be less than 27.5 percent of the member's average total direct pay [only to a refund of the member's contributions to the pension system].

(f) A surviving spouse who receives a survivor's benefit under this article is entitled to receive an additional amount each month equal to \$150 [88.05], beginning with the later of the date the first payment of the survivor's benefit is due or the date the first monthly payment becomes due after June 18, 2001, and continuing until the end of the month in which the surviving spouse dies.

(g) ~~A [surviving spouse or dependent who was in pay status on November 23, 1998, is entitled to receive a one-time lump sum payment of \$5,000 as soon as administratively feasible after November 23, 1998. The] surviving spouse or dependent who becomes eligible to receive benefits with respect to an active member who dies in active service after November 23, 1998, is entitled to receive a one-time lump-sum payment of \$5,000 at the time the first monthly pension benefit is paid, if the member has not already received a \$5,000 lump-sum payment under Section 12 or 15(c) of this article. If more than one dependent is eligible to receive a payment under this subsection, the \$5,000 shall be divided equally among the eligible dependents. This payment has no effect on the amount of the surviving spouse's or dependents' monthly pension and may not be paid more than once.~~

(h) The monthly benefits of surviving spouses or dependents provided under this section, except the \$150 ~~[\$88.05]~~ monthly payments described by Subsection (f) of this section, shall be increased annually at the same time and by the same percentage as the pensions of retired members are increased in accordance with Section 12(c) of this article. Also, for any year in which a 13th payment is made pursuant to Section 12(e) of this article, a 13th payment, computed in the same manner, shall also be made to survivors who are entitled to receive death benefits at that time.

SECTION 16. Article 6243g-4, Revised Statutes, is amended by adding Section 16A to read as follows:

Sec. 16A. BENEFICIARY DESIGNATION. (a) The provisions of Section 16 of this article pertaining to rights of survivors do not apply to an amount held in a member's DROP account. A member who participates in DROP may designate a beneficiary to receive the balance of the member's DROP account in the event of the member's death, as permitted by Section 401(a)(9) of the code and the board's policies. A member who is married is considered to have designated the member's spouse as the member's beneficiary unless the spouse consents, in a notarized writing delivered to the board, to the designation of another person as beneficiary. If no designated beneficiary survives the member, the board may pay the balance of the member's DROP account to the member's beneficiaries in the following order:

(1) to the member's spouse;

(2) if the member does not have a spouse, to each child of the member in equal shares;

(3) if the member does not have a spouse or any children, to each surviving parent of the member in equal shares; or

(4) if the member has no beneficiaries described by Subdivisions (1), (2), and (3) of this subsection, to the estate of the member.

(b) If a member names a spouse as a beneficiary and is subsequently divorced from that spouse, the divorce voids the designation of the divorced spouse as the member's beneficiary. A designation of a divorced spouse will cause the board to pay any balance remaining in the member's DROP account in the order prescribed by Subsection (a) of this section.

SECTION 17. Section 17(h), Article 6243g-4, Revised Statutes, is amended to read as follows:

(h) Subject to procedures adopted by the board, the pension system shall accept a direct cash transfer of funds from another plan that is an eligible rollover distribution within the meaning of Section 402(f)(2)(A) of the code. The transfer shall be accepted only for the purpose of repaying contributions the member has previously withdrawn or for other purposes expressly authorized by the board's procedures. [City contributions made under Section 9(b) of this article based on the unused sick leave, vacation pay, and accumulated overtime pay of a member who has separated from service may be applied, at the election of the member seeking a refund, to pay a refund of member contributions if the contributions are not used under Section 11(e) of this article to satisfy a service requirement for retirement.]

SECTION 18. Section 18, Article 6243g-4, Revised Statutes, is amended by amending Subsections (a) and (b) and adding Subsection (d) to read as follows:

(a) Except as provided by this section:

(1) [7] credit may not be allowed to any person for service with any department in the city other than the police department; and

(2) a [- Except as provided by this section, if a person is transferred to or from some other department of the city to or from the police department, the] person's service will be computed from the date of entry into the service of the police department until the date of separation from service with the police department.

(b) Solely for purposes of determining whether a person has a sufficient number of years of service to receive a retirement pension or to enter the DROP program, and not for purposes of determining the amount of the pension or DROP credit, a person who is employed in any full-time position with the city after June 18, 2001 [~~November 23, 1998~~], and has or obtains any credited service with the pension system after that date, shall receive service credit for any period of full-time employment with the same city. However, a person may not receive credit for service with both the police department and any other department of the city for the same period.

(d) Classified police officers who were formerly employed by a city as park police, airport police, or marshals, who were involuntarily transferred from another city department to the police department of the city, and who are current active members of the pension system shall have the option to receive credit with the pension system for previous service with another pension system of the city, provided that a person may not receive service credit for both pension systems for the same period of service.

SECTION 19. Section 20, Article 6243g-4, Revised Statutes, is amended to read as follows:

Sec. 20. DONATIONS. The pension system may accept gifts and donations, and the gifts and donations shall be added to the fund for the use of the pension system, including, but not limited to, for use for education programs and the related administrative expenses of the programs.

SECTION 20. Section 22, Article 6243g-4, Revised Statutes, is amended to read as follows:

Sec. 22. LEGAL ADVICE. The city attorney of the city shall handle all legal matters for the pension system that are referred by the board without additional compensation for the service. The board may, however, as it considers necessary, employ outside legal counsel to the exclusion of, or to assist, the city attorney and pay reasonable compensation for the service of the additional legal counsel from the fund.

SECTION 21. Section 23, Article 6243g-4, Revised Statutes, is amended to read as follows:

Sec. 23. MEMBERS IN MILITARY SERVICE. (a) A member of the pension system engaged in active service in a uniformed service may not be required to make the monthly payments into the fund and may not lose any

previous years' service with the city because of the uniformed service. The uniformed service shall count as continuous service in the police department if the member returns to the city police department after discharge from the uniformed service as an employee within the period required by the Uniformed Services Employment and Reemployment Rights Act of 1994 (38 U.S.C. Section 4301 et seq.), as amended, and the uniformed service does not exceed the period for which a person is entitled to have service counted pursuant to that Act. Notwithstanding any other provision of this article, contributions and benefits shall be paid and qualified service for military service shall be determined in compliance with Section 414(u) of the code.

(b) The city is required to make its [~~regular monthly~~] payments into the fund on behalf of each member while the member is engaged in a uniformed service. If a member who has less than 10 years of service in the pension system dies directly or indirectly as a result of the uniformed service, and without returning to active service, the spouse, dependent children, dependent parent, or estate of the member is entitled to receive a benefit [~~refund~~] in the same manner as described by Section 16(c) of this article.

SECTION 22. Sections 25(d) and (e), Article 6243g-4, Revised Statutes, are amended to read as follows:

(d) The total salary taken into account for any purpose for any member of the pension system may not exceed \$200,000 for any year for an eligible participant, or for years beginning after 2001 for an ineligible participant, or \$150,000 a year before 2001 for an ineligible participant. These dollar limits shall be adjusted from time to time in accordance with guidelines provided by the United States secretary of the treasury. For purposes of this subsection, an eligible participant is a person who first became an active member before 1996, and an ineligible participant is a member who is not an eligible participant.

(e) Accrued benefits under this article become 100 percent nonforfeitable for a member on the date the member has completed 10 years of service. If the pension system or the fund is terminated or partially terminated, or city contributions to the fund are discontinued completely, there may not be a reversion of funds to the employer. On complete or partial termination or discontinuance of city contributions, the fund held by the pension system shall be used exclusively for benefits for members and their surviving spouses and dependents, and the members' [~~affected employees'~~] rights to the benefits, to the extent funded, shall be nonforfeitable if not already nonforfeitable under this subsection.

SECTION 23. Article 6243g-4, Revised Statutes, is amended by adding Section 29 to read as follows:

Sec. 29. CONFIDENTIALITY OF INFORMATION ABOUT MEMBERS OR BENEFICIARIES. (a) Information contained in a record that is in the custody of a fund established under this article concerning an individual member, retiree, survivor, or beneficiary is confidential for purposes of Sections 552.101, 552.102, and 552.117, Government Code. The information may not be disclosed in a form that identifies a specific individual unless the information is disclosed to:

(1) the individual;

(2) the individual's attorney, guardian, executor, administrator, or conservator; or

(3) a person who has written authorization from the individual to receive the information.

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

SECTION 24. Sections 9(b), 15(f), and 16(d), Article 6243g-4, Revised Statutes, are repealed.

SECTION 25. This Act takes effect September 1, 2003.

**HB 111 - HOUSE REFUSES TO CONCUR
IN SENATE AMENDMENTS
CONFERENCE COMMITTEE APPOINTED**

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

HB 111, A bill to be entitled an Act relating to responsibility for payment for transport by ambulance of a recipient of medical assistance in certain circumstances.

Representative Olivo moved that the house not concur in the senate amendments and that a conference committee be requested to adjust the differences between the two houses on **HB 111**.

The motion prevailed without objection.

The chair announced the appointment of the following conference committee, on the part of the house, on **HB 111**: Chavez, chair; Castro; Uresti; Wohlgemuth; and Mowery.

**HB 217 - HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS**

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

HB 217, A bill to be entitled An Act relating to limiting the amount of school district ad valorem taxes that may be imposed on the residence homestead of a disabled person.

On motion of Representative Hamric, the house concurred in the senate amendments to **HB 217**.

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

Amend **HB 217** as follows:

(1) In SECTION 2 of the bill, in added Subsection (m), Section 11.26, Tax Code (Committee printing, on page 2, line 48), strike "an individual" and substitute "a disabled individual".

(2) In SECTION 2 of the bill, in added Subsection (m), Section 11.26, Tax Code (Committee printing, on page 2, line 49), strike "the individual" and substitute "the disabled individual".

(3) Add the following appropriately numbered SECTIONS to the bill:

SECTION ____. Section 11.42(c), Tax Code, is amended to read as follows:

(c) An exemption authorized by Section 11.13(c) or (d) [~~for an individual 65 years of age or older~~] is effective as of January 1 of the tax year in which the person qualifies for the exemption and applies to the entire tax year.

SECTION ____. Section 11.43(k), Tax Code, is amended to read as follows:

(k) A person who qualifies for an [~~the~~] exemption authorized by Section 11.13(c) or (d) [~~for an individual 65 years of age or older~~] must apply for the exemption no later than the first anniversary of the date the person qualified for the exemption.

SECTION ____. Section 26.10(b), Tax Code, is amended to read as follows:

(b) If the appraisal roll shows that a residence homestead exemption for an individual 65 years of age or older or a residence homestead exemption for a disabled individual applicable to a property on January 1 of a year terminated during the year and if the owner qualifies a different property for one of those [~~a~~] residence homestead exemptions [~~exemption~~] during the same year, the tax due against the former residence homestead is calculated by:

(1) subtracting:

(A) the amount of the taxes that otherwise would be imposed on the former residence homestead for the entire year had the individual qualified for the residence homestead exemption for the entire year; from

(B) the amount of the taxes that otherwise would be imposed on the former residence homestead for the entire year had the individual not qualified for the residence homestead exemption during the year;

(2) multiplying the remainder determined under Subdivision (1) by a fraction, the denominator of which is 365 and the numerator of which is the number of days that elapsed after the date the exemption terminated; and

(3) adding the product determined under Subdivision (2) and the amount described by Subdivision (1)(A).

SECTION ____. Section 26.112, Tax Code, is amended to read as follows:

Sec. 26.112. CALCULATION OF TAXES ON RESIDENCE HOMESTEAD OF ELDERLY OR DISABLED PERSON. (a) Except as provided by Section 26.10(b), if at any time during a tax year property is owned by an individual who qualifies for an exemption under Section 11.13(c) or (d) [~~for an individual 65 years of age or older~~], the amount of the tax due on the property for the tax year is calculated as if the person qualified for the exemption on January 1 and continued to qualify for the exemption for the remainder of the tax year.

(b) If a person qualifies for an exemption under Section 11.13(c) or (d) [~~for an individual 65 years of age or older~~] with respect to the property after the amount of the tax due on the property is calculated and the effect of the qualification is to reduce the amount of the tax due on the property, the assessor for each taxing unit shall recalculate the amount of the tax due on the property

and correct the tax roll. If the tax bill has been mailed and the tax on the property has not been paid, the assessor shall mail a corrected tax bill to the person in whose name the property is listed on the tax roll or to the person's authorized agent. If the tax on the property has been paid, the tax collector for the taxing unit shall refund to the person who paid the tax the amount by which the payment exceeded the tax due.

(4) Strike SECTION 4 of the bill (Committee Printing page 3, line 64 through page 4, line 2) and substitute the following appropriately numbered SECTION:

SECTION _____. (a) Except as provided by Subsection (b) of this section, this Act takes effect January 1, 2004, and applies only to an ad valorem tax year that begins on or after that date.

(b) The changes in law to Section 11.26, Tax Code, and to Section 403.302, Government Code, made by this Act take effect only if the constitutional amendment proposed by the 78th Legislature, Regular Session, 2003, to prohibit an increase in the total amount of school district ad valorem taxes that may be imposed on the residence homestead of a disabled person is approved by the voters. If that amendment is not approved by the voters, the changes in law to those sections made by this Act have no effect.

(5) Renumber the existing SECTIONS of the bill accordingly.

LEAVE OF ABSENCE GRANTED

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

Turner on motion of Puente.

HB 826 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

Representative Y. Davis called up with senate amendments for consideration at this time,

HB 826, A bill to be entitled An Act relating to the disposition of certain unclaimed wage payments.

On motion of Representative Y. Davis, the house concurred in the senate amendments to **HB 826**.

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

Amend **HB 826** (Senate Committee Printing) as follows:

(1) In SECTION 1 of the bill, in proposed Section 61.103, Labor Code (page 1, line 47), strike "An" and substitute "(a) Except as provided by Subsection (b), an".

(2) In SECTION 1 of the bill, in proposed Section 61.103, Labor Code (page 1, between lines 51 and 52), insert the following:

(b) An employer or former employer who holds an unclaimed wage payment of \$100 or less that is presumed to be abandoned under this subchapter is not required to dispose of the unclaimed wage payment in the manner

prescribed by Chapter 74, Property Code, until the payment has been abandoned for three years after the date from which the period applicable under Section 61.101 or 61.102 is measured.

(3) Between SECTIONS 3 and 4 of the bill (page 2, between lines 6 and 7), insert the following appropriately numbered SECTION and renumber subsequent SECTIONS accordingly:

SECTION _____. Section 74.301(a), Property Code, is amended to read as follows:

(a) Except as provided by Subsection (c), each holder who on June 30 holds property that is presumed abandoned under Chapter 72, 73, or 75 of this code or Subchapter G, Chapter 61, Labor Code, shall deliver the property to the comptroller on or before the following November 1 accompanied by the report required to be filed under Section 74.101.

HB 833 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

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

HB 833, A bill to be entitled An Act relating to certain pharmaceutical services for an injured employee receiving workers' compensation medical benefits.

On motion of Representative Hochberg, the house concurred in the senate amendments to **HB 833**.

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

Amend **HB 833**, in SECTION 2 of the bill, after Subsection (b) of that section, by inserting the following:

(c) In adopting rules under Section 408.028(e), Labor Code, as added by this Act, the Texas Workers' Compensation Commission shall make any changes to the commission's rules under 28 T.A.C. Section 134.800 that are necessary to assist pharmacies in complying with the change in law made by this Act.

Senate Amendment No. 2 (Senate Floor Amendment No. 3)

Amend **HB 833** by adding the following appropriately numbered SECTION and renumbering the SECTIONS of the bill appropriately:

SECTION _____. (a) The Texas Workers' Compensation Commission shall consider a rulemaking petition based on a study funded by collaborative efforts of workers' compensation insurance carriers and pharmacy providers. The study must be designed to determine pharmacy fees paid by other payors and administrative costs and expenses incurred by pharmacy providers to process claims and payments for prescription drugs provided to individuals under the Texas workers' compensation system relative to the costs and expenses incurred in providing the drugs to self-paying individuals or individuals for whom payment is made under insurance coverage other than workers' compensation insurance.

(b) The Texas Workers' Compensation Commission shall adopt, not later than six months after the date a rulemaking petition is submitted to the commission, rules that clearly define the methodology for determining payment amounts for prescription drugs under Subtitle A, Title 5, Labor Code. The rules described by this section must take into account pharmacy fees paid by other payors and the costs and expenses that workers' compensation insurance carriers and pharmacies incur in providing prescription drugs to individuals under that subtitle and must ensure the presence of a reliable network of pharmacy providers for injured workers in this state.

(c) The Texas Workers' Compensation Commission shall pursue efforts to streamline the procedures for presenting, processing, and paying claims for prescription drugs under Subtitle A, Title 5, Labor Code, through the development of a system that is more efficient than the system in place on the effective date of this Act.

(d) The Texas Workers' Compensation Commission shall implement the requirements of this section in a budget-neutral manner and consider the findings of studies or other research funded by collaborative efforts of workers' compensation insurance carriers and pharmacy providers. If the studies are not funded by workers' compensation insurance carriers and pharmacy providers and this section cannot be implemented in a budget-neutral manner, this section may not be implemented.

(e) This section expires December 31, 2004.

HB 1218 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

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

HB 1218, A bill to be entitled An Act relating to the continuation and functions of the Texas State Board of Public Accountancy and to the confidentiality of certain information of a taxpayer undergoing examination by the comptroller; providing penalties.

HB 1218 - STATEMENT OF LEGISLATIVE INTENT

REPRESENTATIVE HOMER: Mr. Chisum, I heard you say that they removed the amendment that we had put on here in the house, about public disclosure as—at what point that open records become available. And I was going to ask—the reason I added that amendment was because we have firms in Texas that are actually headhunting or whatever you want to call it—drive-by stealing clients from well-doing CPA's across Texas. And I'm just wondering if you might know why the senate pulled that out.

REPRESENTATIVE CHISUM: The discussion, as I remember it, is that anything that involves open records receives a lot of debate over there. And they didn't want to exclude anything from open records. And the fact that the comptroller's office was doing a tax audit—audited someone to make sure that they were in compliance—the senate just felt like it violated the intent of the Open Records Act under Chapter 52 of open records. So, that's their reasoning

for taking that out. I talked with the members of the board of accountants, they believed it was alright. I tend to agree with you that we don't want people out there stealing clients, but they did remove that provision from the bill.

HOMER: So I guess, if we concur, we'll still be in a position to where—when the comptroller's office makes notice to a business or an entity in Texas that they're subject to an audit, or will be audited—then that becomes public, and then anyone can actually basically get those records and try to pick those clients off.

CHISUM: Absolutely. And so, I guess the message is, that we have to encourage those good accountants to work with their clients, and tell them that—you know—that they are ready to go with them when they have to go to a tax audit by the comptroller's office. I guess it's a business practice that some unscrupulous accounting firms may use to try to get more clients. But it just has to change—the business has to change to comply with this. Because I don't think any of us are in favor of doing away with the open records, I think it's very—

HOMER: Oh I don't want to—I fully think we ought to have open records. But I think it's—

CHISUM: As a business person I'm sure you agree, that sometimes there's people that take advantage of the Open Records Act, and it's kind of deplorable on their part. And I certainly agree with that.

HOMER: Well, I know you worked real hard on this bill, and I certainly don't hold anything against you. I just think it's a shame that the senate wouldn't agree with us that open records shouldn't be open—or, open until after the audit is complete. And I appreciate your work.

CHISUM: Well, I'm sure the senate didn't have the benefit of your fine debate, or they might have changed their mind.

HOMER: Well, thank you.

REMARKS ORDERED PRINTED

Representative Homer moved to print remarks between Representative Homer and Representative Chisum.

The motion prevailed without objection.

On motion of Representative Chisum, the house concurred in the senate amendments to **HB 1218**.

Senate Committee Substitute

HB 1218, A bill to be entitled An Act relating to the continuation and functions of the Texas State Board of Public Accountancy; providing penalties.

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

SECTION 1. Section 901.006, Occupations Code, is amended to read as follows:

Sec. 901.006. APPLICATION OF SUNSET ACT. The Texas State Board of Public Accountancy 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 chapter expires September 1, 2015 [~~2003~~].

SECTION 2. Section 901.053, Occupations Code, is amended to read as follows:

Sec. 901.053. MEMBERSHIP AND EMPLOYEE RESTRICTIONS. (a) In this section, "Texas trade association" means a ~~[nonprofit-]~~ cooperative~~[-]~~ and voluntarily joined statewide 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 acting in the capacity of an [An] officer, executive board or executive committee member, employee, or paid consultant of a Texas trade association in the field of public accountancy; or

(2) the person's [may not be a member of the board and may not be an employee of the board who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group A17, of the position classification salary schedule.]

[(e) A person who is the] spouse is acting in the capacity of an officer, executive board or executive committee member, manager, or paid consultant of a Texas trade association in the field of public accountancy [may not be an employee of the board who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group A17, of the position classification salary schedule].

(c) ~~[(d)]~~ A person may not be ~~[serve as]~~ 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.

[(e) A member or employee of the board may not be related within the second degree by consanguinity or affinity, as determined under Chapter 573, Government Code, to a person who is an officer, employee, or paid consultant of a trade association of persons governed by this chapter.]

SECTION 3. Sections 901.056(a) and (c), Occupations Code, are amended to read as follows:

(a) It is a ground for removal from the board that a member:

(1) does not have at the time of taking office ~~[the appointment]~~ the qualifications required by Section 901.051;

(2) does not maintain during service on the board the qualifications required by Section 901.051 ~~[or 901.052]~~;

(3) is ineligible for membership under ~~[violates a prohibition established by]~~ Section 901.052 or 901.053;

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

(5) is absent from more than half of the regularly scheduled board meetings [~~of the board and a committee of the board~~] that the member is eligible to attend during a calendar year without an excuse approved [~~unless the absence is excused~~] by a majority vote of the board.

(c) If the executive director has knowledge that a potential ground for removal [~~of a board member~~] exists, the executive director shall notify the presiding officer [~~executive committee~~] 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 executive director 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.

SECTION 4. Subchapter B, Chapter 901, Occupations Code, is amended by adding Section 901.059 to read as follows:

Sec. 901.059. 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) this chapter;

(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.

SECTION 5. Section 901.102, Occupations Code, is amended to read as follows:

Sec. 901.102. DIVISION OF RESPONSIBILITIES. The board shall develop and implement policies that clearly separate ~~[define]~~ the policy-making ~~[respective]~~ responsibilities of the board and the management responsibilities of the executive director and the staff of the board.

SECTION 6. Section 901.105, Occupations Code, is amended to read as follows:

Sec. 901.105. EQUAL EMPLOYMENT OPPORTUNITY POLICY; REPORT. (a) The executive director or the executive director's designee shall prepare and maintain a written policy statement that implements a program ~~[to ensure implementation]~~ of ~~[an]~~ equal employment opportunity to ensure that ~~[program under which]~~ all personnel decisions ~~[transactions]~~ 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, ~~[appointment]~~ 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 ~~[a comprehensive]~~ analysis of the extent to which the composition of the board's personnel is in accordance with ~~[board workforce that meets]~~ federal and state law and a description of reasonable methods to achieve compliance with federal and state law ~~[guidelines];~~

~~[(3) procedures by which a determination can be made of significant underuse in the board workforce of all persons for whom federal or state guidelines encourage a more equitable balance; and~~

~~[(4) reasonable methods to appropriately address those areas of underuse].~~

(c) The ~~[(b) A]~~ policy statement ~~[prepared under Subsection (a)]~~ must:

(1) ~~[cover an annual period;~~

~~[(2)]~~ be updated ~~[at least]~~ annually;

(2) ~~[and (3)]~~ be reviewed by the Commission on Human Rights for compliance with Subsection (b)(1); and

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

~~[(e) The governor shall deliver a biennial report to the legislature based on the information received under Subsection (b). The report may be made separately or as a part of other biennial reports made to the legislature].~~

SECTION 7. Subchapter C, Chapter 901, Occupations Code, is amended by adding Section 901.106 to read as follows:

Sec. 901.106. INFORMATION ON STATE EMPLOYEE INCENTIVE PROGRAM. The executive director or the executive director's designee shall provide to board 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 8. Subchapter D, Chapter 901, Occupations Code, is amended by adding Section 901.1525 to read as follows:

Sec. 901.1525. APPOINTMENT OF BOARD COMMITTEES. (a) The board may appoint policy-making and working committees to assist the board in performing its responsibilities under this chapter. The board's policy-making committees shall assist the board in establishing policies, drafting rules, setting budgets, representing the board, and performing other oversight duties necessary to administer this chapter. The board's working committees shall assist the board in carrying out the board's functions, including reviewing enforcement cases and other licensing matters. In establishing committees, the board shall maintain the distinction between the types of committees authorized by this section.

(b) A person may not serve on a policy-making committee unless the person is a board member. A working committee may consist of members who are members of the board and members who are not board members. A member of a working committee who is not a board member may participate as a full voting member of the committee.

(c) A person may not be a non-board member of a committee if:

(1) the person is acting in the capacity of an officer, executive board or executive committee member, employee, or paid consultant of a Texas trade association in the field of public accountancy;

(2) the person's spouse is acting in the capacity of an officer, executive board or executive committee member, manager, or paid consultant of a Texas trade association in the field of public accountancy; or

(3) 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.

(d) For purposes of Subsection (c), "Texas trade association" has the meaning assigned by Section 901.053.

(e) A committee member who is not a member of the board is subject to the same financial disclosure requirements that apply to a member of the board, except that the financial disclosures shall be maintained by the executive director.

(f) A committee member who is not a member of the board may not serve on the committee if the member:

(1) violates Subsection (c);

(2) cannot, because of illness or disability, discharge the member's duties for a substantial time;

(3) is absent from more than half of the regularly scheduled meetings of the committee that the member is eligible to attend during a calendar year unless the absence is excused by a majority vote of the committee; or

(4) does not comply with Subsection (e).

(g) The board shall adopt rules that provide that a committee member shall refrain from participating in the discussion of and may not vote on an issue before a committee in which the member has a personal or financial interest. A committee member who is not permitted to vote on a matter described by this subsection shall state at the time of the vote the reason why the member is not voting on the matter.

SECTION 9. Section 901.153, Occupations Code, is amended by amending Subsection (a) and adding Subsections (d) and (e) to read as follows:

(a) The board may appoint enforcement committees ~~[from its membership]~~. An enforcement committee operates as a board working committee. The membership of each enforcement committee must include at least one public member of the board.

(d) In appointing the members of an enforcement committee, the board must determine whether a prospective committee member who is a license holder under this chapter has been the subject of any disciplinary action under this chapter. A license holder who has been found in violation of this chapter may not serve on an enforcement committee.

(e) A board member who serves on an enforcement committee that participates in the investigation of a specific complaint may not participate in any subsequent disciplinary proceeding of the board that pertains to the complaint and may not vote on the final disposition of the case. The board shall adopt rules necessary to implement the requirements of this subsection.

SECTION 10. Subchapter D, Chapter 901, Occupations Code, is amended by adding Section 901.1565 to read as follows:

Sec. 901.1565. RULES ON CONSEQUENCES OF CRIMINAL CONVICTION. (a) The board shall adopt rules necessary to comply with Chapter 53.

(b) In its rules under this section, the board shall list the specific misdemeanor offenses for which a conviction would constitute grounds for the board to take action under Section 53.021. With regard to a misdemeanor conviction in another state, the board shall develop a process for determining whether the conviction is for an offense listed in the rules required by this subsection.

SECTION 11. Section 901.160, Occupations Code, is amended by adding Subsection (e) to read as follows:

(e) The board may disclose information that is confidential under this section to another governmental, regulatory, or law enforcement agency engaged in an enforcement action. The board by rule shall adopt guidelines to assist the board in exercising its authority to share information under this subsection. Subsections (a) and (c) do not apply to information disclosed under this subsection.

SECTION 12. Subchapter D, Chapter 901, Occupations Code, is amended by adding Section 901.166 to read as follows:

Sec. 901.166. AUTHORITY TO ISSUE SUBPOENA, ADMINISTER OATH, AND RECEIVE EVIDENCE. (a) The board may issue a subpoena to compel the attendance of a relevant witness or the production, for inspection and copying, of relevant documents, records, and other evidence, maintained by electronic or other means, that is in this state.

(b) The board may administer oaths and take testimony and other evidence regarding any matter under the board's jurisdiction.

(c) If a person fails to comply with a subpoena, the board, acting through the attorney general, may file suit to enforce the subpoena in a district court in Travis County or in a county in which a hearing conducted by the board may be held.

(d) On finding that good cause exists for issuing the subpoena, the court shall order the person to comply with the subpoena. The court may punish a person who fails to obey the court order.

(e) The board shall pay a reasonable fee for photocopies subpoenaed under this section in an amount not to exceed the amount the board may charge for copies of its own records.

(f) The reimbursement of the expenses of a witness whose attendance is compelled under this section is governed by Section 2001.103, Government Code.

SECTION 13. Subchapter D, Chapter 901, Occupations Code, is amended by adding Section 901.167 to read as follows:

Sec. 901.167. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE RESOLUTION POLICY. (a) The board shall develop and implement a policy to encourage the use of:

(1) negotiated rulemaking procedures under Chapter 2008, Government Code, for the adoption of board rules; and

(2) appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the board's jurisdiction.

(b) The board's procedures relating to alternative dispute resolution must conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

(c) The board shall designate a trained person to:

(1) coordinate the implementation of the policy adopted under Subsection (a);

(2) serve as a resource for any training necessary for implementation of the negotiated rulemaking or alternative dispute resolution procedures; and

(3) collect data on the effectiveness of the procedures implemented by the board.

SECTION 14. Subchapter D, Chapter 901, Occupations Code, is amended by adding Section 901.168 to read as follows:

Sec. 901.168. TECHNOLOGY POLICY. The board shall develop and implement a policy requiring the executive director and board employees to research and propose appropriate technological solutions to improve the board's ability to perform its functions. The technological solutions must:

(1) ensure that the public is able to easily find information about the board on the Internet;

(2) ensure that persons who want to use the board's services are able to:

(A) interact with the board through the Internet; and

(B) access any service that can be provided effectively through the

Internet; and

(3) be cost-effective and developed through the board's planning processes.

SECTION 15. Section 901.203, Occupations Code, is amended to read as follows:

Sec. 901.203. COMPLAINT INFORMATION. (a) The board shall maintain a [an information] file on [about] each written complaint filed with the board. The file must include:

- (1) the name of the person who filed the complaint;
- (2) the date the complaint is received by the 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 board closed the file without taking action other than to investigate the complaint.

(b) The board 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 [board for a period not to exceed the 10th anniversary of the date of the complaint's final disposition].

(c) The board, at least quarterly until final disposition of the [a] written complaint, shall notify [is filed with] the [board relating to a] person filing [regulated under this chapter, the board shall notify the parties to] the complaint and each person who is a subject of the complaint of [each change in] the status of the investigation [complaint, including the final disposition,] unless the notice would jeopardize an undercover investigation.

SECTION 16. Section 901.304(a), Occupations Code, as amended by Chapters 381 and 1497, Acts of the 77th Legislature, Regular Session, 2001, is reenacted and amended to read as follows:

(a) For each examination or reexamination, the board by rule shall apportion an amount of the total examination fee among the parts of the examination that an applicant is eligible to take on a particular examination date. For each examination or reexamination, the board shall set [collect] a fee [set] by board rule not to exceed the cost of administering the examination. Notwithstanding Section 2113.203, Government Code, the board may delegate the collection of an examination fee to the person who conducts the examination.

SECTION 17. Section 901.403, Occupations Code, is amended to read as follows:

Sec. 901.403. APPLICATION FOR AND RENEWAL OF LICENSE. (a) The board shall specify:

- (1) the form of the application for a license;
- (2) the term of a license; and
- (3) the requirements for renewal of a license.

(b) The board by rule may adopt a system under which licenses expire on various dates during the year. For the year in which the license expiration date is changed, the board shall prorate license fees 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.

SECTION 18. Section 901.404(a), Occupations Code, is amended to read as follows:

(a) Not later than the 30th ~~[31st]~~ day before the expiration date of a person's license, the board shall send written notice of the impending license expiration to the person at the person's last known address according to the board's records.

SECTION 19. Section 901.405, Occupations Code, is amended to read as follows:

Sec. 901.405. PROCEDURE FOR RENEWAL. (a) A person who is otherwise eligible to renew a license may renew an unexpired license by paying the required renewal fee to the board before the expiration date of the license. A person whose license has expired may not engage in activities that require a license until the license has been renewed.

(b) A person whose license has been expired for 90 days or less may renew the license by paying to the board a ~~[the required]~~ renewal fee ~~[and a late fee]~~ that is equal to 1-1/2 times ~~[half of]~~ the normally required renewal ~~[amount of the initial examination]~~ fee ~~[for the license]~~.

(c) A person whose ~~[If a person's]~~ license has been expired for more than 90 days but less than one year~~[, the person]~~ may renew the license by paying to the board a [all unpaid] renewal ~~[fees and a late]~~ fee that is equal to two times the normally required renewal ~~[the amount of the initial examination]~~ fee ~~[for the license]~~.

(d) A person whose license has been expired for at least one year but less than two years may renew the license by paying to the board a renewal fee that is equal to three times the normally required renewal fee.

(e) A person whose license has been expired for two years or more may not renew the license. The person may obtain a new license by complying with the requirements and procedures, including the examination requirements, for obtaining an original license.

(f) 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 two years preceding the date of application may obtain a new license without reexamination. The person must pay to the board a fee that is equal to two times the normally required renewal fee for the license.

SECTION 20. Section 901.501(a), Occupations Code, is amended to read as follows:

(a) On a determination that a ground for discipline exists under Section 901.502, after notice and hearing as provided by Section 901.509, the board may:

(1) revoke a certificate, firm license, or practice privilege issued under this chapter;

(2) suspend under any terms a certificate, firm license, practice privilege, or license issued under this chapter for a period not to exceed five years;

(3) refuse to renew a license;

(4) place a license holder on probation;

(5) reprimand a license holder;

(6) limit the scope of a license holder's practice;

(7) require a license holder to complete a peer review program conducted in the manner prescribed by the board;

(8) require a license holder to complete a continuing education program specified by the board;

(9) impose on a license holder the direct administrative costs incurred by the board in taking action under Subdivisions (1) through (8); ~~or~~

(10) require a license holder to pay restitution as provided by Section 901.6015;

(11) impose an administrative penalty under Subchapter L; or

(12) impose any combination of the sanctions provided by this subsection.

SECTION 21. Section 901.503(c), Occupations Code, is amended to read as follows:

(c) The board shall provide for the refund of the examination fee paid [submitted] by a person whose application for examination is denied under this section.

SECTION 22. Subchapter K, Chapter 901, Occupations Code, is amended by adding Section 901.5045 to read as follows:

Sec. 901.5045. EMERGENCY SUSPENSION. (a) On determining that a license holder is engaged in or about to engage in an act of fraud or a violation of this chapter and that the license holder's continued practice constitutes an immediate threat to the public welfare, the board may issue an order suspending the license holder's license without notice or a hearing. The board shall immediately serve notice of the suspension on the license holder.

(b) The notice required by Subsection (a) must:

(1) be personally served on the license holder or be sent by registered or certified mail, return receipt requested, to the license holder's last known address according to the board's records;

(2) state the grounds for the suspension; and

(3) inform the license holder of the right to a hearing on the suspension order.

(c) A license holder whose license is suspended under this section is entitled to request a hearing on the suspension not later than the 30th day after the date of receipt of notice of the suspension. Not later than the fifth day after the date a hearing is requested, the board shall issue a notice of hearing as provided by Section 901.509.

(d) The hearing shall be held not later than the fifth day after the date notice of hearing is issued, unless the parties agree to a later date. A hearing on a suspension order under this section is subject to Chapter 2001, Government Code. If the hearing is before an administrative law judge, after the hearing, the administrative law judge shall recommend to the board whether to uphold, vacate, or modify the suspension order.

(e) A suspension order issued under this section remains in effect until further action is taken by the board. If the administrative law judge's recommendation under Subsection (d) is to vacate the order, the board shall determine whether to vacate the order not later than the second day after the date of the recommendation.

SECTION 23. Section 901.552, Occupations Code, is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

(a) The amount of an administrative penalty may not exceed \$100,000 [~~\$1,000~~] for each violation.

(c) The board by rule shall adopt a schedule for purposes of this subchapter that prescribes ranges in the amounts of administrative penalties to be imposed for specified types of conduct and circumstances.

SECTION 24. Section 901.601, Occupations Code, is amended to read as follows:

Sec. 901.601. CEASE AND DESIST ORDER [~~INJUNCTION~~]. (a) If it appears to the board that a person is [~~The board may bring an action to enjoin a person from:~~

~~(1) using a title, designation, or abbreviation in violation of Subchapter J; or~~

~~(2) engaging in an act or practice that constitutes the practice of public accountancy without a license~~ [~~unless the person is licensed~~] under this chapter, the board, after notice and an opportunity for a hearing, may issue a cease and desist order prohibiting the person from engaging in that activity.

(b) A violation of an order under this section constitutes grounds for imposition of an administrative penalty under Subchapter L. Notwithstanding Section 901.552, the amount of an administrative penalty for a violation of an order under this section may not exceed \$25,000. [~~An action under Subsection (a)(1) must be brought in district court in:~~

~~(1) Travis County, if the person is licensed under this chapter or is not a resident of this state; or~~

~~(2) the county in which the person resides, if the person is a resident of this state but is not licensed under this chapter.]~~

(c) The board by rule shall adopt a schedule for purposes of this section that prescribes ranges in the amounts of administrative penalties to be imposed for specified types of conduct and circumstances that violate an order under this section. [~~An action under Subsection (a)(2) must be brought in district court in a county in which the person resides or has an office. The board is not required to post a bond as a condition to the issuance of the injunction.]~~

SECTION 25. Subchapter M, Chapter 901, Occupations Code, is amended by adding Section 901.6015 to read as follows:

Sec. 901.6015. RESTITUTION. (a) The board may order a license holder to pay restitution under Section 901.501(a)(10) to a person harmed by the license holder's:

(1) violation of this chapter; and

(2) failure to fulfill the terms of a contract with the person.

(b) The amount of restitution ordered under this section may not exceed the actual amount paid by the person to the license holder under the contract.

SECTION 26. Section 901.602(b), Occupations Code, is amended to read as follows:

(b) Except as otherwise provided by this subsection, an [A~~n~~] offense under this section is a Class B misdemeanor. An offense under this section that involves intentional fraud is punishable as:

(1) a state jail felony if it is shown on the trial of the offense that the violation resulted in a monetary loss of less than \$10,000 or did not result in a monetary loss;

(2) a felony of the third degree if it is shown on the trial of the offense that the violation resulted in a monetary loss of at least \$10,000 but less than \$100,000; or

(3) a felony of the second degree if it is shown on the trial of the offense that the violation resulted in a monetary loss of at least \$100,000.

SECTION 27. Subchapter M, Chapter 901, Occupations Code, is amended by adding Section 901.606 to read as follows:

Sec. 901.606. IMMUNITY FROM LIABILITY. (a) A person acting in good faith who voluntarily reports or assists in the investigation of a report of an alleged violation of this chapter or who testifies or otherwise participates in an administrative or judicial proceeding arising from a report or investigation of an alleged violation of this chapter is immune from civil or criminal liability that might otherwise be incurred or imposed.

(b) A person who reports the person's own violation of this chapter or who acts in bad faith or with malicious purpose in reporting an alleged violation of this chapter is not immune from civil or criminal liability.

SECTION 28. Section 901.304(b), Occupations Code, is repealed.

SECTION 29. The Texas State Board of Public Accountancy shall report to the governor, the lieutenant governor, and the speaker of the house of representatives, not later than December 31, 2004, regarding:

(1) the requirements of the federal Sarbanes-Oxley Act (Pub. L. No. 107-204), including any restrictions on public interest entities, and any legislation or other action needed to conform state law to the requirements of that Act;

(2) the federal General Accounting Office study on audit firm rotation and any legislation or other action needed to conform state law to the findings of that study; and

(3) the rules adopted by the board that are intended to comply with the federal standards described by Subdivisions (1) and (2) of this section and the board's actions in implementing and enforcing those rules.

SECTION 30. This Act takes effect September 1, 2003.

SECTION 31. (a) The Texas State Board of Public Accountancy shall adopt rules as required by this Act not later than March 1, 2004.

(b) The changes in law made by this Act by Section 901.053, Occupations Code, as amended by this Act, and Section 901.059, Occupations Code, as added by this Act, in the prohibitions on or qualifications of members of the Texas State Board of Public Accountancy do not affect the entitlement of a member serving

on the board immediately before September 1, 2003, to continue to serve and function as a member of the board for the remainder of the member's term. Those changes in law apply only to a member appointed on or after September 1, 2003.

(c) The change in law made by this Act with respect to conduct that is grounds for imposition of a disciplinary sanction, including an administrative penalty, restitution, or a cease and desist order, applies to conduct that occurs on or after the effective date of this Act. Conduct that occurs before the effective date of this Act is governed by the law in effect on the date the conduct occurred, and the former law is continued in effect for that purpose.

(d) The change in law made by this Act by the addition of Section 901.606, Occupations Code, applies only to the immunity or liability of a person who voluntarily reports or assists in the investigation of a report of an alleged violation of Chapter 901, Occupations Code, or who testifies or otherwise participates in an administrative or judicial proceeding arising from a report or investigation of an alleged violation of that chapter on or after the effective date of this Act. The immunity or liability of a person who makes a report, assists in an investigation, testifies, or otherwise participates in a proceeding before the effective date of this Act is governed by the law in effect at the time those activities occurred, and the former law is continued in effect for that purpose.

SECTION 32. (a) The change in law made by this Act to Section 901.602, Occupations Code, applies only to an offense committed on or after the effective date of this Act. For purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before that date.

(b) An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose.

COMMITTEE GRANTED PERMISSION TO MEET

Representative Edwards requested permission for the Committee on Rules and Resolutions to meet while the house is in session.

Permission to meet was granted without objection.

COMMITTEE MEETING ANNOUNCEMENT

The following committee meeting was announced:

Rules and Resolutions, 11:45 a.m. today, speakers committee room, for a formal meeting, to consider the calendar.

HB 1296 - LAID ON THE TABLE SUBJECT TO CALL

Representative Noriega moved to lay **HB 1296** on the table subject to call.

The motion prevailed without objection.

HB 1457 - HOUSE REFUSES TO CONCUR IN SENATE AMENDMENTS CONFERENCE COMMITTEE APPOINTED

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

HB 1457, A bill to be entitled an Act relating to the authorization of the imposition of a temporary prohibition on enforcement of the law governing access to public beaches following a meteorological event.

Representative McCall moved that the house not concur in the senate amendments and that a conference committee be requested to adjust the differences between the two houses on **HB 1457**.

The motion prevailed without objection.

The chair announced the appointment of the following conference committee, on the part of the house, on **HB 1457**: Eiland, chair; Ritter; Bonnen; Taylor; and Deshotel.

HB 2081 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

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

HB 2081, A bill to be entitled An Act relating to an exemption from The Texas Engineering Practice Act for certain public works.

On motion of Representative McReynolds, the house concurred in the senate amendments to **HB 2081** by (Record 809): 144 Yeas, 0 Nays, 1 Present, not voting.

Yeas — Allen; Alonzo; Bailey; Baxter; Berman; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Burnam; Callegari; Campbell; Canales; Capelo(C); Casteel; Castro; Chavez; Chisum; Christian; Coleman; Cook, B.; Cook, R.; Corte; Crabb; Crownover; Davis, J.; Davis, Y.; Dawson; Delisi; Denny; Deshotel; Driver; Dukes; Dunnam; Dutton; Edwards; Eissler; Elkins; Ellis; Escobar; Farabee; Farrar; Flores; Flynn; Gallego; Garza; Gattis; Geren; Giddings; Goodman; Goolsby; Griggs; Grusendorf; Guillen; Gutierrez; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Heflin; Hegar; Hilderbran; Hill; Hochberg; Hodge; Homer; Hopson; Howard; Hughes; Hunter; Hupp; Isett; Jones, D.; Jones, E.; Jones, J.; Keel; Keffer, B.; Keffer, J.; King; Kolkhorst; Krusee; Kuempel; Laubenberg; Lewis; Luna; Mabry; Madden; Marchant; Martinez Fischer; McCall; McClendon; McReynolds; Menendez; Mercer; Merritt; Miller; Moreno, J.; Morrison; Mowery; Naishtat; Nixon; Noriega; Oliveira; Olivo; Paxton; Peña; Phillips; Pickett; Pitts; Puente; Quintanilla; Raymond; Reyna; Riddle; Ritter; Rodriguez; Rose; Seaman; Smith, T.; Smith, W.; Smithee; Solis; Solomons; Stick; Swinford; Talton; Taylor; Telford; Thompson; Truitt; Uresti; Van Arsdale; Villarreal; West; Wilson; Wise; Wohlgemuth; Wolens; Wong; Woolley; Zedler.

Present, not voting — Mr. Speaker.

Absent, Excused — Eiland; Hope; Laney; Turner.

Absent — Moreno, P.

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

Amend **HB 2081** by adding a new SECTION 2 on page 1, line 23 to read as follows and renumbering subsequent sections:

"SECTION 2. In the event of a conflict between a provision of this Act and another Act passed by the 78th Legislature, Regular Session, 2003, that becomes law, this Act prevails and controls regardless of the relative dates of enactment."

(McClendon in the chair)

**HB 1931 - HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS**

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

HB 1931, A bill to be entitled An Act relating to pipeline safety emergency response plans and the repeal of the requirements governing notification of pipeline construction and operation.

On motion of Representative Capelo, the house concurred in the senate amendments to **HB 1931** by (Record 810): 144 Yeas, 0 Nays, 1 Present, not voting.

Yeas — Allen; Alonzo; Bailey; Baxter; Berman; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Burnam; Callegari; Campbell; Canales; Capelo; Casteel; Castro; Chavez; Chisum; Christian; Coleman; Cook, B.; Cook, R.; Corte; Crownover; Davis, J.; Davis, Y.; Dawson; Delisi; Denny; Deshotel; Driver; Dukes; Dunnam; Dutton; Edwards; Eissler; Elkins; Ellis; Escobar; Farabee; Farrar; Flores; Flynn; Gallego; Garza; Gattis; Geren; Giddings; Goodman; Goolsby; Griggs; Grusendorf; Guillen; Gutierrez; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Heflin; Hegar; Hilderbran; Hill; Hochberg; Hodge; Homer; Hopson; Howard; Hughes; Hunter; Hupp; Isett; Jones, D.; Jones, E.; Jones, J.; Keel; Keffer, B.; Keffer, J.; King; Kolkhorst; Krusee; Kuempel; Laubenberg; Lewis; Luna; Mabry; Madden; Marchant; Martinez Fischer; McCall; McClendon(C); McReynolds; Menendez; Mercer; Merritt; Miller; Moreno, J.; Moreno, P.; Morrison; Mowery; Naishtat; Nixon; Noriega; Oliveira; Olivo; Paxton; Peña; Phillips; Pickett; Pitts; Puente; Quintanilla; Raymond; Reyna; Riddle; Ritter; Rodriguez; Rose; Seaman; Smith, T.; Smith, W.; Smithee; Solis; Solomons; Stick; Swinford; Talton; Taylor; Telford; Thompson; Truitt; Uresti; Van Arsdale; Villarreal; West; Wilson; Wise; Wohlgenuth; Wolens; Wong; Woolley; Zedler.

Present, not voting — Mr. Speaker.

Absent, Excused — Eiland; Hope; Laney; Turner.

Absent — Crabb.

Senate Committee Substitute

HB 1931, A bill to be entitled An Act relating to pipeline safety emergency response plans and the requirements governing notification of pipeline construction and operation.

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

SECTION 1. Section 117.012, Natural Resources Code, is amended by amending Subsections (h), (i), and (k) and adding Subsections (l) and (m) to read as follows:

(h) The commission shall require operators or their designated representatives to communicate and conduct liaison activities with fire, police, and other appropriate public emergency response officials. The liaison activities must be conducted by meetings in person except as provided by this section. An operator or the operator's representative may conduct required community liaison activities as provided by Subsection (i) only if the operator or the operator's representative has made an effort, by one of the following methods, [~~the following efforts~~] to conduct a community liaison meeting in person with the officials:

(1) mailing a written request for a meeting in person to the appropriate officials by certified mail, return receipt requested;

(2) sending a request for a meeting in person to the appropriate officials by facsimile transmission; or [~~and~~]

(3) making one or more telephone calls or e-mail message transmissions to the appropriate officials to request a meeting in person.

(i) If the operator or operator's representative cannot arrange a meeting in person after complying with Subsection (h), the operator or the operator's representative shall make an effort, by one of the following methods, [~~the following efforts~~] to conduct community liaison activities by means of a telephone conference call with the officials:

(1) mailing a written request for a telephone conference to the appropriate officials by certified mail, return receipt requested;

(2) sending a request for a telephone conference to the appropriate officials by facsimile transmission; or [~~and~~]

(3) making one or more telephone calls or e-mail message transmissions to the appropriate officials to request a telephone conference.

(k) The commission by rule shall require the owner or operator of each [~~interstate or~~] intrastate hazardous liquid or carbon dioxide pipeline facility any part of which is located within 1,000 feet of a public school building containing classrooms, or within 1,000 feet of another public school facility where students congregate, to:

(1) on written request from the school district, provide in writing the following parts of a pipeline emergency response plan that are relevant to the school:

(A) a description and map of the pipeline facilities that are within 1,000 feet of the school building or facility;

(B) a list of any product transported in the segment of the pipeline that is within 1,000 feet of the school facility;

(C) the designated emergency number for the pipeline facility operator;

(D) information on the state's excavation one-call system; and

(E) information on how to recognize, report, and respond to a product release [develop an emergency response plan in consultation with the fire department in whose jurisdiction the school is located or another local emergency response entity]; and

(2) mail a copy of the requested items by certified mail, return receipt requested, to the superintendent of the school district in which the school building or facility is located [present the plan:

(A) at the first annual budget meeting of the board of trustees of the school district in which the school is located after the plan is developed; and

(B) at subsequent annual budget meetings of the board of trustees of the school district on the request of the board].

(l) A pipeline operator or the operator's representative shall appear at a regularly scheduled meeting of the school board to explain the items listed in Subsection (k) if requested by the school board or school district.

(m) The commission may not require the release of parts of an emergency response plan that include security sensitive information including maps or data. Security sensitive information shall be made available for review by but not provided to the school board.

SECTION 2. (a) Chapter 756, Health and Safety Code, is amended by adding Subchapter G to read as follows:

SUBCHAPTER G. CONSTRUCTION AFFECTING PIPELINE EASEMENTS
AND RIGHTS-OF-WAY

Sec. 756.101. DEFINITIONS. In this subchapter:

(1) "Construction" means a building, structure, driveway, roadway, or other construction any part of which is physically located on, across, over, or under the easement or right-of-way of a pipeline facility or that physically impacts or creates a risk to a pipeline facility.

(2) "Constructor" means a person that builds, operates, repairs, replaces, or maintains a construction or causes a construction to be built, operated, repaired, maintained, or replaced.

(3) "Pipeline facility" means a pipeline used to transmit or distribute natural gas or to gather or transmit oil, gas, or the products of oil or gas.

Sec. 756.102. APPLICABILITY. This subchapter applies to a construction or the repair, replacement, or maintenance of a construction unless there is a written agreement, including a Texas Department of Transportation right-of-way agreement, to the contrary between the owner or operator of the affected pipeline facility and the person that places or causes a construction to be placed on the easement or right-of-way of a pipeline facility.

Sec. 756.103. PROHIBITION OF CONSTRUCTION WITHOUT NOTICE. A person may not build, repair, replace, or maintain a construction on, across, over, or under the easement or right-of-way for a pipeline facility unless notice of the construction is given the operator of the pipeline facility and:

(1) the operator of the pipeline facility determines that the construction will not increase a risk to the public or increase a risk of a break, leak, rupture, or other damage to the pipeline facility;

(2) if the operator of the pipeline facility determines that the construction will increase risk to the public or the pipeline facility, the constructor pays the cost of the additional fortifications, barriers, conduits, or other changes or improvements necessary to protect the public or pipeline facility from that risk before proceeding with the construction;

(3) the building, repair, replacement, or maintenance is conducted under an existing written agreement; or

(4) the building, repair, replacement, or maintenance is required to be done promptly by a regulated utility company because of the effects of a natural disaster.

(b) The change in law made by Subchapter G, Chapter 756, Health and Safety Code, as added by this section, applies only to an activity described by Section 756.103, Health and Safety Code, as added by this section, that is initiated on or after the effective date of this Act.

SECTION 3. Section 81.056, Natural Resources Code, is repealed.

SECTION 4. This Act applies to a permit application that is pending with the Railroad Commission of Texas on the effective date of this Act or that is filed with the commission on or after that date.

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, 2003.

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

Amend **CSHB 1931** (Senate committee printing) as follows:

(1) In Subsection (a) of Section 2 of the bill, in proposed Section 756.102, Health and Safety Code (page 2, line 45), between "APPLICABILITY." and "This", insert "(a)".

(2) In Subsection (a) of Section 2 of the bill, between proposed Sections 756.102 and 756.103, Health and Safety Code (page 2, between lines 51 and 52), insert:

(b) This subchapter does not apply to:

(1) construction done by a municipality on property owned by the municipality, unless the construction is for private commercial use; or

(2) construction or repair, replacement, or maintenance of construction on property owned by a navigation district or port authority created or operating under Section 52, Article III, or Section 59, Article XVI, Texas Constitution.

(3) After Subsection (b) of Section 2 of the bill (page 3, between lines 7 and 8), insert:

(c) Section 756.102(b), Health and Safety Code, as added by this section, does not affect litigation that is pending on the effective date of this section and does not affect the rights or obligations of a municipality, navigation district, or port authority otherwise provided by law.

**HJR 16 - HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS**

Representative F. Brown called up with senate amendments for consideration at this time,

HJR 16, A joint resolution proposing a constitutional amendment to authorize a county, a city or town, or a junior college district to establish an ad valorem tax freeze on residence homesteads of the disabled and of the elderly and their spouses.

On motion of Representative F. Brown, the house concurred in the senate amendments to **HJR 16** by (Record 811): 139 Yeas, 0 Nays, 2 Present, not voting.

Yeas — Allen; Bailey; Baxter; Berman; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Burnam; Callegari; Campbell; Canales; Capelo; Casteel; Castro; Chavez; Chisum; Christian; Coleman; Cook, B.; Cook, R.; Corte; Crabb; Crownover; Davis, J.; Dawson; Delisi; Denny; Deshotel; Driver; Dukes; Dunnam; Dutton; Edwards; Eissler; Elkins; Escobar; Farabee; Farrar; Flores; Flynn; Gallego; Garza; Gattis; Geren; Giddings; Goodman; Goolsby; Griggs; Grusendorf; Guillen; Gutierrez; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Heflin; Hegar; Hilderbran; Hill; Hochberg; Hodge; Homer; Hopson; Howard; Hughes; Hunter; Hupp; Isett; Jones, D.; Jones, E.; Jones, J.; Keel; Keffer, B.; Keffer, J.; King; Kolkhorst; Krusee; Kuempel; Laubenberg; Lewis; Luna; Mabry; Madden; Marchant; Martinez Fischer; McCall; McReynolds; Menendez; Mercer; Merritt; Miller; Moreno, J.; Moreno, P.; Morrison; Mowery; Naishtat; Nixon; Noriega; Olivo; Paxton; Peña; Phillips; Pickett; Pitts; Puente; Quintanilla; Raymond; Reyna; Riddle; Ritter; Rodriguez; Rose; Seaman; Smith, T.; Smith, W.; Smithee; Solis; Solomons; Stick; Swinford; Talton; Taylor; Telford; Thompson; Truitt; Uresti; Van Arsdale; Villarreal; West; Wilson; Wise; Wohlgemuth; Wong; Woolley; Zedler.

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

Absent, Excused — Eiland; Hope; Laney; Turner.

Absent — Alonzo; Davis, Y.; Ellis; Oliveira; Wolens.

Senate Committee Substitute

HJR 16, A joint resolution proposing a constitutional amendment to authorize a county, a city or town, or a junior college district to establish an ad valorem tax freeze on residence homesteads of the disabled and of the elderly and their spouses.

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

SECTION 1. Section 1-b, Article VIII, Texas Constitution, is amended by adding Subsection (h) to read as follows:

(h) The governing body of a county, a city or town, or a junior college district by official action may provide that if a person who is disabled or is sixty-five (65) years of age or older receives a residence homestead exemption

prescribed or authorized by this section, the total amount of ad valorem taxes imposed on that homestead by the county, the city or town, or the junior college district may not be increased while it remains the residence homestead of that person or that person's spouse who is disabled or sixty-five (65) years of age or older and receives a residence homestead exemption on the homestead. As an alternative, on receipt of a petition signed by five percent (5%) of the registered voters of the county, the city or town, or the junior college district, the governing body of the county, the city or town, or the junior college district shall call an election to determine by majority vote whether to establish a tax limitation provided by this subsection. If a county, a city or town, or a junior college district establishes a tax limitation provided by this subsection and a disabled person or a person sixty-five (65) years of age or older dies in a year in which the person received a residence homestead exemption, the total amount of ad valorem taxes imposed on the homestead by the county, the city or town, or the junior college district may not be increased while it remains the residence homestead of that person's surviving spouse if the spouse is fifty-five (55) years of age or older at the time of the person's death, subject to any exceptions provided by general law. The legislature, by general law, may provide for the transfer of all or a proportionate amount of a tax limitation provided by this subsection for a person who qualifies for the limitation and establishes a different residence homestead within the same county, within the same city or town, or within the same junior college district. A county, a city or town, or a junior college district that establishes a tax limitation under this subsection must comply with a law providing for the transfer of the limitation, even if the legislature enacts the law subsequent to the county's, the city's or town's, or the junior college district's establishment of the limitation. Taxes otherwise limited by a county, a city or town, or a junior college district under this subsection may be increased to the extent the value of the homestead is increased by improvements other than repairs and other than improvements made to comply with governmental requirements and except as may be consistent with the transfer of a tax limitation under a law authorized by this subsection. The governing body of a county, a city or town, or a junior college district may not repeal or rescind a tax limitation established under this subsection.

SECTION 2. This proposed constitutional amendment shall be submitted to the voters at an election to be held on September 13, 2003. The ballot shall be printed to provide for voting for or against the proposition: "The constitutional amendment to permit counties, cities and towns, and junior college districts to establish an ad valorem tax freeze on residence homesteads of the disabled and of the elderly and their spouses."

HJR 21 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

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

HJR 21, A joint resolution proposing a constitutional amendment to prohibit an increase in the total amount of school district ad valorem taxes that may be imposed on the residence homestead of a disabled person.

On motion of Representative Hamric, the house concurred in the senate amendments to **HJR 21** by (Record 812): 140 Yeas, 0 Nays, 2 Present, not voting.

Yeas — Allen; Bailey; Baxter; Berman; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Burnam; Campbell; Canales; Capelo; Casteel; Castro; Chavez; Chisum; Christian; Coleman; Cook, B.; Cook, R.; Corte; Crabb; Crownover; Davis, J.; Dawson; Delisi; Denny; Deshotel; Driver; Dunnam; Dutton; Edwards; Eissler; Elkins; Ellis; Escobar; Farabee; Farrar; Flores; Flynn; Gallego; Garza; Gattis; Geren; Giddings; Goodman; Goolsby; Griggs; Grusendorf; Guillen; Gutierrez; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Heflin; Hegar; Hilderbran; Hill; Hochberg; Hodge; Homer; Hopson; Howard; Hughes; Hunter; Hupp; Isett; Jones, D.; Jones, E.; Jones, J.; Keel; Keffer, B.; Keffer, J.; King; Kolkhorst; Krusee; Kuempel; Laubenberg; Lewis; Luna; Mabry; Madden; Marchant; Martinez Fischer; McCall; McReynolds; Menendez; Mercer; Merritt; Miller; Moreno, J.; Moreno, P.; Morrison; Mowery; Naishtat; Nixon; Noriega; Oliveira; Olivo; Paxton; Peña; Phillips; Pickett; Pitts; Puente; Quintanilla; Raymond; Reyna; Riddle; Ritter; Rodriguez; Rose; Seaman; Smith, T.; Smith, W.; Smithee; Solis; Solomons; Stick; Swinford; Talton; Taylor; Telford; Thompson; Truitt; Uresti; Van Arsdale; Villarreal; West; Wilson; Wise; Wohlgemuth; Wolens; Wong; Woolley; Zedler.

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

Absent, Excused — Eiland; Hope; Laney; Turner.

Absent — Alonzo; Callegari; Davis, Y.; Dukes.

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

Amend **HJR 21** in SECTION 3 of the joint resolution (Senate committee printing, page 1, line 53), by striking "November 4" and inserting "September 13."

HJR 85 - HOUSE REFUSES TO CONCUR IN SENATE AMENDMENTS CONFERENCE COMMITTEE APPOINTED

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

HJR 85, A joint resolution proposing a constitutional amendment to allow wineries in this state to manufacture, sell, and dispense certain wine.

Representative Homer moved that the house not concur in the senate amendments and that a conference committee be requested to adjust the differences between the two houses on **HJR 85**.

The motion prevailed without objection.

The chair announced the appointment of the following conference committee, on the part of the house, on **HJR 85**: Homer, chair; Swinford; Phillips; R. Cook; and Truitt.

**HB 2261 - HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS**

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

HB 2261, A bill to be entitled An Act relating to the composition of the Eighth and Eleventh courts of appeals districts.

On motion of Representative West, the house concurred in the senate amendments to **HB 2261**. (J. Keffer recorded voting no)

Senate Committee Substitute

HB 2261, A bill to be entitled An Act relating to the Eighth, Ninth, and Eleventh courts of appeals districts.

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

SECTION 1. Sections 22.201(i) and (l), Government Code, are amended to read as follows:

(i) The Eighth Court of Appeals District is composed of the counties of Andrews, Brewster, Crane, Crockett, Culberson, ~~[Ector,]~~ El Paso, ~~[Gaines, Glasscock,]~~ Hudspeth, Jeff Davis, Loving, ~~[Martin, Midland,]~~ Pecos, Presidio, Reagan, Reeves, Terrell, Upton, Ward, and Winkler.

(l) The Eleventh Court of Appeals District is composed of the counties of Baylor, Borden, Brown, Callahan, Coleman, Comanche, Dawson, Eastland, Ector, Erath, Fisher, Gaines, Glasscock, Haskell, Howard, Jones, Knox, Martin, Midland, Mitchell, Nolan, Palo Pinto, Scurry, Shackelford, Stephens, Stonewall, Taylor, and Throckmorton.

SECTION 2. Section 22.216(h), Government Code, is amended to read as follows:

(h) The Court of Appeals for the Eighth Court of Appeals District consists of a chief justice and two ~~[three]~~ justices.

SECTION 3. Section 22.216(i), Government Code, is amended to read as follows:

(i) The Court of Appeals for the Ninth Court of Appeals District consists of a chief justice and three ~~[two]~~ justices.

SECTION 4. Notwithstanding Section 22.216(h), Government Code, as amended by this Act, the Eighth Court of Appeals consists of a chief justice and three justices until a vacancy occurs or the term of a justice expires, whichever occurs first. Section 22.216(h), Government Code, as amended by this Act, does not affect the office of a justice of the Eighth Court of Appeals serving on September 1, 2003, and the justice, unless otherwise removed, continues to serve for the term to which the justice was elected.

SECTION 5. This Act does not affect the jurisdiction on appeal of any case from a county that is transferred by this Act to a different court of appeals district if the notice of appeal for the case was filed before the effective date of this Act in the appropriate court of appeals district.

SECTION 6. (a) Except as provided by Subsection (b) of this section, this Act takes effect September 1, 2003.

(b) Section 3 of this Act takes effect January 1, 2005.

HB 3330 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

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

HB 3330, A bill to be entitled An Act relating to the definition of an eligible highway for purposes of applying to erect an information logo sign.

On motion of Representative Crossover, the house concurred in the senate amendments to **HB 3330** by (Record 813): 142 Yeas, 0 Nays, 2 Present, not voting.

Yeas — Allen; Alonzo; Bailey; Baxter; Berman; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Burnam; Callegari; Campbell; Canales; Capelo; Casteel; Castro; Chavez; Chisum; Christian; Coleman; Cook, B.; Cook, R.; Corte; Crabb; Crossover; Davis, J.; Davis, Y.; Dawson; Delisi; Denny; Deshotel; Driver; Dukes; Dunnam; Dutton; Edwards; Eissler; Elkins; Ellis; Escobar; Farabee; Farrar; Flores; Flynn; Gallego; Garza; Gattis; Geren; Giddings; Goodman; Goolsby; Griggs; Grusendorf; Guillen; Gutierrez; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Heflin; Hegar; Hilderbran; Hill; Hochberg; Hodge; Homer; Hopson; Howard; Hughes; Hunter; Hupp; Isett; Jones, D.; Jones, E.; Jones, J.; Keel; Keffer, B.; Keffer, J.; King; Kolkhorst; Krusee; Kuempel; Laubenberg; Lewis; Luna; Mabry; Madden; Marchant; Martinez Fischer; McCall; McReynolds; Menendez; Mercer; Miller; Merritt; Moreno, J.; Morrison; Mowery; Naishtat; Nixon; Noriega; Oliveira; Olivo; Paxton; Peña; Phillips; Pickett; Pitts; Puente; Quintanilla; Raymond; Reyna; Riddle; Ritter; Rodriguez; Rose; Seaman; Smith, T.; Smith, W.; Smithee; Solis; Solomons; Stick; Swinford; Talton; Taylor; Telford; Thompson; Truitt; Uresti; Van Arsdale; West; Wilson; Wise; Wohlgemuth; Wolens; Wong; Woolley; Zedler.

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

Absent, Excused — Eiland; Hope; Laney; Turner.

Absent — Moreno, P.; Villarreal.

Senate Committee Substitute

HB 3330, A bill to be entitled An Act relating to regulation of certain information logo signs along certain major highways.

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

SECTION 1. Section 391.001(2), Transportation Code, is amended to read as follows:

(2) "Eligible highway" means a highway that:

(A) is located outside an urbanized area with a population of 50,000 or more[~~±~~] and

~~[(B)]~~ qualifies for a maximum speed limit of 65 miles per hour under 23 U.S.C. Section 154 or, if that law is repealed, qualified for a maximum speed limit of 65 miles per hour on the day before the effective date of the repeal;
or

(B) is a controlled-access highway located inside an urbanized area with a population of 50,000 or more.

SECTION 2. Section 391.091, Transportation Code, is amended to read as follows:

Sec. 391.091. ERECTION AND MAINTENANCE OF SIGNS. (a) The commission shall contract with an individual, firm, group, or association in this state to erect and maintain specific information logo signs at appropriate locations along an eligible highway.

(b) A contract under this section shall provide for:

(1) the assessment of fees to be paid to a contractor by a commercial establishment eligible for display on the specific information logo sign; and

(2) remittance to the department of at least 10 percent of the fees collected by the contractor.

SECTION 3. Section 391.0935, Transportation Code, is amended by amending Subsection (c) and adding Subsections (f) and (g) to read as follows:

(c) A major shopping area that has its name displayed on a major shopping area guide sign shall reimburse the commission for all costs associated with the composition, placement, erection, and maintenance of the sign unless the commission has entered into a contract under Subsection (f).

(f) The commission may contract with an individual, firm, group, or association in this state to erect and maintain major shopping area guide signs at appropriate locations along an eligible urban highway.

(g) A contract under this section shall provide for:

(1) the assessment of fees to be paid to a contractor by a major shopping area; and

(2) remittance to the department of at least 10 percent of the fees collected by the contractor.

SECTION 4. Section 391.097(c), Transportation Code, is amended to read as follows:

(c) A contract under this section shall provide for:

(1) the assessment of fees to be paid to a contractor by a commercial establishment of a major agricultural interest; and

(2) remittance to the department of 10 percent ~~[a portion]~~ of the fees collected by the contractor ~~[in an amount sufficient to recover the department's costs of administering the program].~~

SECTION 5. (a) This Act takes effect September 1, 2003.

(b) The changes in law made to Sections 391.091, 391.0935, and 391.097(c), Transportation Code, by this Act, apply only to a contract entered into on or after the effective date of this Act.

**HB 3374 - HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS**

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

HB 3374, A bill to be entitled An Act relating to the creation, administration, powers, duties, operation, and financing of the Kenedy County Groundwater Conservation District.

On motion of Representative Escobar, the house concurred in the senate amendments to **HB 3374**.

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

Amend **HB 3374** (Senate committee printing) as follows:

(1) Strike SECTION 4 of the bill and substitute the following:

SECTION 4. BOUNDARIES. The boundaries of the district are coextensive with Kenedy County, Texas and also include the following separate tracts:

(a) A tract of land known as the Laureles Ranch containing 255,026.53 acres, more or less, in Kleberg and Nueces Counties, Texas, being more particularly described in an oil, gas, and mineral lease from the Executors and Trustees under the will of Mrs. Henrietta M. King, deceased, to Humble Oil & Refining Company dated September 26, 1933, recorded in Volume 20, page 1-13, of the Oil and Gas Lease Records of Nueces County, Texas, and Volume 37, pages 183-189, of the Deed Records of Kleberg County, Texas, said tract having been described as Item First in said lease to which reference is here made for a complete description thereof;

(b) A tract of land known as the Santa Gertrudis Ranch containing 203,468.13 acres, more or less, in Kleberg, Jim Wells, and Brooks Counties, Texas, and composed of two parcels as follows:

(1) A parcel of land containing 173,028.90 acres, more or less, in Kleberg, Jim Wells, and Brooks Counties, being more particularly described in an oil, gas, and mineral lease from the Executors and Trustees under the will of Mrs. Henrietta M. King, deceased, to Humble Oil & Refining Company dated September 26, 1933, recorded in Volume 20, pages 1-13, of the Oil and Gas Lease Records of Nueces County, Texas, and Volume 37, pages 183-189, of the Deed Records of Kleberg County, Texas, said tract having been described as Item Second in said lease to which reference is here made for a complete description thereof; and

(2) A parcel of land containing 30,439.23 acres, more or less, in Kleberg and Jim Wells Counties, Texas, being more particularly described in an oil, gas, and mineral lease from Alice G. K. Kleberg to Humble Oil & Refining Company dated September 26, 1933, recorded in Volume 37, page 200-206, of the Deed Records of Kleberg County, Texas, and in Volume 50, page 166-172, of the Deed Records of Jim Wells County, Texas, to which reference is here made for a complete description thereof; and

(c) ALL of Farm Lots Twelve (12) and Thirteen (13), in Block or Section Number Nine (9), of the Kleberg Town and Improvement Company's Subdivision in Kleberg County, Texas or 74.62 acres more or less, AND BEING the same property conveyed to John B. Armstrong and Henrietta L. Armstrong, Trustees by Deed executed by Bessie Y. Larkin, et al, dated June 10, 1964, and filed for recorded in the Office of the County Clerk of Kleberg County, Texas, Volume 183, Pages 524-527; and

(d) Lot 3 of Survey 283, A-124, of C.B. & C.N.G.R.R. Co. according to Mrs. H. M. King Second Subdivision of Rivera Farm Lands, containing 77.89 acres of land, more or less, and being the same tract of land that was conveyed to King Ranch by J. F. McCullar by deed dated November 2, 1943, recorded in Vol. 61, page 90 of the Deed Records of Kleberg County, Texas.

(e) The tract of land described in Subsection (a) of this section does not include the 1999.96 acre tract of land described in Volume 1386, Pages 193-205, Nueces County Deed Records.

(f) The legislature finds that the boundaries and field notes of the district form a closure.

(2) On page 2, line 1 (committee printing) strike "entire district" and substitute "Santa Gertrudis Independent School District".

(3) On page 2, line 1 (committee printing) strike "county" and substitute "Kenedy County".

LEAVE OF ABSENCE GRANTED

The following member was granted leave of absence temporarily for today to attend a conference committee meeting:

Wohlgemuth on motion of Solomons.

HB 867 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

Representative J. Jones called up with senate amendments for consideration at this time,

HB 867, A bill to be entitled An Act relating to air conditioning systems in certain facilities.

On motion of Representative J. Jones, the house concurred in the senate amendments to **HB 867**.

Senate Committee Substitute

HB 867, A bill to be entitled An Act relating to minimum standards applicable to certain facilities.

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

ARTICLE 1. MINIMUM STANDARDS RELATING TO AIR CONDITIONING

SECTION 1.01. DEFINITION. In this article, "department" means the Texas Department of Human Services.

SECTION 1.02. AIR CONDITIONING SYSTEMS FOR NURSING HOMES. (a) As soon as practicable after the effective date of this article, the department shall review the rules and minimum standards applicable to an institution licensed under Chapter 242, Health and Safety Code, and adopted under Section 242.037, Health and Safety Code. The department shall ensure that the rules and minimum standards require each affected institution to use a central air conditioning system or a substantially similar air conditioning system that is capable of maintaining a temperature within the areas of the institution used by residents suitable for the comfort of the residents.

(b) Not later than January 1, 2004, the department shall amend the applicable rules and minimum standards as necessary to comply with Subsection (a) of this section.

(c) An amendment to the applicable rules and minimum standards made under Subsection (b) of this section applies to an institution or a part of an institution for which construction is begun after the effective date of the amendment, which may not be later than January 1, 2004, including a facility converted to use as an institution after that date.

SECTION 1.03. AIR CONDITIONING SYSTEMS FOR ASSISTED LIVING FACILITIES. (a) As soon as practicable after the effective date of this article, the department shall review the minimum standards applicable to an assisted living facility licensed under Chapter 247, Health and Safety Code, and adopted under Section 247.026, Health and Safety Code. The department shall ensure that the rules and minimum standards require each affected facility to use a central air conditioning system or a substantially similar air conditioning system that is capable of maintaining a temperature within the areas of the facility used by residents suitable for the comfort of the residents.

(b) Not later than January 1, 2004, the department shall amend the applicable minimum standards as necessary to comply with Subsection (a) of this section.

(c) An amendment to the applicable minimum standards made under Subsection (b) of this section applies to an assisted living facility or a part of a facility for which construction is begun after the effective date of the amendment, which may not be later than January 1, 2004, including a facility converted to use as an assisted living facility after that date.

ARTICLE 2. MINIMUM STANDARDS RELATING TO FIRE PROTECTION

SECTION 2.01. Section 247.030(b), Health and Safety Code, is amended to read as follows:

(b) The board shall adopt minimum standards for an assisted living facility classified under this section, including standards imposing adequate requirements relating to medication supervision. The board shall modify accessibility and life safety code standards generally applicable to a facility licensed under this chapter as necessary for a facility classified under this section to reflect the level of services provided by the facility. The modified standards must be specifically defined by the board and must provide for ~~[two-story]~~ buildings with three or fewer stories. Buildings with three or fewer stories ~~[Two-story buildings]~~ must meet all life safety code requirements in regards to protecting vertical openings,

as specified in the 1988 edition of the National Fire Protection Association (NFPA) 101, Section 21-2.3.1. With respect to life safety code requirements, an existing building that is converted to a large Type B assisted living facility, as classified by the board, must conform only to Chapter 21 of the 1988 edition of the National Fire Protection Association (NFPA) 101.

SECTION 2.02. An assisted living facility is not required to comply with Section 247.030(b), Health and Safety Code, as amended by this article, before September 1, 2004.

ARTICLE 3. EFFECTIVE DATE

SECTION 3.01. This Act takes effect September 1, 2003.

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

Amend **CSHB 867** by striking Article 2 of the bill (page 1, line 56 through page 2, line 15, Senate committee printing) and renumbering the subsequent article accordingly.

HB 730 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

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

HB 730, A bill to be entitled An Act relating to residential construction, including certain warranties, building and performance standards, and dispute resolution; providing an administrative penalty.

On motion of Representative Ritter, the house concurred in the senate amendments to **HB 730**.

Senate Committee Substitute

HB 730, A bill to be entitled An Act relating to residential construction, including certain warranties, building and performance standards, and dispute resolution; providing an administrative penalty.

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

ARTICLE 1. TEXAS RESIDENTIAL CONSTRUCTION COMMISSION;
STATE-SPONSORED INSPECTION AND DISPUTE RESOLUTION;
WARRANTIES AND BUILDING AND PERFORMANCE STANDARDS

SECTION 1.01. The Property Code is amended by adding Title 16 to read as follows:

TITLE 16. TEXAS RESIDENTIAL CONSTRUCTION COMMISSION ACT

SUBTITLE A. GENERAL PROVISIONS

CHAPTER 401. GENERAL PROVISIONS

Sec. 401.001. SHORT TITLE. This title may be cited as the Texas Residential Construction Commission Act.

Sec. 401.002. GENERAL DEFINITIONS. In this title:

(1) "Applicable building and performance standards" means:

(A) building and performance standards adopted under Section 430.001; or

(B) for homes constructed before the adoption of building and performance standards under Section 430.001, the building and performance standards under any express warranty provided in writing by the builder or, if there is no express warranty, the usual and customary residential construction practices in effect at the time of the construction.

(2) "Applicable warranty period" means:

(A) a warranty period established under Section 430.001; or

(B) for construction to which the warranty periods adopted under Section 430.001 do not apply, any other construction warranty period that applies to the construction.

(3) "Approved architect" means an architect licensed by this state and approved by the commission to provide services to the commission in connection with the state-sponsored inspection and dispute resolution process.

(4) "Approved structural engineer" means a licensed professional engineer approved by the commission to provide services to the commission in connection with the state-sponsored inspection and dispute resolution process.

(5) "Commission" means the Texas Residential Construction Commission.

(6) "Home" means the real property and improvements and appurtenances for a single-family house or duplex.

(7) "Homeowner" means a person who owns a home or a subrogee or assignee of a person who owns a home.

(8) "Limited statutory warranty and building and performance standards" means the limited statutory warranty and building and performance standards adopted by the commission under Section 430.001.

(9) "Nonstructural matter" has the meaning assigned by the limited statutory warranty and building and performance standards adopted by the commission under Section 430.001.

(10) "Request" means a request submitted under Section 428.001.

(11) "State inspector" means a person employed by the commission under Section 427.002.

(12) "State-sponsored inspection and dispute resolution process" means the process by which the commission resolves a request.

(13) "Structural" means the load-bearing portion of a home.

(14) "Structural failure" has the meaning assigned by the limited statutory warranty and building and performance standards adopted by the commission under Section 430.001.

(15) "Third-party inspector" means a person appointed by the commission under Section 428.003.

Sec. 401.003. DEFINITION OF BUILDER. (a) In this title, "builder" means any business entity or individual who, for a fixed price, commission, fee, wage, or other compensation, constructs or supervises or manages the construction of:

(1) a new home;

(2) a material improvement to a home, including the roof of an existing home; or

(3) an improvement to the interior of an existing home when the cost of the work exceeds \$10,000.

(b) The term includes:

(1) an owner, officer, director, shareholder, partner, affiliate, or employee of the builder;

(2) a risk retention group governed by Article 21.54, Insurance Code, that insures all or any part of a builder's liability for the cost to repair a residential construction defect; and

(3) a third-party warranty company and its administrator.

(c) The term does not include any business entity or individual who has been issued a license by this state or an agency or political subdivision of this state to practice a trade or profession related to or affiliated with residential construction if the work being done by the entity or individual to the home is solely for the purpose for which the license was issued.

Sec. 401.004. DEFINITION OF CONSTRUCTION DEFECT. (a) In this title, "construction defect" means:

(1) the failure of the design, construction, or repair of a home, an alteration of or a repair, addition, or improvement to an existing home, or an appurtenance to a home to meet the applicable warranty and building and performance standards during the applicable warranty period; and

(2) any physical damage to the home, an appurtenance to the home, or real property on which the home or appurtenance is affixed that is proximately caused by that failure.

(b) The term does not include a defect that arises or any damages that arise wholly or partly from:

(1) the negligence of a person other than the builder or an agent, employee, subcontractor, or supplier of the builder;

(2) failure of a person other than the builder or an agent, employee, subcontractor, or supplier of the builder to:

(A) take reasonable action to mitigate any damages that arise from a defect; or

(B) take reasonable action to maintain the home;

(3) normal wear, tear, or deterioration; or

(4) normal shrinkage due to drying or settlement of construction components within the tolerance of building and performance standards.

Sec. 401.005. EXEMPTIONS. (a) This title does not apply to a home that is:

(1) built by the individual who owns the home, alone or with the assistance of the individual's employees or independent contractors; and

(2) used by the individual as the individual's primary residence for at least one year after the completion or substantial completion of construction of the home.

(b) This title does not apply to a homeowner or to a homeowner's real estate broker, agent, or property manager who supervises or arranges for the construction of an improvement to a home owned by the homeowner.

Sec. 401.006. SUNSET PROVISION. The Texas Residential Construction 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 title expires September 1, 2009.

[Chapters 402-405 reserved for expansion]

SUBTITLE B. TEXAS RESIDENTIAL CONSTRUCTION COMMISSION

CHAPTER 406. COMMISSION

Sec. 406.001. TEXAS RESIDENTIAL CONSTRUCTION COMMISSION; MEMBERSHIP. (a) The Texas Residential Construction Commission consists of nine members appointed by the governor with the advice and consent of the senate as follows:

(1) four members must be builders who each hold a certificate of registration under Chapter 416;

(2) three members must be representatives of the general public;

(3) one member must be a licensed professional engineer who practices in the area of residential construction; and

(4) one member must be a licensed architect who practices in the area of residential construction.

(b) Appointments to the commission shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointees.

Sec. 406.002. TERMS. (a) Commission members serve staggered six-year terms, with three members' terms expiring February 1 of each odd-numbered year. The terms of three of the builder representatives must expire in different odd-numbered years. The term of one of the representatives of the general public must expire in each odd-numbered year.

(b) A member of the commission may not serve more than two complete terms.

Sec. 406.003. PRESIDING OFFICER. The governor shall designate a member of the commission as the presiding officer of the commission to serve in that capacity at the pleasure of the governor. At a regular meeting in February of each year, the commission shall elect from its membership a vice presiding officer and a secretary.

Sec. 406.004. MEMBERSHIP AND EMPLOYEE RESTRICTIONS. (a) In this section, "Texas trade association" means a cooperative and voluntarily joined association of business or professional competitors in this state designed to assist its members and their industry or profession as a whole in dealing with mutual business or professional problems, issues, and circumstances and in promoting the common interest of its members and their industry and profession as a whole.

(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 employee or paid consultant of a Texas trade association in the field of residential construction; or

(2) the person's spouse is a manager or paid consultant of a Texas trade association in the field of residential construction.

(c) A person may not be a member of the commission or act as the general counsel to the commission if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the commission.

(d) A person may not be a commission employee described by Subsection (b) if the person is an employee or agent in the field of residential construction. This subsection does not apply to a person appointed to the commission.

Sec. 406.005. GROUNDS FOR REMOVAL. (a) It is a ground for removal from the commission that a member:

(1) does not have at the time of taking office the qualifications required by Section 406.001;

(2) does not maintain during service on the commission the qualifications required by Section 406.001;

(3) is ineligible for membership under Section 406.004;

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

(5) is absent from more than half of the regularly scheduled commission meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the commission.

(b) The validity of an action of the commission is not affected by the fact that it is taken when a ground for removal of a commission member exists.

(c) If the executive director has knowledge that a potential ground for removal exists, the executive director shall notify the presiding officer of the potential ground. The presiding officer shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the presiding officer, the executive director shall notify the next highest ranking officer of the commission, who shall notify the governor and the attorney general that a potential ground for removal exists.

Sec. 406.006. TRAINING. (a) A person who is appointed to and qualifies for office as a member of the commission may not vote, deliberate, or be counted as a member in attendance at a meeting of the commission until the person completes a training program that complies with this section.

(b) The training program must provide the person with information regarding:

(1) 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 the most recent formal audit 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.

Sec. 406.007. MEETINGS. The commission shall meet at least quarterly and at other times at the call of the presiding officer.

CHAPTER 407. EXECUTIVE DIRECTOR AND OTHER AGENCY PERSONNEL

Sec. 407.001. EXECUTIVE DIRECTOR. The commission shall employ an executive director as the executive head of the agency.

Sec. 407.002. OTHER PERSONNEL. The commission may employ other personnel as necessary for the administration of this title.

Sec. 407.003. DIVISION OF RESPONSIBILITIES. The commission shall develop and implement policies that clearly separate the policy-making responsibilities of the commission and the management responsibilities of the executive director and the staff of the commission.

Sec. 407.004. QUALIFICATIONS AND STANDARDS OF CONDUCT INFORMATION. The executive director or the executive director's designee shall provide to members of the commission and to commission employees, as often as necessary, information regarding the requirements for office or employment under this title, including information regarding a person's responsibilities under applicable laws relating to standards of conduct for state officers or employees.

Sec. 407.005. CAREER LADDER PROGRAM; PERFORMANCE EVALUATION. (a) The executive director or the executive director's designee shall develop an intra-agency career ladder program that addresses opportunities for mobility and advancement for employees within the commission. The program must require intra-agency posting of all nonentry level positions concurrently with any public posting.

(b) The executive director or the executive director's designee shall develop a system of annual performance evaluations based on measurable job tasks. All merit pay for commission employees must be based on the system established under this subsection.

Sec. 407.006. EQUAL EMPLOYMENT OPPORTUNITY POLICY; ANNUAL REPORT. (a) The executive director or the executive director'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 commission 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 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.

(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); and

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

(d) The governor's office shall deliver a biennial report to the legislature based on the information received under Subsection (c)(3). The report may be made separately or as a part of other biennial reports made to the legislature.

Sec. 407.007. INFORMATION AND TRAINING ON 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.

CHAPTER 408. POWERS AND DUTIES

Sec. 408.001. RULES. (a) The commission may not adopt a substantive rule before submitting the proposed rule to the attorney general for a ruling on the proposed rule's validity.

(b) The commission shall adopt rules as necessary for the implementation of this title, including rules:

(1) governing the state-sponsored inspection and dispute resolution process, including building and performance standards, administrative regulations, and the conduct of hearings under Subtitle D;

(2) establishing limited statutory warranty and building and performance standards for residential construction;

(3) approving third-party warranty programs; and

(4) approving third-party inspectors.

Sec. 408.002. FEES. The commission shall adopt fees as required by this title in amounts that are reasonable and necessary to provide sufficient revenue to cover the costs of administering this title.

Sec. 408.003. ACCESSIBILITY. (a) The commission shall comply with federal and state laws related to program and facility accessibility.

(b) The executive director shall prepare and maintain a written plan that describes how a person who does not speak English can obtain reasonable access to the commission's programs and services.

Sec. 408.004. ANNUAL REPORT. (a) The commission shall file annually with the governor and the presiding officer of each house of the legislature a complete and detailed written report accounting for all funds received and disbursed by the commission during the preceding fiscal year.

(b) The report must be in the form and reported in the time provided by the General Appropriations Act.

CHAPTER 409. PUBLIC INTEREST INFORMATION AND COMPLAINT PROCEDURES

Sec. 409.001. PUBLIC INTEREST INFORMATION. (a) The commission shall prepare information of public interest describing the functions of the commission, the provisions of the limited statutory warranty and building and performance standards, the state-sponsored inspection and dispute resolution process, and the procedures by which complaints or requests are filed with and resolved by the commission.

(b) The commission shall make the information available to the public and appropriate state agencies and shall post the information on the commission's website.

(c) Within 30 days of the receipt by the commission of the registration required by Section 426.003, the commission shall mail a copy of the information of public interest described in Subsection (a) to the owner of the home as described in the registration.

Sec. 409.002. PUBLIC PARTICIPATION. The commission shall develop and implement policies that provide the public with a reasonable opportunity to appear before the commission and to speak on any issue under the jurisdiction of the commission.

Sec. 409.003. RECORDS OF COMPLAINTS. (a) The commission shall maintain a file on each written complaint filed with the commission.

(b) The commission shall provide to the person filing the complaint and to each person who is a subject of the complaint a copy of the commission's policies and procedures relating to complaint investigation and resolution.

(c) The commission, 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.

[Chapters 410-415 reserved for expansion]

SUBTITLE C. BUILDER REGISTRATION

CHAPTER 416. CERTIFICATE OF REGISTRATION

Sec. 416.001. REGISTRATION REQUIRED. A person may not act as a builder unless the person holds a certificate of registration under this chapter.

Sec. 416.002. APPLICATION FOR CERTIFICATE. (a) An applicant for an original or renewal certificate of registration must submit an application on a form prescribed by the commission.

(b) Each applicant must disclose in the application whether the applicant has:

(1) entered a plea of guilty or nolo contendere to a felony charge or a misdemeanor involving moral turpitude; or

(2) been convicted of a felony or a misdemeanor involving moral turpitude and the time for appeal has elapsed or the conviction has been affirmed on appeal.

(c) Disclosure under Subsection (b) is required regardless of whether an order granting the person community supervision suspended the imposition of the sentence.

(d) The commission may, on receipt of an application, conduct a criminal background check of the applicant or any person responsible for the application. The commission may obtain criminal history record information maintained by the Department of Public Safety, the Federal Bureau of Investigation, or any other local, state, or national governmental entity. Unless the information is a public record at the time the commission obtains the information under this subsection, the information is confidential, and the commission may not release or disclose the information to any person except under a court order or with the permission of the applicant.

Sec. 416.003. PROVISIONAL REGISTRATION. (a) Pending the receipt of the results of a criminal background check, the commission may issue a provisional registration certificate. On approval of the results of the criminal background check, the commission shall issue a registration certificate. On receipt of unfavorable results of the criminal background check, the commission shall revoke the provisional registration certificate.

(b) This section expires January 1, 2005.

Sec. 416.004. FEES. (a) The commission shall charge and collect:

(1) a filing fee for an application for an original certificate of registration that does not exceed \$500; and

(2) a fee for renewal of a certificate of registration that does not exceed \$300.

(b) The commission shall establish a fee schedule that takes into consideration the unit volume or dollar volume of potential applicants.

Sec. 416.005. GENERAL ELIGIBILITY REQUIREMENTS. A person may not receive a certificate of registration under this chapter unless:

(1) the person, at the time of the application:

(A) is at least 18 years of age; and

(B) is a citizen of the United States or a lawfully admitted alien;

and

(2) the commission is satisfied with the person's honesty, trustworthiness, and integrity based on information supplied or discovered in connection with the person's application.

Sec. 416.006. ADDITIONAL ELIGIBILITY REQUIREMENTS FOR BUSINESS ENTITIES. (a) To be eligible for an original or renewal certificate of registration under this chapter:

(1) a corporation must designate one of its officers as its agent for the purposes of this chapter;

(2) a limited liability company must designate one of its managers as its agent for the purposes of this chapter; and

(3) a partnership, limited partnership, or limited liability partnership must designate one of its managing partners as its agent for the purposes of this chapter.

(b) A corporation, limited liability company, partnership, limited partnership, or limited liability partnership is not eligible to be registered under this chapter and may not act as a builder unless the entity's designated agent is individually registered as a builder.

Sec. 416.007. ISSUANCE OF CERTIFICATE. (a) Not later than the 15th day after the date the commission receives an application from an applicant who meets the requirements of this chapter, the commission shall issue a certificate of registration to the applicant.

(b) The certificate of registration remains in effect for the period prescribed by the commission if the certificate holder complies with this chapter and pays the appropriate renewal fees.

Sec. 416.008. DENIAL OF REGISTRATION. (a) If the commission denies an application for an original certificate of registration or a renewal application, the commission shall give written notice to the applicant not later than the 15th day after the date the commission receives the application.

(b) The applicant may appeal the denial of the application if, on or before the 30th day after the date the applicant receives notice under this section, the applicant files a written request for a hearing before the commission.

(c) The commission shall:

(1) set a time and place for the hearing not later than the 30th day after the date the commission receives the notice of the appeal; and

(2) give notice of the hearing to the applicant before the 15th day before the date of the hearing.

(d) The hearing may be continued from time to time with the consent of the applicant.

(e) The hearing shall be before a hearings officer appointed by the commission. After the hearing, the hearings officer shall enter an appropriate order. The order of the hearings officer under this subsection is a final decision.

(f) The commission shall adopt procedural rules under which a decision by a hearings officer under this section is subject to appeal to the commission.

(g) A hearing under this section is governed by Chapter 2001, Government Code.

Sec. 416.009. EXPIRATION OF CERTIFICATE. (a) The commission may issue or renew a certificate of registration for a period that does not exceed 24 months.

(b) The commission by rule may adopt a system under which certificates of registration expire on several dates during the year. The commission shall adjust the date for payment of renewal fees accordingly.

(c) In a year in which the expiration date for a certificate of registration is changed, the renewal fee payable shall be prorated on a monthly basis so that the certificate holder pays only that portion of the fee that is allocable to the number

of months during which the certificate of registration is valid. On renewal of the certificate of registration on the new expiration date, the total renewal fee is payable.

Sec. 416.010. OFFICE LOCATION; CHANGE OF ADDRESS. (a) A builder shall maintain a fixed office location in this state. The address of the builder's principal place of business must be designated on the certificate of registration.

(b) Not later than the 30th day after the date a builder moves from the address designated on the certificate of registration, the builder shall submit an application, accompanied by the appropriate fee, for a certificate of registration that designates the new location of the builder's principal place of business. The commission shall issue a certificate of registration that designates the new location if the new location complies with the requirements of this section.

(c) This section does not require a builder to obtain a certificate of registration for each sales office.

Sec. 416.011. TEXAS STAR BUILDER DESIGNATION. (a) The commission shall establish rules and procedures for a program through which a builder can be designated as a "Texas Star Builder." A builder's participation in the program is voluntary and is not a requirement for the issuance of a certificate of registration required under this chapter.

(b) A builder who participates in this program will be allowed to represent to the public that the builder is a "Texas Star Builder" and meets all of the requirements and qualifications that are set forth by the commission for the program.

(c) If the commission determines that a builder must meet certain education requirements to participate in the "Texas Star Builder" program, a builder may satisfy those requirements by completing education programs offered by a trade association or other organization whose education programs have been approved by the commission.

(d) The certification issued by the commission as a "Texas Star Builder" shall be for the same period of time as the builder's registration under this chapter.

CHAPTER 417. PROHIBITED PRACTICES; DISCIPLINARY PROCEEDINGS

Sec. 417.001. GROUNDS FOR DISCIPLINARY ACTION. A person is subject to disciplinary action under this chapter for:

- (1) fraud or deceit in obtaining a certificate of registration;
- (2) misappropriation of trust funds in the practice of residential construction;
- (3) naming false consideration in a contract to sell a new home or in a construction contract;
- (4) discriminating on the basis of race, color, religion, sex, national origin, or ancestry;
- (5) publishing a false or misleading advertisement;

(6) failure to honor, within a reasonable time, a check issued to the commission after the commission has sent by certified mail a request for payment to the person's last known business address, according to commission records;

(7) failure to pay an administrative penalty assessed by the commission under Chapter 418;

(8) nonpayment of a final nonappealable judgment arising from a construction defect or other transaction between the person and a homeowner;

(9) failure to register a home as required by Section 426.003;

(10) failure to remit the fee for registration of a home under Section 426.003; or

(11) failure to reimburse a homeowner the amount ordered by the commission as provided in Section 428.004(d).

Sec. 417.002. DISCIPLINARY POWERS OF COMMISSION. On a determination that a ground for disciplinary action under Section 417.001 exists, the commission may:

(1) revoke or suspend a certificate of registration;

(2) probate the suspension of a certificate of registration; or

(3) formally or informally reprimand a certificate holder.

Sec. 417.003. HEARING. (a) If the commission proposes to take a disciplinary action against a person under Section 417.002, the person is entitled to a hearing before the commission.

(b) The commission shall adopt procedural rules by which all decisions to take disciplinary action under this chapter are subject to appeal to the commission.

(c) The commission shall prescribe the time and place of the hearing.

(d) A hearing under this section is governed by Chapter 2001, Government Code.

Sec. 417.004. APPEAL. (a) A person aggrieved by a ruling, order, or decision of the commission is entitled to appeal to a district court in the county in which the administrative hearing was held.

(b) An appeal under this section is governed by Chapter 2001, Government Code.

CHAPTER 418. ADMINISTRATIVE PENALTY

Sec. 418.001. IMPOSITION OF ADMINISTRATIVE PENALTY. In a contested case involving disciplinary action, the commission may, as part of the commission's order, impose an administrative penalty on a certificate holder who violates this title or a rule adopted or order issued by the commission under this title.

Sec. 418.002. AMOUNT OF PENALTY. (a) An administrative penalty imposed under this chapter may not exceed \$5,000 for each violation.

(b) In determining the amount of an administrative penalty, the hearings officer or commission shall consider:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the prohibited acts;

(2) the history of previous violations;

(3) the amount necessary to deter a future violation;

- (4) efforts to correct the violation; and
- (5) any other matter justice may require.

Sec. 418.003. PAYMENT OF PENALTY. The commission shall specify in an order imposing an administrative penalty under this chapter a date on or before the 30th day after the date the order becomes final and unappealable by which the person against whom the penalty is imposed must pay the penalty.

Sec. 418.004. ENFORCEMENT OF PENALTY. If a person does not pay an administrative penalty imposed under this chapter and enforcement of the penalty is not stayed, the commission may:

- (1) refer the matter to the attorney general for collection of the penalty;
- or
- (2) enforce any part of the order that specifies disciplinary action to be taken against the certificate holder if the certificate holder fails to pay the administrative penalty within the time prescribed.

[Chapters 419-425 reserved for expansion]

SUBTITLE D. STATE-SPONSORED INSPECTION AND DISPUTE
RESOLUTION
PROCESS; STATUTORY WARRANTY AND BUILDING AND
PERFORMANCE STANDARDS

CHAPTER 426. GENERAL PROVISIONS

Sec. 426.001. APPLICABILITY OF SUBTITLE. (a) This subtitle applies to a dispute between a builder and a homeowner if:

(1) the dispute arises out of an alleged construction defect, other than a claim solely for:

- (A) personal injury, survival, or wrongful death; or
- (B) damage to goods; and

(2) a request is submitted to the commission on or before the 10th anniversary of the date of the initial transfer of title from the builder to the initial owner of the home or the improvement that is the subject of the dispute or, if there is not a closing, the date on which the contract for construction of the improvement was entered into.

(b) This subtitle does not apply to a dispute arising out of:

- (1) an alleged violation of Section 27.01, Business & Commerce Code;
- (2) a builder's wrongful abandonment of an improvement project before completion; or
- (3) a violation of Chapter 162.

(c) For the purposes of this section, "damage to goods" does not include damage to a home.

Sec. 426.002. CONFLICT WITH CERTAIN OTHER LAW. To the extent of any conflict between this subtitle and any other law, including Chapter 27 and the Deceptive Trade Practices-Consumer Protection Act (Subchapter E, Chapter 17, Business & Commerce Code), this subtitle prevails.

Sec. 426.003. REGISTRATION OF HOME. (a) A builder shall register a new home with the commission on or before the 15th day of the month following the month in which the transfer of title from the builder to the homeowner occurs. The registration must include the information required by the commission by rule and be accompanied by the fee required by Subsection (c).

(b) A builder who enters into a transaction governed by this title, other than the transfer of title of a new home from the builder to the seller, shall register the home involved in the transaction with the commission. The registration must:

(1) include the information required by the commission by rule;

(2) be accompanied by the fee required by Subsection (c); and

(3) be delivered to the commission not later than the 15th day after the earlier of:

(A) the date of the agreement that describes the transaction between the homeowner and the builder; or

(B) the commencement of the work on the home.

(c) A builder must remit to the commission a registration fee for each home registered with the commission in an amount determined by the commission. The fee set by the commission under this subsection may not exceed \$125.

(d) The commission may assess a late payment penalty that does not exceed \$500 against a builder who fails to pay a required registration fee in the time prescribed by this section.

Sec. 426.004. APPLICATION AND INSPECTION FEES. (a) A party who submits a matter to the commission for the state-sponsored inspection and dispute resolution process shall pay to the commission:

(1) an application fee in an amount determined by the commission; and

(2) any additional amount required by the commission to cover the expense of the third-party inspector.

(b) The commission shall adopt rules permitting a waiver or reduction of the application fee and inspection expenses for homeowners demonstrating a financial inability to pay the fees and expenses.

(c) If the transfer of the title of the home from the builder to the initial homeowner occurred before January 1, 2004, or if the contract for improvements or additions between the builder and homeowner was entered into before January 1, 2004, the person who submits a request involving the home shall pay, in addition to the application fee and inspection expenses required by this section, the registration fee required by Section 426.003.

Sec. 426.005. PREREQUISITE TO ACTION. (a) A homeowner must comply with this subtitle before initiating an action for damages or other relief arising from an alleged construction defect.

(b) An action described by Subsection (a) must be filed:

(1) on or before the 90th day after the date the third-party inspector issues the inspector's recommendation; or

(2) if the recommendation is appealed, not later than the 90th day after the date the commission issues its ruling on the appeal.

(c) Any claim for personal injuries, damages to personal goods, or consequential damages or other relief arising out of an alleged construction defect must be included in any action concerning the construction defect.

(d) This section does not apply to an action that is initiated by a person subrogated to the rights of a claimant if payment was made pursuant to a claim made under an insurance policy.

Sec. 426.006. TIME FOR REQUESTING INSPECTION AND DISPUTE RESOLUTION. The state-sponsored inspection and dispute resolution process must be requested on or before the second anniversary of the date of discovery of the conditions claimed to be evidence of the construction defect but not later than the 30th day after the date the applicable warranty period expires.

Sec. 426.007. ADMISSIBILITY OF CERTAIN EVIDENCE. A person who submits a request for state-sponsored inspection and dispute resolution must disclose in the request the name of any person who, before the request is submitted, inspected the home on behalf of the requestor in connection with the construction defect alleged in the request. If a person's name is known to the requestor at the time of the request and is not disclosed as required by this section, the requestor may not designate the person as an expert or use materials prepared by that person in:

(1) the state-sponsored inspection and dispute resolution process arising out of the request; or

(2) any action arising out of the construction defect that is the subject of the request.

Sec. 426.008. REBUTTABLE PRESUMPTION OF THIRD-PARTY INSPECTOR'S RECOMMENDATION OR RULING BY PANEL OF STATE INSPECTORS. (a) In any action involving a construction defect brought after a recommendation by a third-party inspector or ruling by a panel of state inspectors on the existence of the construction defect or its appropriate repair, the recommendation or ruling shall constitute a rebuttable presumption. A party seeking to dispute, vacate, or overcome that presumption must establish by clear and convincing evidence that the recommendation or ruling is inconsistent with the applicable warranty and building and performance standards.

(b) The presumption established by this section applies only to an action between the homeowner and the builder. A recommendation or ruling under this subtitle is not admissible in an action between any other parties.

CHAPTER 427. INSPECTORS

Sec. 427.001. QUALIFICATIONS OF THIRD-PARTY INSPECTORS. (a) A third-party inspector approved by the commission must:

(1) meet the minimum qualifications prescribed by this section and any other qualifications prescribed by the commission by rule; and

(2) submit an application to the commission annually with an application fee in the amount required by the commission by rule.

(b) A third-party inspector who inspects an issue involving workmanship and materials must:

(1) have a minimum of five years' experience in the residential construction industry; and

(2) be certified as a residential combination inspector by the International Code Council.

(c) A third-party inspector who inspects an issue involving a structural matter must:

(1) be an approved structural engineer or approved architect; and

(2) have a minimum of 10 years' experience in residential construction.

(d) Each third-party inspector who inspects an issue involving a structural matter must receive, in accordance with commission rules:

(1) initial training regarding the state-sponsored inspection and dispute resolution process and this subtitle; and

(2) annual continuing education in the inspector's area of practice.

(e) A third-party inspector may not receive more than 10 percent of the inspector's gross income in a federal income tax year from providing expert witness services, including retention for the purpose of providing testimony, evidence, or consultation in connection with a pending or threatened legal action.

(f) In adopting rules under Subsection (d), the commission shall recognize any continuing education requirements established for engineers and architects.

Sec. 427.002. STATE INSPECTORS. (a) The commission shall employ state inspectors to:

(1) review on an appeals panel the recommendations of third-party inspectors;

(2) provide consultation to third-party inspectors; and

(3) administer the state-sponsored inspection and dispute resolution process.

(b) A state inspector must be certified as a residential combination inspector by the International Code Council.

CHAPTER 428. STATE-SPONSORED INSPECTION AND DISPUTE RESOLUTION PROCESS

Sec. 428.001. REQUEST FOR RESOLUTION. (a) If a dispute between a homeowner and a builder arises out of an alleged construction defect, the homeowner or the builder may submit to the commission a written request for state-sponsored inspection and dispute resolution.

(b) The request must:

(1) specify in reasonable detail each alleged construction defect that is a subject of the request;

(2) state the amount of any known out-of-pocket expenses and engineering or consulting fees incurred by the homeowner in connection with each alleged construction defect;

(3) include any evidence that depicts the nature and cause of each alleged construction defect and the nature and extent of repairs necessary to remedy the construction defect, including, if available, expert reports, photographs, and videotapes, if that evidence would be discoverable under Rule 192, Texas Rules of Civil Procedure;

(4) be accompanied by the fees required under Section 426.004; and

(5) state the name of any person who has, on behalf of the requestor, inspected the home in connection with an alleged construction defect.

(c) Not later than the 30th day before the date a homeowner submits a request under this section, the homeowner must notify the builder in writing of each construction defect the homeowner claims to exist. After the notice is provided, the builder must be provided with a reasonable opportunity to inspect the home or have the builder's designated consultants inspect the home.

(d) A person who submits a request under this section must send by certified mail, return receipt requested, a copy of the request, including evidence submitted with the request, to each other party involved in the dispute.

(e) The commission by rule shall establish methods by which homeowners may be notified of the name, mailing address, and telephone number of the commission for the purpose of directing a request to the commission.

(f) The commission shall provide a person who files a request with a copy of the commission's policies and procedures relating to investigation and resolution of a request.

(g) The commission by rule shall establish a standard form for submitting a request under this section and provide a means to submit a request electronically.

(h) The filing of a request under this section tolls the limitations period in an action between the homeowner and the builder arising out of the subject of the request until the 45th day after the date a final, nonappealable recommendation is issued under this title in response to the request.

Sec. 428.002. BUILDER'S RIGHT OF INSPECTION. (a) In addition to the right of inspection provided by Section 428.001(c), at any time before the conclusion of the state-sponsored inspection and dispute resolution process and on the builder's written request, the builder shall be given reasonable opportunity to inspect the home that is the subject of the request or have the home inspected to determine the nature and cause of the construction defect and the nature and extent of repairs necessary to remedy the construction defect.

(b) The builder may take reasonable steps to document the construction defect and the condition of the home.

(c) If the homeowner delays the inspection for more than five days after the date of receiving the builder's written request, any period for subsequent action to be taken by the builder or the third-party inspector shall be extended one day for each day the inspection is delayed after the fifth day.

Sec. 428.003. INSPECTION BY THIRD-PARTY INSPECTOR. (a) On or before the 15th day after the date the commission receives a request, the commission shall appoint a third-party inspector to inspect the home and meet with the homeowner and the builder.

(b) The commission shall establish rules and regulations that allow the homeowner and the builder to each have the right to strike the appointment of a third-party inspector one time for each request submitted.

Sec. 428.004. INSPECTOR'S RECOMMENDATION. (a) If the dispute involves workmanship and materials in the home of a nonstructural matter, the third-party inspector shall issue a recommendation not later than the 15th day after the date the third-party inspector receives the appointment from the commission.

(b) If the dispute involves a structural matter in the home, the commission shall appoint an approved engineer to be the third-party inspector. The third-party inspector shall inspect the home not later than the 30th day after the date the request is submitted and issue a recommendation not later than the 60th day after the date the third-party inspector receives the assignment from the commission, unless additional time is requested by the third-party inspector or a party to the dispute. The commission shall adopt rules governing the extension of time under this subsection.

(c) The third-party inspector's recommendation must:

(1) address only the construction defect, based on the applicable warranty and building and performance standards; and

(2) designate a method or manner of repair, if any.

(d) Except as provided by this subsection, the third-party inspector's recommendation may not include payment of any monetary consideration. If the inspector finds for the party who submitted the request, the commission may order the other party to reimburse all or part of the fees and inspection expenses paid by the requestor under Section 426.004.

Sec. 428.005. THREAT TO HEALTH OR SAFETY. A builder who receives written notice of a request relating to a construction defect that creates an imminent threat to the health or safety of the inhabitants of the residence shall take reasonable steps to cure the defect as soon as practicable. If the builder fails to cure the defect in a reasonable time, the homeowner may have the defect cured and recover from the builder the reasonable cost of the cure plus reasonable attorney's fees and expenses associated with curing the defect in addition to any other damages not inconsistent with this subtitle.

CHAPTER 429. APPEAL OF THIRD-PARTY INSPECTOR'S RECOMMENDATION

Sec. 429.001. APPEAL. (a) A homeowner or builder may appeal a third-party inspector's recommendation on or before the 15th day after the date the recommendation is issued.

(b) If a homeowner or builder appeals a third-party inspector's recommendation, the executive director shall appoint three state inspectors to a panel to review the recommendation. If the recommendation involves a dispute regarding a structural failure, one of the state inspectors on the panel must be a licensed professional engineer.

(c) The panel shall:

(1) review the recommendation without a hearing unless a hearing is otherwise required by rules adopted by the commission;

(2) approve, reject, or modify the recommendation of the third-party inspector or remand the dispute for further action by the third-party inspector; and

(3) issue written findings of fact and a ruling on the appeal not later than the 30th day after the date the notice of appeal is filed with the commission.

CHAPTER 430. WARRANTIES AND BUILDING AND PERFORMANCE
STANDARDS

Sec. 430.001. LIMITED STATUTORY WARRANTIES AND BUILDING AND PERFORMANCE STANDARDS. (a) The commission by rule shall adopt limited statutory warranties and building and performance standards for residential construction that comply with this section.

(b) The warranty periods shall be:

(1) one year for workmanship and materials;

(2) two years for plumbing, electrical, heating, and air-conditioning delivery systems; and

(3) 10 years for major structural components of the home.

(c) The limited statutory warranties and building and performance standards must:

(1) require substantial compliance with the nonelectrical standards contained in the version of the International Residential Code for One- and Two-Family Dwellings published by the International Code Council that is applicable under Subsection (d) and the electrical standards contained in the version of the National Electrical Code that is applicable under Subsection (e);

(2) include standards for mold reduction and remediation that comply with Section 430.002;

(3) establish standards for performance for interior and exterior components of a home, including foundations, floors, ceilings, walls, roofs, drainage, landscaping, irrigation, heating, cooling, and electrical and plumbing components; and

(4) contain standards that are not less stringent than the standards required by the United States Department of Housing and Urban Development for FHA programs as set forth in 24 C.F.R. Sections 203.202 through 203.206.

(d) The International Residential Code for One- and Two-Family Dwellings that applies to nonelectrical aspects of residential construction for the purposes of the limited statutory warranties and building and performance standards adopted under this section is:

(1) for residential construction located in a municipality or the extraterritorial jurisdiction of a municipality, the version of the International Residential Code applicable to nonelectrical aspects of residential construction in the municipality under Section 214.212, Local Government Code;

(2) for residential construction located in an unincorporated area not in the extraterritorial jurisdiction of a municipality, the version of the International Residential Code applicable to nonelectrical aspects of residential construction in the municipality that is the county seat of the county in which the construction is located; and

(3) for residential construction located in an unincorporated area in a county that does not contain an incorporated area, the version of the International Residential Code that existed on May 1, 2001.

(e) The National Electrical Code for One- and Two-Family Dwellings that applies to electrical aspects of residential construction for the purposes of this section is:

(1) for residential construction located in a municipality or the extraterritorial jurisdiction of a municipality, the version of the National Electrical Code applicable to electrical aspects of residential construction in the municipality under Section 214.214, Local Government Code;

(2) for residential construction located in an unincorporated area not in the extraterritorial jurisdiction of a municipality, the version of the National Electrical Code applicable to electrical aspects of residential construction in the municipality that is the county seat of the county in which the construction is located; and

(3) for residential construction located in an unincorporated area in a county that does not contain an incorporated area, the version of the National Electrical Code that existed on May 1, 2001.

(f) Except as provided by a written agreement between the builder and the initial homeowner, a warranty period adopted under this section for a new home begins on the earlier of the date of:

(1) occupancy; or

(2) transfer of title from the builder to the initial homeowner.

(g) A warranty period adopted under this section for an improvement other than a new home begins on the date the improvement is substantially completed.

(h) The building and performance standards adopted by the commission under this section may be adopted in phases and amended or supplemented by the commission from time to time as the commission receives additional evidence or information from task forces or other sources regarding any improvements or developments in the areas of residential homebuilding practices, procedures, or technology.

Sec. 430.002. MOLD REDUCTION AND REMEDIATION; TASK FORCE. (a) The building and performance standards adopted under Section 430.001 must include measures that are designed to reduce the general population's exposure to mold often formed in water-damaged building materials and that include:

(1) methods by which mold, water damage, and microbial volatile compounds in indoor environments may be recognized; and

(2) recommended management practices for:

(A) limiting moisture intrusion in a home, including the use of a water leak detection system listed by Underwriters Laboratories that is capable of shutting off a valve on the main water line coming into the structure immediately upon detecting a water leak in the structure; and

(B) mold remediation.

(b) The commission shall appoint a task force to advise the commission with regard to adoption of standards under this section. The task force must include representatives of public health officers of this state, health and medical experts, mold abatement experts, and representatives of affected consumers and industries. The commission and the task force shall consider the feasibility of adopting permissible limits for exposure to mold in indoor environments.

Sec. 430.003. CERTAIN DESIGN RECOMMENDATIONS; ADVISORY COMMITTEE. The commission shall appoint a task force to develop design recommendations for residential construction that encourage rain harvesting and water recycling.

Sec. 430.004. STATUTORY WARRANTIES EXCLUSIVE. The warranties established under this chapter supersede all implied warranties. The only warranties that exist for residential construction or residential improvements are warranties created by this chapter or by other statutes expressly referring to residential construction or residential improvements, or any express, written warranty acknowledged by the homeowner and the builder. A court may not discern or declare any other implied warranty.

Sec. 430.005. WAIVER BY CONTRACT PROHIBITED. A contract between a builder and a homeowner may not waive the limited statutory warranties and building and performance standards adopted under this chapter. This section does not prohibit a builder and a homeowner from contracting for more stringent warranties and building standards than are provided under this chapter.

Sec. 430.006. APPROVAL OF THIRD-PARTY WARRANTY COMPANY. (a) The commission may approve as a third-party warranty company for the purposes of Section 430.007:

(1) an entity that has operated warranty programs in this state for at least five years;

(2) a company whose performance is insured by an insurance company authorized to engage in the business of insurance in this state; or

(3) an insurance company that insures the warranty obligations of a builder under the statutory warranty and building and performance standards.

(b) A third-party warranty company must submit to the commission an annual application and fee in the form and in the amount required by the commission by rule before the company may be approved under this section.

Sec. 430.007. THIRD-PARTY WARRANTY COMPANY. (a) If a builder chooses to provide a third-party warranty company approved by the commission, the builder may limit liability to a homeowner under the terms of that warranty.

(b) A limitation of liability under this section is not effective unless the company providing the warranty:

(1) agrees to perform the builder's warranty obligations under this chapter; and

(2) actually pays for or corrects any construction defect covered by the warranty.

(c) A third-party warranty company approved by the commission has all of the obligations and rights of a builder under this subtitle regarding performance of repairs to remedy construction defects or payment of money instead of repair.

(d) The third-party warranty company may not assume liability for personal injuries or damage to personal property. A builder does not avoid liability for personal injuries or damage to personal property for which the builder would otherwise be liable under law by providing a written warranty from a third-party warranty company.

(e) A company that administers a warranty for a third-party warranty company is not liable for any damages resulting from a construction defect or from repairs covered under the warranty.

Sec. 430.008. MINIMUM STANDARDS FOR DETERMINATION OF DEFECT. A third-party warranty company shall use defect inspection procedures substantially similar to the procedures adopted by the commission under this subtitle. A warranty company may adopt warranty standards in addition to the standards adopted by the commission, but it may not reduce the limited statutory warranty and building and performance standards.

Sec. 430.009. EFFECT OF SUBTITLE ON OTHER RIGHTS AND OBLIGATIONS. (a) This subtitle provides the sole rights and obligations between a homeowner and a builder unless additional rights and obligations are provided in an express, written contract between the homeowner and the builder. Except as permitted by this subtitle, an express, written contract between a homeowner and a builder may not limit the obligations of a builder under this title.

(b) After the issuance of written findings of fact and a ruling on an appeal under Chapter 429, a homeowner may bring a cause of action against a builder or third-party warranty company for breach of a limited statutory warranty adopted by the commission under this subtitle. In an action brought under this subsection, the homeowner may recover only those damages provided by Section 27.004(g).

(c) This subtitle creates the only cognizable cause of action available against a builder or third-party warranty company with regard to construction defects.

SECTION 1.02. (a) On or before December 1, 2003, the governor shall appoint the members of the Texas Residential Construction Commission in accordance with Title 16, Property Code, as added by this article. In making the initial appointments, the governor shall designate three members for terms expiring February 1, 2005, three members for terms expiring February 1, 2007, and three members for terms expiring February 1, 2009.

(b) The governor shall designate a person to perform the ministerial acts necessary for posting notice of and holding the first meeting of the commission.

(c) Section 406.006, Property Code, as added by this article, does not apply to a member of the Texas Residential Construction Commission until March 1, 2004.

SECTION 1.03. As soon as possible after appointment of its members, the Texas Residential Construction Commission shall adopt limited statutory warranties and building and performance standards under Section 430.001, Property Code, as added by this article. The warranties and building and performance standards adopted by the commission apply only to residential construction that begins on or after the effective date of those warranties and building and performance standards as determined by the commission. Residential construction that begins before the effective date of those warranties and building and performance standards is governed by the warranties and building and performance standards applicable to the construction before that date.

SECTION 1.04. On or before March 1, 2004, the Texas Residential Construction Commission shall begin requiring registration under Subtitle C, Title 16, Property Code, as added by this article.

SECTION 1.05. On January 1, 2004, the Texas Residential Construction Commission shall begin collecting, and builders are required to remit, the registration fee required by Section 426.003, Property Code, as added by this Act.

ARTICLE 2. RESIDENTIAL CONSTRUCTION LIABILITY ACTIONS

SECTION 2.01. Section 27.001, Property Code, is amended to read as follows:

Sec. 27.001. DEFINITIONS. In this chapter:

(1) "Action" means a court or judicial proceeding or an arbitration.

(2) "Appurtenance" means any structure or recreational facility that is appurtenant to a residence but is not a part of the dwelling unit.

(3) "Commission" means the Texas Residential Construction Commission.

(4) [(2)] "Construction defect" has the meaning assigned by Section 401.004 for an action to which Subtitle D, Title 16, applies and for any other action means a matter concerning the design, construction, or repair of a new residence, of an alteration of or repair or addition to an existing residence, or of an appurtenance to a residence, on which a person has a complaint against a contractor. The term may include any physical damage to the residence, any appurtenance, or the real property on which the residence and appurtenance are affixed proximately caused by a construction defect.

(5) [(3)] "Contractor" means a builder, as defined by Section 401.003, and any person contracting with an owner for the construction or sale of a new residence constructed by that person or of an alteration of or addition to an existing residence, repair of a new or existing residence, or construction, sale, alteration, addition, or repair of an appurtenance to a new or existing residence. The term includes:

(A) an owner, officer, director, shareholder, partner, or employee of the contractor; and

(B) a risk retention group registered under Article 21.54, Insurance Code, that insures all or any part of a contractor's liability for the cost to repair a residential construction defect.

(6) "Economic damages" means compensatory damages for pecuniary loss proximately caused by a construction defect. The term does not include exemplary damages or damages for physical pain and mental anguish, loss of consortium, disfigurement, physical impairment, or loss of companionship and society.

(7) [(4)] "Residence" means the real property and improvements for a single-family house, duplex, triplex, or quadruplex or a unit in a multiunit residential structure in which title to the individual units is transferred to the owners under a condominium or cooperative system.

(8) [(8)] "Structural failure" has the meaning assigned by Section 401.002 for an action to which Subtitle D, Title 16, applies and for any other action means actual physical damage to the load-bearing portion of a residence caused by a failure of the load-bearing portion.

(9) "Third-party inspector" has the meaning assigned by Section 401.002.

SECTION 2.02. Section 27.002, Property Code, is amended by amending Subsections (a) and (b) and adding Subsection (d) to read as follows:

(a) This chapter applies to:

(1) any action to recover damages or other relief arising ~~[resulting]~~ from a construction defect, except a claim for personal injury, survival, or wrongful death or for damage to goods; and

(2) any subsequent purchaser of a residence who files a claim against a contractor.

(b) To the extent of conflict between this chapter and any other law, including the Deceptive Trade Practices-Consumer Protection Act (Subchapter E, Chapter 17, Business & Commerce Code) or a common law cause of action, this chapter prevails.

(d) This chapter does not apply to an action to recover damages that arise from:

(1) a violation of Section 27.01, Business & Commerce Code;

(2) a contractor's wrongful abandonment of an improvement project before completion; or

(3) a violation of Chapter 162.

SECTION 2.03. Section 27.003, Property Code, is amended to read as follows:

Sec. 27.003. LIABILITY. (a) In an action to recover damages or other relief arising ~~[resulting]~~ from a construction defect:

(1) a contractor is not liable for any percentage of damages caused by:

(A) negligence of a person other than the contractor or an agent, employee, or subcontractor of the contractor;

(B) failure of a person other than the contractor or an agent, employee, or subcontractor of the contractor to:

(i) take reasonable action to mitigate the damages; or

(ii) take reasonable action to maintain the residence;

(C) normal wear, tear, or deterioration;

(D) normal shrinkage due to drying or settlement of construction components within the tolerance of building standards; or

(E) the contractor's reliance on written information relating to the residence, appurtenance, or real property on which the residence and appurtenance are affixed that was obtained from official government records, if the written information was false or inaccurate and the contractor did not know and could not reasonably have known of the falsity or inaccuracy of the information; and

(2) if an assignee of the claimant or a person subrogated to the rights of a claimant fails to provide the contractor with the written notice and opportunity to inspect and offer to repair [~~to the contractor~~] required by Section 27.004 or fails to request state-sponsored inspection and dispute resolution under Chapter 428, if applicable, [27.004(a)] before performing repairs, the contractor is not liable for the cost of any repairs or any percentage of damages caused by repairs made to a construction defect at the request of an assignee of the claimant or a person subrogated to the rights of a claimant by a person other than the contractor or an agent, employee, or subcontractor of the contractor.

(b) Except as provided by this chapter [~~herein~~], this chapter does not limit or bar any other defense or defensive matter or other defensive cause of action applicable to an action to recover damages or other relief arising [~~resulting~~] from a construction defect.

SECTION 2.04. Section 27.004, Property Code, is amended to read as follows:

Sec. 27.004. NOTICE AND OFFER OF SETTLEMENT. (a) In a claim not subject to Subtitle D, Title 16, before [~~Before~~] the 60th day preceding the date a claimant seeking from a contractor damages or other relief arising from a construction defect initiates an action [~~files suit~~], the claimant shall give written notice by certified mail, return receipt requested, to the contractor, at the contractor's last known address, specifying in reasonable detail the construction defects that are the subject of the complaint. On the request of the contractor, the claimant shall provide to the contractor any evidence that depicts the nature and cause of the defect and the nature and extent of repairs necessary to remedy the defect, including expert reports, photographs, and videotapes, if that evidence would be discoverable under Rule 192, Texas Rules of Civil Procedure. During the 35-day period after the date the contractor receives the notice, and on the contractor's written request, the contractor shall be given a reasonable opportunity to inspect and have inspected the property that is the subject of the complaint to determine the nature and cause of the defect and the nature and extent of repairs necessary to remedy the defect. The contractor may take reasonable steps to document the defect. In a claim subject to Subtitle D, Title 16, a contractor is entitled to make an offer of repair in accordance with Subsection (b). A claimant is not required to give written notice to a contractor under this subsection in a claim subject to Subtitle D, Title 16.

(b) Not later than the 15th day after the date of a final, unappealable determination of a dispute under Subtitle D, Title 16, if applicable, or not later than the 45th day [~~Within the 45-day period~~] after the date the contractor receives the notice under this section, if Subtitle D, Title 16, does not apply, the contractor may make a written offer of settlement to the claimant. The offer must be sent to the claimant at the claimant's last known address or to the claimant's attorney by certified mail, return receipt requested. The offer may include either an agreement by the contractor to repair or to have repaired by an independent contractor partially or totally at the contractor's expense or at a reduced rate to the claimant any construction defect described in the notice and shall describe in reasonable detail the kind of repairs which will be made. The repairs shall be made not later

than the 45th day [within the 45-day period] after the date the contractor receives written notice of acceptance of the settlement offer, unless completion is delayed by the claimant or by other events beyond the control of the contractor. If a contractor makes a written offer of settlement that the claimant considers to be unreasonable:

(1) on or before the 25th day after the date the claimant receives the offer, the claimant shall advise the contractor in writing and in reasonable detail of the reasons why the claimant considers the offer unreasonable; and

(2) not later than the 10th day after the date the contractor receives notice under Subdivision (1), the contractor may make a supplemental written offer of settlement to the claimant by sending the offer to the claimant or the claimant's attorney. [For the purposes of this section, "independent contractor" means a person who is independent of the contractor and did not perform any of the work complained of in the claimant's notice. The claimant and the contractor may agree in writing to extend the periods described by this subsection.]

(c) If compliance with Subtitle D, Title 16, or the giving of the notice under Subsections (a) and (b) within the period prescribed by those subsections is impracticable because of the necessity of initiating an action [filing suit] at an earlier date to prevent expiration of the statute of limitations or if the complaint is asserted as a counterclaim, compliance with Subtitle D, Title 16, or the [that] notice is not required. However, the action [suit] or counterclaim shall specify in reasonable detail each construction defect that is the subject of the complaint. If Subtitle D, Title 16, applies to the complaint, simultaneously with the filing of an action by a claimant, the claimant must submit a request under Section 428.001. If Subtitle D, Title 16, does not apply, [and] the inspection provided for by Subsection (a) may be made not later than the 75th day after [during the 60-day period following] the date of service of the suit, request for arbitration, or counterclaim on the contractor, and the offer provided for by Subsection (b) may be made not later than the 15th day after the date the state-sponsored inspection and dispute resolution process is completed, if Subtitle D, Title 16, applies, or not later than the 60th day after [within the 60-day period following] the date of service, if Subtitle D, Title 16, does not apply. If, while an action [a suit] subject to this chapter is pending, the statute of limitations for the cause of action would have expired and it is determined that the provisions of Subsection (a) were not properly followed, the action [suit] shall be abated [for up to 75 days in order] to allow compliance with Subsections (a) and (b).

(d) The court or arbitration tribunal shall dismiss an action [abate a suit] governed by this chapter if Subsection (c) does not apply and the court or tribunal, after a hearing, finds that the contractor is entitled to dismissal [an abatement] because the claimant failed to comply with the requirements of Subtitle D, Title 16, if applicable, failed to provide the notice or failed to give the contractor a reasonable opportunity to inspect the property as required by Subsection (a), or failed to follow the procedures specified by Subsection (b). An action [A suit] is automatically dismissed [abated] without the order of the court or tribunal beginning on the 11th day after the date a motion to dismiss [plea in abatement] is filed if the motion [plea in abatement]:

(1) is verified and alleges that the person against whom the action ~~[suit]~~ is pending did not receive the written notice required by Subsection (a), the person against whom the action is pending ~~[or]~~ was not given a reasonable opportunity to inspect the property as required by Subsection (a), or the claimant failed to follow the procedures specified by Subsection (b) or Subtitle D, Title 16; and

(2) is not controverted by an affidavit filed by the claimant before the 11th day after the date on which the motion to dismiss ~~[plea in abatement]~~ is filed.

~~(e) [An abatement under Subsection (d) continues until the 60th day after the date that written notice is served in compliance with Subsection (a).]~~

~~[(f)]~~ If a claimant ~~[unreasonably]~~ rejects a reasonable ~~[an]~~ offer made under Subsection (b) ~~[as provided by this section]~~ or does not permit the contractor or independent contractor a reasonable opportunity to inspect or repair the defect pursuant to an accepted offer of settlement, the claimant:

(1) may not recover an amount in excess of:

(A) the fair market value of the contractor's last offer of settlement under Subsection (b) ~~[reasonable cost of the offered repairs which are necessary to cure the construction defect and which are the responsibility of the contractor];~~ or

(B) the amount of a reasonable monetary settlement or purchase offer made under Subsection (n); and

(2) may recover only the amount of reasonable and necessary costs and attorney's fees as prescribed by Rule 1.04, Texas Disciplinary Rules of Professional Conduct, ~~[and costs]~~ incurred before the offer was rejected or considered rejected.

~~(f) [(g)]~~ If a contractor fails to make a reasonable offer under Subsection (b) ~~[this section]~~, or fails to make a reasonable attempt to fully perform under ~~[complete the repairs specified in]~~ an accepted offer made under this section, or fails to complete, in a good and workmanlike manner, the repairs specified in an accepted offer made under this section, the limitations on damages ~~[and defenses to liability]~~ provided for in Subsection (e) ~~[this section]~~ shall not apply.

~~(g) [(h)]~~ Except as provided by Subsection (e) ~~[(f)]~~, in an action ~~[a suit]~~ subject to this chapter the claimant may recover only the following economic damages proximately caused by a construction defect:

(1) the reasonable cost of repairs necessary to cure any construction defect~~[- including any reasonable and necessary engineering or consulting fees required to evaluate and cure the construction defect, that the contractor is responsible for repairing under this chapter];~~

(2) the reasonable and necessary cost for the replacement or repair of any damaged goods in the residence;

(3) reasonable and necessary engineering and consulting fees;

(4) the reasonable expenses of temporary housing reasonably necessary during the repair period;

(5) [(3)] the reduction in current market value, if any, after the construction defect is repaired if the construction defect is a [to the extent the reduction is due to] structural failure; and

(6) [(4)] reasonable and necessary attorney's fees.

(h) A homeowner and a contractor may agree in writing to extend any time period described in this chapter [(i) The total damages awarded in a suit subject to this chapter may not exceed the greater of the claimant's purchase price for the residence or the current fair market value of the residence without the construction defect].

(i) [(j)] An offer of settlement made under this section that is not accepted before the 25th day after the date the offer is received by the claimant is considered rejected.

(j) [(k)] An affidavit certifying rejection of a settlement offer under this section may be filed with the court or arbitration tribunal. The trier of fact shall determine the reasonableness of a final [an] offer of settlement made under this section.

(k) [(l)] A contractor who makes or provides for repairs under this section is entitled to take reasonable steps to document the repair and to have it inspected.

(l) If Subtitle D, Title 16, applies to the claim and the contractor's offer of repair is accepted by the claimant, the contractor, on completion of the repairs and at the contractor's expense, shall engage the third-party inspector who provided the recommendation regarding the construction defect involved in the claim to inspect the repairs and determine whether the residence, as repaired, complies with the applicable limited statutory warranty and building and performance standards adopted by the commission. The contractor is entitled to a reasonable period not to exceed 15 days to address minor cosmetic items that are necessary to fully complete the repairs. The determination of the third-party inspector of whether the repairs comply with the applicable limited statutory warranty and building and performance standards adopted by the commission establishes a rebuttable presumption on that issue. A party seeking to dispute, vacate, or overcome that presumption must establish by clear and convincing evidence that the determination is inconsistent with the applicable limited statutory warranty and building and performance standards.

(m) Notwithstanding Subsections (a), (b), and (c), a contractor who receives written notice of a construction defect resulting from work performed by the contractor or an agent, employee, or subcontractor of the contractor and creating an imminent threat to the health or safety of the inhabitants of the residence shall take reasonable steps to cure the defect as soon as practicable. If the contractor fails to cure the defect in a reasonable time, the owner of the residence may have the defect cured and may recover from the contractor the reasonable cost of the repairs plus attorney's fees and costs in addition to any other damages recoverable under any law not inconsistent with the provisions of this chapter.

(n) This section does not preclude a contractor from making a monetary settlement offer or an offer to purchase the residence.

(o) A notice and response letter prescribed by this chapter must be sent by certified mail, return receipt requested, to the last known address of the recipient. If previously disclosed in writing that the recipient of a notice or response letter is represented by an attorney, the letter shall be sent to the recipient's attorney in accordance with Rule 21a, Texas Rules of Civil Procedure [The inspection and repair provisions of this chapter are in addition to any rights of inspection and settlement provided by common law or by another statute, including Section 17.505, Business & Commerce Code].

(p) If the contractor provides written notice of a claim for damages arising from a construction defect to a subcontractor, the contractor retains all rights of contribution from the subcontractor if the contractor settles the claim with the claimant.

SECTION 2.05. Chapter 27, Property Code, is amended by adding Section 27.0042 to read as follows:

Sec. 27.0042. CONDITIONAL SALE TO BUILDER. (a) A written agreement between a contractor and a homeowner may provide that, except as provided by Subsection (b), if the reasonable cost of repairs necessary to repair a construction defect that is the responsibility of the contractor exceeds an agreed percentage of the current fair market value of the residence, as determined without reference to the construction defects, then, in an action subject to this chapter, the contractor may elect as an alternative to the damages specified in Section 27.004(g) that the contractor who sold the residence to the homeowner purchase it.

(b) A contractor may not elect to purchase the residence under Subsection (a) if the residence is more than five years old at the time an action is initiated.

(c) If a contractor elects to purchase the residence under Subsection (a):

(1) the contractor shall pay the original purchase price of the residence and closing costs incurred by the homeowner and the cost of transferring title to the contractor under the election;

(2) the homeowner may recover:

(A) reasonable and necessary attorney's and expert fees as identified in Section 27.004(g);

(B) reimbursement for permanent improvements the owner made to the residence after the date the owner purchased the residence from the builder; and

(C) reasonable costs to move from the residence; and

(3) conditioned on the payment of the purchase price, the homeowner shall tender a special warranty deed to the contractor, free of all liens and claims to liens as of the date the title is transferred to the contractor, and without damage caused by the homeowner.

(d) An offer to purchase a claimant's home that complies with this section is considered reasonable absent clear and convincing evidence to the contrary.

SECTION 2.06. Section 27.007(a), Property Code, is amended to read as follows:

(a) A written contract subject to this chapter must contain next to the signature lines in the contract a notice printed or typed in 10-point boldface type or the computer equivalent that reads substantially similar to the following:

"This contract is subject to Chapter 27 of the Texas~~[§]~~ Property Code. The provisions of that chapter may affect your right to recover damages arising from the performance of this contract. If you have a complaint concerning a construction defect arising from the performance of this contract and that defect has not been corrected through normal warranty service, you must provide the notice required by Chapter 27 of the Texas Property Code ~~[regarding the defect]~~ to the contractor by certified mail, return receipt requested, not later than the 60th day before the date you file suit to recover damages in a court of law or initiate arbitration. The notice must refer to Chapter 27 of the Texas~~[§]~~ Property Code~~[§]~~ and must describe the construction defect. If requested by the contractor, you must provide the contractor an opportunity to inspect and cure the defect as provided by Section 27.004 of the Texas~~[§]~~ Property Code."

SECTION 2.07. (a) The changes in law made by this article to Sections 27.002, 27.003, and 27.004, Property Code, apply 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 in effect immediately before that date, and that law is continued in effect for that purpose.

(b) Section 27.0042, Property Code, as added by this article and the changes in law made by this article to Section 27.007(a), Property Code, apply only with respect to a contract between a contractor and a homeowner that is entered into on or after the effective date of this Act. With respect to a contract that is entered into before the effective date of this Act, the law in effect immediately before the effective date applies, and that law is continued in effect for that purpose.

ARTICLE 3. EFFECTIVE DATE

SECTION 3.01. This Act takes effect September 1, 2003.

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

Amend **CSHB 730** (senate committee printing) as follows:

(1) In Section 1.01 of the bill, in added Section 401.003(a)(2), Property Code (page 2, lines 18-19), strike "including the roof of an existing home" and substitute "other than an improvement solely to replace or repair a roof of an existing home".

(2) In Section 1.01 of the bill, in added Section 401.003(a)(3), Property Code (page 2, line 21), strike "\$10,000" and substitute "\$20,000".

(3) In Section 1.01 of the bill, in added Section 406.001, Property Code (page 3, lines 21-22), strike Subsection (a)(4) and substitute the following:

(4) one member must be either a licensed architect who practices in the area of residential construction or a building inspector who meets the requirements set forth in Chapter 427 and practices in the area of residential construction.

(4) In Section 1.01 of the bill, strike added Section 408.001, Property Code (page 5, lines 51-63), and substitute a new Section 408.001, Property Code, to read as follows:

Sec. 408.001. RULES. The commission shall adopt rules as necessary for the implementation of this title, including rules:

(1) governing the state-sponsored inspection and dispute resolution process, including building and performance standards, administrative regulations, and the conduct of hearings under Subtitle D;

(2) establishing limited statutory warranty and building and performance standards for residential construction;

(3) approving third-party warranty companies; and

(4) approving third-party inspectors.

(5) In Section 1.01 of the bill, in added Section 416.007, Property Code (page 7, between lines 55 and 56), insert the following new Subsection (c) at the appropriate place to read as follows:

(c) The commission shall issue one certificate of registration for each business entity registered under this Chapter.

(6) In Section 1.01 of the bill, in added Section 416.010, Property Code (page 8, line 27), strike "OFFICE LOCATION; CHANGE OF ADDRESS" and substitute "OFFICE LOCATION; CHANGE OF ADDRESS; ASSUMED NAMES".

(7) In Section 1.01 of the bill, in added Section 416.010, Property Code (page 8, between lines 38 and 39), insert the following new Subsection (c) at the appropriate place and renumber the subsequent subsection and any cross-references appropriately:

(c) If a builder operates under any name other than the name that is set forth on the builder's certificate of registration, the builder shall, within 45 days of operating under this other name, disclose this other name to the commission.

(8) In Section 1.01 of the bill, in added Section 428.003, Property Code (page 13, lines 33-36) strike Subsection (a) in its entirety and replace with a new Subsection (a) as follows:

"(a) On or before the 15th day after the date the commission receives a request, the commission shall appoint the next available third-party inspector from the applicable lists of third-party inspectors maintained by the commission under subsection (c)."

(9) In Section 1.01 of the bill, in added Section 428.003, Property Code (page 13, between lines 40-41) add a new Subsection (c) to read as follows:

"(c) The commission shall adopt rules that allow for the commission to maintain a list of available third-party inspectors for the various regions of the state, as required to satisfy the provisions of this Act."

(10) In Section 1.01 of the bill, in added Section 430.002, Property Code (page 15, line 52), strike "including" and substitute "that may include".

(11) In Section 1.01 of the bill, in added Section 430.009(b), Property Code (page 17, line 5), between "27.004" and ":", strike "(g)".

Senate Amendment No. 2 (Senate Floor Amendment No. 2)

Amend **CSHB 730** (Senate committee printing) as follows:

(1) In Section 1.01 of the bill, in added Section 401.002, Property Code (page 2, between lines 12 and 13), insert the following subdivision at the appropriate place and renumber other subdivisions appropriately:

(16) "Warranty of habitability" means a builder's obligation to construct a home or home improvement that is in compliance with the limited statutory warranties and building and performance standards adopted by the commission under Section 430.001, and that is safe, sanitary, and fit for humans to inhabit.

(2) In Section 1.01 of the bill, in added Chapter 430, Property Code (page 15, between lines 42 and 43), insert the following section at the appropriate place and renumber other sections and any cross-references appropriately:

Sec. 430.002. WARRANTY OF HABITABILITY. (a) The construction of each new home or home improvement shall include the warranty of habitability.

(b) For a construction defect to be actionable as a breach of the warranty of habitability, the defect must have a direct adverse effect on the habitable areas of the home and must not have been discoverable by a reasonable prudent inspection or examination of the home or home improvement within the applicable warranty periods adopted by the commission under Section 430.001.

(3) In Section 1.01 of the bill, in added Section 430.005, Property Code (page 16, line 12), strike "adopted under this chapter" and substitute "adopted under this chapter or the warranty of habitability".

(4) In Section 1.01 of the bill, in added Section 430.007, Property Code (page 16, lines 35-40), strike Subsection (b) and substitute the following:

(b) A limitation of liability under this section is not effective unless the company providing the warranty:

(1) agrees to perform the builder's warranty obligations under this chapter that are covered by the warranty provided through the third-party warranty company; and

(2) actually pays for or corrects any construction defect covered by the warranty provided through the third-party warranty company.

(5) In Section 1.01 of the bill, in added Section 430.008, Property Code (page 16, lines 59 and 60), strike "commission, but it may not reduce the limited statutory warranty and building and performance standards" and substitute "commission. A third-party warranty company may not reduce the limited statutory warranty and building and performance standards, except that a third-party warranty company shall not be required to provide a warranty of habitability".

Senate Amendment No. 3 (Senate Floor Amendment No. 3)

Amend **CSHB 730** (Senate committee printing) as follows:

(1) In SECTION 1.01 of the bill, in added Subtitle C, Title 16, Property Code, insert the following chapter (page 8, between lines 59 and 60):

CHAPTER 417. CERTIFICATION OF RESIDENTIAL CONSTRUCTION ARBITRATORS

Sec. 417.001. CERTIFICATION. (a) The commission by rule shall establish eligibility requirements and procedures for a person to be certified by the commission as a residential construction arbitrator.

(b) The requirements established under this section must, at a minimum, require a certified arbitrator to:

(1) have at least five years' experience in conducting arbitrations between homeowners and builders involving construction defects;

(2) be familiar with the statutory warranties and building and performance standards established under Chapter 430 and with the provisions of Chapter 27; and

(3) meet continuing education requirements established by the commission.

(c) Nothing in the chapter prohibits an arbitrator who does not hold a certificate under this chapter from conducting an arbitration involving a residential construction defect.

Sec. 417.002. APPLICATION FOR CERTIFICATION. An applicant for certification under this chapter or for renewal of that certification must submit an application on a form prescribed by the commission and include the fee required by Section 417.003.

Sec. 417.003. FEES. The commission shall charge and collect:

(1) a filing fee for an application for certification under this chapter that does not exceed \$100; and

(2) a fee for renewal of a certification under this chapter that does not exceed \$50.

Sec. 417.004. PUBLICATION AND COMMENT PERIOD; CERTIFICATION. (a) The commission shall publish notice of each applicant's original application for certification under this chapter in the Texas Register and allow public comment on the application during the 21 days after the date the notice is published. During that period, any person may contest the application in writing submitted to the commission.

(b) If the commission finds that certification of the applicant is in the public interest, the commission shall certify the applicant under this chapter.

Sec. 417.005. DENIAL OF CERTIFICATION. The commission shall establish procedures under which a denial of a certification under this chapter may be contested by the applicant.

Sec. 417.006. EXPIRATION OF CERTIFICATION. The commission may issue or renew a certification under this chapter for a period that does not exceed 24 months.

Sec. 417.007. LIST OF CERTIFIED ARBITRATORS. The commission shall maintain an updated list of residential construction arbitrators certified under this chapter and make the list available to the public.

(2) In SECTION 1.01 of the bill, in added Section 417.001(1), Property Code (page 8, lines 63 and 64), strike "certificate of registration" and substitute "registration or certification under this subtitle".

(3) In SECTION 1.01 of the bill, in added Section 417.002, Property Code, strike "certificate of registration" wherever it appears and substitute "registration or certification" (page 9, lines 21-23).

(4) In SECTION 1.01 of the bill, in added Section 417.002, Property Code, strike "certificate holder" and substitute "registered or certified person" (page 9, lines 24 and 25).

(5) In SECTION 1.01 of the bill, in added Chapter 418, Property Code, strike "certificate holder" wherever it appears and substitute "registered or certified person" (page 9, line 46, and page 10, lines 1 and 2).

(6) In ARTICLE 1 of the bill, insert the following appropriately numbered SECTION:

SECTION _____. On or before March 1, 2004, the Texas Residential Construction Commission shall begin certifying arbitrators under Chapter 417, Property Code, as added by this article.

(7) Renumber and reletter appropriately.

Senate Amendment No. 4 (Senate Floor Amendment No. 4)

Amend **CSHB 730** (Senate committee printing) as follows:

(1) In SECTION 1.01, following added Subtitle D, Title 16, Property Code (page 17, between lines 8 and 9), insert:

SUBTITLE E. RESIDENTIAL CONSTRUCTION ARBITRATION
CHAPTER 436. GENERAL PROVISIONS

Sec. 436.001. DEFINITIONS. In this subtitle:

(1) "Arbitration" means the procedure for dispute resolution described by Section 154.027, Civil Practice and Remedies Code.

(2) "Arbitration services provider" means a person that holds itself out as:

(A) managing, coordinating, or administering arbitrations;

(B) providing the services of arbitrators;

(C) making referrals or appointments to arbitrators; or

(D) providing lists of arbitrators.

(3) "Arbitrator" means a neutral individual who hears the claims of the parties to a dispute and renders a decision and who is:

(A) chosen by the parties to the dispute;

(B) appointed by a court; or

(C) selected by an arbitration services provider under an agreement of the parties or applicable rules.

Sec. 436.002. APPLICABILITY. (a) This subtitle applies only to an arbitration of a dispute between a homeowner and a builder that involves an alleged construction defect.

(b) The requirements of this subtitle supplement Chapter 171, Civil Practice and Remedies Code, and the Federal Arbitration Act (9 U.S.C. Sections 1-16), as amended.

Sec. 436.003. VENUE. (a) An arbitration of a dispute involving a construction defect shall be conducted in the county in which the home alleged to contain the defect is located.

(b) The requirements of this section may not be waived by contract.

Sec. 436.004. RESIDENTIAL CONSTRUCTION ARBITRATION TASK FORCE. (a) The commission shall appoint a task force to study residential arbitrators and arbitration and advise the commission with respect to residential arbitrators and arbitration.

(b) The task force established under this section shall report to the 79th and 80th legislatures on the task force's recommendations and the effect of the implementation of those recommendations and of the provisions relating to arbitrators and arbitration in this subtitle. This subsection expires September 1, 2007.

CHAPTER 437. REPORTING REQUIREMENTS

Sec. 437.001. AWARD FILING. (a) If an arbitration award is filed in a court of competent jurisdiction in this state, the filer shall also, not later than the 30th day after the date an award is made in a residential construction arbitration, the arbitrator who conducts the arbitration or, if an arbitration services provider administers the arbitration, the services provider shall file with the commission a summary of the arbitration award that includes:

- (1) the names of the parties to the dispute;
- (2) the name of each party's attorney, if any;
- (3) the name of the arbitrator who conducted the arbitration;
- (4) the name of the arbitration services provider who administered the arbitration, if any;
- (5) the fee charge to conduct the arbitration;
- (6) a general statement of each issue in dispute;
- (7) the arbitrator's determination, including the party that prevailed in each issue in dispute and the amount of any monetary award; and
- (8) the date of the arbitrator's award.

(b) The commission shall establish rules to permit the voluntary filing of the information listed in subsection (a) by any interested party. Any agreement prohibiting the disclosure of the information listed in subsection (a) is unenforceable.

Sec. 437.002. ENFORCEMENT. (a) The commission by rule shall establish a fee not to exceed \$100 for the late filing of an arbitration award and procedures for the collection of that fee.

(b) A party to an arbitration, or an attorney for a party, may report an overdue filing of an arbitration award to the commission.

CHAPTER 438. ENFORCEABILITY OF RESIDENTIAL CONSTRUCTION ARBITRATION AWARDS

Sec. 438.001. GROUNDS FOR VACATING AWARD. In addition to grounds for vacating an arbitration award under Section 171.088, Civil Practice and Remedies Code, on application of a party, a court shall vacate an award in a residential construction arbitration upon a showing of manifest disregard for Texas law.

(2) In ARTICLE 1 of the bill, following SECTION 1.05 (page 17, between lines 41 and 42), insert the following new SECTION, numbered appropriately:

SECTION 1.__. (a) Section 436.003, Property Code, as added by this article, governs the venue of an arbitration initiated on or after the effective date of this Act under a residential construction contract entered into before, on, or after the effective date of this Act, unless otherwise provided by a contract entered into before the effective date of this Act.

(b) Chapter 437, Property Code, as added by this article, applies only to an arbitration initiated on or after January 1, 2004. An arbitration initiated before that date 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.

(c) Chapter 438, Property Code, as added by this article, applies only to an arbitration initiated on or after the effective date of this Act. An arbitration initiated before that date is governed by the law in effect immediately before that date, and that law is continued in effect for that purpose.

Senate Amendment No. 5 (Senate Floor Amendment No. 5)

Amend **CSHB 730** in ARTICLE 1, SECTION 1.01, added Section 426.008(a), Property Code (Senate committee printing) as follows:

(1) On page 11, line 52, between "presumption" and "." insert the following:

"of the existence or non-existence of a construction defect or the reasonable manner of repair of the construction defect".

(2) On page 11, line 53, strike "clear and convincing" and substitute "a preponderance of the".

Senate Amendment No. 6 (Senate Floor Amendment No. 6)

Amend **CSHB 730** (Senate committee printing) as follows:

(1) In Section 1.01 of the bill, in newly-added Section 426.005, Property Code (page 11, lines 14-19), strike Subsection (b) and substitute the following:

"(b) An action described by Subsection (a) must be filed:

(1) on or before the expiration of any applicable statute of limitations or by the 45th day after the date the third-party inspector issues the inspector's recommendation, whichever is later; or

(2) if the recommendation is appealed, on or before the expiration of any applicable statute of limitations or by the 45th day after the date the commission issues its ruling on the appeal, whichever is later."

(2) In Section 1.01 of the bill, in newly-added Section 428.001(h), Property Code (page 13, line 13), strike "in an action" and substitute "in any action".

(3) In Section 1.01 of the bill, in newly-added Section 430.004, Property Code (page 16, lines 7-8), strike the sentence that reads "A court may not discern or declare any other implied warranty."

(4) In Section 1.01 of the bill, in newly-added Section 430.007, Property Code (page 16, lines 31-34), strike new Subsection (a) and substitute the following:

(a) A builder may elect to provide a warranty through a third-party warranty company approved by the commission.

(5) In Section 1.01 of the bill, in newly-added Section 430.007(b), Property Code (page 16, line 35), strike "limitation" and substitute "transfer".

(6) In Section 1.01 of the bill, in newly-added Section 430.009, Property Code (page 16, lines 62-65), strike the sentence that reads "This subtitle provides the sole rights and obligations between a homeowner and a builder unless additional rights and obligations are provided in and express, written contract between the homeowner and the builder."

(7) In Section 1.01 of the bill, in newly-added Section 430.009, Property Code (page 17, line 3), strike "subsection" and substitute "subtitle".

(8) In Section 1.01 of the bill, in newly-added Section 430.009, Property Code (page 17, lines 6-8), strike Subsection (c) and substitute a new Subsection (c) as follows:

(c) Breach of a limited statutory warranty adopted by the commission or breach of the statutory warranty of habitability shall not, by itself, constitute a violation of the Deceptive Trade Practice-Consumer Protection Act (Subchapter E, Chapter 17, Business and Commerce Code).

Senate Amendment No. 7 (Senate Floor Amendment No. 7)

Amend **CSHB 730** (Senate committee printing) as follows:

(1) In Section 2.04 of the bill, page 21, strike lines 10 through 17, and insert the following:

(f) If a contractor fails to make a reasonable offer under Subsection (b), the limitations on damages provided for in Subsection (e) shall not apply.

(2) In Section 2.04 of the bill, page 22, line 32, before "SECTION 2.05" insert the following new subsection:

(q) If a contractor refuses to initiate repairs under an accepted offer made under this section, the limitations on damages provided for in this section shall not apply.

(3) In Section 2.05 of the bill, in newly-added Section 27.0042, Property Code (page 22, line 44) strike lines 44 through 46 and insert the following:

(b) A contractor may not elect to purchase the residence under Subsection (a) if:

(1) the residence is more than five years old at the time an action is initiated; or

(2) the contractor makes such an election later than the 15th day after the date of a final, unappealable determination of a dispute under Subtitle D., Title 16, if applicable.

Senate Amendment No. 8 (Senate Floor Amendment No. 8)

Amend **CSHB 730** (Senate committee printing) in SECTION 1.01 of the bill as follows:

(1) In the heading of added Section 426.004, Property Code, strike "APPLICATION AND INSPECTION" (page 10, line 61).

(2) In added Section 426.004, Property Code, strike Subsections (a) and (b) (page 10, line 61, through page 11, line 3), and substitute the following:

(a) A party who submits a request under this subtitle shall pay any amount required by the commission to cover the expense of the third-party inspector.

(b) The commission shall adopt rules permitting a waiver or reduction of the inspection expenses for homeowners demonstrating a financial inability to pay the expenses.

(3) In added Section 426.004(c), Property Code, strike "application fee and" (page 11, line 9).

Senate Amendment No. 9 (Senate Floor Amendment No. 9)

Amend **CSHB 730** in SECTION 1.01 of the bill, in added Chapter 430, Property Code, by inserting the following section (page 15, between lines 68 and 69) and renumbering sections and cross-references appropriately:

Sec. 430.004. ALTERNATIVE STANDARDS FOR CERTAIN CONSTRUCTION. For the purpose of this title, the only statutory warranty and building and performance standards that apply to residential construction in unincorporated areas of counties that are considered economically distressed areas as defined by Section 15.001(11) of the Water Code and located within 50 miles of an international border are the standards established for colonia housing programs administered by the Texas Department of Housing and Community Affairs, unless a county commissioners court has adopted other building and performance standards authorized by statute.

RECESS

Representative Elkins moved that the house recess until 2 p.m.

The motion prevailed without objection.

The house accordingly, at 12:06 p.m., recessed until 2 p.m.

AFTERNOON SESSION

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

MESSAGE FROM THE SENATE

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

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

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

HB 1839, A bill to be entitled An Act relating to property in the custody of a pawnbroker; providing criminal penalties.

On motion of Representative Solomons, the house concurred in the senate amendments to **HB 1839**.

Senate Committee Substitute

HB 1839, A bill to be entitled An Act relating to property in the custody of a pawnbroker; providing criminal penalties.

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

SECTION 1. Subchapter D, Chapter 371, Finance Code, is amended by adding Section 371.1821 to read as follows:

Sec. 371.1821. LAW ENFORCEMENT HOLD PROCEDURE; PLEDGE OR SALE OF MISAPPROPRIATED PROPERTY. (a) In this section:

(1) "Chief law enforcement officer" means:

(A) the sheriff of the county in which the pawnshop is located or an officer of the sheriff's department designated by the sheriff, if the pawnshop is not located in a municipality that maintains a police department; or

(B) the police chief of the municipality in which the pawnshop is located or a police officer designated by the police chief, if the pawnshop is located in a municipality that maintains a police department.

(2) "Misappropriated" means stolen, embezzled, converted, or otherwise wrongfully appropriated, or pledged against the will of the owner of the goods or a person holding a perfected security interest in the goods.

(b) If a chief law enforcement officer has reasonable suspicion to believe that goods in the possession of a pawnbroker are misappropriated, the officer may place a hold order on the goods.

(c) Goods subject to a hold order must be physically retained by the pawnbroker in a secure area and may not be released, sold, redeemed, or disposed of unless:

(1) the chief law enforcement officer delivers a written release to the pawnbroker;

(2) the hold order and any extension of the hold order expire; or

(3) a court order, including a search warrant, requires the release, sale, or disposal of the property.

(d) A hold order is effective only if it contains:

(1) the name of the pawnbroker;

(2) the name and mailing address of the pawnshop where the goods are located;

(3) the name, title, badge number, and phone number of the chief law enforcement officer placing the hold order;

(4) the case number of the criminal proceeding or investigation involving the goods to be held;

(5) a complete description of the goods to be held, including any available model number and serial number, and the related pawn or purchase ticket number;

(6) the expiration date of the hold order; and

(7) the name of the law enforcement agency that prepared the investigative report and the associated number of the report.

(e) The hold order and any extension of the hold order must be signed and dated by the chief law enforcement officer and the pawnbroker or the pawnbroker's designee, as evidence of the hold order's issuance by the chief law enforcement officer, the pawnbroker's receipt of the hold order, and the beginning of the holding period. The chief law enforcement officer shall provide at no cost to the pawnbroker an executed copy of the hold order for the pawnbroker's records.

(f) The initial holding period of the hold order may not exceed 60 days. A hold order may be extended for up to three successive 60-day periods on written notification to the pawnbroker before the expiration of the immediately preceding holding period or extension. A hold order may be released before the expiration of the holding period or extension by written release from the chief law enforcement officer. A hold order is considered expired on the expiration date stated on the hold order if the holding period is not extended under this subsection.

(g) Notwithstanding Subsection (e) or (f), the chief law enforcement officer may place a verbal hold order on property, or may verbally extend a hold order, for up to seven days while a written hold order or extension is being prepared. A verbal hold order must include the information required by Subsection (d).

(h) Goods subject to a hold order may be released to the custody of the chief law enforcement officer for use in a criminal investigation if the officer:

(1) has probable cause to believe that the goods subject to a hold order are misappropriated; and

(2) furnishes a written receipt for the goods.

(i) The release of the goods to the custody of the chief law enforcement officer is not considered a waiver or release of the pawnbroker's rights or interest in the goods. Goods in the custody of the chief law enforcement officer are subject to Chapter 47, Code of Criminal Procedure.

(j) A person commits an offense if the person pledges with or sells to a pawnbroker misappropriated property. An offense under this subsection is a Class B misdemeanor.

SECTION 2. Chapter 371, Finance Code, is amended by adding Subchapter H to read as follows:

SUBCHAPTER H. PROVIDING DATA TO LAW ENFORCEMENT AGENCIES BY ELECTRONIC MEANS

Sec. 371.351. DEFINITIONS. In this subchapter:

(1) "Chief law enforcement officer" has the meaning assigned by Section 371.1821.

(2) "Law enforcement agency" means the department of the chief law enforcement officer.

(3) "Provider" means a commercial enterprise primarily engaged in the business of establishing and maintaining one or more Internet repositories.

(4) "Reportable data" means the following information from a transaction in which a pawnshop customer pledges or sells personal property:

(A) the name and address of the pawnshop;

(B) the date of the transaction; and

(C) an identification and complete description of the goods pledged or sold, including any available model numbers and serial numbers, and other identifying characteristics.

(5) "Repository" means an electronic storage of transaction data.

(6) "Transaction data" means information from a transaction in which a pawnshop customer pledges or sells personal property, including:

(A) the name and address of the pawnshop;

(B) the date of the transaction;

(C) an identification and complete description of the goods pledged or sold, including any available model numbers and serial numbers, and other identifying characteristics;

(D) the customer's name, address, and physical description; and

(E) a driver's license number, military identification number, identification certificate number, or other official number that identifies the customer.

Sec. 371.352. ELECTRONIC REPORTING TO LAW ENFORCEMENT AGENCY OR PROVIDER. (a) A pawnbroker who generates computerized pawn and purchase tickets shall, as required by the chief law enforcement officer, transmit all:

(1) reportable data to the law enforcement agency electronically in a format used by the pawnbroker's computer software; or

(2) transaction data electronically in the format used by the pawnbroker's computer software directly to a provider.

(b) A pawnbroker may transmit transaction data to the chief law enforcement officer. A pawnbroker and the chief law enforcement officer may agree to another means of transferring transaction data to a law enforcement agency.

(c) A pawnbroker who reports information under this subchapter shall transmit data pertaining to a transaction not later than the seventh day after the date of the transaction, or within a shorter period as agreed to by the chief law enforcement officer and the pawnbroker.

(d) If the chief law enforcement officer requires a pawnbroker to submit reportable data to the law enforcement agency, the law enforcement agency shall maintain a secure database using a minimum of 128-bit encryption for all electronic transmissions under this subchapter that occur through the Internet. The law enforcement agency shall implement appropriate security measures to ensure that its database of reportable data may be accessed only by the chief law enforcement officer.

(e) A law enforcement agency may not charge a fee to a pawnbroker or customer of a pawnbroker for the preparation, compilation, conversion, or transmission of data under this section.

Sec. 371.353. PROVIDER REPOSITORY. (a) A provider may establish a repository for the purpose of providing law enforcement agencies with access to transaction data to facilitate the investigation of alleged property crimes.

(b) A provider shall collect and maintain the transaction data and shall update the repository at least daily.

(c) A provider shall implement appropriate security measures and data recovery measures necessary to ensure the integrity of the data. A provider shall ensure that the repository can be accessed only by a chief law enforcement officer in accordance with this subchapter.

Sec. 371.354. CHARGES FOR USE OF REPOSITORY. (a) A provider may charge a law enforcement agency a fee to access the repository. The fee must be reasonable in relation to the provider's costs in establishing and maintaining the repository.

(b) A provider may not charge a pawnbroker or customer of a pawnbroker a fee for the compilation or transmission of reportable data or for the creation, maintenance, or use of any repository.

Sec. 371.355. REPOSITORY REQUIREMENTS. A repository must:

(1) enable reporting pawnbrokers to transmit data for each pawn and purchase transaction over the Internet in the format used by the pawnbroker's computer software;

(2) enable authorized chief law enforcement officers who provide a secure identification or access code to access the reportable data contained in the repository over the Internet;

(3) prevent unauthorized persons from accessing the data contained in the repository;

(4) require authorized chief law enforcement officers seeking access to the identity of the customer in a pawn or purchase transaction to:

(A) represent that the information is sought in connection with the investigation of a crime involving the goods delivered by the customer in that transaction; and

(B) present:

(i) a valid case number of a criminal proceeding or investigation for which the customer's identity is needed; or

(ii) if a case number is not available, the name and badge number of the chief law enforcement officer seeking access to the customer's identity;

(5) record the following information for each search of the repository:

(A) the identity of the law enforcement personnel searching the repository;

(B) the pawn or purchase transaction involved in the search; and

(C) the identity of any customer whose information was accessed through the search; and

(6) use a minimum of 128-bit encryption for all transmissions to and from the repository.

Sec. 371.356. CONFIDENTIALITY. (a) The data in the repository is confidential and may be released or disclosed only to a law enforcement agency for the investigation of a crime or to the commissioner for administrative purposes.

(b) A person who releases or discloses data in violation of this section commits an offense. An offense under this section is a Class A misdemeanor.

Sec. 371.357. FRAUDULENT ACCESS OF REPOSITORY. A person who gains access to the information in the repository through fraud or false pretenses commits an offense. An offense under this section is a Class A misdemeanor.

Sec. 371.358. COMMISSIONER OVERSIGHT. (a) The commissioner may require appropriate documentation demonstrating that a provider or a law enforcement agency that collects reportable data meets the requirements of this subchapter.

(b) On or before January 31 of each year, a provider or law enforcement agency that collects reportable data electronically under this subchapter shall report to the commissioner the total number of transactions reported by each reporting pawnbroker in the preceding calendar year. The provider or law enforcement agency shall provide the report at no cost to the commissioner.

Sec. 371.359. COMPUTER-RELATED MALFUNCTIONS AND ERRORS. (a) A pawnbroker who electronically reports information under this subchapter may not be held responsible for a delay in submitting data that results from a computer-related malfunction or error caused by the pawnbroker's equipment or software, if:

(1) the pawnbroker makes a bona fide effort to repair the malfunction or correct the error; and

(2) the pawnbroker and the chief law enforcement officer arrange a mutually acceptable alternative method by which the pawnbroker provides the data to the law enforcement agency.

(b) A pawnbroker who electronically reports information under this subchapter may not be held responsible for a delay in submitting data that results from a computer-related malfunction or error that is the responsibility of a provider or a law enforcement agency. A pawnbroker and a chief law enforcement officer shall arrange a mutually acceptable alternative method by which the pawnbroker provides the data to the law enforcement agency until the malfunction or error is corrected.

(c) The Finance Commission of Texas may adopt rules to establish procedures to address computer-related malfunctions and errors under this subchapter.

Sec. 371.360. PAPER COPIES. (a) A pawnbroker who electronically reports information under this subchapter shall make available for on-site inspection, to any appropriate law enforcement officer on request, paper copies of pawn or purchase transaction documents.

(b) After the 180th day after the date a pawnbroker transmits data under this subchapter, the pawnbroker is not required to make available to any law enforcement personnel paper copies of the pawnbroker's information related to the pawnbroker's pawn or purchase transactions, except as provided by Subsection (c) and for evidentiary purposes for which a law enforcement officer makes a specific request related to a specific transaction.

(c) For a reasonable period of time following the repair of a computer-related malfunction or error, a pawnbroker shall make available for on-site inspection, to any appropriate law enforcement officer on request, paper copies of pawn or purchase transaction documents for transactions that occurred during the period beginning when the malfunction or error occurs and ending when the chief law enforcement officer is reasonably certain the malfunction or error has been corrected.

(d) The Finance Commission of Texas may adopt rules to implement this section.

SECTION 3. This Act takes effect January 1, 2004.

**HB 7 - HOUSE REFUSES TO CONCUR
IN SENATE AMENDMENTS
CONFERENCE COMMITTEE APPOINTED**

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

HB 7, A bill to be entitled an Act relating to making supplemental appropriations and making reductions in current appropriations.

Representative Heflin moved that the house not concur in the senate amendments and that a conference committee be requested to adjust the differences between the two houses on **HB 7**.

The motion prevailed without objection.

The chair announced the appointment of the following conference committee, on the part of the house, on **HB 7**: Heflin, chair; Luna; Turner; J. Keffer; and Wohlgemuth.

(Phillips in the chair)

**HB 2359 - HOUSE REFUSES TO CONCUR
IN SENATE AMENDMENTS
CONFERENCE COMMITTEE APPOINTED**

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

HB 2359, A bill to be entitled an Act relating to the programs and systems administered by the Employees Retirement System of Texas.

Representative Ritter moved that the house not concur in the senate amendments and that a conference committee be requested to adjust the differences between the two houses on **HB 2359**.

The motion prevailed without objection.

The chair announced the appointment of the following conference committee, on the part of the house, on **HB 2359**: Ritter, chair; Delisi; Grusendorf; King; and Hill.

(Speaker in the chair)

**HB 3015 - HOUSE REFUSES TO CONCUR
IN SENATE AMENDMENTS
CONFERENCE COMMITTEE APPOINTED**

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

HB 3015, A bill to be entitled an Act relating to the tuition charged and financial assistance funded by tuition charged to students of institutions of higher education and to a study of the accessibility and availability of graduate and professional programs.

Representative Morrison moved that the house not concur in the senate amendments and that a conference committee be requested to adjust the differences between the two houses on **HB 3015**.

The motion prevailed without objection.

The chair announced the appointment of the following conference committee, on the part of the house, on **HB 3015**: Morrison, chair; Heflin; F. Brown; Pitts; and Menendez.

(Puente in the chair)

**HB 3306 - HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS**

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

HB 3306, A bill to be entitled An Act relating to statutory authority to reduce appropriations made by the legislature to certain individuals and governmental entities.

On motion of Representative Berman, the house concurred in the senate amendments to **HB 3306** by (Record 814): 142 Yeas, 0 Nays, 2 Present, not voting.

Yeas — Allen; Alonzo; Bailey; Baxter; Berman; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Burnam; Callegari; Campbell; Canales; Capelo; Casteel; Castro; Chavez; Chisum; Christian; Coleman; Cook, B.; Cook, R.; Corte; Crabb; Crownover; Davis, J.; Davis, Y.; Dawson; Delisi; Denny; Deshotel; Driver; Dukes; Dunnam; Dutton; Edwards; Eissler; Elkins; Ellis; Escobar; Farabee; Farrar; Flores; Flynn; Gallego; Garza; Gattis; Geren; Giddings; Goodman; Goolsby; Griggs; Grusendorf; Guillen; Gutierrez; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Heflin; Hegar; Hilderbran; Hill; Hochberg; Hodge; Homer; Hopson; Hughes; Hunter; Hupp; Isett; Jones, D.; Jones, E.; Jones, J.; Keel; Keffer, B.; Keffer, J.; King; Kolkhorst; Krusee; Kuempel; Laubenberg; Lewis; Luna; Mabry; Madden; Marchant; Martinez Fischer; McCall; McClendon; McReynolds; Menendez; Mercer; Merritt; Miller; Moreno, J.; Moreno, P.; Morrison; Mowery; Naishtat; Nixon; Noriega; Oliveira; Olivo; Paxton; Peña; Phillips; Pickett; Pitts; Quintanilla; Raymond; Reyna; Riddle; Ritter; Rodriguez; Rose; Seaman; Smith, T.; Smith, W.; Smithee; Solis; Solomons; Stick; Swinford; Talton; Taylor; Telford; Thompson; Truitt; Uresti; Van Arsdale; Villarreal; West; Wilson; Wise; Wolens; Wong; Woolley; Zedler.

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

Absent, Excused — Eiland; Hope; Laney; Turner; Wohlgemuth.

Absent — Howard.

Senate Committee Substitute

HB 3306, A bill to be entitled An Act relating to certain appropriations made in support of the courts by the legislature to certain individuals and governmental entities, to the assignment of certain visiting judges, and to the Eighth, Ninth, and Eleventh courts of appeals districts.

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

SECTION 1. Subsection (f), Section 2, Article 11.071, Code of Criminal Procedure, is amended to read as follows:

(f) The convicting court shall reasonably compensate as provided by Section 2A and attorney appointed under this section, regardless of whether the attorney is appointed by the convicting court or was appointed by the court of criminal appeals under prior law ~~[as provided by Section 2A]~~.

SECTION 2. Section 2A, Article 11.071, Code of Criminal procedure, is amended by adding Subsection (d) to read as follows:

(d) The comptroller shall reimburse a county for the compensation and payment of expenses of an attorney appointed by the court of criminal appeals under prior law. A convicting court seeking reimbursement for a county as permitted by this subsection shall certify the amount the county is entitled to receive under this subsection for an application filed under this article, not to exceed a total amount of \$25,000.

SECTION 3. Subsection (d), Section 3, Article 11.071, Code of Criminal Procedure, is amended to read as follows:

(d) Counsel may incur expenses for habeas corpus investigation, including expenses for experts, without prior approval by the convicting court or the court of criminal appeals. On presentation of a claim for reimbursement, which may be presented ex parte, the convicting court shall order reimbursement of counsel for expenses, if the expenses are reasonably necessary and reasonably incurred. If the convicting court denies in whole or in part the request for expenses, the court shall briefly state the reasons for the denial in a written order provided to the applicant. The applicant may request reconsideration of the denial for reimbursement by the convicting court.

SECTION 4. Sections 22.201(i) and (l), Government Code, are amended to read as follows:

(i) The Eighth Court of Appeals District is composed of the counties of Andrews, Brewster, Crane, Crockett, Culberson, ~~[Ector,]~~ El Paso, ~~[Gaines, Glasscock,]~~ Hudspeth, Jeff Davis, Loving, ~~[Martin, Midland,]~~ Pecos, Presidio, Reagan, Reeves, Terrell, Upton, Ward, and Winkler.

(l) The Eleventh Court of Appeals District is composed of the counties of Baylor, Borden, Brown, Callahan, Coleman, Comanche, Dawson, Eastland, Ector, Erath, Fisher, Gaines, Glasscock, Haskell, Howard, Jones, Knox, Martin, Midland, Mitchell, Nolan, Palo Pinto, Scurry, Shackelford, Stephens, Stonewall, Taylor, and Throckmorton.

SECTION 5. Section 22.216(h), Governmental Code, is amended to read as follows:

(h) The Court of Appeals for the Eighth Court of Appeals District consists of a chief justice and two ~~[three]~~ justices.

SECTION 6. Section 22.216(i), Government Code, is amended to read as follows:

(i) The Court of Appeals for the Ninth Court of Appeals District consists of a chief justice and three ~~[two]~~ justices.

SECTION 7. The heading to Section 74.003, Government Code, is amended to read as follows:

Sec. 74.003. ASSIGNMENT OF JUSTICES AND JUDGES FOR APPELLATE COURTS ~~[JUDGES]~~.

SECTION 8. Section 74.003, Government Code, is amended by adding Subsection (f) to read as follows:

(f) Notwithstanding any other provision of law, an active district court judge may be assigned to hear a matter pending in an appellate court.

SECTION 9. Section 74.061, Government Code, is amended by amending Subsection (c) and adding Subsections (j) and (k) to read as follows:

(c) The salary of a retired judge or justice while assigned under this chapter shall be paid out of money appropriated from the general revenue fund for that purpose in an amount equal to the compensation received from state and county sources of the judge of the court to which he is assigned. The salary of a retired judge or justice while assigned shall be determined pro rata for the period of time that the judge or justice actually sits as the assigned judge. The salary of a retired statutory county court judge assigned under this chapter to serve in a district court ~~[or statutory county court]~~ shall be paid by the state in the same manner as the salary of a retired district judge assigned under this chapter to serve in a district court ~~[or statutory county court]~~ is paid by the state.

(j) A judge or justice who sits as an assigned judge for half a day or less shall be compensated in an amount that is equal to one-half of the amount to which a judge or justice is entitled for sitting as an assigned judge for a full day under this section.

(k) Notwithstanding any other provision of law, a former, retired, or active judge is not entitled to compensation paid by the state when the judge sits as an assigned judge for a statutory county court.

SECTION 10. The amounts or entitlements required by statute for individuals or entities that receive state funds under Article IV of the General Appropriations Act may be reduced or eliminated in order to achieve a balanced budget.

SECTION 11. An active, former, or retired visiting judge or justice is not entitled to an amount from the state for expenses, per diem, travel, or salary that exceeds the amount authorized for those purposes by the General Appropriations Act.

SECTION 12. A local administrative district judge is not entitled to a salary from the state under Section 659.0125, Government Code, that exceeds the amount authorized for that salary by the General Appropriations Act.

SECTION 13. An active district judge is not entitled to travel expenses under Section 24.019, Government Code, in an amount that exceeds the amount authorized for those expenses by the General Appropriations Act.

SECTION 14. A judge, justice, or prosecuting attorney is not entitled to an amount from the state for a salary, a salary supplement, office expenses or reimbursement of office expenses, or travel that exceeds the amount authorized for those purposes by the General Appropriations Act.

SECTION 15. (a) A county is not entitled to receive from the state supplemental salary compensation for county prosecutors under Section 46.0031, Government Code, or longevity pay supplements reimbursement under Section

41.255, Government Code, or any other supplements for prosecutors, in an amount that exceeds the amount appropriated for those purposes by the General Appropriations Act.

(b) A county is not entitled to state contributions for salaries or supplements under Chapter 25 or 26, Government Code, in an amount that exceeds the amounts appropriated for those purposes in the General Appropriations Act.

(c) A county is not entitled to reimbursement under Article 11.071, Code of Criminal Procedure, for reimbursement for compensation and payment of expenses of counsel under Article 11.071, Code of Criminal Procedure, for counsel appointed under that article or prior law in an amount that exceeds the amount appropriated for that purpose in the General Appropriations Act.

SECTION 16. A person reimbursed by the state for travel and expenses for attendance as a witness as provided by Article 35.27, Code of Criminal Procedure, is not entitled to an amount that exceeds the amount appropriated for that purpose by the General Appropriations Act.

SECTION 17. Section 74.061, Government Code, as amended by this Act, applies only to the assignment of a judge or justice under Chapter 74 or 75, Government Code, made on or after the effective date of this Act. An assignment made before the effective date of this Act is governed by the law in effect at the time the assignment is made, and that law is continued in effect for that purpose.

SECTION 18. Notwithstanding Section 22.216(h), Government Code, as amended by this Act, the Eighth Court of Appeals consists of a chief justice and three justices until a vacancy occurs or the term of a justice expires, whichever occurs first. Section 22.216(h), Government Code, as amended by this Act, does not affect the office of a justice of the Eighth Court of Appeals serving on September 1, 2003, and the justice, unless otherwise removed, continues to serve for the term to which the justice was elected.

SECTION 19. This Act does not affect the jurisdiction on appeal of any case from a county that is transferred by this Act to a different court of appeals district if the notice of appeal for the case was filed before the effective date of this Act in the appropriate court of appeals district.

SECTION 20. (a) Except as provided by Subsection (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, 2003.

(b) Sections 4, 5, and 9 of this Act take effect September 1, 2003 and Section 6 of this Act takes effect January 1, 2005.

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

Amend **CSHB 3306** (committee printing) as follows:

(1) Strike SECTION 8 of the bill (page 2, lines 6 through 10) and substitute the following appropriately numbered SECTION:

SECTION __. Section 74.003, Government Code, is amended by amending Subsection (b) and adding Subsections (f), (g), and (h) to read as follows:

(b) The chief justice of the supreme court may assign a qualified retired justice or judge of the supreme court, of the court of criminal appeals, or of a court of appeals to a court of appeals for active service regardless of whether a vacancy exists in the court to which the justice is assigned. To be eligible for assignment under this subsection, a retired justice or judge must:

(1) have served as an active justice or judge for at least 96 months in a district, statutory probate, statutory county, or appellate court, with at least 48 of those months in an appellate court;

(2) not have been removed from office;

(3) certify under oath to the chief justice of the supreme court, on a form prescribed by the chief justice, that:

(A) the justice or judge has never been publicly reprimanded or censured by the State Commission on Judicial Conduct; and

(B) the justice or judge:

(i) did not resign or retire from office after the State Commission on Judicial Conduct notified the justice or judge of the commencement of a full investigation into an allegation or appearance of misconduct or disability of the justice or judge as provided in Section 33.022 and before the final disposition of that investigation; or

(ii) if the justice or judge did resign from office under circumstances described by Subparagraph (i), the justice or judge was not publicly reprimanded or censured as a result of the investigation;

(4) annually demonstrate that the justice or judge has completed in the past state fiscal year the educational requirements for active appellate court justices or judges; and

(5) certify to the chief justice of the supreme court a willingness not to appear and plead as an attorney in any court in this state for a period of two years.

(f) For the purposes of Subsection (b)(1), a month of service is calculated as a calendar month or a portion of a calendar month in which a justice or judge was authorized by election or appointment to preside.

(g) Subsection (b)(1) does not apply to a retired justice of the supreme court.

(h) Notwithstanding any other provision of law, an active district court judge may be assigned to hear a matter pending in an appellate court.

(2) Add the following appropriately numbered SECTIONS and renumber subsequent SECTIONS of the bill accordingly:

SECTION __. Section 74.041, Government Code, is amended by adding Subdivisions (4)-(7) to read as follows:

(4) "Active judge" means a person who is a current judicial officeholder.

(5) "Former judge" means a person who has served as an active judge in a district, statutory probate, statutory county, or appellate court, but who is not a retired judge.

(6) "Retired judge" means:

(A) a retiree; or

(B) a person who served as an active judge for at least 96 months in a statutory probate or statutory county court and has retired under the Texas County and District Retirement System.

(7) "Senior judge" means a retiree who has elected to be a judicial officer under Section 75.001.

SECTION __. Section 74.053, Government Code, is amended to read as follows:

Sec. 74.053. OBJECTION TO ~~[ASSIGNED]~~ JUDGE ASSIGNED TO A TRIAL COURT. (a) When a judge is assigned to a trial court under this chapter:

(1) the order of assignment must state whether the judge is an active, former, retired, or senior judge; and

(2) the presiding judge shall, if it is reasonable and practicable and if time permits, give notice of the assignment to each attorney representing a party to the case that is to be heard in whole or part by the assigned judge.

(b) If a party to a civil case files a timely objection to the assignment, the judge shall not hear the case. Except as provided by Subsection (d), each party to the case is only entitled to one objection under this section for that case.

(c) An objection under this section must be filed not later than the seventh day after the date the party receives actual notice of the assignment or before the date the first hearing or trial, including pretrial hearings, commences, whichever date occurs earlier. The presiding judge may extend the time to file an objection under this section on written motion by a party who demonstrates good cause [over which the assigned judge is to preside].

(d) An assigned [A former] judge or justice who was defeated in the last primary or general election for which the judge or justice was a candidate for the judicial office held by the judge or justice [not a retired judge] may not sit in a case if either party objects to the judge or justice.

(e) An active judge assigned under this chapter is not subject to an objection.

(f) For purposes of this section, notice of an assignment may be given and an objection to an assignment may be filed by electronic mail.

(g) In this section, "party" includes multiple parties aligned in a case as determined by the presiding judge.

SECTION __. Sections 74.054(a) and (b), Government Code, are amended to read as follows:

(a) Except as provided by Subsections (b) and (c), the following judges may be assigned as provided by this chapter by the presiding judge of the administrative region in which the assigned judge resides:

(1) an active [a regular] district, constitutional county, or statutory county court judge in this state;

(2) a senior judge [a district or appellate judge who is a retiree under Subtitle D or E of Title 8,] who has consented to be subject to assignment[;] and who is on the list maintained by the presiding judge under this chapter;

(3) a former district or appellate judge, retired or former statutory probate court judge, or retired or former statutory county court judge who certifies to the presiding judge a willingness to serve and who is on the list maintained by the presiding judge as required by this chapter;

(4) a retiree or a former judge whose last judicial office before retirement was justice or judge of the supreme court, the court of criminal appeals, or a court of appeals and who has been assigned by the chief justice to the administrative judicial region in which the retiree or former judge resides for reassignment by the presiding judge of that region to a district or statutory county court in the region; and

(5) an active judge or justice of the supreme court, the court of criminal appeals, or a court of appeals who has had trial court experience.

(b) An active ~~[A regular]~~ statutory county court judge may not be assigned to hear a matter pending in a district court outside the county of the judge's residence.

SECTION __. Section 74.055, Government Code, is amended by amending Subsections (c) and (e) and adding Subsections (f) and (g) to read as follows:

(c) To be eligible to be named on the list, a retired or former judge must:

(1) have served as an active ~~[a]~~ judge for at least 96 ~~[48]~~ months in a district, statutory probate, statutory county, or appellate court;

(2) have developed substantial experience in the judge's area of specialty;

(3) not have been removed from office;

(4) certify under oath to the presiding judge, on a form prescribed by the state board of regional judges, that:

(A) the judge has never been publicly reprimanded or censured by the State Commission on Judicial Conduct; and

(B) the judge:

(i) did not resign or retire from office after [having received notice that formal proceedings by] the State Commission on Judicial Conduct notified the judge of the commencement of a full investigation into an allegation or appearance of misconduct or disability of the judge [had been instituted] as provided in Section 33.022 and before the final disposition of that investigation; or

(ii) if the judge did resign from office under circumstances described by Subparagraph (i), was not publicly reprimanded or censured as a result of the investigation [the proceedings];

(5) annually demonstrate that the judge has completed in the past state fiscal ~~[calendar]~~ year the educational requirements for active district, statutory probate, and statutory county court judges; and

(6) certify to the presiding judge a willingness not to appear and plead as an attorney in any court in this state for a period of two years.

(e) For purposes of Subsection (c)(1), a month of service is calculated as a calendar month or a portion of a calendar month in which a judge was authorized by election or appointment ~~[by the governor]~~ to preside.

(f) A former or retired judge is ineligible to be named on the list if the former or retired judge is identified in a public statement issued by the State Commission on Judicial Conduct as having resigned or retired from office in lieu of discipline.

(g) A former or retired judge named on the list shall immediately notify the presiding judge of a full investigation by the State Commission on Judicial Conduct into an allegation or appearance of misconduct or disability by the judge. A judge who does not notify the presiding judge of an investigation as required by this subsection is ineligible to remain on the list.

(3) Strike SECTION 9 of the bill (page 2, lines 11 through 34), and substitute the following appropriately numbered SECTION:

SECTION __. Section 74.061, Government Code, is amended by amending Subsections (c) and (d) and adding Subsections (j) and (k) to read as follows:

(c) The salary of a retired judge or justice while assigned under this chapter shall be paid out of money appropriated from the general revenue fund for that purpose in an amount equal to the compensation received from state and county sources of the judge of the court to which he is assigned. The salary of a retired judge or justice while assigned shall be determined pro rata for the period of time that the judge or justice actually sits as the assigned judge. The salary of a retired statutory county court judge assigned under this chapter to serve in a district court [~~or statutory county court~~] shall be paid by the state in the same manner as the salary of a retired district judge assigned under this chapter to serve in a district court [~~or statutory county court~~] is paid by the state.

(d) For services actually performed while assigned under this chapter, a retired or former judge or justice shall receive from county funds and money appropriated by the legislature the same amount of salary, compensation, and expenses that the regular judge is entitled to receive from the county and from the state for those services. The presiding judge of the administrative region shall certify to the county and the state the services rendered under this chapter by a retired or former judge or justice and the share to be paid by the state. The amount certified by the presiding judge as the state's share shall be paid from an item in the Judicial Section—Comptroller's Department of the General Appropriations Act for the payment of salaries of district and criminal district judges.

(j) A judge or justice who sits as an assigned judge for half a day or less shall be compensated in an amount that is equal to one-half of the amount to which a judge or justice is entitled for sitting as an assigned judge for a full day under this section.

(k) Notwithstanding any other provision of law, a former, retired, or active judge is not entitled to compensation paid by the state when the judge sits as an assigned judge for a statutory county court.

(4) Add the following appropriately numbered SECTIONS and renumber subsequent SECTIONS of the bill accordingly:

SECTION __. Section 75.551, Government Code, is amended to read as follows:

Sec. 75.551. OBJECTION TO JUDGE OR JUSTICE ASSIGNED TO AN APPELLATE COURT. (a) When a judge or justice is assigned to an appellate court under this chapter or Chapter 74:

(1) the order of assignment must state whether the judge or justice is an active, former, retired, or senior judge or justice; and

(2) [7] the person who assigns the judge or justice shall, if it is reasonable and practicable and if time permits, give notice of the assignment to each attorney representing a party to the case that is to be heard in whole or part by the assigned judge or justice.

(b) A judge or justice assigned to an appellate court may not hear a civil case if a party to the case files a timely objection to the assignment of the judge or justice. Except as provided by Subsection (d), [7]

~~[(4)] each party to the case is entitled to only one objection under this section for that case in the appellate court[7, and~~

~~[(2) a party to an appeal may not in the same case object in an appellate court to the assignment of a judge or justice under Section 74.053(b) and under this subsection].~~

(c) An objection under this section must be filed not later than the seventh day after the date the party receives actual notice of the assignment or before the date the case is submitted to the court, whichever date occurs earlier. The court may extend the time to file an objection under this section on a showing of good cause [first hearing in which the assigned judge or justice is assigned to sit].

(d) A ~~[former]~~ judge or justice who was defeated in the last primary or general election for which the judge or justice was a candidate for the judicial office held by the judge or justice [not a retired judge or justice] may not sit in an appellate case if either party objects to the judge or justice.

(e) An active judge or justice assigned under this chapter is not subject to an objection.

(f) For purposes of this section, notice of an assignment may be given and an objection to an assignment may be filed by electronic mail.

(g) In this section, "party" includes multiple parties aligned in a case as determined by the appellate court.

SECTION __. Section 74.055(d), Government Code, is repealed.

SECTION __. (a) The change in law made by this Act to Sections 74.053 and 75.551, Government Code, applies only to a case that is pending or commences on or after the effective date of this Act.

(b) Except as provided by Subsection (c) of this section, the change in law made by this Act to Sections 74.003, 74.054, and 74.055, Government Code, applies only to the assignment of a judge or justice under Chapter 74 or 75, Government Code, made on or after the effective date of this Act. An assignment made before the effective date of this Act is governed by the law in effect at the time the assignment is made, and that law is continued in effect for that purpose.

(c) The change in law made by this Act to Sections 74.003, 74.054, and 74.055, Government Code, does not apply to a person who immediately before the effective date of this Act meets the eligibility requirements to be assigned by the chief justice of the supreme court under Section 74.003(b) or Chapter 75,

Government Code, or to be named on a list of retired and former judges under Section 74.055(c), Government Code, other than the certification requirement under Section 74.055(c)(6), Government Code, and the former law is continued in effect for determining that person's eligibility for those purposes.

INTRODUCTION OF GUESTS

The chair recognized Representative Rose who introduced Janie Botkin, Tyler Giles, Jamie Stuart, Willa Kramer, and Katie Stoltze, members of the Dripping Springs High School literary criticism team.

HB 2044 - HOUSE REFUSES TO CONCUR IN SENATE AMENDMENTS CONFERENCE COMMITTEE APPOINTED

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

HB 2044, A bill to be entitled an Act relating to the powers and duties of the General Land Office and the accounting and disposition of state-owned real property.

Representative McReynolds moved that the house not concur in the senate amendments and that a conference committee be requested to adjust the differences between the two houses on **HB 2044**.

The motion prevailed without objection.

The chair announced the appointment of the following conference committee, on the part of the house, on **HB 2044**: McReynolds, chair; Howard; Dawson; Hilderbran; and Hochberg.

HB 2075 - HOUSE REFUSES TO CONCUR IN SENATE AMENDMENTS CONFERENCE COMMITTEE APPOINTED

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

HB 2075, A bill to be entitled an Act relating to regulating health and safety conditions at youth camps.

Representative Hilderbran moved that the house not concur in the senate amendments and that a conference committee be requested to adjust the differences between the two houses on **HB 2075**.

The motion prevailed without objection.

The chair announced the appointment of the following conference committee, on the part of the house, on **HB 2075**: Hilderbran, chair; Hupp; Taylor; McClendon; and Zedler.

HB 2877 - WITH SENATE AMENDMENTS

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

HB 2877, A bill to be entitled an Act relating to the permitting procedures of the Texas Commission on Environmental Quality.

HB 2877 - POINT OF ORDER

Representative Villarreal raised a point of order against further consideration of **HB 2877** under Rule 11, Section 2 of the House Rules on the grounds that the senate amendments are not germane to the bill.

The chair sustained the point of order.

The ruling precluded further consideration of **HB 2877**.

**HB 3459 - HOUSE REFUSES TO CONCUR
IN SENATE AMENDMENTS
CONFERENCE COMMITTEE APPOINTED**

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

HB 3459, A bill to be entitled an Act relating to fiscal matters involving certain governmental educational entities, including public school finance, program compliance monitoring by the Texas Education Agency, funding for regional education service centers, amounts withheld from compensatory education allotments, the public school technology allotment, the accounting for the permanent school fund, refunding of certain student loan bonds, funding for the higher education fund, health insurance coverage provided by certain educational entities, the uses of the telecommunications infrastructure fund, and the regulation of driver education schools.

Representative Pitts moved that the house not concur in the senate amendments and that a conference committee be requested to adjust the differences between the two houses on **HB 3459**.

The motion prevailed without objection.

The chair announced the appointment of the following conference committee, on the part of the house, on **HB 3459**: Pitts, chair; McCall; Heflin; Branch; and Gutierrez.

**HB 2425 - HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS**

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

HB 2425, A bill to be entitled An Act relating to state and certain local fiscal matters; making an appropriation.

On motion of Representative McCall, the house concurred in the senate amendments to **HB 2425** by (Record 815): 132 Yeas, 0 Nays, 4 Present, not voting.

Yeas — Allen; Alonzo; Bailey; Baxter; Berman; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Burnam; Callegari; Campbell; Canales; Capelo; Casteel; Chisum; Christian; Coleman; Cook, B.; Cook, R.; Crabb; Crownover; Davis, J.; Davis, Y.; Dawson; Delisi; Denny; Deshotel; Driver; Dukes; Dunnam; Dutton; Edwards; Eissler; Elkins; Ellis; Escobar; Farabee; Farrar; Flores; Flynn; Gallego; Garza; Gattis; Geren; Giddings; Goodman; Goolsby; Griggs; Grusendorf; Guillen; Gutierrez; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Heflin; Hegar; Hilderbran; Hill; Hochberg; Hodge; Homer; Hopson; Howard; Hughes; Hunter; Hupp; Isett; Jones, E.; Keel; Keffer, B.; Keffer, J.; King; Kolkhorst; Krusee; Kuempel; Laubenberg; Luna; Mabry; Madden; Marchant; Martinez Fischer; McCall; McClendon; McReynolds; Menendez; Mercer; Merritt; Miller; Moreno, J.; Moreno, P.; Morrison; Mowery; Naishtat; Nixon; Noriega; Oliveira; Olivo; Paxton; Phillips; Pickett; Pitts; Raymond; Reyna; Riddle; Ritter; Rodriguez; Rose; Seaman; Smith, W.; Solis; Solomons; Stick; Swinford; Talton; Taylor; Telford; Thompson; Uresti; Van Arsdale; Villarreal; West; Wilson; Wise; Wolens; Wong; Woolley; Zedler.

Present, not voting — Mr. Speaker; Jones, D.; Puente(C); Truitt.

Absent, Excused — Eiland; Hope; Laney; Turner; Wohlgemuth.

Absent — Castro; Chavez; Corte; Jones, J.; Lewis; Peña; Quintanilla; Smith, T.; Smithee.

STATEMENT OF VOTE

When Record No. 815 was taken, I was temporarily out of the house chamber. I would have voted yes.

T. Smith

Senate Committee Substitute

HB 2425, A bill to be entitled An Act relating to state and certain local fiscal matters; making an appropriation.

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

SECTION 1. Section 103.051(a), Civil Practice and Remedies Code, is amended to read as follows:

(a) To apply for compensation under this subchapter, the claimant must file with the ~~judicial section of the~~ comptroller's judiciary section ~~[office]~~:

(1) an application for compensation provided for that purpose by the comptroller;

(2) a verified copy of the pardon or court order justifying the application for compensation; ~~and~~

(3) a statement provided by the Texas Department of Criminal Justice verifying the length of incarceration; and

(4) a certification of the claimant's actual innocence of the crime for which the claimant was sentenced that is signed by the attorney representing the state in the prosecution of felonies in the county in which the sentence was rendered.

SECTION 2. Section 14(e), Article 42.12, Code of Criminal Procedure, as added by Chapter 1188, Acts of the 76th Legislature, Regular Session, 1999, is amended to read as follows:

(e) The clerk of a court that collects a fee imposed under Subsection (c)(2) shall remit the fee to the comptroller not later than the last day of the month following the end of the calendar quarter in which the fee is collected, and the comptroller shall deposit the fee into the general revenue fund. If the clerk does not collect a fee imposed under Subsection (c)(2), the clerk is not required to file any report required by the comptroller relating to the collection of the fee. In requiring the payment of a fee under Subsection (c)(2), the judge shall consider fines, fees, and other necessary expenses for which the defendant is obligated in establishing the amount of the fee. The judge may not:

(1) establish the fee in an amount that is greater than 25 percent of the defendant's gross income while the defendant is a participant in residential aftercare; or

(2) require the defendant to pay the fee at any time other than a time at which the defendant is both employed and a participant in residential aftercare.

SECTION 3. Section 19(f), Article 42.12, Code of Criminal Procedure, is amended to read as follows:

(f) A community corrections and supervision department shall remit fees collected under Subsection (e) of this section to the comptroller not later than the last day of the month following the end of the calendar quarter in which the fee is collected. The comptroller shall deposit the fee in the special revenue fund to the credit of the sexual assault program established under Section 44.0061, Health and Safety Code. If the department does not collect a fee imposed under Subsection (e), the department is not required to file any report required by the comptroller relating to the collection of the fee.

SECTION 4. Sections 42.259(c), (d), and (f), Education Code, are amended to read as follows:

(c) Payments from the foundation school fund to each category 2 school district shall be made as follows:

(1) 22 percent of the yearly entitlement of the district shall be paid in an installment to be made on or before the 25th day of September of a fiscal year;

(2) 18 percent of the yearly entitlement of the district shall be paid in an installment to be made on or before the 25th day of October;

(3) 9.5 percent of the yearly entitlement of the district shall be paid in an installment to be made on or before the 25th day of November;

(4) 7.5 percent of the yearly entitlement of the district shall be paid in an installment to be made on or before the 25th day of April;

(5) five percent of the yearly entitlement of the district shall be paid in an installment to be made on or before the 25th day of May;

(6) 10 percent of the yearly entitlement of the district shall be paid in an installment to be made on or before the 25th day of June;

(7) 13 percent of the yearly entitlement of the district shall be paid in an installment to be made on or before the 25th day of July; and

(8) 15 percent of the yearly entitlement of the district shall be paid in an installment to be made after the fifth day of September and not later than the 10th day of September of the calendar year following the calendar year of the payment made under Subdivision (1) ~~on or before the 25th day of August~~.

(d) Payments from the foundation school fund to each category 3 school district shall be made as follows:

(1) 45 percent of the yearly entitlement of the district shall be paid in an installment to be made on or before the 25th day of September of a fiscal year;

(2) 35 percent of the yearly entitlement of the district shall be paid in an installment to be made on or before the 25th day of October; and

(3) 20 percent of the yearly entitlement of the district shall be paid in an installment to be made after the fifth day of September and not later than the 10th day of September of the calendar year following the calendar year of the payment made under Subdivision (1) ~~on or before the 25th day of August~~.

(f) Except as provided by Subsection (c)(8) or (d)(3), any ~~Any~~ previously unpaid additional funds from prior years owed to a district shall be paid to the district together with the September payment of the current year entitlement.

SECTION 5. Section 44.901, Education Code, as amended by Chapter 573, Acts of the 77th Legislature, Regular Session, 2001, is amended to read as follows:

Sec. 44.901. ENERGY SAVINGS PERFORMANCE CONTRACTS ~~OR WATER CONSERVATION MEASURES~~. (a) In this section, "energy savings performance contract" means a contract for energy or water conservation measures to reduce energy or water consumption or operating costs of school facilities in which the estimated savings in utility costs resulting from the measures is guaranteed to offset the cost of the measures over a specified period. The term includes a contract for the installation or implementation of: ~~The board of trustees of a school district may enter into a contract for energy or water conservation measures to reduce energy or water consumption or operating costs of school facilities in accordance with this section.~~

~~(b) A contract to which this section applies includes a contract for the installation of:~~

(1) insulation of a ~~the~~ building structure ~~structures~~ and systems within the building;

(2) storm windows or doors, caulking or weatherstripping, multiglazed windows or doors, heat absorbing or heat reflective glazed and coated window or door systems, or other window or door system modifications that reduce energy consumption;

(3) automatic energy control systems, including computer software and technical data licenses;

(4) heating, ventilating, or air-conditioning system modifications or replacements that reduce energy or water consumption;

- (5) lighting fixtures that increase energy efficiency;
- (6) energy recovery systems;
- (7) electric systems improvements;
- (8) water-conserving fixtures, appliances, and equipment or the substitution of non-water-using fixtures, appliances, and equipment;
- (9) water-conserving landscape irrigation equipment;
- (10) landscaping measures that reduce watering demands and capture and hold applied water and rainfall, including:
 - (A) landscape contouring, including the use of berms, swales, and terraces; and
 - (B) the use of soil amendments that increase the water-holding capacity of the soil, including compost;
- (11) rainwater harvesting equipment and equipment to make use of water collected as part of a storm-water system installed for water quality control;
- (12) equipment for recycling or reuse of water originating on the premises or from other sources, including treated municipal effluent;
- (13) equipment needed to capture water from nonconventional, alternate sources, including air conditioning condensate or graywater, for nonpotable uses;
- (14) metering equipment needed to segregate water use in order to identify water conservation opportunities or verify water savings; or
- (15) other energy or water conservation-related improvements or equipment, ~~including improvements or equipment relating to renewable energy or nonconventional water sources or water reuse~~.

(b) The board of trustees of a school district may enter into an energy savings performance contract in accordance with this section.

(c) ~~Each~~ ~~[All]~~ energy or water conservation measure ~~[measures]~~ must comply with current local, state, and federal construction, plumbing, and environmental codes and regulations. Notwithstanding ~~[anything to the contrary in]~~ Subsection (a) ~~(b)~~, an energy savings performance ~~[a]~~ contract may ~~[for energy or water conservation measures shall]~~ not include improvements or equipment that allow or cause water from any condensing, cooling, or industrial process or any system of nonpotable usage over which the public water supply system officials do not have sanitary control, to be returned to the potable water supply.

(d) The ~~[person with whom the]~~ board may enter into energy savings performance contracts only with persons who are ~~[must be]~~ experienced in the design, implementation, and installation of the energy or water conservation measures addressed by the contract.

(e) Before entering into an energy savings performance ~~[a]~~ contract ~~[for energy or water conservation measures]~~, the board shall require the provider of the energy or water conservation measures to file with the board a payment and performance bond relating to the installation of the ~~[energy or water conservation]~~ measures in accordance with Chapter 2253, Government Code. The ~~[that is in an amount the]~~ board ~~[finds reasonable and necessary to protect the~~

~~interests of the school district and that~~ may also require a separate bond to cover the value of the guaranteed savings on the contract ~~[and is conditioned on the faithful execution of the terms of the contract].~~

(f) An energy savings performance contract ~~[Energy or water conservation measures with respect to existing buildings or facilities]~~ may be financed:

(1) under a lease/purchase contract that has a term not to exceed 15 years from the final date of installation and that meets federal tax requirements for tax-free municipal leasing or long-term financing;

(2) with the proceeds of bonds; or

(3) under a contract with the provider of the energy or water conservation measures that has a term not to exceed 15 years from the final date of installation.

(g) An energy savings performance ~~[A]~~ contract ~~[for energy or water conservation measures]~~ shall contain provisions requiring ~~[pursuant to which]~~ the provider of the energy or water conservation measures to guarantee ~~[guarantees]~~ the amount of the savings to be realized by the school district under the contract. If the term of an energy savings performance ~~[a]~~ contract ~~[for energy or water conservation measures]~~ exceeds one year, the school district's contractual obligations in any one year during the term of the contract beginning after the final date of installation may not exceed the total energy, water, wastewater, and operating cost savings, including ~~[but not limited to]~~ electrical, gas, water, wastewater, or other utility cost savings and operating cost savings resulting from the measures, ~~[automatic monitoring and control]~~ as determined by the school district in this subsection, divided by the number of years in the contract term.

(h) An energy savings performance ~~[A]~~ contract shall [under this section may] be let according to the procedures established for procuring certain professional services by Section 2254.004, Government Code ~~[under competitive proposal procedures]~~. Notice of the request for qualifications ~~[proposals]~~ shall be published in the manner provided for competitive bidding. ~~[Requests for proposals must solicit quotations and must specify the relative importance of guaranteed savings, price, return on investment, financial performance and stability, quality, technical ability, experience, and other evaluation factors. The contract shall be awarded to the responsible offeror whose proposal, following negotiations, is determined to be the most advantageous to the school district considering the guaranteed savings and other evaluation factors set forth in the request for proposals.]~~

(i) Before ~~[To obtain the best final offers, the school district may allow proposal revisions after submissions and before the award of the contract.]~~

~~[(j) Prior to]~~ entering into an energy savings performance ~~[a]~~ contract ~~[under this section]~~, the board must require that the cost savings projected by an offeror be reviewed by a licensed professional engineer who is not an officer or employee of an offeror for the contract under review or otherwise associated with the contract or the offeror. An engineer who reviews a contract shall maintain the confidentiality of any proprietary information the engineer acquires while

reviewing the contract. Sections 1001.053 and 1001.407, Occupations Code, apply [~~Section 19, The Texas Engineering Practice Act (Article 3271a, Vernon's Texas Civil Statutes), applies~~] to work performed under the contract.

SECTION 6. Section 51.927, Education Code, as amended by Chapter 573, Acts of the 77th Legislature, Regular Session, 2001, is amended to read as follows:

Sec. 51.927. ENERGY SAVINGS PERFORMANCE CONTRACTS [~~OR WATER CONSERVATION MEASURES~~]. (a) In this section, "energy savings performance contract" means a contract for energy or water conservation measures to reduce energy or water consumption or operating costs of institutional facilities in which the estimated savings in utility costs resulting from the measures is guaranteed to offset the cost of the measures over a specified period. The term [~~The governing board of an institution of higher education may enter into a contract for energy or water conservation measures to reduce energy or water consumption or operating costs of institutional facilities in accordance with this section.~~]

~~[(b) A contract to which this section applies]~~ includes a contract for the installation or implementation of:

- (1) insulation of a building structure and systems within a building;
- (2) storm windows or doors, caulking or weather stripping, multiglazed windows or doors, heat-absorbing or heat-reflective glazed and coated window or door systems, or other window or door system modifications that reduce energy consumption;
- (3) automatic energy control systems, including computer software and technical data licenses;
- (4) heating, ventilating, or air conditioning system modifications or replacements that reduce energy or water consumption;
- (5) lighting fixtures that increase energy efficiency;
- (6) energy recovery systems;
- (7) electric systems improvements;
- (8) water-conserving fixtures, appliances, and equipment or the substitution of non-water-using fixtures, appliances, and equipment;
- (9) water-conserving landscape irrigation equipment;
- (10) landscaping measures that reduce watering demands and capture and hold applied water and rainfall, including:
 - (A) landscape contouring, including the use of berms, swales, and terraces; and
 - (B) the use of soil amendments that increase the water-holding capacity of the soil, including compost;
- (11) rainwater harvesting equipment and equipment to make use of water collected as part of a storm-water system installed for water quality control;
- (12) equipment for recycling or reuse of water originating on the premises or from other sources, including treated municipal effluent;
- (13) equipment needed to capture water from nonconventional, alternate sources, including air conditioning condensate or graywater, for nonpotable uses;

(14) metering equipment needed to segregate water use in order to identify water conservation opportunities or verify water savings; or

(15) other energy or water conservation-related improvements or equipment, ~~including improvements or equipment related to renewable energy or nonconventional water sources or water reuse~~.

(b) The governing board of an institution of higher education may enter into an energy savings performance contract in accordance with this section.

(c) Each ~~Each~~ energy or water conservation measure ~~measures~~ must comply with current local, state, and federal construction, plumbing, and environmental codes and regulations. Notwithstanding ~~anything to the contrary in~~ Subsection (a) ~~(b)~~, an energy savings performance ~~a~~ contract may ~~for energy or water conservation measures shall~~ not include improvements or equipment that allow or cause water from any condensing, cooling, or industrial process or any system of nonpotable usage over which the public water supply system officials do not have sanitary control, to be returned to the potable water supply.

(d) The ~~entity with whom the~~ board may enter into energy savings performance contracts only with entities that are ~~must be~~ experienced in the design, implementation, and installation of the energy or water conservation measures addressed by the contract.

(e) Before entering into an energy savings performance ~~a~~ contract ~~for energy or water conservation measures~~, the board shall require the provider of the energy or water conservation measures to file with the board a payment and performance bond in accordance with Chapter 2253, Government Code. The ~~that is in an amount the~~ board may also require a separate bond to cover the value of the guaranteed savings on ~~finds reasonable and necessary to protect the interests of the institution and is conditioned on the faithful execution of the terms of~~ the contract.

(f) The board may enter into an energy savings performance ~~a~~ contract for a period of more than one year only ~~for energy or water conservation measures with an entity~~ if the board finds that the amount the institution would spend on the energy or water conservation measures will not exceed the amount to be saved in energy, water, wastewater, and operating costs over 15 years from the date of installation. If the term of the ~~a~~ contract ~~for energy or water conservation measures~~ exceeds one year, the institution's ~~board's~~ contractual obligation in any year during the term of the contract beginning after the final date of installation may not exceed the total energy, water, wastewater, and operating cost savings, including ~~but not limited to~~ electrical, gas, water, wastewater, or other utility cost savings and operating cost savings resulting from the measures ~~automatic monitoring and control~~, as determined by the board in this subsection, divided by the number of years in the contract term beginning after the final date of installation. The board shall consider all costs of the energy or water conservation measures, including costs of design, engineering, installation, maintenance, repairs, and debt service.

(g) An energy savings performance contract ~~Energy or water conservation measures~~ may be financed:

(1) under a lease/purchase contract that has a term not to exceed 15 years from the final date of installation and that meets federal tax requirements for tax-free municipal leasing or long-term financing, including a lease/purchase contract under the master equipment lease purchase program administered by the Texas Public Finance Authority under Chapter 1232, Government Code;

(2) with the proceeds of bonds; or

(3) under a contract with the provider of the energy or water conservation measures that has a term not to exceed 15 years from the final date of installation.

(h) An energy savings performance [A] contract [for energy or water conservation measures] shall contain provisions requiring [pursuant to which] the provider of the energy or water conservation measures to guarantee [guarantees] the amount of the savings to be realized by the institution of higher education under the contract. [The Master Equipment Lease Purchase Program operated by the Texas Public Finance Authority may be utilized by an institution to fund a contract for energy or water conservation measures so long as the costs of the energy or water conservation measures, including costs of design, engineering, installation, maintenance, repairs, and anticipated debt service requirements of the Master Equipment Lease Purchase Program, do not exceed the total energy and operating cost savings, as described in Subsection (f), beginning after the final date of installation.]

(i) An energy savings performance [A] contract shall [under this section may] be let according to the procedures established for procuring certain professional services by Section 2254.004, Government Code [under competitive sealed proposal procedures]. Notice of the request for qualifications [proposals] shall be given in the manner provided by Section 2156.002 [for in Chapter 2156], Government Code. The Texas Higher Education Coordinating Board, in consultation with the State Energy Conservation Office [and the Texas Energy Coordination Council] with regard to energy and water conservation measures, shall establish guidelines and an approval process for awarding energy savings performance contracts [awarded under this section]. The guidelines must require that the cost savings projected by an offeror be reviewed by a licensed professional engineer who is not an officer or employee of an offeror for the contract under review or otherwise associated with the contract. An engineer who reviews a contract shall maintain the confidentiality of any proprietary information the engineer acquires while reviewing the contract. A contract is not required to be reviewed or approved by the State Energy Conservation Office [or Texas Energy Coordination Council]. Sections 1001.053 and 1001.407, Occupations Code, apply [Section 19, The Texas Engineering Practice Act (Article 3271a, Vernon's Texas Civil Statutes), applies] to work performed under the contract. [The contract shall be awarded to the responsible offeror whose proposal, following negotiations, is determined by the institution to be the most advantageous to the institution considering the guaranteed savings and other evaluation factors set forth in the request for proposals, except that if the institution finds that no offer is acceptable, it shall refuse all offers.]

~~(j) [In accordance with regulations adopted by the institution, the institution may conduct discussions with offerors who submit proposals and who are determined to be reasonably qualified for the award of the contract. Offerors shall be treated fairly and equally with respect to any opportunity for discussion and revision of proposals. To obtain the best final offers, the institution may allow proposal revisions after submissions and before the award of the contract.~~

~~[(k) If provided in a request for proposals under Subsection (i), proposals shall be opened in a manner that avoids disclosure of the contents to competing offerors and keeps the proposals secret during negotiations. All proposals are open for public inspection after a contract is awarded unless the information is exempted from disclosure under Chapter 552, Government Code.~~

~~[(4)]~~ The legislature shall base an institution's appropriation for energy, water, and wastewater costs during a fiscal year on the sum of:

(1) the institution's estimated energy, water, and wastewater costs for that fiscal year; and

(2) if an energy savings performance [a] contract [under this section] is in effect, the institution's estimated net savings resulting from the contract during the contract term, divided by the number of years in the contract term.

SECTION 7. Section 54.619, Education Code, is amended by adding Subsection (j) to read as follows:

(j) The board may temporarily suspend new enrollment in the program on the request of the comptroller as the comptroller considers necessary to ensure the actuarial soundness of the fund.

SECTION 8. Section 54.624, Education Code, is amended to read as follows:

Sec. 54.624. SENIOR COLLEGE PLAN. (a) Through the senior college plan, a prepaid tuition contract shall provide prepaid tuition and required fees for the beneficiary to attend a public senior college or university for a specified number of undergraduate credit hours not to exceed the typical number of hours required for a baccalaureate degree awarded by a public senior college or university.

(b) When the beneficiary of a senior college plan prepaid tuition contract enrolls in a public senior college or university, the university shall accept as payment in full of the beneficiary's tuition and required fees the lesser of:

(1) the amount of tuition and required fees charged by the institution; or

(2) an amount paid by the board under the contract equal to the weighted average amount of tuition and required fees of all public senior colleges and universities for that semester or other academic period as determined by the board.

(c) Each public senior college or university shall provide the information requested by the board on or before June 1 each year to assist the board in determining the weighted average amount of tuition and required fees of all public senior colleges and universities for each semester or other academic term of the following academic year for purposes of this section.

SECTION 9. Section 403.016(f), Government Code, is amended to read as follows:

(f)(1) Except as provided by Subdivisions [Subdivision] (2) and (4) and subject to any limitation in rules adopted by the comptroller, an automated clearinghouse, or the federal government, the comptroller may use the electronic funds transfer system to deposit payments only to one or more accounts of a payee at one or more financial institutions, including credit unions.

(2) The comptroller may also use the electronic funds transfer system to deposit a portion of an employee's gross pay into the employee's account at a credit union as prescribed by Subchapter G, Chapter 659.

(3) A single electronic funds transfer may contain payments to multiple payees. Individual transfers or warrants are not required for each payee.

(4) The comptroller may also use the electronic funds transfer system to deposit a portion of an employee's gross pay into an account of an eligible state employee organization for a membership as prescribed by Subchapter G, Chapter 659.

SECTION 10. Section 403.020, Government Code, is amended to read as follows:

Sec. 403.020. PERFORMANCE REVIEW OF SCHOOL DISTRICTS AND INSTITUTIONS OF HIGHER EDUCATION. (a) In this section, "public junior college" and "general academic teaching institution" have the meanings assigned by Section 61.003, Education Code.

(b) The comptroller may periodically review the effectiveness and efficiency of the budgets and operations of:

- (1) school districts;
- (2) public junior colleges; and
- (3) general academic teaching institutions.

(c) A review of a school district may be initiated by the comptroller or by the request of the [school] district. A review of a public junior college or general academic teaching institution may be initiated only at the request of:

- (1) the governor;
- (2) the Legislative Budget Board; or
- (3) the governing body of the college or institution.

(d) A review may be initiated by a school district only by resolution adopted by a majority of the members of the board of trustees of the district. A review may be initiated by a public junior college or general academic teaching institution only at the request of the president of the college or institution or by a resolution adopted by a majority of the governing body of the college or institution.

(e) [~~b~~] If a review is initiated by the school district, public junior college, or general academic teaching institution, the district, college, or institution shall pay 25 percent of the cost incurred in conducting the review.

(f) [~~e~~] The comptroller shall:

(1) prepare a report showing the results of each review conducted under this section;

(2) file the report with:

(A) the school district, public junior college, or general academic teaching institution that is the subject of the report;

- (B) ~~[5]~~ the governor;
- (C) ~~[5]~~ the lieutenant governor;
- (D) ~~[5]~~ the speaker of the house of representatives;
- (E) ~~[5]~~ the chairs of the standing committees of the senate and of the house of representatives with jurisdiction over public education;
- (F) the commissioner of higher education, if a public junior college or general academic teaching institution is the subject of the report; ~~[5]~~ and
- (G) the commissioner of education, if a school district is the subject of the report; and

(3) make the entire report and a summary of the report available to the public on the Internet.

SECTION 11. Section 403.027(g), Government Code, is amended to read as follows:

(g) In this section, "digital signature" means an electronic identifier intended by the person using it to have the same force and effect as the use of a manual signature ~~[has the meaning assigned by Section 2.108(d), Business & Commerce Code].~~

SECTION 12. Section 403.054, Government Code, is amended by amending Subsection (b) and adding Subsection (i) to read as follows:

(b) The comptroller may not issue a replacement warrant if:

(1) the comptroller has paid the original warrant, unless the comptroller:

- (A) has received ~~[obtained]~~ a refund of the payment; or
- (B) is satisfied that the state agency on whose behalf the comptroller issued the original warrant has taken reasonable steps to obtain a refund of the payment;

(2) the period during which the comptroller may pay the original warrant has expired under Section 404.046 or other applicable law;

(3) the payee of the replacement warrant is not the same as the payee of the original warrant; or

(4) the comptroller is prohibited by a payment law ~~[Section 403.055 or 481.0841, or by Section 57.48, Education Code,]~~ from issuing a warrant to the payee of the replacement warrant.

(i) In this section, "payment law" means:

- (1) Section 403.055;
- (2) Section 57.48, Education Code;
- (3) Section 231.007, Family Code; or
- (4) any similar law that prohibits the comptroller from issuing a warrant or initiating an electronic funds transfer to a person.

SECTION 13. Sections 403.092(a) and (b), Government Code, are amended to read as follows:

(a) To allow efficient management of the cash flow of the general revenue fund and to avoid a temporary cash deficiency in that fund, the comptroller may transfer available ~~[surplus]~~ cash, except constitutionally dedicated revenues, between funds that are managed by or in the custody of the comptroller ~~[state treasury]~~. As soon as practicable the comptroller shall return the available

~~[surplus]~~ cash to the fund from which it was transferred. The comptroller shall preserve the ~~[fund]~~ equity of the fund from which the cash was transferred and shall allocate the earned ~~[depository]~~ interest as if the transfer had not been made.

(b) If the comptroller submits a statement under Article III, Section 49a, of the Texas Constitution when available ~~[surplus]~~ cash transferred under Subsection (a) is in the general revenue fund, the comptroller shall indicate in that statement that the transferred available ~~[surplus]~~ cash is in the general revenue fund, is a liability of that fund, and is not available for appropriation by the legislature except as necessary to return cash to the fund from which it was transferred as required by Subsection (a).

SECTION 14. Sections 403.1042(b), (c), (e), and (f), Government Code, are amended to read as follows:

(b) The advisory committee is composed of 11 members appointed ~~[by the advisory committee]~~ as follows:

(1) one member appointed ~~[nominated]~~ by the comptroller to represent a public hospital or hospital district located in a county with a population of 50,000 or less or a public hospital owned or maintained by a municipality;

(2) one member appointed ~~[nominated]~~ by the political subdivision that, in the year preceding the appointment, received the largest annual distribution paid from the account;

(3) one member appointed ~~[nominated]~~ by the political subdivision that, in the year preceding the appointment, received the second largest annual distribution paid from the account;

(4) four members appointed ~~[nominated]~~ by political subdivisions that:

(A) in the year preceding the appointment, received the 3rd, 4th, 5th, 6th, 7th, 8th, 9th, 10th, 11th, or 12th largest annual distribution paid from the account; and

(B) do not have an appointee ~~[a nominee]~~ serving on the advisory committee at the time of appointment;

(5) one member appointed ~~[nominated]~~ by the County Judges and Commissioners Association of Texas;

(6) one member appointed ~~[nominated]~~ by the North and East Texas County Judges and Commissioners Association;

(7) one member appointed ~~[nominated]~~ by the South Texas County Judges and Commissioners Association; and

(8) one member appointed ~~[nominated]~~ by the West Texas County Judges and Commissioners Association.

(c) A commissioners court that sets the tax rate for a hospital district must approve any person appointed ~~[nominated]~~ by the hospital district to serve on the advisory committee.

(e) Except as provided by this subsection, members ~~[Members]~~ of the advisory committee serve staggered six-year terms expiring on August 31 of each odd-numbered year. A member of the advisory committee whose term expires or who attempts to resign from the committee remains a member of the committee until the member's successor is appointed.

(f) An individual or entity authorized to make an appointment [~~or nominate someone for appointment~~] to the advisory committee created under this section shall attempt to appoint [~~or nominate~~] persons who represent the gender composition, minority populations, and geographic regions of the state.

SECTION 15. Section 404.024, Government Code, is amended by amending Subsection (b) and adding Subsection (l) to read as follows:

(b) State funds not deposited in state depositories shall be invested by the comptroller in:

- (1) direct security repurchase agreements;
- (2) reverse security repurchase agreements;
- (3) direct obligations of or obligations the principal and interest of which are guaranteed by the United States;
- (4) direct obligations of or obligations guaranteed by agencies or instrumentalities of the United States government;
- (5) bankers' acceptances that:
 - (A) are eligible for purchase by the Federal Reserve System;
 - (B) do not exceed 270 days to maturity; and
 - (C) are issued by a bank that has received the highest short-term credit rating by a nationally recognized investment rating firm;
- (6) commercial paper that:
 - (A) does not exceed 270 days to maturity; and
 - (B) except as provided by Subsection (i), has received the highest short-term credit rating by a nationally recognized investment rating firm;
- (7) contracts written by the treasury in which the treasury grants the purchaser the right to purchase securities in the treasury's marketable securities portfolio at a specified price over a specified period and for which the treasury is paid a fee and specifically prohibits naked-option or uncovered option trading;
- (8) direct obligations of or obligations guaranteed by the Inter-American Development Bank, the International Bank for Reconstruction and Development (the World Bank), the African Development Bank, the Asian Development Bank, and the International Finance Corporation that have received the highest credit rating by a nationally recognized investment rating firm;
- (9) bonds issued, assumed, or guaranteed by the State of Israel;
- (10) obligations of a state or an agency, county, city, or other political subdivision of a state;
- (11) mutual funds secured by obligations that are described by Subdivisions (1) through (6), including pooled funds:
 - (A) established by the Texas Treasury Safekeeping Trust Company;
 - (B) operated like a mutual fund; and
 - (C) with portfolios consisting only of dollar-denominated securities; and
- (12) foreign currency for the sole purpose of facilitating investment by state agencies that have the authority to invest in foreign securities.

(l) The comptroller may lend securities under procedures established by the comptroller. The procedures must be consistent with industry practice and must include a requirement to fully secure the loan with cash, obligations, or a combination of cash and obligations. In this subsection, "obligation" means an item described by Subsections (b)(1)-(6).

SECTION 16. Section 404.102, Government Code, is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

(a) The comptroller may incorporate a special-purpose trust company called the Texas Treasury Safekeeping Trust Company. The purposes of the trust company are to provide a means for the comptroller to obtain direct access to services provided by the Federal Reserve System and to enable the comptroller to manage, disburse, transfer, safekeep, and invest funds and securities more efficiently and economically by using established and reasonable financial practices, including the pooling of funds and the lending of securities to the extent practical or necessary. The comptroller may deposit funds and securities with the trust company to achieve its purpose.

(c) The trust company may establish government investment pools consisting of state agency funds not required to be deposited in the state treasury and local government funds that are placed into the pools for investment or reinvestment by the trust company. A state agency or local government may place funds into the pools for investment or reinvestment as authorized by Subsection (a) or other law. In this subsection, "local government" and "state agency" have the meanings assigned by Section 2256.002.

SECTION 17. Section 404.107(b), Government Code, is amended to read as follows:

~~(b) A participant that has money or securities on [Agencies and local political subdivisions of the state and nonprofit corporations, foundations, and other charitable organizations created on behalf of the state or an agency or local political subdivision of the state that are authorized or required to] deposit [money and securities] with the trust company shall pay the fees provided in [established on] the trust company's fee schedule developed under Section 404.103(f). The trust company may:~~

(1) deduct a fee from the principal or earning of a participant on deposit with the trust company; or

(2) require a participant to pay a fee from an amount not on deposit with the trust company.

SECTION 18. Section 404.123(b), Government Code, is amended to read as follows:

(b) The committee may impose a limit on the sum of the total amount of the notes outstanding and the total outstanding liability of the general revenue fund under Section 403.092 ~~[may not at any time exceed 25 percent of the taxes and revenues to be credited to the general revenue fund for the fiscal year as determined by the comptroller, based on the certification made by the comptroller in the enactment of the General Appropriations Act applicable to that fiscal year].~~

SECTION 19. Chapter 447, Government Code, as amended by Chapters 573, 1158, and 1398, Acts of the 77th Legislature, Regular Session, 2001, is reenacted to read as follows:

CHAPTER 447. STATE ENERGY CONSERVATION OFFICE

Sec. 447.001. GOVERNANCE AND GENERAL AUTHORITY. The state energy conservation office:

- (1) is under the direction and control of the comptroller;
- (2) shall promote the policies enumerated in this chapter; and
- (3) may act in any capacity authorized by state or federal law.

Sec. 447.002. INFORMATION; PROCEDURES AND RULES; MEASURES AND PROGRAMS. (a) The state energy conservation office shall develop and provide energy and water conservation information for the state.

(b) The state energy conservation office may establish procedures and adopt rules relating to the development and implementation of energy and water conservation measures and programs applicable to state buildings and facilities.

(c) A procedure established or a rule adopted under Subsection (b) may include provisions relating to:

(1) the retrofitting of existing state buildings and facilities with energy-saving or water-saving devices; and

(2) the energy-related or water-related renovation of those buildings and facilities.

(d) To the extent that the governor receives money appropriated for energy and water efficiency measures and programs, the governor, through the state energy conservation office, shall implement measures and programs that the state energy conservation office identifies as encouraging energy or water conservation by state government.

(e) A state agency shall implement an energy or water conservation measure or program in accordance with plans developed under Section 447.009.

(f) The state energy conservation office shall coordinate all water conservation-related activities with the Texas Water Development Board. The board shall assist the office in the development of all proposed water conservation and reuse requirements and provide training and expertise to the office regarding water conservation issues.

Sec. 447.003. LIAISON TO FEDERAL GOVERNMENT. The state energy conservation office is the state liaison to the federal government for the implementation and administration of federal programs relating to state agency energy matters. The office shall administer state programs established under:

(1) Part D, Title III, Energy Policy and Conservation Act (42 U.S.C. Section 6321 et seq.), and its subsequent amendments;

(2) Part G, Title III, Energy Policy and Conservation Act (42 U.S.C. Section 6371 et seq.), and its subsequent amendments; and

(3) other federal energy conservation programs as assigned to the office by the governor or the legislature.

Sec. 447.004. DESIGN STANDARDS. (a) The state energy conservation office shall establish and publish mandatory energy and water conservation design standards for each new state building or major renovation project,

including a new building or major renovation project of a state-supported institution of higher education. The office shall define "major renovation project" for purposes of this section and shall review and update the standards biennially.

(b) The standards established under Subsection (a) must:

(1) include performance and procedural standards for the maximum energy and water conservation allowed by the latest and most cost-effective technology that is consistent with the requirements of public health, safety, and economic resources;

(2) be stated in terms of energy and water consumption levels;

(3) consider the various types of building uses; and

(4) allow for design flexibility.

(c) Any procedural standard established under this section must be directed toward specific design and building practices that produce good thermal resistance and low infiltration and toward requiring practices in the design of mechanical and electrical systems that maximize energy and water efficiency. The procedural standards must address, as applicable:

(1) insulation;

(2) lighting;

(3) ventilation;

(4) climate control;

(5) water-conserving fixtures, appliances, and equipment or the substitution of non-water-using fixtures, appliances, and equipment;

(6) water-conserving landscape irrigation equipment;

(7) landscaping measures that reduce watering demands and capture and hold applied water and rainfall, including:

(A) landscape contouring, including the use of berms, swales, and terraces; and

(B) the use of soil amendments that increase the water-holding capacity of the soil, including compost;

(8) rainwater harvesting equipment and equipment to make use of water collected as part of a storm-water system installed for water quality control;

(9) equipment for recycling or reusing water originating on the premises or from other sources, including treated municipal effluent;

(10) equipment needed to capture water from nonconventional, alternate sources, including air conditioning condensate or graywater, for nonpotable uses;

(11) metering equipment needed to segregate water use in order to identify water conservation opportunities or verify water savings;

(12) special energy requirements of health-related facilities of higher education and state agencies; and

(13) any other item that the state energy conservation office considers appropriate.

(d) A state agency or an institution of higher education shall submit a copy of its design and construction manuals to the state energy conservation office as the office considers necessary to demonstrate compliance by the agency or institution with the standards established under this section.

(e) A state agency or an institution of higher education may not begin construction of a new state building or a major renovation project before the design architect or engineer for the construction or renovation has:

(1) certified to the agency or institution that the construction or renovation complies with the standards established under this section; and

(2) provided a copy of that certification to the state energy conservation office.

Sec. 447.005. ENERGY AND WATER EFFICIENCY PROJECTS. Subject to applicable state and federal laws or guidelines, the state energy conservation office may:

(1) implement an energy or water efficiency project at a state agency; or

(2) assist the agency in implementing the project through an energy or water efficiency program.

Sec. 447.006. ADDITIONAL ENERGY AND WATER SERVICES.

(a) The state energy conservation office may provide additional energy and water services, including:

(1) training of designated state employees in energy and water management, energy-accounting techniques, water-accounting techniques, and energy efficient and water efficient design and construction;

(2) technical assistance regarding energy efficient and water efficient capital improvements, energy efficient and water efficient building design, and cogeneration and thermal storage investments;

(3) technical assistance to the state auditor or a state agency regarding energy and water management performance audits and the monitoring of utility bills to detect billing errors;

(4) technical assistance to a state agency regarding third-party financing of an energy efficient and water efficient capital improvement project; and

(5) other energy-related and water-related assistance that the office considers appropriate, if the assistance is requested by a state agency, an institution of higher education, a consortium of institutions of higher education, or another governmental entity created by state law.

(b) Using available state, federal, or oil overcharge funds, the state energy conservation office may provide technical assistance to a state agency or an institution of higher education in analyzing or negotiating rates for electricity or natural gas supplies from a locally certificated electric supplier, a natural gas supplier, or a state-owned energy resource, including a transportation charge for natural gas.

(c) A state agency or an institution of higher education may request the assistance of the state energy conservation office before negotiating or contracting for the supply or transportation of natural gas or electricity.

(d) A state agency or an institution of higher education with expertise in rate analysis, negotiation, or any other matter related to the procurement of electricity and natural gas supplies from a locally certificated electric supplier, a natural gas supplier, or a state-owned energy resource may assist the state energy

conservation office whenever practicable. The attorney general on request shall assist the office and other state agencies and institutions of higher education in negotiating rates for electricity and other terms of electric utility service.

(e) Using available funds from any source, the state energy conservation office may assist a state agency, an institution of higher education, a consortium of institutions of higher education, or another governmental entity created by state law to further the goals and pursue the policies of the state in energy research as may be determined by the governor or the legislature. The office may assist a state agency in implementing current federal energy policy.

(f) The state energy conservation office on request may negotiate rates for electricity and other terms of electric utility service for a state agency or an institution of higher education. The office also may negotiate the rates and the other terms of service for a group of agencies or institutions in a single contract.

(g) The state energy conservation office may analyze the rates for electricity charged to and the amount of electricity used by state agencies and institutions of higher education to determine ways the state could obtain lower rates and use less electricity. Each state agency, including the Public Utility Commission of Texas, and institution of higher education shall assist the office in obtaining the information the office needs to perform its analysis.

Sec. 447.007. ENERGY AND WATER AUDITS. (a) The state energy conservation office may audit a state-owned building used by a state agency to assist the agency in reducing energy and water consumption and costs through improved energy and water efficiency.

(b) Based on any audit performed under Subsection (a), the state energy conservation office may recommend changes to improve energy and water efficiency.

(c) Each state agency or institution of higher education shall review and audit utility billings and contracts to detect billing errors. Any contract with a private person to conduct the review or audit must comply with all applicable provisions of Subchapter A, Chapter 2254, regarding professional services contracts. The contract may not be awarded on a contingent fee basis unless the governor determines that the contract is necessary, reasonable, and prudent.

Sec. 447.008. ENERGY-SAVING AND WATER-SAVING DEVICES OR MEASURES. (a) On approval by the state energy conservation office, a state agency that reduces its energy or water expenses may use any funds saved by the agency from appropriated utility funds for the purchase of an energy-saving or water-saving device or measure. For purposes of this section, "energy-saving or water-saving device or measure" means a device or measure that directly reduces:

(1) energy or water costs; or

(2) the energy or water consumption of equipment, including a lighting, heating, ventilation, air-conditioning system, or other water-using system, without materially altering the quality of the equipment.

(b) A state agency, in accordance with the recommendations of an energy or water audit, may purchase energy-saving and water-saving devices or measures from appropriated utility funds if the savings in utility funds projected by the audit will offset the purchase. The agency shall retain in its files a copy of the recommendation and repayment schedule as evidence of the projected savings.

Sec. 447.009. ENERGY AND WATER MANAGEMENT PLANNING.

(a) The state energy conservation office shall provide energy and water management planning assistance to a state agency or an institution of higher education, including:

(1) preparation by the agency or institution of a long-range plan for the delivery of reliable, cost-effective utility services for the state agency or institution;

(2) assistance to the Department of Public Safety for energy emergency contingency planning, using state or federal funds when available;

(3) assistance to each state agency or institution of higher education in preparing comprehensive energy and water management plans; and

(4) assistance to state agencies other than institutions of higher education in meeting the requirements of Section 447.002, including assistance in scheduling and assigning priorities to implementation plans to ensure that state agencies adopt qualified cost-effective efficiency measures and programs for all state facilities not later than September 1, 2006.

(b) A state agency or an institution of higher education shall develop the plan described in Subsection (a)(1) and submit the plan to the state energy conservation office upon request. The agency or institution shall use the plan in preparing its five-year construction and major renovation plans. After other energy-saving or water-saving alternatives are considered, district heating and cooling or on-site generation of electricity may be considered in planning for reliable, efficient, and cost-effective utility services.

(c) The state energy conservation office shall prepare guidelines for preparation of the plan described in Subsection (a)(3). A state agency or an institution of higher education that occupies a state-owned building shall prepare and implement a five-year energy and water management plan and shall submit that plan to the office upon request. The agency or institution shall update its plan biennially. A state agency or an institution of higher education that occupies a building not owned by the state shall cooperate with the office in addressing the energy or water management of that building.

(d) The comprehensive energy and water management plan described in Subsection (a)(3) shall be included in the five-year construction and major repair and rehabilitation plans for institutions of higher education as required by Section 61.0651, Education Code.

SECTION 20. Subchapter A, Chapter 609, Government Code, is amended by adding Section 609.014 to read as follows:

Sec. 609.014. COORDINATION OF PLANS. Notwithstanding any other provision of this chapter, an institution of higher education, as defined by Section 61.003, Education Code, participating in a group benefits program under Chapter 1551, Insurance Code, may participate under this chapter only in a deferred compensation plan described by Subchapter C.

SECTION 21. Section 659.102, Government Code, is amended by amending Subsection (c) and adding Subsection (d) to read as follows:

(c) The supplemental optional benefits program may include permanent life insurance, catastrophic illness insurance, disability insurance, ~~[or]~~ prepaid legal services, or a qualified transportation benefit.

(d) A qualified transportation benefit is a transportation benefit meeting the requirements of Section 132(f), Internal Revenue Code of 1986. The Employees Retirement System of Texas shall determine a fee or charge that may be paid as a qualified transportation benefit.

SECTION 22. Subchapter G, Chapter 659, Government Code, is amended by adding Section 659.1031 to read as follows:

Sec. 659.1031. DEDUCTION OF MEMBERSHIP FEES FOR ELIGIBLE STATE EMPLOYEE ORGANIZATIONS. (a) An employee of a state agency may authorize in writing a deduction each pay period from the employee's salary or wage payment for payment to an eligible state employee organization of a membership fee in the organization.

(b) In this section, "eligible state employee organization" means a state employee organization with a membership of at least 2,000 active or retired state employees who hold or who have held certification from the Commission on Law Enforcement Officer Standards and Education.

SECTION 23. Section 659.104(a), Government Code, is amended to read as follows:

(a) An authorization for a deduction under this subchapter must direct the comptroller or, if applicable, the appropriate financial officer of an institution of higher education to transfer the withheld funds to the program, eligible state employee organization, or credit union designated by the employee.

SECTION 24. Section 659.110, Government Code, is amended to read as follows:

Sec. 659.110. RULES. The comptroller may establish procedures and adopt rules to administer the credit union and the eligible state employee organization membership fee deduction programs ~~[program]~~ authorized by this subchapter.

SECTION 25. Section 659.131(8), Government Code, is amended to read as follows:

(8) "Indirect services" means ~~[health and human]~~ services that:

(A) enable, augment, or otherwise support the ~~[are not]~~ direct delivery of health and human services; and

(B) demonstrably benefit residents of this state.

SECTION 26. Section 659.146(c), Government Code, is amended to read as follows:

(c) A federation or fund that seeks statewide participation in a state employee charitable campaign must apply on behalf of itself and its affiliated agencies to the state policy committee during the annual eligibility determination period specified by the committee. The state policy committee shall review each application and may approve a federation or fund for statewide participation only if the federation or fund qualifies as a statewide charitable organization [~~or as an international federation or fund~~]. The state policy committee may approve an affiliated charitable organization for statewide participation only if the organization qualifies as a statewide charitable organization [~~or is an affiliated agency of an international federation or fund~~].

SECTION 27. Section 659.150(b), Government Code, is amended to read as follows:

(b) A participating charitable organization may not use contributions under this subchapter to:

- (1) directly or indirectly fund [~~conduct~~] litigation; or
- (2) make expenditures that would require the organization to register under Chapter 305 if the organization were not an entity exempt from registration under that chapter.

SECTION 28. Section 659.253, Government Code, is amended to read as follows:

Sec. 659.253. TRANSFER WITHIN AGENCY FROM EXEMPT TO CLASSIFIED POSITION. (a) Except as provided by Subsection (b), a [A] state employee who transfers [~~moves~~] within a state agency from an exempt [a] position [~~exempt from the state's position classification plan~~] to a classified position is entitled to [~~will~~] receive an annual salary in the [~~proper~~] salary group to which the classified position is allocated.

(b) During the fiscal biennium in which a state employee transfers within a state agency from an exempt position to a classified position, the employee's annual salary rate after the transfer may not [to] exceed:

(1) the rate for the salary step equal to the rate received by the employee when holding the [~~employee's current~~] exempt position [~~salary~~] or the rate for the next higher salary step, if the classified position is allocated [~~moving~~] to a [~~position in a~~] salary group that is divided into steps; or

(2) the rate received by the employee when holding the [~~employee's current~~] exempt position [~~salary~~] or the maximum rate of the [~~new~~] salary group to which the classified position is allocated, whichever is lower, if the classified position is allocated to [~~moving to a position in~~] a salary group that is not divided into steps.

[(b) Except as provided by this section, a state agency that at any time during a state fiscal biennium pays a state employee an exempt salary specifically established in the General Appropriations Act may not subsequently during the state fiscal biennium pay the employee a greater salary under Salary Schedule A, B, or C of the General Appropriations Act.]

(c) A merit salary increase for [~~state agency that pays~~] a state employee who transfers to a classified position from an exempt position for which the [~~an exempt~~] salary is specifically established in the General Appropriations Act [~~and~~

~~that then transfers the employee to a position in which the employee is paid under Salary Schedule A, B, or C of the General Appropriations Act] may not take effect if:~~

~~(1) the employee has spent less than [grant a merit salary increase to the employee until at least] six months in the classified position; or~~

~~(2) the increase would cause the salary limitation prescribed by Subsection (b) to be exceeded [after the date that the agency begins to pay the employee under Salary Schedule A, B, or C of the General Appropriations Act].~~

(d) The Legislative Budget Board and the governor together may approve an exception to the salary limitations prescribed by Subsection (b) ~~[this section]~~ for a state employee:

(1) on receiving the employing state agency's application for the exception; and

(2) if the employee's job responsibilities with the state agency have changed substantially during the ~~[state fiscal]~~ biennium.

(e) In this section:

(1) "Classified position" means a position classified under the state's position classification plan.

(2) "Exempt position" means a position exempt from the state's position classification plan.

SECTION 29. Subchapter K, Chapter 659, Government Code, is amended by adding Section 659.2531 to read as follows:

Sec. 659.2531. TRANSFER WITHIN AGENCY BETWEEN CLASSIFIED POSITIONS ALLOCATED TO SAME SALARY GROUP. (a) In this section:

(1) "Classified position" means a position classified under the state's position classification plan.

(2) "Transfer" means the transfer of a state employee within a state agency between two classified positions that:

(A) are allocated to the same salary group; and

(B) have different position titles as listed in the General Appropriations Act.

(b) Except as provided by Subsection (c), a state employee's annual salary rate immediately after a transfer may not exceed:

(1) the rate for the salary step that is one step higher than the salary step at which the employee was paid immediately before the transfer, if the classified position to which the employee transfers is allocated to a salary group that is divided into steps; or

(2) 103.4 percent of the employee's annual salary rate immediately before the transfer, if the classified position to which the employee transfers is allocated to a salary group that is not divided into steps.

(c) A state employee's annual salary rate immediately after a transfer may not exceed the maximum rate for the appropriate salary group.

SECTION 30. Section 659.255, Government Code, is amended to read as follows:

Sec. 659.255. MERIT SALARY INCREASES; ONE-TIME MERIT PAYMENTS. (a) In this [This] section:

(1) "Classified employee" means a state employee who holds a classified position.

(2) "Classified position" means a position [applies only to positions] classified under the state's position classification plan.

(3) "Merit salary increase" means an increase in compensation to:

(A) a higher step rate in the same classified salary group, if the classified employee is compensated under Salary Schedule A of the General Appropriations Act; or

(B) a higher rate within the range of the same classified salary group, if the classified employee is compensated under Salary Schedule B of the General Appropriations Act.

~~(b) [A state agency administrator may grant merit salary increases including one-time merit payments to employees compensated under Salary Schedules A and B of the General Appropriations Act whose job performance and productivity are consistently above that normally expected or required. For classified employees compensated under Salary Schedule A of the General Appropriations Act, a merit increase involves an increase in an employee's salary to a higher step rate in the same salary group. For classified employees compensated under Salary Schedule B of the General Appropriations Act, a merit increase involves an increase in an employee's salary to a higher rate within the range of the same salary group. Merit increases including one-time merit payments are subject to the restrictions prescribed by Subsections (c) (c).~~

~~(c) The comptroller shall prescribe accounting and reporting procedures as necessary to ensure the availability of information reflecting each state agency's use of merit salary increases, including one-time merit payments.~~

(c) Each state agency shall establish:

(1) a procedure for determining the eligibility of a classified employee to receive a merit salary increase or a one-time merit payment from the agency; and

(2) requirements for substantiating the eligibility of a classified employee who receives a merit salary increase or a one-time merit payment from the agency.

~~(d) Merit salary increases and [including] one-time merit payments shall be applied throughout the range of classified salary groups used by each state agency.~~

(e) A state agency may award a merit salary increase to a classified employee in relation to the employee's performance in the current classified position held by the employee if [For an employee to be eligible for a merit salary increase or a one-time merit payment, the following additional criteria must be met]:

(1) the employee has [must have] been employed by the [state] agency in that position for at least six continuous months before [prior to] the effective date [award] of the increase [or payment];

(2) the effective date of the increase is at least six months after the effective date of the employee's [must have elapsed since the employee's] last:

(A) promotion; [~~enhanced compensation award authorized by the General Appropriations Act, one time merit payment,~~] or

(B) merit salary increase for performance in that position [~~at the agency~~]; [~~and~~]

(3) the agency has complied with Subsection (c);

(4) the employee's job performance and productivity in that position are consistently above that normally expected or required; and

(5) the effective date of the increase is at least six months after the effective date of the agency's last:

(A) payment to the employee of an enhanced compensation award authorized by the General Appropriations Act; or

(B) one-time merit payment for performance in that position.

(f) A state agency may make a one-time merit payment to a classified employee in relation to the employee's performance in the current classified position held by the employee if:

(1) the employee has been employed by the agency in that position for at least six continuous months before the effective date of the payment;

(2) the effective date of the payment is at least six months after the effective date of the employee's last:

(A) promotion; or

(B) merit salary increase for performance in that position;

(3) the agency has complied with Subsection (c);

(4) the employee's job performance and productivity in that position are consistently above that normally expected or required; and

(5) the effective date of the payment is at least six months after the effective date of the agency's last:

(A) payment to the employee of an enhanced compensation award authorized by the General Appropriations Act; or

(B) one-time merit payment for performance in that position.

~~[criteria for granting merit salary increases or one-time merit payments must include specific criteria and documentation to substantiate the granting of a merit increase or one-time merit payment.]~~

SECTION 31. Subchapter K, Chapter 659, Government Code, is amended by adding Section 659.262 to read as follows:

Sec. 659.262. ADMINISTRATION. The comptroller may establish procedures and adopt rules to administer this subchapter.

SECTION 32. Section 661.152(d), Government Code, is amended to read as follows:

(d) An employee accrues vacation leave and may carry vacation leave forward from one fiscal year to the next in accordance with the following schedule:

	Maximum Hours
	Carried Forward
Hours Accrued	From One Fiscal
Per Month for	Year to the Next

Employees With Total State Employment of:	Full-time Employment	for a Full-time Employee
less than 2 years	<u>8</u> [7]	<u>180</u> [168]
at least 2 but less than 5 years	<u>9</u> [8]	<u>244</u> [232]
at least 5 but less than 10 years	<u>10</u> [9]	<u>268</u> [256]
at least 10 but less than 15 years	<u>11</u> [10]	<u>292</u> [280]
at least 15 but less than 20 years	<u>13</u> [12]	<u>340</u> [328]
at least 20 but less than 25 years	<u>15</u> [14]	<u>388</u> [376]
at least 25 but less than 30 years	<u>17</u> [16]	<u>436</u> [424]
at least 30 but less than 35 years	<u>19</u> [18]	<u>484</u> [472]
at least 35 years or more	<u>21</u> [20]	<u>532</u> [520]

SECTION 33. Subchapter A, Chapter 811, Government Code, is amended by adding Sections 811.007 and 811.008 to read as follows:

Sec. 811.007. IMMUNITY FROM LIABILITY. The board of trustees, executive director, and employees of the retirement system are not liable for any action taken or omission made or suffered by them in good faith in the performance of any duty in connection with any program or system administered by the retirement system.

Sec. 811.008. INSURANCE. Notwithstanding any other law, the board of trustees may self-insure or purchase any insurance in amounts the board considers reasonable and prudent.

SECTION 34. The heading to Section 813.104, Government Code, is amended to read as follows:

Sec. 813.104. ALTERNATIVE PAYMENTS AND METHODS TO ESTABLISH OR REESTABLISH SERVICE CREDIT.

SECTION 35. Section 813.104, Government Code, is amended by adding Subsection (e) to read as follows:

(e) The retirement system may provide for the electronic filing of agreements to establish or reestablish service credit. In this subsection, "electronic filing" has the meaning assigned by Section 814.010(a).

SECTION 36. Subchapter A, Chapter 814, Government Code, is amended by adding Section 814.010 to read as follows:

Sec. 814.010. ELECTRONIC FILING OF BENEFICIARY DESIGNATION. (a) In this section, "electronic filing" means the filing of data in the form of digital electronic signals transformed by computer and stored on magnetic tape, optical disks, or any other medium.

(b) A person entitled to designate a beneficiary under any system or program administered by the retirement system may make the designation by electronic filing under procedures adopted by the retirement system.

SECTION 37. Section 815.103, Government Code, is amended by adding Subsection (f) to read as follows:

(f) Chapter 412, Labor Code, does not apply to the retirement system. The board of trustees may acquire services described by that chapter in any manner or amount the board considers reasonable.

SECTION 38. Section 832.002, Government Code, is amended to read as follows:

Sec. 832.002. MEMBERSHIP FEE. (a) Each member of the retirement system annually shall pay the system a membership fee of \$10. A contributing member shall pay the fee with the member's first contribution to the retirement system in each fiscal year in the manner provided by Section 835.101 for payment of the member's contribution to the retirement system.

(b) If the membership fee is not paid with the member's first contribution of the fiscal year to the retirement system, the board of trustees may deduct the amount of the fee from that contribution or from any benefit to which the member becomes entitled.

SECTION 39. Sections 2101.0115(a) and (b), Government Code, are amended to read as follows:

(a) A state agency shall submit an annual report to:

- (1) the governor;
- (2) ~~the comptroller;~~
- ~~(3)~~ the Legislative Reference Library;
- (3) ~~(4)~~ the state auditor; and
- (4) ~~(5)~~ the Legislative Budget Board.

(b) A state agency's annual report must cover an entire fiscal year. The agency shall submit the report not later than December 31 of each year ~~the date and in the form prescribed by the comptroller~~.

SECTION 40. Section 2113.205(b), Government Code, is amended to read as follows:

(b) The comptroller may authorize a [A] state agency to [may] use money appropriated for a particular fiscal year to pay the entire cost or amount of a service, including an Internet connection, a periodical subscription, a maintenance contract, a post office box rental, insurance, or a surety or honesty bond, regardless of whether the service is provided over [it covers] more than one fiscal year.

SECTION 41. Section 2162.001, Government Code, is amended to read as follows:

Sec. 2162.001. DEFINITIONS ~~DEFINITION~~. In this chapter:

(1) "Council" ~~["council"]~~ means the State Council on Competitive Government.

(2) "Local government" means a county, municipality, special district, school district, junior college district, or other legally constituted political subdivision of the state.

SECTION 42. Section 2162.102, Government Code, is amended by adding Subsection (d) to read as follows:

(d) To the extent the council determines is feasible, a local government may voluntarily participate in a contract awarded by the council or a state agency under this chapter. A local government that purchases a good or a service under a contract awarded under this chapter is considered to have satisfied any state law requiring the local government to follow a competitive purchasing procedure for the purchase.

SECTION 43. Section 2166.406, Government Code, as amended by Chapter 573, Acts of the 77th Legislature, Regular Session, 2001, is amended to read as follows:

Sec. 2166.406. ENERGY SAVINGS PERFORMANCE CONTRACTS [OR WATER CONSERVATION MEASURES]. (a) In this section, "energy savings performance contract" means a contract for energy or water conservation measures to reduce energy or water consumption or operating costs of governmental facilities in which the estimated savings in utility costs resulting from the measures is guaranteed to offset the cost of the measures over a specified period. The term ~~Notwithstanding any other provisions of this chapter, the governing body of a state agency, without the consent of the commission, may enter into a contract for energy conservation measures to reduce energy or water consumption or operating costs of governmental facilities in accordance with this section.~~

~~[(b) A contract authorized under this section]~~ includes a contract for the installation of:

(1) insulation of a ~~the~~ building structure and systems within the building;

(2) storm windows or doors, caulking or weather stripping, multiglazed windows or doors, heat absorbing or heat reflective glazed and coated window or door systems, or other window or door system modifications that reduce energy consumption;

(3) automatic energy control systems, including computer software and technical data licenses;

(4) heating, ventilating, or air-conditioning system modifications or replacements that reduce energy or water consumption;

(5) lighting fixtures that increase energy efficiency;

(6) energy recovery systems;

(7) electric systems improvements;

(8) water-conserving fixtures, appliances, and equipment or the substitution of non-water-using fixtures, appliances, and equipment;

(9) water-conserving landscape irrigation equipment;

(10) landscaping measures that reduce watering demands and capture and hold applied water and rainfall, including:

(A) landscape contouring, including the use of berms, swales, and terraces; and

(B) the use of soil amendments that increase the water-holding capacity of the soil, including compost;

(11) rainwater harvesting equipment and equipment to make use of water collected as part of a storm-water system installed for water quality control;

(12) equipment for recycling or reuse of water originating on the premises or from other sources, including treated municipal effluent;

(13) equipment needed to capture water from nonconventional, alternate sources, including air conditioning condensate or graywater, for nonpotable uses;

(14) metering equipment needed to segregate water use in order to identify water conservation opportunities or verify water savings; or

(15) other energy or water conservation-related improvements or equipment including improvements or equipment related to renewable energy or nonconventional water sources or water reuse.

(b) Notwithstanding any other provision of this chapter, a state agency, without the consent of the commission, may enter into an energy savings performance contract in accordance with this section.

(c) Each ~~[All]~~ energy or water conservation measure ~~[measures]~~ must comply with current local, state, and federal construction, plumbing, and environmental codes and regulations. Notwithstanding ~~[anything to the contrary in]~~ Subsection (a) ~~(b)~~, an energy savings performance [a] contract may ~~[for energy or water conservation measures shall]~~ not include improvements or equipment that allow or cause water from any condensing, cooling, or industrial process or any system of nonpotable usage over which the public water supply system officials do not have sanitary control to be returned to the potable water supply.

(d) A state agency may enter into energy savings performance ~~[The entity with whom the board]~~ contracts only with a person who is ~~[must be]~~ experienced in the design, implementation, and installation of the energy or water conservation measures addressed by the contract.

(e) Before entering into an energy savings performance [a] contract ~~[for energy or water conservation measures]~~, a ~~[the governing body of the]~~ state agency shall require the provider of the energy or water conservation measures to file with the agency ~~[governing body]~~ a payment and performance bond relating to the installation of the measures in accordance with Chapter 2253. The agency may also require a separate bond to cover the value of the guaranteed savings on the contract ~~[that is in an amount the governing body finds reasonable and necessary to protect the interests of the state agency and that is conditioned on the faithful execution of the terms of the contract].~~

(f) The state agency may enter into an energy savings performance [a] contract for a period of more than one year only ~~[for energy or water conservation measures with an entity]~~ if the state agency finds that the amount the state agency would spend on the energy or water conservation measures will not exceed the amount to be saved in energy, water, wastewater, and operating costs over 15 years from the date of installation.

(g) An energy savings performance contract ~~[Energy or water conservation measures]~~ with respect to existing buildings or facilities may be financed:

(1) under a lease/purchase contract that has a term not to exceed 15 years from the final date of installation and that meets federal tax requirements for tax-free municipal leasing or long-term financing, including a lease/purchase contract under the master equipment lease purchase program administered by the Texas Public Finance Authority under Chapter 1232;

(2) with the proceeds of bonds; or

(3) under a contract with the provider of the energy or water conservation measures that has a term not to exceed 15 years from the final date of installation.

(h) ~~An energy savings performance [A] contract [for energy or water conservation measures]~~ shall contain provisions requiring [pursuant to which] the provider of the energy or water conservation measures to guarantee [guarantees] the amount of the savings to be realized by the state agency under the contract. If the term of the [a] contract [for energy or water conservation measures] exceeds one year, the agency's contractual obligation, including costs of design, engineering, installation, and anticipated debt service, in any one year during the term of the contract beginning after the final date of installation may not exceed the total energy, water, wastewater, and operating cost savings, including [but not limited to] electrical, gas, water, wastewater, or other utility cost savings and operating cost savings resulting from the measures [automatic monitoring and control], as determined by the state agency in this subsection, divided by the number of years in the contract term.

(i) An energy savings performance [A] contract shall [under this section may] be let according to the procedures established for procuring certain professional services by Section 2254.004 [under competitive sealed proposal procedures]. Notice of the request for qualifications [proposals] shall be given in the manner provided by Section 2156.002 [for in Chapter 2156]. The State Energy Conservation Office shall establish guidelines and an approval process for awarding energy savings performance contracts [awarded under this section]. The guidelines adopted under this subsection must require that the cost savings projected by an offeror be reviewed by a licensed professional engineer who is not an officer or employee of an offeror for the contract under review or otherwise associated with the contract. An engineer who reviews a contract shall maintain the confidentiality of any proprietary information the engineer acquires while reviewing the contract. An energy savings performance contract may not be entered into unless the contract has been approved by the State Energy Conservation Office. Sections 1001.053 and 1001.407, Occupations Code, apply [Section 19, The Texas Engineering Practice Act (Article 3271a, Vernon's Texas Civil Statutes), applies] to work performed under the contract. [The contract shall be awarded to the responsible offeror whose proposal, following negotiations, is determined to be the most advantageous to the state agency considering the savings and other evaluation factors set forth in the request for proposals except that if the state agency finds that no offer is acceptable, it shall refuse all offers.]

(j) ~~[In accordance with regulations adopted by the state agency, the state agency may conduct discussions with offerors who submit proposals and who are determined to be reasonably qualified for the award of the contract. Offerors shall be treated fairly and equally with respect to any opportunity for discussion and revision of proposals.]~~

~~[(k) If provided in a request for proposals, proposals shall be opened in a manner that avoids disclosure of the contents to competing offerors and keeps the proposals secret during negotiations. All proposals are open for public inspection after a contract is awarded unless the information is excepted from disclosure under Chapter 552.~~

~~[(l) To obtain the best final offers, the state agency may allow proposal revisions after submissions and before the award of a contract for energy or water conservation measures. Final review and approval of the contract will be provided by the State Energy Conservation Office.~~

~~[(m)]~~ The legislature shall base an agency's appropriation for energy, water, and wastewater costs during a fiscal year on the sum of:

(1) the agency's estimated energy, water, and wastewater costs for that fiscal year; and

(2) if an energy savings performance [a] contract [under this section] is in effect, the agency's estimated net savings resulting from the contract during the contract term, divided by the number of years in the contract term.

SECTION 44. Section 2201.002, Government Code, is amended to read as follows:

Sec. 2201.002. USE OF FUND. ~~[(a)]~~ The fund may be used ~~[only]~~ to finance:

(1) the acquisition, construction, repair, improvement, or equipping of a building by a state agency for a state purpose;

(2) the acquisition of real or personal property necessary for a state agency to take an action described by Subdivision (1); ~~[or]~~

(3) the administration of the asset management division of the General Land Office; or

(4) any other purpose for which funds may be appropriated from general revenue.

~~[(b) The fund may not be used to pay for an activity of:~~

~~[(1) the Texas Department of Transportation;~~

~~[(2) an institution of higher education as defined by Section 61.003, Education Code;~~

~~[(3) the Texas State Technical College System;~~

~~[(4) the Southwest Collegiate Institute for the Deaf;~~

~~[(5) the Employees Retirement System of Texas; or~~

~~[(6) the Teacher Retirement System of Texas.~~

~~[(c) The fund may not be used to pay salaries.]~~

SECTION 45. Section 2201.003(b), Government Code, is amended to read as follows:

(b) At the end of each fiscal biennium the unencumbered balance of the fund ~~[in excess of \$500 million]~~ shall be transferred to the credit of the general revenue fund.

SECTION 46. Section 2251.025(b), Government Code, is amended to read as follows:

(b) The rate of interest that ~~[interest]~~ accrues on an overdue payment is ~~[at]~~ the rate in effect on September 1 of the fiscal year in which the payment becomes overdue. The rate in effect on September 1 is equal to the sum of:

- (1) one percent; and
- (2) the prime rate as published in the Wall Street Journal on the first day of July of the preceding fiscal year that does not fall on a Saturday or Sunday ~~[each month].~~

SECTION 47. Section 2252.903(e), Government Code, is amended by adding Subdivision (4) to read as follows:

(4) "Written contract" does not include a contract the payments for which must be made through the comptroller's issuance of warrants or initiation of electronic funds transfers under Section 404.046, 404.069, or 2103.003.

SECTION 48. Section 2305.012, Government Code, is amended to read as follows:

Sec. 2305.012. ADMINISTRATION ~~[STAFF]~~; ASSISTANCE. (a) The energy office shall ~~[provide staff to]~~ implement and administer this chapter.

(b) The energy office or the governor through the energy office may ~~[also]~~ enlist the assistance of a private entity or a state agency, department, commission, or other entity to:

- (1) evaluate or review a proposal;
- (2) audit a program participant or a supervising state agency;
- (3) perform administrative duties under this chapter; or
- (4) develop eligibility or evaluation criteria.

SECTION 49. Section 2305.032(a), Government Code, is amended to read as follows:

(a) The energy office under the loanstar revolving loan program may ~~[approve and finance projects that]~~ provide loans to finance energy and water efficiency measures for public facilities ~~[eligible applicants for energy saving capital improvements. Projects approved by the energy office should benefit:~~

- ~~[(1) a state agency or institution of higher education;~~
- ~~[(2) a public school;~~
- ~~[(3) a political subdivision of the state;~~
- ~~[(4) a small to medium sized business; and~~
- ~~[(5) a public or nonprofit hospital or health care facility].~~

SECTION 50. Sections 2305.033(b) and (d), Government Code, are amended to read as follows:

(b) In accordance with Part D, Title III ~~[B]~~, Energy Policy and Conservation Act (42 U.S.C. Sec. 6321 et seq.), and its subsequent amendments, the energy office, under the program, shall distribute funds for projects that save measurable quantities of energy.

(d) A proposal under Subsection (b) must:

- (1) promote the conservation of energy; or ~~[and]~~
- (2) improve the efficient use of energy through activities that result in quantifiable energy savings, including:
 - (A) energy audits of buildings;
 - (B) technical assistance in reducing energy bills;

(C) training to building operators and fiscal officers on various energy issues such as utility bill analysis and energy management techniques; or ~~[and]~~

(D) other technical assistance to programs for which funds are appropriated.

SECTION 51. Section 2305.034, Government Code, is amended to read as follows:

Sec. 2305.034. STATE AGENCIES PROGRAM. The energy office is the supervising agency for the state agencies program that may distribute funds through Chapter 447. Projects funded under this section may include:

- (1) energy manager training;
- (2) energy savings performance contracting services, including:
 - (A) education and training;
 - (B) contract review and approval;
 - (C) third-party contract review;
 - (D) development and dissemination of guidelines; and
 - (E) identification of contract financing sources ~~[described by Section 51.027, Education Code];~~
- (3) energy-efficient design assistance for new facilities, including major renovation;
- (4) projects for state building design standards compliance;
- (5) projects to create awareness of model energy codes at the local and state levels;
- (6) projects to develop and maintain the state's utility database; and
- (7) other appropriate energy and information applications.

SECTION 52. Section 2305.039(b), Government Code, is amended to read as follows:

(b) A project may:

- (1) assist a service provider in providing services such as:
 - ~~(A) [traffic light synchronization;~~
 - ~~(B) fleet management;~~
 - ~~(C) [computerized transit routing that is energy efficient;~~
 - (B) commuting solutions
 - ~~(D) car care clinics;~~
 - ~~(E) vanpooling or ridesharing efforts]; and~~
 - (C) [(F) public education related to mass transit;
 - ~~(G) driver training in energy conservation awareness; and~~
 - ~~(H) transportation services for the elderly or persons with a disability;]~~ and
- (2) include studies to improve existing systems and plan for future transportation systems in this state.

SECTION 53. Section 2306.783(a), Government Code, as added by Chapter 432, Acts of the 77th Legislature, Regular Session, 2001, is amended to read as follows:

(a) The Texas Interagency Council for the Homeless is composed of:

(1) one representative from each of the following agencies, appointed by the administrative head of that agency:

- (A) the Texas Department of Health;
- (B) the Texas Department of Human Services;
- (C) the Texas Department of Mental Health and Mental Retardation;
- (D) the Texas Department of Criminal Justice;
- (E) the Texas Department on Aging;
- (F) the Texas Rehabilitation Commission;
- (G) the Texas Education Agency;
- (H) the Texas Commission on Alcohol and Drug Abuse;
- (I) the Department of Protective and Regulatory Services;
- (J) the Health and Human Services Commission;
- (K) the Texas Workforce Commission;
- (L) the Texas Youth Commission; and
- (M) the Texas Veterans Commission;

(2) ~~one representative from the office of the comptroller appointed by the comptroller;~~

~~(3)~~ two representatives from the department, one each from the community affairs division and the housing finance division, appointed by the director; and

~~(3)~~ ~~(4)~~ three members representing service providers to the homeless, one each appointed by the governor, the lieutenant governor, and the speaker of the house of representatives.

SECTION 54. Article 4.73(a), Insurance Code, is amended to read as follows:

(a) The comptroller shall prepare a biennial report with respect to results of the implementation of this subchapter. The report must include:

(1) the number of certified capital companies holding certified capital;

(2) the amount of certified capital invested in each certified capital company;

(3) the amount of certified capital the certified capital company has invested in qualified businesses as of January 1, 2006 ~~[2004]~~, and the cumulative total for each subsequent year;

(4) the total amount of tax credits granted under this subchapter for each year that credits have been granted;

(5) the performance of each certified capital company with respect to renewal and reporting requirements imposed under this subchapter;

(6) with respect to the qualified businesses in which certified capital companies have invested:

(A) the classification of the qualified businesses according to the industrial sector and the size of the business;

(B) the total number of jobs created by the investment and the average wages paid for the jobs; and

(C) the total number of jobs retained as a result of the investment and the average wages paid for the jobs; and

(7) the certified capital companies that have been decertified or that have failed to renew the certification and the reason for any decertification.

SECTION 55. Section 101.251, Insurance Code, is amended by amending Subsections (b), (g), (i), and (j) and adding Subsection (k) to read as follows:

(b) Except as provided by Subsection (j), an ~~unauthorized~~ insurer shall pay to the comptroller, on a form prescribed by the comptroller, a premium receipts tax of 4.85 percent of gross premiums charged for insurance on a subject resident, located, or to be performed in this state.

(g) The ~~unauthorized~~ insurer shall pay the premium receipts tax required by this section before:

(1) March 1 following the calendar year in which the insurance was effectuated, continued, or renewed; or

(2) another date specified by the comptroller.

(i) The tax under this section, if not paid when due, is a liability [On default] of the [an unauthorized] insurer, the insurer agent, and [in the payment of the tax,] the insured [shall pay the tax].

(j) This section does not apply to premiums on:

(1) insurance procured by a licensed surplus lines agent from an eligible surplus lines insurer as defined by Article 1.14-2 on which premium tax is paid in accordance with Article 1.14-2; ~~or~~

(2) an independently procured contract of insurance on which premium tax is paid in accordance with this chapter; or

(3) a contract of insurance written by an insurer that holds a certificate of authority in this state and that is authorized to write the contract.

(k) In this section, "insurer" has the meaning assigned by Section 101.002 and includes an insurer that does not hold a certificate of authority in this state, an eligible surplus lines insurer, and an insurer that holds a certificate of authority in this state.

SECTION 56. The heading to Chapter 302, Local Government Code, is amended to read as follows:

CHAPTER 302. ENERGY SAVINGS PERFORMANCE CONTRACTS [OR WATER CONSERVATION MEASURES] FOR LOCAL GOVERNMENTS

SECTION 57. Section 302.001, Local Government Code, is amended to read as follows:

Sec. 302.001. DEFINITIONS [DEFINITION]. In this chapter:

(1) "Energy savings performance contract" means a contract for energy or water conservation measures to reduce energy or water consumption or operating costs of local government facilities in which the estimated savings in utility costs resulting from the measures is guaranteed to offset the cost of the measures over a specified period. The term includes a contract for the installation or implementation of:

(A) insulation of a building structure and systems within the building;

(B) storm windows or doors, caulking or weather stripping, multiglazed windows or doors, heat-absorbing or heat-reflective glazed and coated window or door systems, or other window or door system modifications that reduce energy consumption;

(C) automatic energy control systems, including computer software and technical data licenses;

(D) heating, ventilating, or air-conditioning system modifications or replacements that reduce energy or water consumption;

(E) lighting fixtures that increase energy efficiency;

(F) energy recovery systems;

(G) electric systems improvements;

(H) water-conserving fixtures, appliances, and equipment or the substitution of non-water-using fixtures, appliances, and equipment;

(I) water-conserving landscape irrigation equipment;

(J) landscaping measures that reduce watering demands and capture and hold applied water and rainfall, including:

(i) landscape contouring, including the use of berms, swales, and terraces; and

(ii) the use of soil amendments that increase the water-holding capacity of the soil, including compost;

(K) rainwater harvesting equipment and equipment to make use of water collected as part of a storm-water system installed for water quality control;

(L) equipment for recycling or reuse of water originating on the premises or from other sources, including treated municipal effluent;

(M) equipment needed to capture water from nonconventional, alternate sources, including air-conditioning condensate or graywater, for nonpotable uses;

(N) metering equipment needed to segregate water use in order to identify water conservation opportunities or verify water savings; or

(O) other energy or water conservation-related improvements or equipment, including improvements or equipment relating to renewable energy or nonconventional water sources or water reuse.

(2) "Local [~~,"local~~] government" means a county, municipality, or other political subdivision of this state. The term [~~local government~~] does not include a school district authorized to enter into an energy savings performance [~~a~~] contract [~~for energy or water conservation measures~~] under Section 44.901, Education Code.

SECTION 58. Section 302.002, Local Government Code, is amended to read as follows:

Sec. 302.002. ENERGY SAVINGS PERFORMANCE CONTRACTS [~~OR WATER CONSERVATION MEASURES~~]. (a) The governing body of a local government may enter into an energy savings performance [~~a~~] contract [~~for energy or water conservation measures to reduce energy or water consumption or operating costs of governmental facilities~~] in accordance with this chapter.

(b) Each [~~A contract authorized under this chapter includes a contract for the installation or implementation of:~~

~~[(1) insulation of the building structure and systems within the building;~~

~~[(2) storm windows or doors, caulking or weather stripping, multiglazed windows or doors, heat absorbing or heat reflective glazed and coated window or door systems, or other window or door system modifications that reduce energy consumption;~~

~~[(3) automatic energy control systems, including computer software and technical data licenses;~~

~~[(4) heating, ventilating, or air conditioning system modifications or replacements that reduce energy or water consumption;~~

~~[(5) lighting fixtures that increase energy efficiency;~~

~~[(6) energy recovery systems;~~

~~[(7) electric systems improvements;~~

~~[(8) water conserving fixtures, appliances, and equipment or the substitution of non water using fixtures, appliances, and equipment;~~

~~[(9) water conserving landscape irrigation equipment;~~

~~[(10) landscaping measures that reduce watering demands and capture and hold applied water and rainfall, including:~~

~~[(A) landscape contouring, including the use of berms, swales, and terraces; and~~

~~[(B) the use of soil amendments that increase the water holding capacity of the soil, including compost;~~

~~[(11) rainwater harvesting equipment and equipment to make use of water collected as part of a storm water system installed for water quality control;~~

~~[(12) equipment for recycling or reuse of water originating on the premises or from other sources, including treated municipal effluent;~~

~~[(13) equipment needed to capture water from nonconventional, alternate sources, including air conditioning condensate or graywater, for nonpotable uses;~~

~~[(14) metering equipment needed to segregate water use in order to identify water conservation opportunities or verify water savings; or~~

~~[(15) other energy or water conservation related improvements or equipment, including improvements or equipment related to renewable energy or nonconventional water sources or water reuse.~~

~~[(c) A-H] energy or water conservation measure ~~[measures]~~ must comply with current local, state, and federal construction, plumbing, and environmental codes and regulations. Notwithstanding Section 302.001(1) ~~[anything to the contrary in Subsection (b)]~~, an energy savings performance ~~[a]~~ contract may for ~~energy or water conservation measures shall]~~ not include improvements or equipment that allow or cause water from any condensing, cooling, or industrial process or any system of nonpotable usage over which public water supply system officials do not have sanitary control to be returned to the potable water supply.~~

SECTION 59. Section 302.003, Local Government Code, as amended by Chapter 1319, Acts of the 77th Legislature, Regular Session, 2001, is amended to read as follows:

Sec. 302.003. PAYMENT AND PERFORMANCE BOND. Notwithstanding any other law ~~[to the contrary]~~, before entering into an energy savings performance ~~[a]~~ contract ~~[for energy conservation measures]~~, the governing body of the local government shall require the provider of the energy or water conservation measures to file with the governing body a payment and performance bond relating to the installation of the ~~[energy conservation]~~ measures in accordance with Chapter 2253, Government Code. The governing body may also require a separate bond to cover the value of the guaranteed savings on the contract.

SECTION 60. Section 302.004, Local Government Code, is amended to read as follows:

Sec. 302.004. METHOD OF FINANCING; TERMS OF CONTRACT. (a) An energy savings performance contract ~~[Energy or water conservation measures with respect to buildings or facilities]~~ may be financed:

(1) under a lease-purchase contract that has a term not to exceed 15 years from the final date of installation and that meets federal tax requirements for tax-free municipal leasing or long-term financing;

(2) with the proceeds of bonds; or

(3) under a contract with the provider of the energy or water conservation measures that has a term not to exceed 15 years from the final date of installation.

(b) An energy savings performance ~~[The]~~ contract shall contain provisions requiring ~~[pursuant to which]~~ the provider of the energy or water conservation measures to guarantee ~~[guarantees]~~ the amount of the savings to be realized by the local government under the contract. If the term of the ~~[a]~~ contract ~~[for energy or water conservation measures]~~ exceeds one year, the local government's contractual obligations in any one year during the term of the contract beginning after the final date of installation may not exceed the total energy, water, wastewater, and operating cost savings, including ~~[but not limited to]~~ electrical, gas, water, wastewater, or other utility cost savings and operating cost savings resulting from the measures as determined by the local government in this subsection, divided by the number of years in the contract term.

SECTION 61. Section 302.005, Local Government Code, as amended by Chapters 573 and 1319, Acts of the 77th Legislature, Regular Session, 2001, is reenacted and amended to read as follows:

Sec. 302.005. BIDDING PROCEDURES; AWARD OF CONTRACT. (a) An energy savings performance ~~[A]~~ contract under this chapter may be let in accordance with the procedures established for procuring certain professional services by Section 2254.004, Government Code. Notice of the request for qualifications shall be published in the manner provided for competitive bidding.

(b) Before ~~[(d) Prior to]~~ entering into an energy savings performance ~~[a]~~ contract ~~[under this section]~~, the governing body must require that the cost savings projected by an offeror be reviewed by a licensed ~~[professional]~~ engineer who is not an officer or employee of an offeror for the contract under review or otherwise associated with the contract or the offeror. An engineer who reviews a contract shall maintain the confidentiality of any proprietary information the

engineer acquires while reviewing the contract. Sections 1001.053 and 1001.407, Occupations Code, apply [Section 19, The Texas Engineering Practice Act (Article 3271a, Vernon's Texas Civil Statutes), applies] to work performed under the contract.

SECTION 62. Section 74.103, Property Code, is amended by adding Subsection (d) to read as follows:

(d) The comptroller may determine the liability of a holder required to file a property report under Section 74.101 using the best information available to the comptroller if the records of the holder are unavailable or incomplete for any portion of the required retention period.

SECTION 63. Section 74.501, Property Code, is amended by adding Subsections (d) and (e) to read as follows:

(d) On receipt of a claim form and all necessary documentation and as may be appropriate under the circumstances, the comptroller may approve the claim of:

(1) the reported owner of the property;

(2) if the reported owner died testate:

(A) the appropriate legal beneficiaries of the owner as provided by the last will and testament of the owner that has been accepted into probate or filed as a muniment of title; or

(B) the executor of the owner's last will and testament who holds current letters testamentary;

(3) if the reported owner died intestate:

(A) the legal heirs of the owner as provided by Section 38, Texas Probate Code; or

(B) the court-appointed administrator of the owner's estate;

(4) the legal heirs of the reported owner as established by an affidavit of heirship order signed by a judge of the county probate court or by a county judge;

(5) if the reported owner is a minor child or an adult who has been adjudged incompetent by a court of law, the parent or legal guardian of the child or adult;

(6) if the reported owner is a corporation:

(A) the president or chair of the board of directors of the corporation, on behalf of the corporation; or

(B) any person who has legal authority to act on behalf of the corporation;

(7) if the reported owner is a corporation that has been dissolved or liquidated:

(A) the sole surviving shareholder of the corporation, if there is only one surviving shareholder;

(B) the surviving shareholders of the corporation in proportion to their ownership of the corporation, if there is more than one surviving shareholder;

(C) the corporation's bankruptcy trustee; or

(D) the court-ordered receiver for the corporation; or

(8) any other person that is entitled to receive the unclaimed property under other law or comptroller policy.

(e) The comptroller may not pay to the following persons a claim to which this section applies:

(1) a creditor, a judgment creditor, a lienholder, or an assignee of the reported owner or of the owner's heirs; or

(2) a person holding a power of attorney from the reported owner or the owner's heirs.

SECTION 64. Sections 111.104(b) and (c), Tax Code, are amended to read as follows:

(b) A tax refund claim may be filed with the comptroller only by the person who directly paid the tax to this state or by the person's attorney, assignee, or other successor.

(c) A claim for a refund must:

(1) be written;

(2) state fully and in detail each reason or ground [~~the grounds~~] on which the claim is founded; and

(3) be filed before the expiration of the applicable limitation period as provided by this code or before the expiration of six months after a jeopardy or deficiency determination becomes final, whichever period expires later.

SECTION 65. Section 111.1042, Tax Code, is amended by adding Subsection (d) to read as follows:

(d) If the right to a hearing is not exercised on a full or partial denial of a claim for refund, the period during which the comptroller informally reviewed the claim for refund does not toll the limitation period for any subsequent claim for refund on the same period and type of tax for which the claim for refund was fully or partially denied.

SECTION 66. Section 111.105, Tax Code, is amended by amending Subsection (a) and adding Subsection (e) to read as follows:

(a) A person claiming a refund under Section 111.104 [~~of this code~~] is entitled to a hearing on the claim if the person requests a hearing on or before the 30th day after the date [~~in accordance with procedures prescribed by~~] the comptroller issues a letter denying the claim for refund. The person is entitled to 20 days' notice of the time and place of the hearing.

(e) During the administrative hearing process, a person claiming a refund under Section 111.104 must submit documentation to enable the comptroller to verify the claim for refund. The comptroller may issue a notice of demand that all evidence to support the claim for refund must be produced before the expiration of a specified date in the notice. The specified date in the notice may not be earlier than 180 days after the date the refund is claimed. The comptroller may not consider evidence produced after the specified date in the notice in an administrative hearing. The limitation provided by this subsection does not apply to a judicial proceeding filed in accordance with Chapter 112.

SECTION 67. Section 111.107, Tax Code, is amended to read as follows:

Sec. 111.107. WHEN REFUND OR CREDIT IS PERMITTED. (a) Except as otherwise expressly provided, a person may request a refund or a credit or the comptroller may make a refund or issue a credit for the overpayment of a tax imposed by this title at any time before the expiration of the period during which the comptroller may assess a deficiency for the tax and not thereafter unless the refund or credit is requested:

(1) under Subchapter B of Chapter 112 and the refund is made or the credit is issued under a court order;

(2) under the provision of Section 111.104(c)(3) applicable to a refund claim filed after a jeopardy or deficiency determination becomes final; or

(3) under Chapter 153, except Section 153.1195(e), 153.121(d), 153.2225(e), or 153.224(d).

(b) A person may not refile a refund claim for the same transaction or item, tax type, period, and ground or reason that was previously denied by the comptroller.

SECTION 68. Sections 111.206(b), (c), and (d), Tax Code, are amended to read as follows:

(b) A final determination that affects the amount of liability of a tax imposed by this title shall be reported to the comptroller before the expiration of 120 ~~60~~ days after the day on which the determination becomes final. The report must include a detailed statement of the reasons for the difference in tax liability as required by the comptroller.

(c) Notwithstanding the expiration of a period of limitation provided in this title, the comptroller may assess and collect or bring suit for the collection of any tax deficiency, including penalties and interest, resulting from a final determination ~~[or from investigation]~~ at any time before the expiration of one year after:

(1) the later of the day the report is required to be filed as provided by Subsection (b) or the day [of this section is received, if] the report is received [filed within the 60-day period]; or

(2) ~~[if the report is not made or is made after the 60-day period, the day the report is received or]~~ the day the final determination is discovered, if a report is not filed [whichever period is the shorter].

(d) If a final determination ~~[or investigation]~~ results in the taxpayer having overpaid the amount of tax due the state, the taxpayer may file a claim for refund with the comptroller [shall refund or issue a credit] for the amount of the overpayment before the first anniversary of the date the final determination becomes final. If the comptroller assesses tax by issuing a deficiency determination within the [at any time during the one year] period provided by [during which assessments may be made under] Subsection (c), the taxpayer may file a claim for refund for an amount of tax that has been found due in a deficiency determination before the 180th day after the deficiency determination becomes final, but the claim is limited to the items and the tax payment period for which the determination was issued [of this section].

SECTION 69. Sections 111.207(a) and (b), Tax Code, are amended to read as follows:

(a) In determining the expiration date for a period when a tax imposed by this title may be assessed, ~~or~~ collected, or refunded, the following periods are not considered:

(1) the period following the date of a tax payment made under protest, but only if a lawsuit is timely filed in accordance with Chapter 112;

(2) the period during which a judicial proceeding is pending in a court of competent jurisdiction to determine the amount of the tax due; and

(3) the period during which an administrative redetermination or refund hearing ~~proceeding~~ is pending before the comptroller ~~[for a redetermination of the tax liability].~~

(b) The suspension of a period of limitation under Subsection (a) is limited ~~[of this section applies only]~~ to the issues that were contested ~~[amount of taxes in issue]~~ under Subdivision (1), (2), or (3) of that subsection.

SECTION 70. Section 112.058(a), Tax Code, is amended to read as follows:

(a) Payments ~~[Except as provided in Subsections (b) and (c) of this section, payments]~~ made under protest are to be handled as follows:

(1) An officer who receives payments made under protest as required by Section 112.051 ~~[of this code]~~ shall each day send to the comptroller the payments, a list of the persons making the payments, and a written statement that the payments were made under protest.

(2) The comptroller shall, immediately on receipt, credit the payments to each fund to which the tax or fee paid under protest is allocated by law.

(3) The comptroller shall maintain detailed records of payments made under protest.

(4) A payment under protest bears pro rata interest. The pro rata interest is the amount of interest earned by the protested funds ~~[that would be due if the amount had been placed in the suspense account of the comptroller].~~

SECTION 71. Section 142.002, Tax Code, is amended by amending Subdivisions (1), (2), (3), (4), and (6) and adding Subdivisions (3-a), (3-b), and (3-c) to read as follows:

(1) "Agreement" means the Streamlined Sales and Use Tax Agreement as amended and adopted on November 12, 2002 ~~[January 27, 2001]~~.

(2) "Certified automated system" means software certified under ~~[jointly by the states that are signatories to]~~ the agreement to calculate ~~[compute]~~ the tax imposed by each jurisdiction on a transaction, determine the amount of tax to remit to the appropriate state, and maintain a record of the transaction.

(3) "Certified service provider" means an agent certified under ~~[jointly by the states that are signatories to]~~ the agreement to perform all of the seller's sales tax functions, other than the seller's obligation to remit tax on the seller's own purchases.

(3-a) "Model 1 seller" means a seller that has selected a certified service provider as the seller's agent to perform all of the seller's sales and use tax functions, other than the seller's obligation to remit tax on the seller's own purchases.

(3-b) "Model 2 seller" means a seller that has selected a certified automated system to perform part of the seller's sales and use tax functions, but retains responsibility for remitting the tax.

(3-c) "Model 3 seller" means a seller that has sales in at least five member states, has total annual sales revenue of at least \$500 million, has a proprietary system that calculates the amount of tax due each jurisdiction, and has entered into a performance agreement with the member states that establishes a tax performance standard for the seller. The term includes an affiliated group of sellers using the same proprietary system.

(4) "Sales tax" means a sales tax administered or computed under Chapter 151 [this subtitle or Subtitle C, Title 3, or in a similar manner].

(6) "Use tax" means a use tax administered or computed under Chapter 151 [this subtitle or Subtitle C, Title 3, or in a similar manner].

SECTION 72. Section 142.005, Tax Code, is amended by adding Subsection (c) to read as follows:

(c) The comptroller may enter into the agreement on behalf of this state if the governor, lieutenant governor, speaker of the house of representatives, and comptroller unanimously agree that it would be in this state's best interest to be a signatory to the agreement.

SECTION 73. Chapter 142, Tax Code, is amended by adding Section 142.0055 to read as follows:

Sec. 142.0055. RULES. The comptroller may adopt rules relating to the administration and collection of the sales and use tax as necessary to comply with the agreement, including rules establishing the requirements for a seller to be a Model 1 seller, Model 2 seller, or Model 3 seller.

SECTION 74. Chapter 142, Tax Code, is amended by adding Section 142.011 to read as follows:

Sec. 142.011. SETTLEMENT OF TAX, PENALTY, AND INTEREST. On or after the later of the date on which the agreement takes effect as provided by the terms of the agreement or this state becomes a signatory to the agreement, the comptroller may settle a claim for tax, penalty, or interest on tax imposed by Chapter 151 if necessary for the comptroller to comply with the terms of the agreement.

SECTION 75. Section 151.011(a), Tax Code, is amended to read as follows:

(a) Except as provided by Subsection (c) of this section, "use" means the exercise of a right or power incidental to the ownership of tangible personal property over tangible personal property, including tangible personal property other than printed material that has been processed, fabricated, or manufactured into other property or attached to or incorporated into other property transported into this state, and, except as provided by Section 151.056(b) of this code, includes the incorporation of tangible personal property into real estate or into improvements of real estate whether or not the real estate is subsequently sold.

SECTION 76. Subchapter A, Chapter 151, Tax Code, is amended by adding Section 151.012 to read as follows:

Sec. 151.012. EFFECTIVE DATE OF TAX RATE CHANGES. (a) A change in the rate of the tax imposed under Sections 151.051 and 151.101 must take effect on the first day of a calendar quarter.

(b) If the performance of a taxable service begins before the effective date of a change in the tax rate and the performance will not be completed until after that effective date, the change in the tax rate applies to the first billing period for the service performed on or after that effective date.

SECTION 77. Section 151.025, Tax Code, is amended by adding Subsection (d) to read as follows:

(d) If any nontaxable charges are combined with and not separately stated from taxable telecommunications service charges on the customer bill or invoice of a provider of telecommunications services, the combined charge is subject to tax unless the provider can identify the portion of the charges that are nontaxable through the provider's books and records kept in the regular course of business. If the nontaxable charges cannot reasonably be identified, the charges from the sale of both nontaxable services and taxable telecommunications services are attributable to taxable telecommunications services. The provider of telecommunications services has the burden of proving nontaxable charges.

SECTION 78. Section 151.103, Tax Code, is amended by adding Subsection (d) to read as follows:

(d) A retailer who holds a sales tax permit issued by the comptroller under this chapter shall collect any applicable local use tax that is due from a purchaser even if the retailer is not engaged in business in the local jurisdiction into which the taxable item is shipped or delivered.

SECTION 79. Section 151.152(b), Tax Code, is amended to read as follows:

(b) A resale certificate must:

(1) be signed by the purchaser or contain an electronic form of the purchaser's signature authorized by the comptroller and contain the purchaser's name and address;

(2) state the purchaser's tax permit number or that the purchaser's application for a tax permit is pending before the comptroller; and

(3) contain a description of the tangible personal property sold, leased, or rented by the purchaser in the regular course of business or transferred as an integral part of a taxable service performed in the regular course of business.

SECTION 80. Section 151.202, Tax Code, is amended by adding Subsection (c) to read as follows:

(c) A person desiring to be a seller in this state must agree to collect any applicable local use tax that may be imposed by a local jurisdiction even if the seller is not engaged in business in the local jurisdiction into which the taxable item is shipped or delivered.

SECTION 81. Section 151.307(b), Tax Code, is amended to read as follows:

(b) When an exemption is claimed because tangible personal property is exported beyond the territorial limits of the United States, proof of export may be shown only by:

(1) a bill of lading issued by a licensed and certificated carrier of persons or property showing the seller as consignor, the buyer as consignee, and a delivery point outside the territorial limits of the United States;

(2) ~~documentation:~~

~~[(A) provided by a United States Customs Broker licensed by the comptroller under Section 151.157;~~

~~[(B) certifying that delivery was made to a point outside the territorial limits of the United States; and~~

~~[(C) to which a stamp issued under Section 151.158 is affixed in the manner required by that section or Section 151.157;~~

~~[(3)]~~ import documents from the country of destination showing that the property was imported into a country other than the United States;

(3) ~~[(4)]~~ an original airway, ocean, or railroad bill of lading and a forwarder's receipt if an air, ocean, or rail freight forwarder takes possession of the property; or

(4) ~~[(5)]~~ any other manner provided by the comptroller for an enterprise authorized to make tax-free purchases under Section 151.156.

SECTION 82. Section 151.314, Tax Code, is amended by amending Subsections (c), (e), (f), and (g) and adding Subsections (c-1), (c-2), and (c-3) to read as follows:

(c) "Food products" shall not include:

(1) drugs, medicines, tonics, vitamins, dietary supplements, and medicinal preparations in any form;

(2) carbonated and noncarbonated packaged soft drinks, which are nonalcoholic beverages that contain natural or artificial sweeteners ~~[and diluted juices and ice and candy]~~;

(3) ice; or

(4) candy ~~[foods and drinks (which include meals, milk and milk products, fruit and fruit products, sandwiches, salads, processed meats and seafoods, vegetable juices, ice cream in cones or small cups) served, prepared, or sold ready for immediate consumption in or by restaurants, lunch counters, cafeterias, vending machines, hotels, or like places of business or sold ready for immediate consumption from pushcarts, motor vehicles, or any other form of vehicle]~~.

(c-1) For purposes of this section, diluted juice that is more than 50 percent vegetable or fruit juice by volume is not considered to be a soft drink.

(c-2) The exemption provided by Subsection (a) does not include the following prepared food:

(1) food, food products, and drinks, including meals, milk and milk products, fruit and fruit products, sandwiches, salads, processed meats and seafoods, vegetable juice, and ice cream in cones or small cups, served, prepared, or sold ready for immediate consumption in or by restaurants, lunch counters, cafeterias, vending machines, hotels, or like places of business or sold ready for immediate consumption from pushcarts, motor vehicles, or any other form of vehicle;

(2) food sold in a heated state or heated by the seller; or

(3) two or more food ingredients mixed or combined by the seller for sale as a single item, including items that are sold in an unheated state by weight or volume as a single item, but not including food that is only cut, repackaged, or pasteurized by the seller.

(c-3) The exemption provided by Subsection (a) includes:

(1) bakery items sold without plates or other eating utensils, including bread, rolls, buns, biscuits, bagels, croissants, pastries, doughnuts, Danish, cakes, tortes, pies, tarts, muffins, bars, cookies, and tortillas; and

(2) eggs, fish, meat, and poultry, and foods containing these raw animal foods, that require cooking by the consumer as recommended by the Food and Drug Administration in Chapter 3, Section 401.11 of its Food Code to prevent food-borne illness and any other food that requires cooking by the consumer before the food is edible.

(e) Food products, candy, and soft drinks [~~carbonated beverages, and diluted juices~~] are exempted from the taxes imposed by this chapter if sold at an exempt sale qualifying under this subsection or if stored or used by the purchaser of the item at the exempt sale. A sale is exempted under this subsection if:

(1) the sale is made by a person under 19 years old who is a member of a nonprofit organization devoted to the exclusive purpose of education or religious or physical training or by a group associated with a public or private elementary or secondary school;

(2) the sale is made as a part of a fund-raising drive sponsored by the organization or group; and

(3) all net proceeds from the sale go to the organization or group for its exclusive use.

(f) The exemption provided by this section does [~~Subsections (a), (b), and (c) of this section do~~] not apply to the sale of food products through the use or operation of a vending machine for which [~~edible products for human consumption~~] the receipts or sales prices are determined by [~~price for which are taxed subject to~~] Section 151.007(d) [~~of this code~~].

(g) The exemption provided by Subsection (d)(3) does not apply to food products, meals, soft drinks, and candy [~~for human consumption~~] sold to a person confined in a correctional facility operated under the authority or jurisdiction of or under contract with this state or a political subdivision of the state.

SECTION 83. Section 151.317(a), Tax Code, is amended to read as follows:

(a) Subject to Subsection (d), gas and electricity are exempted from the taxes imposed by this chapter when sold for:

(1) residential use;

(2) use in powering equipment exempt under Section 151.318 or 151.3185 by a person processing tangible personal property for sale as tangible personal property, other than preparation or storage of prepared food described by Section 151.314(c-2) [~~food for immediate consumption~~];

(3) use in lighting, cooling, and heating in the manufacturing area during the actual manufacturing or processing of tangible personal property for sale as tangible personal property, other than preparation or storage of prepared food described by Section 151.314(c-2) [~~food for immediate consumption~~];

(4) use directly in exploring for, producing, or transporting, a material extracted from the earth;

(5) use in agriculture, including dairy or poultry operations and pumping for farm or ranch irrigation;

(6) use directly in electrical processes, such as electroplating, electrolysis, and cathodic protection;

(7) use directly in the off-wing processing, overhaul, or repair of a jet turbine engine or its parts for a certificated or licensed carrier of persons or property;

(8) use directly in providing, under contracts with or on behalf of the United States government or foreign governments, defense or national security-related electronics, classified intelligence data processing and handling systems, or defense-related platform modifications or upgrades;

(9) a direct or indirect use, consumption, or loss of electricity by an electric utility engaged in the purchase of electricity for resale; or

(10) use in timber operations, including pumping for irrigation of timberland.

SECTION 84. Section 151.317(c), Tax Code, as amended by Chapters 631 and 1467, Acts of the 76th Legislature, Regular Session, 1999, is reenacted to read as follows:

(c) In this section, "residential use" means use:

(1) in a family dwelling or in a multifamily apartment or housing complex or building or in a part of a building occupied as a home or residence when the use is by the owner of the dwelling, apartment, complex, or building or part of the building occupied; or

(2) in a dwelling, apartment, house, or building or part of a building occupied as a home or residence when the use is by a tenant who occupies the dwelling, apartment, house, or building or part of a building under a contract for an express initial term for longer than 29 consecutive days.

SECTION 85. Section 151.318, Tax Code, is amended by amending Subsections (b) and (s) and adding Subsection (q-1) to read as follows:

(b) The exemption includes:

(1) chemicals, catalysts, and other materials that are used during a manufacturing, processing, or fabrication operation to produce or induce a chemical or physical change, to remove impurities, or to make the product more marketable; [~~and~~]

(2) semiconductor fabrication cleanrooms and equipment; and

(3) pharmaceutical biotechnology cleanrooms and equipment that are installed as part of the construction of a new facility with a value of at least \$150 million and on which construction began after July 1, 2003, and before August 31, 2004.

(q-1) For purposes of Subsection (b), "pharmaceutical biotechnology cleanrooms and equipment" means all tangible personal property, without regard to whether the property is affixed to or incorporated into realty, used in connection with the manufacturing, processing, or fabrication in a cleanroom environment of a pharmaceutical biotechnology product, without regard to whether the property is actually contained in the cleanroom environment. The term includes integrated systems, fixtures, and piping, all property necessary or adapted to reduce contamination or to control airflow, temperature, humidity, chemical purity, or other environmental conditions or manufacturing tolerances, and production equipment and machinery. The term does not include the building or a permanent, nonremovable component of the building that houses the cleanroom environment. The term includes moveable cleanroom partitions and cleanroom lighting. "Pharmaceutical biotechnology cleanrooms and equipment" are not "intraplant transportation equipment" as that term is used in Subsection (c)(1).

(s) The following do not apply to the semiconductor fabrication cleanrooms and equipment in Subsection (q) or the pharmaceutical biotechnology cleanrooms and equipment in Subsection (q-1):

(1) limitations in Subsection (a)(2) that refer to tangible personal property directly causing chemical and physical changes to the product being manufactured, processed, or fabricated for ultimate sale;

(2) Subsection (c)(1); and

(3) Subsection (c)(4).

SECTION 86. Section 151.3181, Tax Code, is amended by adding Subsection (h) to read as follows:

(h) The use of "pharmaceutical biotechnology cleanrooms and equipment," as that term is defined by Section 151.318(q-1), to manufacture, process, or fabricate a pharmaceutical biotechnology product that is not sold is not a divergent use if the use occurs during the certification process by the United States Food and Drug Administration.

SECTION 87. Section 153.119(d), Tax Code, is amended to read as follows:

(d) If the quantity of gasoline used in Texas by auxiliary power units or power take-off equipment on any motor vehicle can be accurately measured while the motor vehicle is stationary by any metering or other measuring device or method designed to measure the fuel separately from fuel used to propel the motor vehicle, the comptroller may approve and adopt the use of any device as a basis for determining the quantity of gasoline consumed in those operations for tax credit or tax refund. The climate-control air conditioning or heating system of a motor vehicle that has a primary purpose of providing for the convenience or comfort of the operator or passengers is not a power take-off system, and a refund may not be allowed for the tax paid on any portion of the gasoline that is used for that purpose.

SECTION 88. Section 153.222(d), Tax Code, is amended to read as follows:

(d) If the quantity of diesel fuel used in Texas by auxiliary power units or power take-off equipment on any motor vehicle can be accurately measured while the motor vehicle is stationary by any metering or other measuring device or method designed to measure the fuel separately from fuel used to propel the motor vehicle, the comptroller may approve and adopt the use of any device as a basis for determining the quantity of diesel fuel consumed in those operations for tax credit or tax refund. If no separate metering device or other approved measuring method is provided, the following credit or refund procedures are authorized. A permitted supplier, a dyed diesel fuel bonded user, or an agricultural bonded user who operates diesel-powered motor vehicles equipped with a power take-off or a diesel-powered auxiliary power unit mounted on the motor vehicle and using the fuel supply tank of the motor vehicle may be allowed a deduction from the taxable gallons used in this state in each motor vehicle so equipped. The comptroller shall determine the percentage of the deduction. A user who is required to pay the tax on diesel fuel used in motor vehicles so equipped may file a claim for a refund not to exceed the percentage allowed by the comptroller of the total taxable fuel used in this state in each motor vehicle so equipped. The climate-control air conditioning or heating system of a motor vehicle that has a primary purpose of providing for the convenience or comfort of the operator or passengers is not a power take-off system, and a refund may not be allowed for the tax paid on any portion of the diesel fuel that is used for that purpose.

SECTION 89. Section 171.001, Tax Code, is amended by amending Subsections (a) and (b) and adding Subsection (d) to read as follows:

(a) A franchise tax is imposed on:

(1) each corporation that does business in this state or that is organized under the laws of [~~chartered or authorized to do business in~~] this state, and

(2) each limited liability company that does business in this state or that is organized under the laws of this state [~~or is authorized to do business in this state~~].

(b) In this chapter:

(1) "Banking corporation" means each state, national, domestic, or foreign bank, whether organized under the laws of this state, another state, or another country, or under federal law, including a limited banking association organized under Subtitle A, Title 3, Finance Code, and each bank organized under Section 25(a), Federal Reserve Act (12 U.S.C. Secs. 611-631) (edge corporations), but does not include a bank holding company as that term is defined by Section 2, Bank Holding Company Act of 1956 (12 U.S.C. Sec. 1841).

(2) "Beginning date" means:

(A) for a corporation chartered in this state, the date on which the corporation's charter takes effect; and

(B) for a foreign corporation, the earlier of the date on which:

(i) the corporation's certificate of authority takes effect; or

(ii) the corporation begins doing business in this state.

(3) "Corporation" includes:

(A) a limited liability company, as defined under the Texas Limited Liability Company Act;

(B) a savings and loan association; and

(C) a banking corporation.

(4) "Charter" includes a limited liability company's certificate of organization.

(5) "Internal Revenue Code" means, except as otherwise provided in this chapter, the Internal Revenue Code of 1986 in effect for the federal tax year beginning on or after January 1, 1996, and before January 1, 1997, and any regulations adopted under that code applicable to that period.

(6)(A) "Investment partnership":

(i) means a partnership in which:

(a) not less than 90 percent of either the original federal income tax basis under the Internal Revenue Code or the current fair market value of the partnership's total assets consist of qualified investment securities and operating assets reasonably necessary to carry on the partnership's investment activities and not less than 90 percent of the partnership's gross income is passive investment income; or

(b) not less than 90 percent of the partnership interests are owned directly or indirectly by an Employee Stock Ownership Plan that has received a favorable determination letter from the Internal Revenue Service; and

(ii) does not include a partnership that is a dealer in securities, as defined by Section 475(c)(1), Internal Revenue Code.

(B) For purposes of Paragraph (A)(i)(a), a partnership shall exclude the basis in or value of an interest in a limited liability company and the gross income from an interest in a limited liability company unless the limited liability company would qualify as an investment partnership if the limited liability company were organized as a partnership.

(7) "Investment partnership interest" means a limited partnership interest in an investment partnership or a beneficial interest in a trust or business trust that is an investment partnership.

(8) "Officer" and "director" include a limited liability company's directors and managers and a limited banking association's directors and managers and participants if there are no directors or managers.

(9) "Partnership" includes:

(A) a joint venture;

(B) a general partnership;

(C) a limited partnership, except an Exempt Wholesale Generator, as defined by the Energy Policy Act of 1992 (15 U.S.C. Sec. 79z-5A) and the Utilities Code, if that entity entered into contracts prior to December 31, 2002, for the sale of electricity that do not provide for modification to pricing by reason of amendments to this chapter; and

(D) a trust or business trust.

(10) "Partner" includes a beneficiary in a trust or business trust.

(11) "Partnership interest" includes a beneficial interest in a trust or business trust.

(12) "Passive investment income" means dividends, interest, or other gross income attributable to the ownership or disposition of qualified investment securities.

(13) "Public partnership" means a partnership that is:

(A) a publicly traded partnership as defined by Section 7704(b), Internal Revenue Code of 1986, as effective January 1, 2003, and was formed on or before January 1, 2003, without regard to whether such partnership qualifies under any exceptions to Section 7704(a), Internal Revenue Code of 1986, as effective January 1, 2003;

(B) a limited partnership to the extent the limited partnership interests are owned directly or indirectly by an entity described by Paragraph (A) or a trust or business trust to the extent the beneficial interests are owned directly or indirectly by an entity described by Paragraph (A);

(C) a limited partnership to the extent the limited partnership interests are owned directly or indirectly by an entity qualifying as a financial asset securitization investment trust as defined by Section 860L, Internal Revenue Code of 1986, as effective January 1, 2003; a real estate investment trust as defined by Section 856, Internal Revenue Code of 1986, as effective January 1, 2003; a qualified REIT subsidiary as defined by Section 856(i), Internal Revenue Code of 1986, as effective January 1, 2003; a real estate mortgage investment conduit as defined by Section 860D, Internal Revenue Code of 1986, as effective January 1, 2003; or a regulated investment company as defined by Section 851, Internal Revenue Code of 1986, as effective January 1, 2003; or

(D) a trust or business trust that qualifies as an entity described in paragraph (C).

(14) "Public partnership interest" means:

(A) a limited partnership interest in a publicly traded partnership as defined by Section 7704(b), Internal Revenue Code of 1986, as effective January 1, 2003, and was formed on or before January 1, 2003, without regard to whether such partnership qualifies under any exceptions to Section 7704(a), Internal Revenue Code of 1986, as effective January 1, 2003;

(B) a limited partnership interest owned directly or indirectly by an entity described by Paragraph (A) or a beneficial interest in a trust or business trust owned directly or indirectly by an entity described by paragraph (A);

(C) a limited partnership interest owned directly or indirectly by an entity qualifying as a financial asset securitization investment trust as defined by Section 860L, Internal Revenue Code of 1986, as effective January 1, 2003; a real estate investment trust as defined by Section 856, Internal Revenue Code of 1986, as effective January 1, 2003; a qualified REIT subsidiary as defined by Section 856(i), Internal Revenue Code of 1986, as effective January 1, 2003; a real estate mortgage investment conduit as defined by Section 860D, Internal Revenue Code of 1986, as effective January 1, 2003; or a regulated investment company as defined by Section 851, Internal Revenue Code of 1986, as effective January 1, 2003; or

(D) a beneficial interest in a trust or business trust that qualifies as an entity described in paragraph (C).

(15) "Qualified investment securities":

(A) means:

(i) common stock, including preferred or debt securities convertible into common stock, and preferred stock;

(ii) bonds, debentures, and other debt securities;

(iii) deposits and any other obligations of banks and other financial institutions;

(iv) stock and bond index securities, futures contracts, options on securities, and other similar financial securities and instruments;

(v) an investment partnership interest or a public partnership interest; and

(vi) an interest in a limited liability company that would qualify as an investment partnership if the limited liability company were organized as a partnership; and

(B) does not include an interest in a partnership unless that partnership is an investment partnership or a public partnership.

(16) [~~(7)~~] "Savings and loan association" means a savings and loan association or savings bank, whether organized under the laws of this state, another state, or another country, or under federal law.

(17) [~~(8)~~] "Shareholder" includes a limited liability company's member and a limited banking association's participant.

(18) "Temporary amortization" means the amortization of the Texas asset basis using the straight-line method over 30 privilege periods, beginning with the privilege period covered by the report which corresponds to the first period a limited partner became subject to the franchise tax under Subsection (d).

(19) "Texas asset basis" means a limited partner's total net asset basis for financial accounting purposes computed in accordance with generally accepted accounting principles less the adjusted tax basis of the partner's total net assets for federal income tax purposes as of the first day of the tax year covered by the report which corresponds to the first period a limited partner became subject to the franchise tax under Subsection (d).

(20) "Tiered partnership arrangement" means an ownership structure in which some or all of the interests in one partnership (a "lower tier partnership") are owned by a second partnership (an "upper tier partnership"). A tiered partnership arrangement may have two or more tiers.

(d)(1) Except as otherwise provided in this subsection, a corporation does business in this state if the corporation is a general or limited partner in a partnership whose activities, if conducted directly by the corporation, would cause that corporation to be subject to the franchise tax.

(2) Notwithstanding any other provision in this subsection, a corporation is not doing business in this state solely by reason of owning an investment partnership interest or a public partnership interest.

(3) A corporation is not doing business in this state solely by reason of owning a beneficial interest in a trust or business trust that does business in this state, unless the corporation and its related entities, as defined in Section 171.1101(b)(2)(A), have the power or authority to:

(A) remove and/or replace the trustee of the trust or business trust or, if more than one trustee, a majority of the trustees of the trust or business trust; or

(B) compel the trustee or trustees of the trust or business trust to take actions, or refrain from taking actions, relating to the management, activities or policies of the trust or business trust.

(4) Partners owning interests in upper tier partnerships are considered to be partners in lower tier partnerships for purposes of this subsection, except that partners owning upper tier public partnership interests are not considered to be partners in lower tier partnerships.

(5) If this subsection is found by any court of competent jurisdiction to be invalid as extending the Texas franchise tax beyond the limits of the United States Constitution and federal law adopted under the United States Constitution, then the franchise tax will be imposed on the partnership and the franchise tax liability of the partnership shall be calculated under Tax Code Section 171.006(b) as if the partnership were a corporation.

SECTION 90. Subchapter A, Chapter 171, Tax Code, is amended by adding Section 171.006 to read as follows:

Sec. 171.006. WITHHOLDING TAX OBLIGATION IMPOSED ON PARTNERSHIPS WITH RESPECT TO NONREPORTING CORPORATE PARTNERS. (a) Each partnership that does business in this state other than a public partnership or an investment partnership is subject to a franchise tax withholding obligation as described by this section.

(b) The withholding tax payable by a partnership shall be equal to the amount of tax computed under Section 171.002 as if such partnership were a corporation, multiplied by the nonreporting corporate partners' percentage share of the partnership's federal taxable income determined as if such partnership were a corporation. If a lower tier partnership is subject to this section, an upper tier partnership's income attributable to the interest in the lower tier partnership shall be deducted for purposes of computing the upper tier partnership's withholding tax payable under this section.

(c) In determining whether a partner is a nonreporting corporate partner, a partnership may rely on the statement of a person owning an interest in the partnership, on a form prescribed by the comptroller, that the person is not a corporate partner. An upper tier partnership submitting a statement under this subsection to a lower tier partnership must disclose any direct partner or indirect partner in the upper tier partnership or any tiered partnership arrangement that is a corporate partner. Public partnerships and investment partnerships are not required to identify or disclose interests directly or indirectly owned by corporations or limited liability companies.

(d) Each nonreporting corporate partner shall be allowed a credit against its franchise tax liability under this chapter for any withholding tax paid by a partnership in connection with the nonreporting corporate partner's interest in the partnership.

(e) A partnership shall not be liable for failing to withhold tax as required by this section with respect to the interest of a nonreporting corporate partner to the extent the nonreporting corporate partner pays the tax against which the withholding tax may be credited.

(f) A partnership is subject to the application of Subchapters D and E, other than Section 171.203, with regard to any withholding tax imposed by this section as if the partnership were a corporation. A partnership that does not owe any withholding tax for a period specified by Subchapter D because it does not have any nonreporting corporate partners shall not be required to file a report under Section 171.201 or 171.202 for that period, but shall file an information report for that period stating that the partnership has no nonreporting corporate partners and including such other information as the comptroller may require. The reports required by this subsection shall include copies of all partner reporting agreements received by the partnership during any partnership reporting period. If a partnership fails to timely file a copy of a partner reporting agreement, the partnership shall treat the corporate partner submitting the agreement as a nonreporting corporate partner.

(g) A partner reporting agreement filed with a partnership is effective until revoked in writing by a corporate partner or until the comptroller notifies the partnership in writing to treat the interest of a corporate partner as an interest of a nonreporting corporate partner because of the corporate partner's failure to comply with the terms of the partner reporting agreement.

(h) Every partnership that withholds tax under this section shall furnish to each nonreporting corporate partner a written statement, as prescribed by the comptroller, showing the amount of withheld tax under this section allocable to such corporate partner's interest in the partnership and such other information as the comptroller may require.

(i) In this section:

(1) "Corporate partner" means a direct partner or an indirect partner that is a corporation or limited liability company that is not exempted from the franchise tax. The term does not include:

(A) an interest directly or indirectly owned by a corporation or limited liability company in or through an investment partnership interest or a public partnership interest; or

(B) a beneficial interest directly or indirectly held or owned by a corporation or limited liability company in a trust or business trust that is not deemed to be doing business in this State pursuant to sections 171.001(d)(2) or 171.001(d)(3).

(2) "Direct partner" means a person that directly owns an interest in a partnership.

(3) "Indirect partner" means, with respect to a lower tier partnership, a person that owns an interest in an upper tier partnership.

(4) "Nonreporting corporate partner" means a corporate partner that does not file a partner reporting agreement with a partnership. The term does not include:

(A) an interest directly or indirectly owned by a corporation or limited liability company in or through an investment partnership interest or a public partnership interest; or

(B) a beneficial interest directly or indirectly held or owned by a corporation or limited liability company in a trust or business trust that is not deemed to be doing business in this State pursuant to sections 171.001(d)(2) or 171.001(d)(3).

(5) "Partner reporting agreement" means a form prescribed by the comptroller in which a corporate partner consents to the imposition of the franchise tax under this chapter on such corporate partner, agrees to file returns and make timely payment of all taxes imposed by this chapter, and agrees to be subject to personal jurisdiction in this state for purposes of the collection of any unpaid franchise tax under this chapter, together with related interest and penalties.

SECTION 91. Subsection (c), Section 171.1032, Tax Code, is amended to read as follows:

(c) A corporation shall include in its gross receipts computed under Subsection (a) the corporation's share of the gross receipts of each partnership and joint venture in which the corporation owns an interest directly or indirectly [of which the corporation is a part] apportioned to this state as though the corporation directly earned the receipts[, including receipts from business done with the corporation]. A corporation owning an interest in an upper tier partnership is considered to be a partner in each lower tier partnership, and the corporation's share of the gross receipts of each partnership shall be computed and apportioned to this state as though the corporation directly earned the receipts at the partnership tier at which the receipts were originally earned.

SECTION 92. Subsection (d), Section 171.1051, Tax Code, is amended to read as follows:

(d) A corporation shall include in its gross receipts computed under Subsection (a) the corporation's share of the gross receipts of each partnership and joint venture in which the corporation owns an interest directly or indirectly [of which the corporation is a part]. A corporation owning an interest in an upper tier partnership is considered to be a partner in each lower tier partnership, and the corporation's share of the gross receipts of each partnership shall be computed as though the corporation directly earned the receipts at the partnership tier at which the receipts were originally earned.

SECTION 93. Subsection (d), Section 171.110, Tax Code, is amended to read as follows:

(d) A corporation's reportable federal taxable income is the corporation's federal taxable income after Schedule C special deductions and before net operating loss deductions as computed under the Internal Revenue Code, except that an S corporation's reportable federal taxable income is the amount of the income reportable to the Internal Revenue Service as taxable to the corporation's shareholders. A corporation shall include in its earned surplus and gross receipts for earned surplus its share of a partnership's items of income or loss, regardless if the partnership is taxed as a corporation for federal income tax purposes.

SECTION 94. Subchapter C, Chapter 171, Tax Code, is amended by adding Section 171.1101 to read as follows:

Sec. 171.1101. RELATED ENTITY EXPENSE ADD-BACK. (a) For the purpose of determining net taxable earned surplus under Section 171.110, a corporation must add back to reportable federal taxable income any excess management fees, excess royalty payments, and excess interest payments made to a related entity during the taxable year to the extent deducted in calculating reportable federal taxable income.

(b) For purposes of this section:

(1) "Excess management fees" means the amount by which a corporation's total management fee expenses exceed an arms length charge for those fees in a transaction between unrelated parties. The term includes all management fee expenses made for the purpose of tax avoidance and not for legitimate business purposes.

(2) "Excess royalty payments" means the amount by which a corporation's total royalty payments exceed an arms length charge for those payments in a transaction between unrelated parties. The term includes all royalty payments made for the purpose of tax avoidance and not for legitimate business purposes.

(3) "Excess interest payments" means the amount by which an interest payment exceeds the amount implied by the rate as set forth in Tax Code Section 111.060(b), as determined when the loan transaction was entered into or during the term of the loan.

(4) "Interest payments" means expenses allowed as deductions under Section 163, Internal Revenue Code, for purposes of determining reportable federal taxable income.

(5) "Management fee" means a payment made directly or indirectly to a parent from a subsidiary for supervision and oversight of its business affairs.

(6)(A) "Related entity" means a person that, with respect to the corporation during all or any portion of a privilege period, is:

(i) a component member as defined by Section 1563(b), Internal Revenue Code;

(ii) a person to or from whom there is attribution of stock ownership in accordance with Section 1563(e), Internal Revenue Code;

(iii) a person that, notwithstanding its form of organization, bears the same relationship to the corporation as a person described by Subparagraphs (i) and (ii);

(iv) a stockholder who is an individual, or a member of the stockholder's family enumerated in Section 318, Internal Revenue Code, if the stockholder and the members of the stockholder's family own, directly, indirectly, beneficially, or constructively, in the aggregate, at least 50 percent of the value of the corporation's outstanding stock;

(v) a stockholder, or a stockholder's partnership, limited liability company, estate, trust, or corporation, if the stockholder and the stockholder's partnerships, limited liability companies, estates, trusts, and

corporations own, directly, indirectly, beneficially, or constructively, in the aggregate, at least 50 percent of the value of the corporation's outstanding stock; or

(vi) a corporation, or a party related to such corporation in a manner that would require an attribution of stock from the corporation to the party or from the party to the corporation under the attribution rules of the Internal Revenue Code, if such corporation owns, directly, indirectly, beneficially, or constructively, at least 50 percent of the value of the corporation's outstanding stock.

(B) The attribution rules of Section 318, Internal Revenue Code, shall apply for purposes of determining whether the ownership requirements under this subdivision have been met.

(7) "Royalty payments" means payments, including royalty and copyright fees, for the use of trademarks, copyrights, trade names, trade dress, service marks, mask works, trade secrets, and other similar types of intangible assets.

(c) For the purpose of computing its net taxable earned surplus, a corporation must subtract management fees, royalty payments and interest payments directly or indirectly received from a related entity during the taxable year to the extent included in calculating reportable federal taxable income unless such royalty or interest payments would not be required to be added back under this section.

(d) The comptroller shall have exclusive jurisdiction to interpret this section.

SECTION 95. Subchapter C, Chapter 171, Tax Code, is amended by adding Section 171.1102 to read as follows:

Sec. 171.1102. TEMPORARY AMORTIZATION OF TEXAS ASSET BASIS. For the purpose of determining net taxable earned surplus under Section 171.110, a corporate limited partner may deduct the temporary amortization of the Texas asset basis from reportable federal taxable income.

SECTION 96. Subchapter C, Chapter 171, Tax Code, is amended by adding Section 171.1103 to read as follows:

Sec. 171.1103. PREEXISTING ELECTRIC RELIABILITY COUNCIL CONTRACTS. For purposes of determining net taxable earned surplus under Section 171.110 for report years ending on or before December 31, 2007, an entity formed on or after October 1, 2000, and on or before September 30, 2002, that derives income predominantly from the sale of electricity must subtract from reportable taxable income any income (and add any loss) derived directly or indirectly from contracts that:

(1) are for the sale of electricity at wholesale within the Electric Reliability Council of Texas, Inc (or its successor) market;

(2) were entered into prior to December 31, 2002; and

(3) do not provide for modification of pricing by reason of amendments to this chapter that are effective on or after May 31, 2003.

SECTION 97. Subsection (e), Section 171.1121, Tax Code, is amended to read as follows:

(e) A corporation shall include in its earned surplus and gross receipts for earned surplus its share of a partnership's items of income or loss, regardless if the partnership is taxed as a corporation for federal income tax purposes. [A corporation's share of a partnership's gross receipts that is included in the corporation's federal taxable income must be used in computing the corporation's gross receipts under this section.] Unless otherwise provided by this chapter, a corporation may not deduct costs incurred from the corporation's share of a partnership's gross receipts. The gross receipts must be apportioned as though the corporation directly earned them. A corporation owning an interest in an upper tier partnership is considered to be a partner in each lower tier partnership, and the corporation's share of the gross receipts of each partnership shall be computed and apportioned as though the corporation directly earned the receipts at the partnership tier at which the receipts were originally earned.

SECTION 98. Section 171.151, Tax Code, is amended to read as follows:

Sec. 171.151. PRIVILEGE PERIOD COVERED BY TAX. The franchise tax shall be paid for each of the following:

(1) an initial period beginning on the corporation's beginning date and ending on the day before the first anniversary of the beginning date;

(2) a second period beginning on the first anniversary of the beginning date and ending on December 31 following that date; ~~and~~

(3) after the initial and second periods have expired, a regular annual period beginning each year on January 1 and ending the following December 31;

(4) for a corporation that becomes subject to the tax imposed under this chapter by the enactment of Section 171.001(d)(1), an initial period beginning on September 1, 2003 and ending on December 31, 2003; and

(5) for a corporation that becomes subject to the tax imposed under this chapter by the enactment of Section 171.001(d)(1), a regular annual period beginning on January 1, 2004 and ending on December 31, 2004.

SECTION 99. Section 171.152, Tax Code, is amended by adding Subsection (d) to read as follows:

(d) Payment of the tax covering the initial period provided by Section 171.151(4) is due on April 1, 2004.

SECTION 100. Section 171.153, Tax Code, is amended by adding Subsection (d) to read as follows:

(d) The tax covering the initial period provided by Section 171.151(4) is based on the business done by the corporation during the period beginning on September 1, 2003 and ending on December 31, 2003.

SECTION 101. Section 171.1532, Tax Code, is amended by adding Subsection (c) to read as follows:

(c) The tax covering the initial period provided by Section 171.151(4) is based on the business done by the corporation during the period beginning on September 1, 2003 and ending on December 31, 2003.

SECTION 102. Subchapter F, Chapter 171, Tax Code, is amended by adding Section 171.2515 to read as follows:

Section. 171.2515. FORFEITURE OF RIGHT OF PARTNERSHIP TO TRANSACT BUSINESS IN THIS STATE. (a) The comptroller may, for the same reasons and using the same procedure the comptroller uses in relation to the forfeiture of the corporate privileges of a corporation, forfeit the right of a partnership subject to a tax imposed by this subchapter to transact business in this state.

(b) The provisions of this subchapter, including Section 171.255, that apply to the forfeiture of corporate privileges apply to forfeiture of a partnership's right to transact business in this state.

SECTION 103. Subchapter G, Chapter 171, Tax Code, is amended by adding Section 171.3015 to read as follows:

Section. 171.3015. FORFEITURE OF CERTIFICATE OR REGISTRATION OF PARTNERSHIP. (a) A partnership's certificate or registration may be forfeited for the same reasons and using the same procedure that are used in relation to the forfeiture of a corporation's charter or certificate of authority.

(b) The provisions of this subchapter that apply to the forfeiture of a corporation's charter or certificate of authority apply to the forfeiture of a partnership's certificate or registration.

SECTION 104. Section 201.057(i), Tax Code, is amended to read as follows:

(i) If, before the commission certifies that a well produces high-cost gas or before the comptroller approves an application for an exemption or tax reduction under this section, the tax imposed by this chapter is paid on high-cost gas that otherwise qualifies for the exemption or tax reduction provided by this section, the producer or producers of the gas are entitled to a credit against other taxes imposed by this chapter in an amount equal to the amount of the tax paid on the gas that otherwise qualified for the exemption or tax reduction on or after the first day of the next month after the month in which the application for certification under this section was filed with the commission. If the application for certification is submitted to the commission after January 1, 2004, the total allowable credit for taxes paid for reporting periods before the date the application is filed may not exceed the total tax paid on the gas that otherwise qualified for the exemption or tax reduction and that was produced during the 24 consecutive calendar months immediately preceding the month in which the application for certification under this section was filed with the commission. The credit is allocated to each producer according to the producer's proportionate share in the gas. To receive a credit, one or more of the producers must apply to the comptroller for the credit not later than the first anniversary after the date the comptroller approves the application for an exemption or tax reduction under this section. If a producer demonstrates that the producer does not have sufficient tax liability under this chapter to claim the credit within five years from the date the application for the credit is made, the producer is entitled to a refund in the amount of any credit the comptroller determines may not be claimed within that

five years. Nothing in this subsection shall relieve the obligation imposed by Subsection (b) to pay tax when due on high-cost gas produced from co-production projects on or before July 31, 1995.

SECTION 105. Section 201.101, Tax Code, is amended to read as follows:

Sec. 201.101. MARKET VALUE. (a) The market value of gas is its value at the mouth of the well from which it is produced. The value of gas at the mouth of the well is determined by ascertaining the producer's actual marketing costs and subtracting those costs from the producer's gross cash receipts from the sale of the gas.

(b) Marketing costs are the costs incurred by the producer to get the gas from the mouth of the well to the market, including:

- (1) costs for compressing the gas sold;
- (2) costs for dehydrating the gas sold;
- (3) costs for sweetening the gas sold; and
- (4) costs for delivering the gas to the purchaser.

(c) Marketing costs do not include:

- (1) costs incurred in producing the gas;
- (2) costs incurred in normal lease separation of the oil or condensate; or
- (3) insurance premiums on the marketing facility.

(d) Marketing costs are determined by adding:

- (1) a reasonable charge for depreciation of the marketing facility being used, provided that, if the facility is rented, the actual rental fee is added;
- (2) a return on the producer-owned investment equal to six percent per year on the average depreciable balance;
- (3) costs of direct or allocated labor associated with the marketing facility;
- (4) costs of materials, supplies, maintenance, repairs, and fuel associated with the marketing facility; and
- (5) ad valorem taxes paid on the marketing facility.

(e) If the facility is used for a purpose other than marketing the gas being sold, the cost shall be allocated accordingly.

(f) If the facility is handling gas for outside parties, the average cost for handling all of the gas shall be applied against the facility owner's gas.

(g) The actual cost being charged a producer by an outside party for marketing functions may be used for tax purposes if no other benefit or value accrues to the producer.

(h) A producer receiving a cost reimbursement from the gas purchaser shall include the reimbursement in the gross cash receipts and is entitled to deduct the actual marketing costs incurred.

SECTION 106. Section 201.102, Tax Code, is amended to read as follows:

Sec. 201.102. CASH SALES. If gas is sold for cash only, the tax shall be computed on the producer's gross cash receipts. Payments from a purchaser of gas to a producer for the purpose of reimbursing the producer for taxes due under this chapter are ~~not~~ part of the gross cash receipts unless the reimbursement amount for taxes due under this chapter is separately stated in the sales contract.

SECTION 107. Section 313.021(2), Tax Code, is amended to read as follows:

(2) "Qualified property" means:

(A) land:

(i) that is located in an area designated as a reinvestment zone under Chapter 311 or 312 or as an enterprise zone under Chapter 2303, Government Code;

(ii) on which a person proposes to construct a new building or erect or affix a new improvement that does not exist before the date the owner applies for a limitation on appraised value under this subchapter;

(iii) that is not subject to a tax abatement agreement entered into by a school district under Chapter 312; and

(iv) on which, in connection with the new building or new improvement described by Subparagraph (ii), the owner of the land proposes to:

(a) make a qualified investment in an amount equal to at least the minimum amount required by Section 313.023; and

(b) create at least 25 new jobs;

(B) the new building or other new improvement described by Paragraph (A)(ii); and

(C) tangible personal property that:

(i) is not subject to a tax abatement agreement entered into by a school district under Chapter 312; and

(ii) except for new equipment described in Section 151.318(q) or (q-1), is first placed in service in the new building or in or on the new improvement described by Paragraph (A)(ii), or on the land on which that new building or new improvement is located, if the personal property is ancillary and necessary to the business conducted in that new building or in or on that new improvement.

SECTION 108. Section 321.003, Tax Code, is amended to read as follows:

Sec. 321.003. OTHER PORTIONS OF TAX APPLICABLE. Subtitles A and B, Title 2, and Chapters 142 and [Chapter] 151 apply to the taxes and to the administration and enforcement of the taxes imposed by this chapter in the same manner that those laws apply to state taxes, unless modified by this chapter.

SECTION 109. Section 321.203, Tax Code, is amended by amending Subsections (b), (c), (d), (e), and (g) and adding Subsections (g-1), (g-2), (g-3), and (l) to read as follows:

(b) If a retailer has only one place of business in this state, all of the retailer's retail sales of tangible personal property are consummated at that place of business except as provided by Subsection (e).

(c) If a retailer has more than one place of business in this state, a sale of tangible personal property ~~[a taxable item]~~ by the retailer is consummated at the retailer's place of business:

(1) from which the retailer ships or delivers the property ~~[item]~~, if the retailer ships or delivers the property ~~[item]~~ to a point designated by the purchaser or lessee; or

(2) where the purchaser or lessee takes possession of and removes the property [item], if the purchaser or lessee takes possession of and removes the property [item] from a place of business of the retailer.

(d) If neither the possession of tangible personal property [a taxable item] is taken at nor shipment or delivery of the property [item] is made from the retailer's place of business in this state, the sale is consummated at:

(1) the retailer's place of business in this state where the order is received; or

(2) if the order is not received at a place of business of the retailer, the place of business from which the retailer's salesman who took the order operates.

(e) A sale of tangible personal property is consummated at the location in this state to which the property [a taxable item] is shipped or delivered or at which possession is taken by the customer if transfer of possession of the property [a taxable item] occurs at, or shipment or delivery of the property [item] originates from, a location in this state other than a place of business of the retailer and if:

(1) the retailer is an itinerant vendor who has no place of business;

(2) the retailer's place of business where the purchase order is initially received or from which the retailer's salesman who took the order operates is outside this state; or

(3) the purchaser places the order directly with the retailer's supplier and the property [item] is shipped or delivered directly to the purchaser by the supplier.

(g) ~~The [sale of telecommunications services is consummated at the location of the telephone or other telecommunications device from which the call or other transmission originates, unless the point of origin cannot be determined, in which case the sale is at the address to which the call is billed. However, the] sale of mobile telecommunications services is consummated in accordance with [the provisions of] Section 151.061.~~

(g-1) The sale of telecommunications services sold based on a price that is measured by individual calls is consummated at the location where the call originates and terminates or the location where the call either originates or terminates and at which the service address is also located.

(g-2) Except as provided by Subsection (g-3), the sale of telecommunications services sold on a basis other than on a call-by-call basis is consummated at the location of the customer's place of primary use. In this subsection, "place of primary use" has the meaning assigned by Section 151.061(a)(2).

(g-3) A sale of post-paid calling services is consummated at the location of the origination point of the telecommunications signal as first identified by the seller's telecommunications system or by information received by the seller from the seller's service provider if the system used to transport the signal is not that of the seller.

(l) Except as otherwise provided by this section, the sale of a taxable service, other than a service described by Section 151.330(f), is consummated at the location at which the service is performed or otherwise delivered.

SECTION 110. Section 321.3022, Tax Code, is amended by amending Subsection (a) and adding Subsection (i) to read as follows:

(a) The comptroller on request shall provide to a municipality that has adopted a tax under this chapter and that has a population of not more than 275,000 information relating to the amount of tax paid to the municipality under this chapter during the preceding or current calendar year by each person doing business in the municipality who annually remits to the comptroller state and local sales tax payments of more than \$25,000 [~~\$100,000~~].

(i) Notwithstanding Chapter 551, Government Code, the governing body of a municipality is not required to confer with one or more employees or a third party in an open meeting to receive information or question the employees or third party regarding the information received by the municipality under this section.

SECTION 111. Section 322.107, Tax Code, is amended to read as follows:

Sec. 322.107. EXEMPTION: SALES TAX ON ITEMS LEAVING

ENTITY. There are exempted from the sales tax of a taxing entity the receipts of the sale of a taxable item that, under a sales contract, is shipped to a point outside the entity by means of:

- (1) facilities operated by the retailer;
- (2) delivery by the retailer to a carrier for shipment to a consignee at that point; or
- (3) delivery by the retailer to a [~~customs broker or a~~] forwarding agent for shipment outside the entity.

SECTION 112. Section 323.003, Tax Code, is amended to read as follows:

Sec. 323.003. OTHER PORTIONS OF TAX APPLICABLE. Subtitles A and B, Title 2, and Chapters 142 and [Chapter] 151 apply to the taxes and to the administration and enforcement of the taxes imposed by this chapter in the same manner that those laws apply to state taxes unless modified by this chapter.

SECTION 113. Section 323.203, Tax Code, is amended by amending Subsections (b), (c), (d), (e), and (g) and adding Subsections (g-1), (g-2), (g-3), and (l) to read as follows:

(b) If a retailer has only one place of business in this state, all of the retailer's retail sales of tangible personal property are consummated at that place of business except as provided by Subsection (e).

(c) If a retailer has more than one place of business in this state, a sale of tangible personal property [~~a taxable item~~] by the retailer is consummated at the retailer's place of business:

(1) from which the retailer ships or delivers the property [~~item~~], if the retailer ships or delivers the property [~~item~~] to a point designated by the purchaser or lessee; or

(2) where the purchaser or lessee takes possession of and removes the property [~~item~~], if the purchaser or lessee takes possession of and removes the property [~~item~~] from a place of business of the retailer.

(d) If neither the possession of tangible personal property [~~a taxable item~~] is taken at nor shipment or delivery of the property [~~item~~] is made from the retailer's place of business in this state, the sale is consummated at:

(1) the retailer's place of business in this state where the order is received; or

(2) if the order is not received at a place of business of the retailer, the place of business from which the retailer's salesman who took the order operates.

(e) A sale of tangible personal property is consummated at the location in this state to which the property [~~a taxable item~~] is shipped or delivered or at which possession is taken by the customer if transfer of possession of the property [~~a taxable item~~] occurs at, or shipment or delivery of the property [~~taxable item~~] originates from, a location in this state other than a place of business of the retailer and if:

(1) the retailer is an itinerant vendor who has no place of business;

(2) the retailer's place of business where the purchase order is initially received or from which the retailer's salesman who took the order operates is outside this state; or

(3) the purchaser places the order directly with the retailer's supplier and the property [~~taxable item~~] is shipped or delivered directly to the purchaser by the supplier.

(g) ~~The sale of [telecommunications services is consummated at the location of the telephone or other telecommunications device from which the call or other transmission originates, unless the point of origin cannot be determined, in which case the sale is at the address to which the call is billed. However, the sale of] mobile telecommunications services is consummated in accordance with [the provisions of] Section 151.061.~~

(g-1) The sale of telecommunications services sold based on a price that is measured by individual calls is consummated at the location where the call originates and terminates or the location where the call either originates or terminates and at which the service address is also located.

(g-2) Except as provided by Subsection (g-3), the sale of telecommunications services sold on a basis other than on a call-by-call basis is consummated at the location of the customer's place of primary use. In this subsection, "place of primary use" has the meaning assigned by Section 151.061(a)(2).

(g-3) A sale of post-paid calling services is consummated at the location of the origination point of the telecommunications signal as first identified by the seller's telecommunications system or by information received by the seller from the seller's service provider if the system used to transport the signal is not that of the seller.

(l) Except as otherwise provided by this section, the sale of a taxable service, other than a service described by Section 151.330(f), is consummated at the location at which the service is performed or otherwise delivered.

SECTION 114. Section 256.009, Transportation Code, is amended to read as follows:

Sec. 256.009. REPORT TO COMPTROLLER. (a) Not later than January 30 of each year, the county auditor or, if the county does not have a county auditor, the official having the duties of the county auditor shall file a report with the comptroller that includes:

(1) an account of how the money allocated to a county under Section 256.002 during the preceding year was spent;

(2) a description, including location, of any new roads constructed in whole or in part with the money allocated to a county under Section 256.002 during the preceding year;

(3) any other information related to the administration of Sections 256.002 and 256.003 that the comptroller requires; and

(4) [stating] the total amount of expenditures for county road and bridge construction, maintenance, rehabilitation, right-of-way acquisition, and utility construction and other appropriate road expenditures of county funds in the preceding county fiscal year that are required by the constitution or other law to be spent on public roads or highways.

(b) The report must be in a form prescribed by the comptroller.

(c) ~~(b)~~ The comptroller may distribute money under Section 256.002(a) to a county only if the most recent report required by Subsection (a) has been filed.

(d) A county official or employee shall provide to the comptroller on request any information necessary to determine the legality of the use of money allocated under Section 256.002.

SECTION 115. (a) The comptroller of public accounts shall conduct a study of the economic and other costs to political subdivisions of this state of changing the sourcing laws relating to the sale of tangible personal property to comply with the Streamlined Sales and Use Tax Agreement.

(b) The comptroller of public accounts may request from a political subdivision of this state any information the comptroller requires to complete the study, and the political subdivision shall provide the requested information as soon as possible.

(c) Not later than December 31, 2004, the comptroller shall provide to the lieutenant governor, speaker of the house of representatives, and presiding officers of the senate and house committees having primary jurisdiction over the comptroller a report on the results of the study.

SECTION 116. The following are repealed:

(1) Section 44.901, Education Code, as amended by Chapter 1319, Acts of the 77th Legislature, Regular Session, 2001;

(2) Section 51.927, Education Code, as amended by Chapter 1319, Acts of the 77th Legislature, Regular Session, 2001;

(3) Section 395.103, Finance Code;

(4) Subchapters O and P, Chapter 403, Government Code;

(5) Section 609.515, Government Code;

(6) Section 659.131(10), Government Code;

(7) Section 659.146(b), Government Code;

(8) Section 659.152, Government Code;

(9) Section 815.211, Government Code;

(10) Section 840.210, Government Code;

(11) Section 2166.406, Government Code, as amended by Chapter 1319, Acts of the 77th Legislature, Regular Session, 2001;

(12) Section 2305.025, Government Code;

- (13) Section 2305.032(c), Government Code;
- (14) Section 2305.033(c), Government Code;
- (15) Section 2305.073, Government Code;
- (16) Section 2305.074, Government Code;
- (17) Section 2305.076, Government Code;
- (18) Article 4.74, Insurance Code;
- (19) Section 1551.054, Insurance Code, as effective June 1, 2003;
- (20) Section 302.003, Local Government Code, as amended by Chapter 573, Acts of the 77th Legislature, Regular Session, 2001;
- (21) Section 111.207(d), Tax Code;
- (22) Sections 112.058(b) and (c), Tax Code;
- (23) Section 151.025(c), Tax Code;
- (24) Section 151.157, Tax Code;
- (25) Section 151.158, Tax Code;
- (26) Section 151.159, Tax Code;
- (27) Sections 151.307(c), (d), and (e), Tax Code;
- (28) Section 151.326(c), Tax Code;
- (29) Section 151.712, Tax Code;
- (30) Section 151.713, Tax Code;
- (31) Chapter 326, Tax Code;
- (32) Sections 256.003(b) and (c), Transportation Code; and
- (33) Sections 1.02(b)-(i), Chapter 753, Acts of the 76th Legislature, Regular Session, 1999.

SECTION 117. (a) For the fiscal biennium beginning September 1, 2003, the comptroller is appropriated from the general revenue fund the amount needed to return any available cash that was transferred to that fund from a fund outside the state treasury and to maintain the equity of the fund from which the transfer was made, as required by Section 403.092, Government Code, as amended by this Act.

(b) The changes in law made by this Act to Sections 54.619 and 54.624, Education Code, apply to each academic term or semester that begins after the effective date of this Act, other than a term or semester before the 2003 fall semester.

(c) The changes in law made by this Act to Section 403.1042, Government Code, do not affect the entitlement of a member serving on the tobacco settlement permanent trust account advisory committee immediately before the effective date of this Act to serve the remainder of the member's current term. As the terms of the members of the tobacco settlement permanent trust account investment advisory committee first expire after the effective date of this Act, the entities authorized to appoint the committee members under Section 403.1042(b), Government Code, as amended by this Act, shall appoint their successors.

(d) Section 659.2531, Government Code, as added by this Act, applies only to a transfer that takes effect on or after September 1, 2003. A transfer that takes effect before September 1, 2003, is governed by the law in effect on the effective

date of the transfer, and the former law is continued in effect for that purpose. In this subsection, "transfer" has the meaning assigned by Section 659.2531, Government Code, as added by this Act.

(e) The changes in law made by this Act to Section 659.255, Government Code, apply only to a merit salary increase or a one-time merit payment that takes effect or is made on or after September 1, 2003. A merit salary increase or a one-time merit payment that takes effect or is made before September 1, 2003, is governed by the law in effect on the date the increase takes effect or the payment is made, and the former law is continued in effect for that purpose.

(f) The rate of interest that accrues on a payment that becomes overdue on or after September 1, 2004, is the rate determined under Section 2251.025(b), Government Code, as amended by this Act. The rate of interest that accrues on a payment that becomes overdue before September 1, 2004, is the rate determined under the law in effect before July 1, 2004, and the former law is continued in effect for that purpose.

(g) The changes in law made by this Act to Section 2252.903, Government Code, apply only to a written contract that is entered into on or after September 1, 2003. A written contract that is entered into before September 1, 2003, is governed by the law in effect on the date the contract is entered into, and the former law is continued in effect for that purpose.

(h) The changes in law made by this Act to Section 74.103, Property Code, apply only to an examination begun on or after September 1, 2003. An examination begun before September 1, 2003, is governed by the law in effect on the date the examination begins, and the former law is continued in effect for that purpose.

(i) The changes in law made by this Act to Chapter 111, Tax Code, apply only to a claim for a refund made on or after the effective date of this Act, without regard to whether the taxes that are the subject of the claim were due before, on, or after that date.

(j) The changes in law made by this Act to Sections 153.119(d) and 153.222(d), Tax Code, apply only to fuel used on or after September 1, 2003, for climate-control air conditioning or heating in a motor vehicle. Fuel used before that date is governed by the law in effect on the date the fuel is used, and that law is continued in effect for that purpose.

SECTION 118. The comptroller shall adopt rules and forms as necessary to implement Article 4.73(a), Insurance Code, as amended by this Act, not later than the 90th day after the effective date of this Act.

SECTION 119. (a) Except as provided by this section, 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, 2003.

(b) The amendments by this Act to the following sections take effect September 1, 2003:

(1) Section 14(e), Article 42.12, Code of Criminal Procedure, as added by Chapter 1188, Acts of the 76th Legislature, Regular Session, 1999;

- (2) Section 19(f), Article 42.12, Code of Criminal Procedure;
- (3) Section 659.253, Government Code;
- (4) Section 659.255, Government Code;
- (5) Sections 2101.0115(a) and (b), Government Code;
- (6) Section 2113.205(b), Government Code;
- (7) Section 2252.903(e), Government Code;
- (8) Section 74.103, Property Code;
- (9) Section 74.501, Property Code;
- (10) Section 112.058(a), Tax Code;
- (11) Section 153.119(d), Tax Code;
- (12) Section 153.222(d), Tax Code;
- (13) Section 201.057(i), Tax Code;
- (14) Section 201.101, Tax Code;
- (15) Section 201.102, Tax Code; and
- (16) Section 256.009, Transportation Code.

(c) The amendments by this Act to Section 2251.025(b), Government Code, and Sections 321.203 and 323.203, Tax Code, take effect July 1, 2004. Sections 151.103(d) and 151.202(c), Tax Code, as added by this Act, take effect July 1, 2004.

(d) The repeal by this Act of Section 395.103, Finance Code, and Sections 112.058(b) and (c), Tax Code, takes effect September 1, 2003.

(e) Sections 659.2531 and 659.262, Government Code, as added by this Act, take effect September 1, 2003.

(f) The amendments by this Act to the following sections take effect October 1, 2003:

- (1) Section 142.002, Tax Code;
- (2) Section 142.005, Tax Code;
- (3) Section 151.011(a), Tax Code;
- (4) Section 151.152(b), Tax Code;
- (5) Section 151.307(b), Tax Code;
- (6) Section 151.314, Tax Code;
- (7) Section 151.317, Tax Code;
- (8) Section 321.003, Tax Code;
- (9) Section 322.107, Tax Code; and
- (10) Section 323.003, Tax Code.

(g) Sections 142.0055, 142.011, and 151.012, Tax Code, as added by this Act, take effect October 1, 2003.

(h) The repeal by this Act of the following provisions takes effect October 1, 2003:

- (1) Section 151.157, Tax Code;
- (2) Section 151.158, Tax Code;
- (3) Section 151.159, Tax Code;
- (4) Sections 151.307(c), (d), and (e), Tax Code;
- (5) Section 151.326(c), Tax Code;
- (6) Section 151.712, Tax Code;
- (7) Section 151.713, Tax Code; and

(8) Chapter 326, Tax Code.

(i) The repeal by this Act of Section 151.025(c), Tax Code, takes effect July 1, 2003, if this Act receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for effect on that date, the repeal of Section 151.025(c), Tax Code, takes effect October 1, 2003.

(j) Section 151.025(d), Tax Code, as added by this Act, takes effect July 1, 2003, if this Act receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for effect on that date, Section 151.025(d), Tax Code, takes effect October 1, 2003.

(k) The change in law made by Sections 89 through 103 of this Act does not affect taxes or fees imposed before the effective date of this Act, and the former law is continued in effect for purposes of the liability for and collection of those taxes and fees.

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

CSHB 2425 is amended as follows:

On page 47, lines 51 and 52, delete the following: "In this subsection, 'place of primary use' has the meaning assigned by Section 151.061(a)(2)."

On page 49, lines 14 and 15, delete the following: "In this subsection, 'place of primary use' has the meaning assigned by Section 151.061(a)(2)."

Senate Amendment No. 2 (Senate Floor Amendment No. 2)

Amend **CSHB 2425** (Senate committee printing) as follows:

(1) Strike SECTION 81 of the bill (page 33, line 60 through page 34, line 16).

(2) In SECTION 116 of the bill (page 50, lines 30-36), strike Subdivisions (24), (25), (26), (27), (29), and (30), and renumber the remaining Subdivisions accordingly.

(3) In SECTION 119(f) of the bill (page 52, line 14), strike Subdivision (5) and renumber the remaining Subdivisions accordingly.

(4) Strike SECTION 119(h) of the bill (page 52, lines 22-31), and substitute the following:

(g) The repeal by this Act of the following provisions takes effect October 1, 2003:

(1) Section 151.326(c), Tax Code; and

(2) Chapter 326, Tax Code.

Senate Amendment No. 3 (Senate Floor Amendment No. 3)

Amend **CSHB 2425** in SECTION 10, amending Section 403.020, Government Code, by striking amended Subsection (c) (page 8, lines 11 through 17, Senate committee printing) and substituting the following:

(c) A review of a school district may be initiated by the comptroller or by the request of the [school] district. Except as provided by Subsection (c-1), a review of a public junior college or general academic teaching institution may be initiated only at the request of:

- (1) the governor;
- (2) the Legislative Budget Board; or
- (3) the governing body of the college or institution.

(c-1) A review of a general academic teaching institution may be initiated by the comptroller if the rate of graduation within six years of initial enrollment for entering freshman students of the institution for the most recent six-year period for which that information is available is less than 35 percent, as determined by the Texas Higher Education Coordinating Board.

Senate Amendment No. 4 (Senate Floor Amendment No. 4)

Amend **CSHB 2425** as follows:

- (1) Strike SECTIONS 89-103 of the bill (Senate committee printing, page 37, line 24, through page 45, line 8).
- (2) Strike SECTION 119(k) of the bill (Senate committee printing, page 52, lines 44-47).
- (3) Renumber SECTIONS of the bill appropriately.

Senate Amendment No. 5 (Senate Floor Amendment No. 5)

Amend **CSHB 2425** by deleting SECTION 54 and SECTION 110.

Senate Amendment No. 6 (Senate Floor Amendment No. 7)

Amend **CSHB 2425** by adding appropriately numbered new SECTIONS to the bill and renumbering subsequent SECTIONS accordingly, to read as follows:

(1) SECTION _____. Section 659.260, Government Code, is amended to read as follows:

Sec. 659.260. TEMPORARY ASSIGNMENT. [~~(a) This section applies only to an employee whose permanent position is classified under the state's position classification plan.~~]

(a) [~~(b)~~] To facilitate a state agency's work during an emergency or other special circumstance, an employee may be temporarily assigned to other duties for a period not to exceed six months. The employee is entitled to receive during the period of reassignment at least the same rate of pay that the employee received immediately before the reassignment. An employee may not be temporarily assigned under this subsection to a position classified in a salary group with a lower minimum salary rate.

(b) [~~(c)~~] An employee may not be assigned temporary duties under this section for more than six months during a twelve-month period.

(c) [~~(d)~~] An employee temporarily designated to act as the administrative head of a state agency may continue to receive a salary for a classified position in an amount not to exceed the amount established by General Appropriations Act for the administrative head of the agency.

(d) [~~(e)~~] While the employee is temporarily assigned under this section, the state agency may not:

- (1) award a merit salary increase to the employee; or
- (2) promote or demote the employee.

(2) SECTION _____. Subsection (e), Section 661.152, Government Code, is amended to read as follows:

(e) In this subsection, "duty" means an employee's last physical day on the job. An employee accrues vacation leave at the applicable rate beginning on the first day of state employment and ending on the last duty day of state employment. An employee accrues and is entitled to be credited for one month's vacation leave for each month of employment with the state beginning on the first day of employment with the state and on the first calendar day of each succeeding month of state employment. An employee who is employed by the state during any part of a calendar month accrues vacation leave entitlement for the entire calendar month.

(3) SECTION _____. Subsection (b), Section 661.202, Government Code, is amended to read as follows:

(b) In this subsection, "duty" means an employee's last physical day on the job. An employee accrues sick leave beginning on the first day of state employment and ending on the last duty day of state employment. An employee is entitled to be credited for one month's accrual of sick leave at the rate specified by Subsection (c) for each month of employment with the state beginning on the first day of employment with the state and on the first calendar day of each succeeding month of state employment.

(4) SECTION _____. Subsection (b), Section 661.206, Government Code, is amended to read as follows:

(b) An employee may use up to eight hours of sick leave each fiscal ~~calendar~~ year to attend parent-teacher conference sessions for the employee's children.

(5) SECTION _____. Section 662.010, Government Code, is amended to read as follows:

Sec. 662.010. HOLIDAY BEFORE WORK BEGINS OR AFTER WORK ENDS. (a) An individual must be a state employee on the workday before and after a state or national holiday in order to be paid for that holiday, unless the holiday falls on the employee's first or last workday of the month ~~[who is not a state employee on the last workday before a state or national holiday but who is a state employee on the first workday after the holiday may not be paid for the holiday if it occurs during the same month as the last workday before the holiday.]~~

~~[(b) An individual who is a state employee on the last workday before a state or national holiday but who is not a state employee on the first workday after the holiday may not be paid for the holiday if it occurs before the first workday of a month and during that month.]~~

(b) [(c)] In this section, "state employee":

- (1) includes an individual who uses paid leave from a state agency; and
- (2) does not include an individual who uses unpaid leave from a state agency.

Senate Amendment No. 7 (Senate Floor Amendment No. 8)

Amend **CSHB 2425** by adding the following appropriately numbered SECTION to the bill and renumbering the other SECTIONS of the bill accordingly:

SECTION __. Section 55.1731(a), Education Code, is amended to read as follows:

(a) In addition to the other authority granted by this subchapter, the board of regents of The Texas A&M University System may issue in accordance with this subchapter and in accordance with a systemwide revenue financing program adopted by the board bonds for the following institutions not to exceed the following aggregate principal amounts to finance projects specified as follows:

(1) Prairie View A&M University:

(A) \$53 million to construct or renovate engineering facilities, construct and renovate an architecture building, and carry out other campus renovations; and

(B) \$15 million to construct a juvenile justice and psychology building;

(2) Tarleton State University, \$18.7 million for a library addition and renovation of a mathematics building;

(3) Texas A&M University–Commerce, \$14,960,000 to construct [~~replace~~] a science building [~~wing~~];

(4) Texas A&M University–Corpus Christi, \$34 million to construct a classroom and laboratory facility and for construction of the Harte Research Center;

(5) Texas A&M International University, \$21,620,000 to construct a science building (Phase IV);

(6) Texas A&M University at Galveston, \$10,030,000 to construct an engineering building;

(7) Texas A&M University–Kingsville, \$20,060,000 to construct facilities for a pharmacy school and to construct a student services building;

(8) Texas A&M University–Texarkana, \$17 million to construct a health science building and for library renovation;

(9) West Texas A&M University, \$22,780,000 to construct a fine arts complex; and

(10) The Texas A&M University Health Science Center, \$14.3 million for construction of classroom and faculty office facilities for the School of Rural Public Health.

Senate Amendment No. 8 (Senate Floor Amendment No. 9)

Amend **CSHB 2425** by inserting the following new SECTIONS, appropriately numbered, and renumbering the SECTIONS of the bill accordingly:

SECTION _____. Articles 4.51(2) and (13), Insurance Code, are amended to read as follows:

(2) "Allocation date" means the date on which the certified investors of a certified capital company are allocated premium tax credits [~~certified capital~~] by the comptroller under this subchapter.

(13) "State premium tax liability" means:

(A) any liability incurred by any person under Subchapter A of this chapter; or

(B) if the tax liability imposed under Subchapter A of this chapter on January 1, 2003 [~~2004~~], is eliminated or reduced, any tax liability imposed on an insurance company or other person that had premium tax liability under Subchapter A of this chapter on that date.

SECTION _____. Article 4.52, Insurance Code, is amended to read as follows:

Art. 4.52. DUTIES OF COMPTROLLER; RULES; IMPLEMENTATION. The comptroller shall administer this subchapter and shall [~~may~~] adopt rules and forms as necessary to implement this subchapter. The rules must provide that:

(1) the comptroller shall begin accepting applications for certification as a certified capital company not later than the 30th day after the date the rules are adopted; and

(2) the comptroller shall accept premium tax credit allocation claims on behalf of certified investors on a date not later than the 120th day after the date the rules are adopted.

SECTION _____. Article 4.65(a), Insurance Code, is amended to read as follows:

(a) A certified investor who makes an investment of certified capital shall in the year of investment earn a vested credit against state premium tax liability equal to 100 percent of the certified investor's investment of certified capital, subject to the limits imposed by this subchapter. Beginning with the tax report due March 1, 2009, for the 2008 tax year, a [A] certified investor may take up to 25 [~~40~~] percent of the vested premium tax credit in any taxable year of the certified investor. The credit may not be applied to estimated payments due in 2008.

SECTION _____. Article 4.66(a), Insurance Code, is amended to read as follows:

(a) A premium tax credit allocation claim must be prepared and executed by a certified investor on a form provided by the comptroller. The certified capital company must file the claim with the comptroller on the date on which the comptroller accepts premium tax credit allocation claims on behalf of certified investors under rules adopted under Article 4.52(2) of this code [~~not later than February 15, 2002~~]. The premium tax credit allocation claim form must include an affidavit of the certified investor under which the certified investor becomes legally bound and irrevocably committed to make an investment of certified capital in a certified capital company in the amount allocated even if the amount allocated is less than the amount of the claim, subject only to the receipt of an allocation under Article 4.68 of this code.

SECTION _____. Section 4.67(b), Insurance Code, is amended to read as follows:

(b) The total amount of certified capital for which premium tax credits may be allowed for all certified investors under this subchapter may not exceed the amount that would entitle all certified investors in certified capital companies to take total credits of \$50 [~~\$20~~] million in a year.

SECTION _____. Article 4.68(c), Insurance Code, is amended to read as follows:

(c) Not later than the 15th day after the date on which the comptroller accepts premium tax credit allocation claims on behalf of certified investors under rules adopted under Article 4.52(2) of this code [~~March 1, 2002~~], the comptroller shall notify each certified capital company of the amount of tax credits allocated to each certified investor. Each certified capital company shall notify each certified investor of their premium tax credit allocation.

SECTION _____. Article 4.73(a), Insurance Code, is amended to read as follows:

(a) The comptroller shall prepare a biennial report with respect to results of the implementation of this subchapter. The report must include:

(1) the number of certified capital companies holding certified capital;
(2) the amount of certified capital invested in each certified capital company;

(3) the amount of certified capital the certified capital company has invested in qualified businesses as of January 1, 2006 [~~2004~~], and the cumulative total for each subsequent year;

(4) the total amount of tax credits granted under this subchapter for each year that credits have been granted;

(5) the performance of each certified capital company with respect to renewal and reporting requirements imposed under this subchapter;

(6) with respect to the qualified businesses in which certified capital companies have invested:

(A) the classification of the qualified businesses according to the industrial sector and the size of the business;

(B) the total number of jobs created by the investment and the average wages paid for the jobs; and

(C) the total number of jobs retained as a result of the investment and the average wages paid for the jobs; and

(7) the certified capital companies that have been decertified or that have failed to renew the certification and the reason for any decertification.

Senate Amendment No. 9 (Senate Floor Amendment No. 10)

Amend **CSHB 2425** by adding a new SECTION 62 on page 29, line 29 and renumbering subsequent sections:

SECTION 62. Section 430.003, Local Government Code, is added to read as follows:

Section 430.003. Exemptions of State Property from Infrastructure Fees. No county, municipality or utility district may collect from a state agency or public institution of higher education any fee charged for the development or maintenance of programs or facilities for the control of excess water or storm water.

Senate Amendment No. 10 (Senate Floor Amendment No. 11)

Amend **CSHB 2425** by adding the following appropriately numbered SECTIONS and renumbering the other SECTIONS of the bill accordingly:

SECTION _____. Section 53.02, Education Code, is amended by adding Subdivision (14) to read as follows:

(14) "Borrower" means any of the following entities that is the recipient of a loan made under Section 53.34:

(A) an institution of higher education;

(B) a nonprofit corporation incorporated by and under the exclusive control of an institution of higher education;

(C) an accredited primary or secondary school; or

(D) an accredited charter school.

SECTION _____. Section 53.33, Education Code, is amended to read as follows:

Sec. 53.33. LIMITED POWER TO ACQUIRE, OWN, AND OPERATE EDUCATIONAL AND HOUSING FACILITIES~~[CONSTRUCTION, ACQUISITION, ETC]~~. (a) An [The] authority or a nonprofit instrumentality created under Section 53.35(b) may acquire, own, hold title to, lease, or operate an educational facility or housing facility or any facility incidental, subordinate, or related to or appropriate in connection with an educational facility or housing facility, but only if:

(1) the facility is or will be located within the corporate limits of the city that created the authority or nonprofit instrumentality;

(2) the governing body of an institution of higher education officially requests the authority or nonprofit instrumentality to acquire and own the facility for the benefit of the institution of higher education;

(3) the institution of higher education officially agrees to accept, and has authority to receive legal title to, the facility not later than the date on which any bonds or other obligations issued to acquire the facility are paid in full; and

(4) the ownership of the facility by the authority or the nonprofit instrumentality is approved by official action of the governing body of:

(A) the city that created the authority or nonprofit instrumentality;

(B) the school district in which the facility is or will be located; and

(C) the county in which the facility is or will be located.

(b) An authority or instrumentality that exercises the powers granted by Subsection (a) may contract for the operation of the facility by public or private entities or persons on the terms and conditions set forth in a contract relating to the operation of the facility.

(c) The changes in law made by the amendment of this section by the 78th Legislature at the 2003 Regular Session do not affect the acquisition, ownership, construction, or improvement of a facility, or the acquisition and ownership of land that were approved by official action of the authority or nonprofit corporate instrumentality before March 15, 2003, and the law in effect immediately before the effective date of the amendment of this section by the 78th Legislature at the 2003 Regular Session is continued in effect for that purpose [by purchase, purchase contract, or lease, may construct, or may enlarge, extend, repair, renovate, or otherwise improve educational facilities or housing facilities. It may acquire land for those purposes, furnish and equip the facilities, and provide by contract, lease, or otherwise for the operation and maintenance of the facilities. The facilities need not be located within the city limits of the city or cities].

SECTION _____. Section 53.34, Education Code, is amended to read as follows:

Sec. 53.34. REVENUE BONDS. (a) An ~~The~~ authority or a nonprofit instrumentality created under Section 53.35(b), including an authority or nonprofit instrumentality authorized to own facilities under Section 53.33(a), may issue and execute revenue bonds or other obligations to loan or otherwise provide funds to a borrower if:

(1) the governing body of the borrower by official action requests the issuer of the bonds or other obligations to loan the proceeds under this subsection;

(2) the purpose of the loan is to enable the borrower to acquire, construct, enlarge, extend, repair, renovate, or otherwise improve an educational facility or housing facility or any facility incidental, subordinate, or related to or appropriate in connection with an educational facility or housing facility, or for acquiring land to be used for those purposes, or to create operating and debt service reserves for and to pay issuance costs related to the bonds or other obligations; and

(3) under the terms of the loan, and unless a mortgage lien granted to secure the loan is in default, the ownership of the facility is required to be at all times under the exclusive control, and held for the exclusive benefit, of the borrower ~~for any of its purposes~~.

(b) In issuing revenue bonds or other obligations under this chapter, the issuer of the bonds or other obligations ~~authority~~ is considered to be acting on behalf of the ~~any~~ city by which it was created.

(c) Bonds or other obligations issued under Subsection (a) ~~(b) The bonds~~ shall be payable from and secured by a pledge of the revenues, income, ~~all or any part of the gross or net revenue to be derived from the operation of the facility or facilities and any other revenue~~ or assets pledged for the purpose by the borrower. The bonds or other obligations may be additionally secured by a mortgage, ~~or~~ deed of trust, ~~on real property of the authority~~ or ~~by a~~ chattel mortgage on real or ~~its~~ personal property, or on ~~by~~ both real and personal property, if granted by the borrower.

(d) A facility financed with the proceeds of a loan or loans made to a borrower under Subsection (a) is not required to be located within the corporate limits of the city that created the issuer of the bonds or other obligations.

(e) An authority or a nonprofit instrumentality that is authorized to acquire and own educational facilities and housing facilities under Section 53.33(a) may issue and execute revenue bonds and other obligations for the purpose of acquiring, owning, and operating the educational and housing facilities, to create operating reserves for the facilities, and to create debt service reserves for and to pay issuance costs related to the bonds or other obligations.

(f) Bonds or other obligations issued under Subsection (e) shall be payable from and secured by a pledge of all or any part of the gross or net revenues to be derived from the operation of the educational facilities and housing facilities being acquired and any other revenues, income, or assets, including the revenues and income of the educational facilities or housing facilities previously acquired

or subsequently to be acquired. The bonds or other obligations may be additionally secured by a mortgage, deed of trust, or chattel mortgage on real or personal property, or on both real and personal property, if granted by the authority or nonprofit instrumentality issuing the bonds or other obligations.

(g) The changes in law made by the amendment of this section by the 78th Legislature at the 2003 Regular Session affect and apply only to transactions involving bonds or other obligations that are issued or executed under this chapter on or after March 15, 2003. Bonds or other obligations that are issued or executed under this chapter before March 15, 2003, are governed by the law in effect immediately before the amendment of this section by the 78th Legislature at the 2003 Regular Session, and that former law is continued in effect for that purpose.

SECTION _____. Section 53.35(b), Education Code, is amended to read as follows:

(b) In addition to or in lieu of establishing an authority under the provisions of this chapter, the governing body of a city or cities may request or order created one or more nonprofit corporations to act on its behalf and as its duly constituted authority and instrumentality to exercise the powers granted to an authority under the provisions of Sections [Section] 53.33 and 53.34, ~~Texas Education Code~~. If a nonprofit corporation is created for such purposes or agrees to such request, the directors thereof shall thereafter be appointed and be subject to removal by the governing body of the city or cities. In addition to the powers ~~[of lease or acquisition of facilities]~~ granted under, and subject to the limitations provided by, Sections [Section] 53.33 and 53.34, the corporation shall have all powers granted under the Texas Non-Profit Corporation Act for the purpose of aiding institutions of higher education in providing educational facilities and housing facilities and facilities incidental, subordinate, or related thereto or appropriate in connection therewith. In addition to Sections [the provisions of Section] 53.33 and 53.34 and the Texas Non-Profit Corporation Act, as amended (Article 1396-1.01, Vernon's Texas Civil Statutes), Sections 53.131, 53.14, 53.15, 53.31, 53.32, 53.331, 53.34, 53.35, 53.38, and 53.41 of this code, ~~Texas Education Code, shall~~ apply to and govern such corporation and its procedures, ~~and~~ bonds, and other obligations.

SECTION _____. Section 53.48, Education Code, is amended to read as follows:

Sec. 53.48. BONDS FOR ACCREDITED PRIMARY OR SECONDARY SCHOOLS. In the same manner that a corporation may issue and execute bonds or other obligations under this chapter for an institution of higher education, a corporation created under Section 53.35(b) may issue and execute bonds or other obligations to finance or refinance educational facilities or housing facilities to be used by an accredited primary or secondary school or by an authorized charter school.

Senate Amendment No. 11 (Senate Floor Amendment No. 12)

Amend **CSHB 2425** by striking "and P," from Section 116(4) and adding the following new appropriately designated sections to the bill:

SECTION _____. Section 403.401, Government Code is amended to read as follows:

(4) "Office" means the office of the ~~comptroller~~ governor.

SECTION ____: Section 403.403, Government Code, is amended to read as follows:

(d) The governor shall designate ~~comptroller is~~ the presiding officer of the board to serve in that capacity at the pleasure of the governor.

SECTION ____: Section 403.406, Government Code, is amended to read as follows:

(a) The board shall hold regular meetings in Austin and other meetings at places and times scheduled by the board in formal sessions and called by the governor ~~comptroller~~.

SECTION ____: Section 403.413, Government Code, is amended to read as follows:

(b) In determining eligible products and ~~small~~ businesses, the board shall give special preference to products or businesses in the areas of semiconductors, nanotechnology, biotechnology and biomedicine that have the greatest likelihood of commercial success, job creation, and job retention in this state.

(e) The board may appoint an advisory committee of experts in the areas of semiconductors, nanotechnology, biotechnology and biomedicine to review projects and businesses seeking financing from the board.

(h) Any business in this state may be eligible for funding through the small business incubator fund if it is determined to have a substantial likelihood of developing and expanding the opportunities for small businesses in the semiconductor, nanotech, biotech or biomedicine industries in Texas.

SECTION ____: Section 403.408 Government Code, Subsection 403.403(f) Government Code and Subsection 403.413(f) Government Code are repealed.

SECTION ____: Proceeds from bonds issued pursuant to V.T.C.A., Government Code Section 403.410 and deposited in the Product Development Fund are hereby appropriated to the Office of the Governor to be used only for purposes specified in V.T.C.A., Government Code Subchapter P: Product Development and Small Business Incubators and Section 71, Article XVI, Texas Constitution. All funds deposited in the Product Development Fund for debt service payments pursuant to contractual agreements between the Board and eligible entities receiving awards from the fund are hereby appropriated.

Senate Amendment No. 12 (Senate Floor Amendment No. 13)

Amend **CSHB 2425** by adding the following appropriately numbered SECTIONS to the bill and renumbering existing SECTIONS of the bill appropriately:

SECTION ____: Section 141.008, Local Government Code, is amended by adding Subsection (a-1) to read as follows:

(a-1) The governing body shall make the payroll deduction described by Subsection (a) if requested in writing by employees who are fire protection personnel as defined by Section 419.021, Government Code, if the municipality receives revenue from the State and if the municipality permits deductions for purposes other than charity, health insurance, taxes, or other purposes for which the municipality is required by law to permit a deduction.

The chair stated that **HB 2425** was passed subject to the provisions of Article III, Section 49a of the Texas Constitution.

**HB 2892 - HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS**

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

HB 2892, A bill to be entitled An Act relating to the illegal use of money or property derived from or intended to further certain controlled substance offenses; providing penalties.

On motion of Representative Allen, the house concurred in the senate amendments to **HB 2892**.

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

Amend **HB 2892** by adding the following appropriately numbered new sections:

SECTION _____. Subchapter D, Chapter 481, Health and Safety Code, is amended by adding Section 481.141 to read as follows:

Sec. 481.141. MANUFACTURE OR DELIVERY OF CONTROLLED SUBSTANCE CAUSING DEATH OR SERIOUS BODILY INJURY. (a) If at the guilt or innocence phase of the trial of an offense described by Subsection (b), the judge or jury, whichever is the trier of fact, determines beyond a reasonable doubt that a person died or suffered serious bodily injury as a result of injecting, ingesting, inhaling, or introducing into the person's body any amount of the controlled substance manufactured or delivered by the defendant, regardless of whether the controlled substance was used by itself or with another substance, including a drug, adulterant, or dilutant, the punishment for the offense is increased by one degree.

(b) This section applies to an offense otherwise punishable as a state jail felony, felony of the third degree, or felony of the second degree under Section 481.112, 481.1121, 481.113, 481.114, or 481.122.

(c) Notwithstanding Article 42.08, Code of Criminal Procedure, if punishment for a defendant is increased under this section, the court may not order the sentence for the offense to run concurrently with any other sentence the court imposes on the defendant.

SECTION _____. The change in law made 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 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.

(Laney now present)

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. 50).

**HB 1541 - HOUSE REFUSES TO CONCUR
IN SENATE AMENDMENTS
CONFERENCE COMMITTEE APPOINTED**

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

HB 1541, A bill to be entitled an Act relating to the general powers and authority of water districts.

Representative Callegari moved that the house not concur in the senate amendments and that a conference committee be requested to adjust the differences between the two houses on **HB 1541**.

The motion prevailed without objection.

The chair announced the appointment of the following conference committee, on the part of the house, on **HB 1541**: Callegari, chair; Escobar; Puente; King; and Hardcastle.

HR 1487 - VOTE RECONSIDERED

Representative Hunter moved to reconsider the vote by which **HR 1487** was adopted.

The motion to reconsider prevailed.

HR 1487 was withdrawn.

**HR 1548 - ADOPTED
(by Hilderbran)**

Representative Hunter moved to suspend all necessary rules to take up and consider at this time **HR 1548**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 1548, Honoring Bob Hope as a world renowned actor, comedian, entertainer, and humanitarian on his 100th birthday.

HR 1548 was adopted without objection.

On motion of Representative Hunter, the names of all the members of the house were added to **HR 1548** as signers thereof.

RESOLUTIONS CALENDAR

The chair laid before the house the following resolutions on committee report:

SCR 1
(Wilson - House Sponsor)

SCR 1, Memorializing Congress to restore the federal income tax deductibility of state and local sales taxes.

SCR 1 was adopted without objection.

SCR 48
(Giddings - House Sponsor)

SCR 48, Directing the Texas Workers' Compensation Commission to complete a study of prescription drug costs provided under the system, promulgate regulations defining payment methodology, and streamline procedures for claims.

SCR 48 was adopted without objection.

(Turner now present)

HCR 163
(by Miller)

HCR 163, Granting Town Talk Foods, Inc., and Thomas E. Potthoff permission to sue the State of Texas and the Texas Department of Health.

A record vote was requested.

HCR 163 failed of adoption by (Record 816): 15 Yeas, 112 Nays, 3 Present, not voting.

Yeas — Allen; Berman; Bohac; Callegari; Flynn; Geren; Hardcastle; Hartnett; Hilderbran; King; Mercer; Miller; Morrison; Phillips; Wilson.

Nays — Alonzo; Bailey; Bonnen; Branch; Brown, B.; Brown, F.; Burnam; Campbell; Canales; Casteel; Castro; Chavez; Chisum; Christian; Coleman; Cook, B.; Cook, R.; Corte; Crabb; Crownover; Davis, J.; Davis, Y.; Dawson; Delisi; Denny; Deshotel; Driver; Dukes; Dunnam; Dutton; Eissler; Elkins; Ellis; Escobar; Farabee; Farrar; Flores; Gallego; Garza; Giddings; Goodman; Griggs; Grusendorf; Guillen; Gutierrez; Haggerty; Hamilton; Hamric; Harper-Brown; Heflin; Hegar; Hill; Hochberg; Hodge; Homer; Hopson; Howard; Hunter; Hupp; Isett; Jones, D.; Jones, E.; Jones, J.; Keel; Keffer, J.; Kolkhorst; Krusee; Kuempel; Laney; Laubenberg; Luna; Mabry; Madden; Martinez Fischer; McCall; McClendon; McReynolds; Menendez; Merritt; Moreno, J.; Moreno, P.; Naishtat; Noriega; Oliveira; Olivo; Paxton; Pickett; Pitts; Quintanilla; Raymond; Riddle; Ritter; Rodriguez; Rose; Seaman; Smith, W.; Solis; Stick; Swinford; Talton; Taylor; Telford; Thompson; Truitt; Turner; Uresti; Villarreal; West; Wise; Wolens; Wong; Woolley.

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

Absent, Excused — Eiland; Hope; Wohlgemuth.

Absent — Baxter; Capelo; Gattis; Goolsby; Hughes; Keffer, B.; Lewis; Marchant; Mowery; Nixon; Peña; Reyna; Smith, T.; Smithee; Solomons; Van Arsdale; Zedler.

STATEMENTS OF VOTE

I was shown voting yes on Record No. 816. I intended to vote no.

Phillips

When Record No. 816 was taken, I was temporarily out of the house chamber. I would have voted no.

T. Smith

**HCR 245
(by Hilderbran)**

HCR 245, Addressing issues relative to small community water systems that face exceptional physical or financial circumstances in attempting to comply with federal Safe Drinking Water Act requirements relating to naturally occurring materials.

Amendment No. 1

Representative Hilderbran offered the following amendment to **HCR 245**:

Amend **HCR 245** to read as follows:

CONCURRENT RESOLUTION

WHEREAS, The U.S. Environmental Protection Agency (EPA), acting under the federal Safe Drinking Water Act (SDWA), has promulgated national standards for naturally occurring materials, such as radionuclides and arsenic, so as effectively to impose unfunded mandates relative to the waters of this state; and

WHEREAS, The Texas Radiation Advisory Board (TRAB) has questioned the validity of the science used by the EPA in promulgating the national standards because the standards are based on unsupported, unwarranted, and nonvalidated public health theories; the proposed fix for the theoretical hazard in the drinking water has actually created more problems than it will solve for small rural community water systems (CWS) that have no alternative water supply, and the TRAB has recommended against Texas proposing and adopting such rules based on the adverse financial and devastating effects the rules will have on small CWS; and

WHEREAS, The Texas Commission on Environmental Quality (TCEQ) is authorized by state and federal law to adopt and enforce rules in Texas to implement the SDWA but does not have authority to provide an exclusion from those rules for small CWS that have no alternative water supply and that are unable to comply with SDWA requirements because of exceptional physical or financial circumstances; now, therefore, be it

RESOLVED, That the 78th Legislature of the State of Texas hereby declare its intent that, in adopting a rule to implement a federal drinking water standard for the maximum contaminant level of naturally occurring materials such as radionuclides and arsenic, the TCEQ after consulting with the EPA and Texas Water Development Board (TWDB) issue alternative compliance schedules for small CWS that cannot achieve compliance with the federal standards because of exceptional physical or financial circumstances; and, be it further

RESOLVED, That in adopting the alternative compliance schedules, the TCEQ give special consideration to the size, density, and median income of the population served by a small CWS and whether a small CWS has any reasonably available alternative source of water; and, be it further

RESOLVED, That the TCEQ, when adopting the federal rules, shall consult with the TWDB, the Texas Department of Agriculture, the TRAB, and other state agencies with expertise in the protection of public health and shall consider all relevant costs and benefits or detriments to the state and to affected small CWS implementing the standards, and will exercise as much regulatory flexibility practicable when implementing the rules; and, be it further

RESOLVED, That the Texas Commission on Environmental Quality and related agencies involved, not later than January 1, 2005, in their regular report to the legislature include a summary of their findings and the status of implementation of the federal rule; and, be it further

RESOLVED, That the secretary of state forward an official copy of this resolution to the respective chairs of the Texas Commission on Environmental Quality, Texas Water Development Board, Texas Department of Agriculture, and Texas Radiation Advisory Board.

Amendment No. 1 was adopted without objection.

HCR 245, as amended, was adopted.

HCR 246
(by Hilderbran)

HCR 246, Memorializing the U.S. Congress to provide funding or statutory relief relating to naturally occurring materials and associated regulatory effects on small community water systems.

HCR 246 was adopted without objection.

HCR 247
(by Delisi)

HCR 247, Memorializing the Congress of the United States to modify the Federal Internal Revenue Code to allow retirees to pay for health care costs on a pre-tax basis.

HCR 247 was adopted.

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. 51).

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).

LEAVE OF ABSENCE GRANTED

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

E. Jones on motion of Madden.

**HB 1695 - HOUSE REFUSES TO CONCUR
IN SENATE AMENDMENTS
CONFERENCE COMMITTEE APPOINTED**

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

HB 1695, A bill to be entitled an Act relating to certain election processes and procedures.

Representative Denny moved that the house not concur in the senate amendments and that a conference committee be requested to adjust the differences between the two houses on **HB 1695**.

The motion prevailed without objection.

The chair announced the appointment of the following conference committee, on the part of the house, on **HB 1695**: Denny, chair; Howard; Harper-Brown; Bohac; and Uresti.

**HB 1119 - HOUSE REFUSES TO CONCUR
IN SENATE AMENDMENTS
CONFERENCE COMMITTEE APPOINTED**

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

HB 1119, A bill to be entitled an Act relating to the disposition of cruelly treated animals.

Representative Goodman moved that the house not concur in the senate amendments and that a conference committee be requested to adjust the differences between the two houses on **HB 1119**.

The motion prevailed without objection.

The chair announced the appointment of the following conference committee, on the part of the house, on **HB 1119**: Goodman, chair; Branch; Merritt; Wolens; and Hughes.

**HB 1566 - HOUSE REFUSES TO CONCUR
IN SENATE AMENDMENTS
CONFERENCE COMMITTEE APPOINTED**

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

HB 1566, A bill to be entitled an Act relating to lower-division and upper-division courses at Texas A&M University-Texarkana.

Representative Telford moved that the house not concur in the senate amendments and that a conference committee be requested to adjust the differences between the two houses on **HB 1566**.

The motion prevailed without objection.

The chair announced the appointment of the following conference committee, on the part of the house, on **HB 1566**: Telford, chair; Morrison; Homer; Goolsby; and F. Brown.

**HB 2593 - HOUSE REFUSES TO CONCUR
IN SENATE AMENDMENTS
CONFERENCE COMMITTEE APPOINTED**

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

HB 2593, A bill to be entitled an Act relating to winery permits.

Representative Phillips moved that the house not concur in the senate amendments and that a conference committee be requested to adjust the differences between the two houses on **HB 2593**.

The motion prevailed without objection.

The chair announced the appointment of the following conference committee, on the part of the house, on **HB 2593**: Homer, chair; Swinford; Phillips; R. Cook; and Truitt.

**HB 1576 - HOUSE REFUSES TO CONCUR
IN SENATE AMENDMENTS
CONFERENCE COMMITTEE APPOINTED**

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

HB 1576, A bill to be entitled an Act relating to the telecommunications planning and oversight council.

Representative Gallego moved that the house not concur in the senate amendments and that a conference committee be requested to adjust the differences between the two houses on **HB 1576**.

The motion prevailed without objection.

The chair announced the appointment of the following conference committee, on the part of the house, on **HB 1576**: Gallego, chair; McCall; Villarreal; Castro; and Marchant.

**HB 1493 - HOUSE REFUSES TO CONCUR
IN SENATE AMENDMENTS
CONFERENCE COMMITTEE APPOINTED**

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

HB 1493, A bill to be entitled an Act relating to the foreclosure of property and the authority of a mortgage servicer to administer the foreclosure on behalf of a mortgagee.

Representative Solomons moved that the house not concur in the senate amendments and that a conference committee be requested to adjust the differences between the two houses on **HB 1493**.

The motion prevailed without objection.

The chair announced the appointment of the following conference committee, on the part of the house, on **HB 1493**: Solomons, chair; Marchant; Elkins; Hughes; and Giddings.

**HB 1817 - HOUSE REFUSES TO CONCUR
IN SENATE AMENDMENTS
CONFERENCE COMMITTEE APPOINTED**

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

HB 1817, A bill to be entitled an Act relating to student fees at institutions in the Texas State University System.

Representative Ritter moved that the house not concur in the senate amendments and that a conference committee be requested to adjust the differences between the two houses on **HB 1817**.

The motion prevailed without objection.

The chair announced the appointment of the following conference committee, on the part of the house, on **HB 1817**: Ritter, chair; Kolkhorst; Deshotel; Morrison; and R. Cook.

**HB 3554 - HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS**

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

HB 3554, A bill to be entitled An Act relating to motor vehicle inspection facilities near the border of this state and Mexico.

HB 3554 - STATEMENT OF LEGISLATIVE INTENT

REPRESENTATIVE GUILLEN: It is your intent that if a facility that serves a bridge that had more than 900,000 commercial border crossings during the state fiscal year ending August 31, 2002, is to be located in a municipality or a municipality's extraterritorial jurisdiction, that Section 201.613(b) of the Transportation Code, as amended by **CSHB 3554**, gives the municipality the right to choose the location of the facility, notwithstanding any language in any other section of the bill or other statute?

REPRESENTATIVE RAYMOND: Yes, that is the intent of **CSHB 3554**.

REMARKS ORDERED PRINTED

Representative Guillen moved to print remarks between Representative Guillen and Representative Raymond.

The motion prevailed without objection.

On motion of Representative Raymond, the house concurred in the senate amendments to **HB 3554** by (Record 817): 143 Yeas, 0 Nays, 2 Present, not voting.

Yeas — Allen; Alonzo; Bailey; Baxter; Berman; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Burnam; Callegari; Campbell; Canales; Capelo; Casteel; Castro; Chavez; Chisum; Christian; Coleman; Cook, B.; Cook, R.; Corte; Crabb; Crownover; Davis, J.; Davis, Y.; Dawson; Delisi; Denny; Deshotel; Driver; Dukes; Dunnam; Dutton; Edwards; Eissler; Elkins; Ellis; Escobar; Farabee; Farrar; Flores; Flynn; Gallego; Garza; Gattis; Geren; Giddings; Goodman; Goolsby; Griggs; Grusendorf; Guillen; Gutierrez; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Heflin; Hegar; Hilderbran; Hill; Hochberg; Hodge; Homer; Hopson; Howard; Hughes; Hunter; Hupp; Isett; Jones, D.; Keel; Keffer, B.; Keffer, J.; King; Kolkhorst; Krusee; Kuempel; Laney; Laubenberg; Lewis; Luna; Mabry; Madden; Marchant; Martinez Fischer; McCall; McClendon; McReynolds; Menendez; Mercer; Merritt; Miller; Moreno, J.; Moreno, P.; Morrison; Mowery; Naishat; Nixon; Noriega; Oliveira; Olivo; Paxton; Peña; Phillips; Pickett; Pitts; Quintanilla; Raymond; Reyna; Riddle; Ritter; Rodriguez; Rose; Seaman; Smith, T.; Smith, W.; Smithee; Solis; Solomons; Stick; Swinford; Talton; Taylor; Telford; Thompson; Truitt; Turner; Uresti; Van Arsdale; Villarreal; West; Wilson; Wise; Wolens; Wong; Woolley; Zedler.

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

Absent, Excused — Eiland; Hope; Jones, E.; Wohlgemuth.

Absent — Jones, J.

Senate Committee Substitute

HB 3554, A bill to be entitled An Act relating to motor vehicle inspection facilities near the border of this state and Mexico.

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

SECTION 1. Section 201.613, Transportation Code, is amended to read as follows:

Sec. 201.613. ONE-STOP BORDER INSPECTION FACILITIES [STATIONS]. (a) The department shall erect and maintain border ~~choose a location for an~~ inspection facilities ~~station~~ along a major highway at or near a border crossing from Mexico in the Pharr ~~Brownsville~~, ~~in~~ Laredo, and ~~in~~ El Paso districts for the inspection of motor vehicles for compliance with federal and state commercial motor vehicle regulations. To the extent possible, the department shall collocate agencies and utilize intelligent transportation systems in order to expedite the movement of people and vehicles ~~so that all federal, state, and municipal agencies that regulate the passage of persons or vehicles across the border at that border crossing may be located in one place~~.

(b) If a facility that serves a bridge system that had more than 900,000 commercial border crossings during the state fiscal year ending August 31, 2002, is to be located in a municipality or a municipality's extraterritorial jurisdiction, the municipality may choose the location of the facility within the municipality or

the municipality's extraterritorial jurisdiction. The municipality shall choose a location not later than the 180th day after the date the department makes a request for a location. [The department shall establish and maintain an inspection station at the locations chosen in Subsection (a) only if the federal agencies involved in the regulation of the passage of persons or vehicles at that border crossing agree to the design of the facility at each location and agree to use the facility at each location if built.

~~[(e) The department may enter into agreements with federal, state, and municipal agencies to accomplish the purpose of this section. An agreement may involve the lease of office space at the inspection station by the department to the agency.]~~

SECTION 2. The Texas Department of Transportation shall spend the money appropriated during the 76th Legislature for Section 201.613, Transportation Code, as added by Chapter 1527, Acts of the 76th Legislature, Regular Session, 1999, or money received from the federal government to establish the border inspection facilities under Section 201.613, Transportation Code, as amended by this Act.

SECTION 3. 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, 2003.

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

Amend **CSHB 3554** on Page 1, Line 35 by adding new Sections 201.613(b)(1) and (2) as follows:

(b) If a facility that serves a bridge [system] that had more than 900,000 commercial border crossings during the state fiscal year ending August 31, 2002, is to be located in a municipality or a municipality's extraterritorial jurisdiction, the municipality may choose the location of the facility within the municipality or the municipality's extraterritorial jurisdiction. The municipality shall choose a location not later than the 180th day after the date the department makes a request for a location.

(1) Only one inspection facility shall be constructed in the municipality referred to in this subsection.

(2) In determining the location for the border inspection facility, the municipality shall obtain and pay for an independent study completed by a university that conducts transportation studies or any other entity that conducts transportation studies to identify commercial truck traffic patterns for the location at which the facility is to be located and ensure that the location shall have adequate capacity to conduct a sufficient number of meaningful vehicle safety inspections as required by Safety of Cross-Border Trucking Between United States and Mexico, (Pub. L. No. 107-87. Sec. 350(9)(49 U.S.C. 13902).

Senate Amendment No. 2 (Senate Floor Amendment No. 2)

Amend **CSHB 3554** in SECTION 1 of the bill as follows:

(1) In amended Section 201.613(a), Transportation Code (Committee printing page 1, lines 21-24), strike ". To the extent possible, the department shall colocate agencies and utilize intelligent transportation systems in order to expedite the movement of people and vehicles".

(2) In amended Section 201.613(b), Transportation Code (Committee printing page 1, line 34), between "location." and "~~[The]~~", insert the following:

(c) To the extent the department considers appropriate to expedite commerce, the department shall provide for implementation by the appropriate agencies of the use of Intelligent Transportation Systems for Commercial Vehicle Operations (ITS/CVO) in:

(1) any new commercial motor vehicle inspection facility constructed; and

(2) any existing facility to which this section applies.

(d) Implementation of systems under Subsection (c) must be based on the Texas ITS/CVO business plan prepared by the department, the Department of Public Safety, and the comptroller. The department shall coordinate with other state and federal transportation officials to develop interoperability standards for the systems.

(e) In implementing systems under Subsection (c) in the construction of a facility, the department to the greatest extent possible shall:

(1) enhance efficiency and reduce complexity for motor carriers by providing:

(A) a single point of contact between carriers and state and federal officials regulating the carriers; and

(B) a single point of information, available to wireless access, about federal and state regulatory and enforcement requirements;

(2) prevent duplication of state and federal procedures and locations for regulatory and enforcement activities, including consolidation of collection of applicable fees;

(3) link information systems of the department, the Department of Public Safety, the comptroller, and, to the extent possible, the United States Department of Transportation and other appropriate regulatory and enforcement entities; and

(4) take other necessary action to:

(A) facilitate the flow of commerce;

(B) assist federal interdiction efforts;

(C) protect the environment by reducing idling time of commercial motor vehicles at the facilities;

(D) prevent highway damage caused by overweight commercial motor vehicles; and

(E) seek federal funds to assist in the implementation of this section.

HJR 28 - HOUSE REFUSES TO CONCUR IN SENATE AMENDMENTS CONFERENCE COMMITTEE APPOINTED

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

HJR 28, A joint resolution proposing a constitutional amendment providing for authorization of the issuing of notes or the borrowing of money on a short-term basis by a state transportation agency for transportation-related projects.

Representative Pickett moved that the house not concur in the senate amendments and that a conference committee be requested to adjust the differences between the two houses on **HJR 28**.

The motion prevailed without objection.

The chair announced the appointment of the following conference committee, on the part of the house, on **HJR 28**: Pickett, chair; Krusee; Gutierrez; Hamric; and E. Jones.

**HB 3420 - HOUSE REFUSES TO CONCUR
IN SENATE AMENDMENTS
CONFERENCE COMMITTEE APPOINTED**

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

HB 3420, A bill to be entitled an Act relating to a set-aside for certain colonia access roadway projects proposed by rural border counties.

Representative Garza moved that the house not concur in the senate amendments and that a conference committee be requested to adjust the differences between the two houses on **HB 3420**.

The motion prevailed without objection.

The chair announced the appointment of the following conference committee, on the part of the house, on **HB 3420**: Garza, chair; Guillen; Griggs; Escobar; and Chavez.

**HB 471 - HOUSE REFUSES TO CONCUR
IN SENATE AMENDMENTS
CONFERENCE COMMITTEE APPOINTED**

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

HB 471, A bill to be entitled an Act relating to the borrowing of money and the issuance of notes by the Texas Transportation Commission; making an appropriation.

Representative Pickett moved that the house not concur in the senate amendments and that a conference committee be requested to adjust the differences between the two houses on **HB 471**.

The motion prevailed without objection.

The chair announced the appointment of the following conference committee, on the part of the house, on **HB 471**: Pickett, chair; Krusee; Gutierrez; Hamric; and E. Jones.

**HB 2020 - HOUSE REFUSES TO CONCUR
IN SENATE AMENDMENTS
CONFERENCE COMMITTEE APPOINTED**

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

HB 2020, A bill to be entitled an Act relating to financial security requirements for certain persons performing operations within the jurisdiction of the Railroad Commission of Texas.

Representative Farabee moved that the house not concur in the senate amendments and that a conference committee be requested to adjust the differences between the two houses on **HB 2020**.

The motion prevailed without objection.

The chair announced the appointment of the following conference committee, on the part of the house, on **HB 2020**: Farabee, chair; J. Keffer; B. Keffer; West; and Canales.

**HB 3546 - HOUSE REFUSES TO CONCUR
IN SENATE AMENDMENTS
CONFERENCE COMMITTEE APPOINTED**

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

HB 3546, A bill to be entitled an Act relating to the exemption from ad valorem taxation of certain property used to provide low-income or moderate-income housing.

Representative Hamric moved that the house not concur in the senate amendments and that a conference committee be requested to adjust the differences between the two houses on **HB 3546**.

The motion prevailed without objection.

The chair announced the appointment of the following conference committee, on the part of the house, on **HB 3546**: Hamric, chair; Talton; Mowery; Luna; and Gutierrez.

**HB 3622 - HOUSE REFUSES TO CONCUR
IN SENATE AMENDMENTS
CONFERENCE COMMITTEE APPOINTED**

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

HB 3622, A bill to be entitled an Act relating to the creation, administration, powers, duties, operation, and financing of the Kingsborough Municipal Utility District No. 1 of Kaufman County.

Representative B. Brown moved that the house not concur in the senate amendments and that a conference committee be requested to adjust the differences between the two houses on **HB 3622**.

The motion prevailed without objection.

The chair announced the appointment of the following conference committee, on the part of the house, on **HB 3622**: B. Brown, chair; Geren; Hardcastle; Callegari; and Homer.

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 1129 - HOUSE REFUSES TO CONCUR
IN SENATE AMENDMENTS
CONFERENCE COMMITTEE APPOINTED**

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

HB 1129, A bill to be entitled an Act relating to enforcement of certain types of restrictions in certain municipalities.

Representative Farrar moved that the house not concur in the senate amendments and that a conference committee be requested to adjust the differences between the two houses on **HB 1129**.

The motion prevailed without objection.

The chair announced the appointment of the following conference committee, on the part of the house, on **HB 1129**: Farrar, chair; Callegari; Thompson; Bohac; and Nixon.

**HB 1163 - HOUSE REFUSES TO CONCUR
IN SENATE AMENDMENTS
CONFERENCE COMMITTEE APPOINTED**

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

HB 1163, A bill to be entitled an Act relating to contracts between certain health care providers and health benefit plans.

Representative Thompson moved that the house not concur in the senate amendments and that a conference committee be requested to adjust the differences between the two houses on **HB 1163**.

The motion prevailed without objection.

The chair announced the appointment of the following conference committee, on the part of the house, on **HB 1163**: Thompson, chair; Taylor; Ellis; Laubenberg; and Y. Davis.

**HB 1278 - HOUSE REFUSES TO CONCUR
IN SENATE AMENDMENTS
CONFERENCE COMMITTEE APPOINTED**

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

HB 1278, A bill to be entitled an Act relating to an exemption from ad valorem taxation for property owned or used by a religious organization for purposes of expanding a religious facility or constructing a new religious facility and to municipal platting requirements and zoning regulations applicable to certain property owned or used by a religious organization.

Representative Mowery moved that the house not concur in the senate amendments and that a conference committee be requested to adjust the differences between the two houses on **HB 1278**.

The motion prevailed without objection.

The chair announced the appointment of the following conference committee, on the part of the house, on **HB 1278**: Zedler, chair; Mowery; Grusendorf; Hill; and Crabb.

**HB 1865 - HOUSE REFUSES TO CONCUR
IN SENATE AMENDMENTS
CONFERENCE COMMITTEE APPOINTED**

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

HB 1865, A bill to be entitled an Act relating to commercial group property and casualty insurance for certain businesses and associations.

Representative Thompson moved that the house not concur in the senate amendments and that a conference committee be requested to adjust the differences between the two houses on **HB 1865**.

The motion prevailed without objection.

The chair announced the appointment of the following conference committee, on the part of the house, on **HB 1865**: Bonnen, chair; Seaman; B. Keffer; Wilson; and Thompson.

HB 3459 - CONFERENCE COMMITTEE APPOINTMENT CORRECTED

Pursuant to Rule 1, Section 16 of the House Rules, the chair corrected the membership of the conference committee on **HB 3459**.

The chair announced the appointment of the following conference committee, on the part of the house, on **HB 3459**: Pitts, chair; McCall; Heflin; Grusendorf; and Gutierrez.

HB 1131 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

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

HB 1131, A bill to be entitled An Act relating to insurer interests in certain motor vehicle repair facilities.

On motion of Representative Flores, the house concurred in the senate amendments to **HB 1131**. (D. Jones and Talton recorded voting no)

HB 1131 - STATEMENT OF LEGISLATIVE INTENT

This section does not prohibit a company in which an insurer owns an interest from opening new facilities or commencing construction on new facilities after April 15, 2003 if the insurer does not increase the percentage of the insurer's ownership interest in the company beyond the percentage held by the insurer as of April 15, 2003.

Flores

Senate Committee Substitute

HB 1131, A bill to be entitled An Act relating to insurer interests in certain motor vehicle repair facilities; providing a civil penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:
SECTION 1. Subtitle A, Title 14, Occupations Code, is amended by adding Chapter 2306 to read as follows:

CHAPTER 2306. INSURER INTERESTS IN REPAIR FACILITIES

Sec. 2306.001. DEFINITIONS. In this chapter:

(1) "Arm's length transaction" means the standard of conduct under which two parties having substantially equal bargaining power, each acting in its own interest, would negotiate or carry out a particular transaction.

(2) "Claims center" means a location designated by an insurer where a claims adjuster, employee, or agent of the insurer performs an initial damage estimate on a vehicle under the terms of an insurance policy.

(3) "Favored facility agreement" means an agreement between an insurer and a repair facility under which the insurer agrees to recommend, directly or indirectly, to its policyholders or other beneficiaries under the insurer's policies, that the policyholder or other beneficiary obtain repairs at that repair facility or in any other way agrees to influence its policyholders or other beneficiaries under the insurer's policies to obtain repairs at that repair facility.

(4) "Insurer" means an insurer authorized by the Texas Department of Insurance to write motor vehicle insurance in this state, including a county mutual insurance company, a Lloyd's plan, and a reciprocal or interinsurance exchange. The term includes an entity that is an affiliate of an insurer as described by Section 823.003, Insurance Code.

(5) "Repair facility" has the meaning assigned by Section 2304.001.

(6) "Support services" means basic services, provided nonspecifically, that are provided internally and to each affiliate or subsidiary, by an insurer, its parent company, or a separate affiliate created to provide basic corporate support. The term does not include a service related to the operation of a repair facility if that service would have no value, or minimal value to any other type of business.

(7) "Tied repair facility" means a repair facility in which an insurer owns an interest.

Sec. 2306.002. INSURER INTERESTS. (a) Except as provided by this section, an insurer may not own or acquire an interest in a repair facility.

(b) An insurer that owns an interest in a tied repair facility that was open for business, or on which construction had commenced, on April 15, 2003, may maintain that ownership interest and may operate that facility.

(c) An insurer may relocate a tied repair facility described by Subsection (b), but may not obtain an ownership interest in any additional facility not described by Subsection (b).

(d) Subsections (b) and (c) are applicable to an insurer only if the insurer and its tied repair facility are otherwise in compliance with this chapter.

Sec. 2306.003. FAVORED FACILITY AGREEMENT PRESUMED. An insurer is presumed to have a favored facility agreement with a repair facility in which it owns an interest.

Sec. 2306.004. CONTRACTUAL CONDITIONS. (a) An insurer that owns an interest in a repair facility may use only one favored facility agreement.

(b) Except as otherwise provided by this subsection, the terms under which the insurer enters into a favored facility agreement must be identical for all repair facilities, including a tied repair facility. An insurer may vary the terms as necessary to implement technical differences required by geographical factors or other legitimate business factors.

(c) Except as provided by Subsection (d), an insurer may not cancel a favored facility agreement until the expiration of the 30th day after the date on which the insurer provides notice to the repair facility of the insurer's intent to cancel the agreement. The insurer shall include with the notice a statement offering the repair facility a reasonable opportunity to cure the alleged failure to meet the requirements of the favored facility agreement.

(d) An insurer may summarily cancel a favored facility agreement with a repair facility if the insurer, a policyholder of the insurer, or another beneficiary under the insurer's policy establishes reasonable grounds to believe that the repair facility is guilty of fraudulent conduct in its dealings with the insurer.

Sec. 2306.005. NOTICE. (a) An insurer that owns an interest in a repair facility shall post the following notice in each of its tied repair facilities:

"THIS REPAIR FACILITY IS OWNED IN WHOLE OR IN PART BY (NAME OF INSURER). YOU ARE HEREBY NOTIFIED THAT YOU ARE ENTITLED TO SEEK REPAIRS AT ANY REPAIR FACILITY OF YOUR CHOICE."

(b) The notice required by Subsection (a) must be posted prominently in a location in which it is likely to be seen and read by a customer of the repair facility.

Sec. 2306.006. PROHIBITIONS. An insurer may not:

(1) condition the provision of a product, service, insurance policy renewal, pricing, or other benefit on the purchase of any good or service from its tied repair facilities;

(2) share information with its tied repair facilities that is not made available on identical terms and conditions to other repair facilities with which the insurer has entered into a favored facility agreement;

(3) engage in a joint marketing program with its tied repair facilities;

(4) provide its tied repair facilities a recommendation, referral, description, advantage, or access to its policyholders or other beneficiaries under its insurance policies that is not provided on identical terms to other repair facilities with which the insurer has entered into a favored facility agreement;

(5) provide a tied repair facility access to the insurer's products or services on terms and conditions different from those under which the insurer provides access to the same products or services to another repair facility with which the insurer has entered into a favored facility agreement;

(6) allow a tied repair facility to use the insurer's name, trademark, tradename, brand, or logo;

(7) subsidize the business activities or operating expenses of a tied repair facility;

(8) directly or indirectly require a policyholder of the insurer or other beneficiary under the insurer's policy to obtain a damage estimate on a vehicle covered by the insurance policy at a tied repair facility;

(9) authorize or allow a person representing the insurer, whether an employee or an independent contractor, to recommend to a policyholder or other beneficiary under the insurance policy that the policyholder or other beneficiary obtain repairs at a tied repair facility, except to the same extent that the person recommends other repair facilities with whom the insurer has entered into a favored facility agreement;

(10) locate a temporary or permanent claims center on the premises of a tied repair facility, except for a period not to exceed 30 days immediately following a weather-related catastrophe or a major natural disaster, as declared by the commissioner of insurance in the manner provided by law;

(11) enter into a favored facility agreement exclusively with its tied repair facilities;

(12) retaliate or discriminate against a person who:

(A) files an action as provided by this chapter; or

(B) assists or participates in any manner in an investigation, judicial proceeding, or other action brought or maintained as provided by this chapter; or

(13) include earnings or losses of a tied repair facility in a rate filing made under Chapter 5, Insurance Code.

Sec. 2306.007. CONFLICT OF INTEREST PROHIBITED. Except as otherwise provided by this chapter, an agreement between an insurer and its tied repair facility must be negotiated and executed as an arm's length transaction.

Sec. 2306.008. SUPPORT SERVICES. (a) Notwithstanding this chapter, and except as provided by Subsection (b), an insurer may provide support services to its tied repair facilities if those services:

(1) are priced at a level that is fair and reasonable to both the insurer and the tied repair facility; and

(2) do not directly or indirectly confer a competitive advantage to the tied repair facility.

(b) Notwithstanding Subsection (a), an agreement by an insurer to provide support services to its tied repair facility may not create the potential for confusion among the policyholders of the insurer, other beneficiaries of an insurance policy issued by the insurer, or other parties.

Sec. 2306.009. ACTION TO COMPEL COMPLIANCE; DISCIPLINARY ACTION. (a) A person, including a repair facility, aggrieved by a violation of this chapter by an insurer may bring an action for injunctive or other appropriate relief to compel the insurer to comply with this chapter.

(b) In an action brought under this section, in addition to other appropriate relief, the court may impose a civil penalty as provided by this section.

(c) A civil penalty imposed under this section may not be less than \$1,000 or more than \$5,000 per violation. Each day during which a violation occurs is a separate violation.

(d) The amount of a civil penalty under this section is based on the seriousness of the violation, and must reflect the following factors:

(1) the nature, circumstances, extent, and gravity of the act or omission that constitutes the violation;

(2) the economic harm caused by the violation;

(3) the history of previous violations;

(4) the need to deter future violations by the person charged with a violation;

(5) efforts, if any, made to correct the violation; and

(6) any other factors the court considers appropriate to implement the remedial intent of this chapter.

(e) A civil penalty collected under this section shall be sent to the comptroller for deposit in the general revenue fund.

(f) A plaintiff who prevails in an action under this section is entitled to recover reasonable attorney's fees and court costs.

(g) If a court finds that an action brought under this section was groundless, brought in bad faith, or brought for the purpose of harassment, the court may award reasonable attorney's fees to the prevailing defendant.

Sec. 2306.010. ANTITRUST ENFORCEMENT. This chapter does not confer immunity from an antitrust law of this state or the United States. A sanction or penalty imposed in an action brought under this chapter is in addition to other relief granted on the basis of the violation of an antitrust law of this state or the United States.

Sec. 2306.011. EXCLUSIVITY. Unless otherwise specifically provided by this chapter, this chapter provides the exclusive authority and rules applicable to the regulation of the relations between an insurer and a tied repair facility.

SECTION 2. This Act takes effect September 1, 2003.

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

Amend **CSHB 1131**, senate committee printing, as follows:

(1) In SECTION 1 of the bill, in added Section 2306.004(c), Occupations Code (page 2, lines 16-18), strike "offering the repair facility a reasonable opportunity to cure the alleged failure to meet the requirements of the favored facility agreement" and substitute "explaining the reason for the cancellation of the agreement".

(2) In SECTION 1 of the bill, in added Section 2306.004(d), Occupations Code (page 2, line 23), strike "is guilty of fraudulent conduct in its dealings with the insurer" and substitute "is fraudulent in its dealings with the insurer or the policyholder or other beneficiaries under the insurer's policy".

(3) In SECTION 1 of the bill, in added Section 2306.006(6), Occupations Code (page 2, line 55), between "logo" and the semicolon, insert "in a manner different than that allowed for any other favored facility".

(4) In SECTION 1 of the bill, in added Section 2306.006, Occupations Code (page 2, line 69 through page 3, line 4), strike Subdivision (10) and substitute the following:

"(10) require a policyholder or beneficiary to use a claims center located on the premises of a tied repair facility;".

**HCR 277 - ADOPTED
(by Solomons)**

The following privileged resolution was laid before the house:

HCR 277

WHEREAS, **SJR 42** has been adopted by the senate and the house of representatives and is being prepared for enrollment; and

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

RESOLVED by the 78th Legislature of the State of Texas, That the enrolling clerk of the senate be instructed to correct **SJR 42**, in SECTION 1 of the resolution, by striking Sections 50(a)(6)(M)(ii) and (iii), Article XVI, Texas Constitution, as amended by the Wolens second reading amendment, House Floor Amendment No. 2, and substituting the following:

(ii) one business day after the date that the owner of the homestead receives a final itemized disclosure of the actual fees, points, interest, costs, and charges that will be charged at closing. If a bona fide emergency or another good cause exists and the lender obtains the written consent of the owner, the lender may provide the documentation to the owner or the lender may modify previously provided documentation on the date of closing; and

(iii) [~~ii~~] the first anniversary of the closing date of any other extension of credit described by Subsection (a)(6) of this section secured by the same homestead property, except a refinance described by Paragraph (Q)(x)(f) of this subdivision;

HCR 277 was adopted without objection.

**HB 3546 - CONFERENCE COMMITTEE
APPOINTMENT CORRECTED**

Pursuant to Rule 1, Section 16 of the House Rules, the chair corrected the membership of the conference committee on **HB 3546**.

The chair announced the appointment of the following conference committee, on the part of the house, on **HB 3546**: Hamric, chair; Talton; Mowery; Luna; and Y. Davis.

**HB 2588 - HOUSE REFUSES TO CONCUR
IN SENATE AMENDMENTS
CONFERENCE COMMITTEE APPOINTED**

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

HB 2588, A bill to be entitled an Act relating to certain fees and costs that may be collected and to certain attorney's fees and costs that may be imposed in relation to certain child support matters.

Representative Goodman moved that the house not concur in the senate amendments and that a conference committee be requested to adjust the differences between the two houses on **HB 2588**.

The motion prevailed without objection.

The chair announced the appointment of the following conference committee, on the part of the house, on **HB 2588**: Goodman, chair; Dutton; Morrison; Reyna; and Baxter.

**HR 1555 - ADOPTED
(by Kolkhorst)**

Representative Kolkhorst moved to suspend all necessary rules to take up and consider at this time **HR 1555**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 1555, Commending the efforts of the FutureGen consortium.

HR 1555 was adopted without objection.

**HR 1556 - ADOPTED
(by Kolkhorst)**

Representative Kolkhorst moved to suspend all necessary rules to take up and consider at this time **HR 1556**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 1556, Congratulating the Blinn College Lady Buccaneers softball team on its outstanding 2002-2003 season.

HR 1556 was adopted without objection.

**HR 1664 - ADOPTED
(by Kuempel)**

Representative Kuempel moved to suspend all necessary rules to take up and consider at this time **HR 1664**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 1664, Welcoming the staff of the Parker Ranch, "Hawaii's Cattle Kingdom," to the Lone Star State.

HR 1664 was adopted without objection.

HR 1482 - ADOPTED
(by Goodman)

Representative Goodman moved to suspend all necessary rules to take up and consider at this time **HR 1482**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 1482, Honoring High Point Church in Arlington for its sponsorship of Patriotic Salute 2003: Enduring Freedom.

HR 1482 was adopted without objection.

HR 1653 - ADOPTED
(by Noriega)

Representative Noriega moved to suspend all necessary rules to take up and consider at this time **HR 1653**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 1653, Recognizing the grand opening of Victoria Park in Houston.

HR 1653 was adopted without objection.

HR 1662 - ADOPTED
(by Rodriguez)

Representative Rodriguez moved to suspend all necessary rules to take up and consider at this time **HR 1662**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 1662, Congratulating David Gonzalez and Corrine Sumpter-Gonzalez of Austin for their many accomplishments.

(Speaker in the chair)

HR 1662 was adopted without objection.

HR 1659 - ADOPTED
(by Raymond)

Representative Raymond moved to suspend all necessary rules to take up and consider at this time **HR 1659**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 1659, Honoring George Carl Terrell, Jr., and Jackie Terrell of Alice on their 50th wedding anniversary.

HR 1659 was adopted without objection.

HR 1673 - ADOPTED
(by Mabry)

Representative Mabry moved to suspend all necessary rules to take up and consider at this time **HR 1673**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 1673, Honoring Elizabeth Wynne Trippet as Miss Waco.

HR 1673 was adopted without objection.

On motion of Representative D. Jones, the names of all the members of the house were added to **HR 1673** as signers thereof.

HR 1674 - ADOPTED
(by Mabry)

Representative Mabry moved to suspend all necessary rules to take up and consider at this time **HR 1674**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 1674, In memory of Steve Kazanas of Waco.

HR 1674 was adopted without objection.

HR 1663 - ADOPTED
(by Stick)

Representative Stick moved to suspend all necessary rules to take up and consider at this time **HR 1663**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 1663, Congratulating the Bullock Family on their reunion and extending to them sincere best wishes for the future.

HR 1663 was adopted without objection.

(Hardcastle in the chair)

SCR 55 - ADOPTED
(Keel and Dukes - House Sponsors)

Representative Keel moved to suspend all necessary rules to take up and consider at this time **SCR 55**.

The motion prevailed without objection.

The following resolution was laid before the house:

SCR 55, Designating the Mexic-Arte Museum in Austin as the Official Mexican and Mexican American Art Museum of Texas.

Amendment No. 1

Representative Keel offered the following amendment to **SCR 55**:

Amend **SCR 55** by striking the text of the resolution and substituting the following:

WHEREAS, The Legislature of the State of Texas is pleased to recognize Mexic-Arte Museum for its role in the cultural enrichment and education of all Texans through its presentation and promotion of Mexican and Mexican American art and culture; and

WHEREAS, One of the oldest institutions presenting Mexican and Mexican American art in the State of Texas, the museum is a pioneer in presenting cultural programs that are deeply rooted in Texas; it has exemplified the diversity within our state, and it has created important ties with our neighboring country, Mexico; and

WHEREAS, Located on Congress Avenue in the capital city of Austin, Mexic-Arte Museum has for more than 19 years promoted the artistic heritage of the Mexican and Mexican American cultures; and

WHEREAS, The museum was established by the support of businesses, individuals, foundations, the City of Austin, the Texas Commission on the Arts, the Mid-America Arts Alliance, the National Endowment for the Arts, the Consulate General of Mexico in Austin, and the Mexican government through the National Council on Arts and Culture; and

WHEREAS, Mexic-Arte Museum serves as an artistic and cultural bridge between Mexico and Texas through its exchange programs and by serving as the official Sister Museum of the Diego Rivera and Frida Kahlo Studio Museum in Mexico City; moreover, by agreement with the Mexican government, the museum will host exhibitions of great art loaned from Mexican museums for extended periods; and

WHEREAS, This important resource for cultural enrichment is vital to the economic development and tourism of the state; now, therefore, be it

RESOLVED, That the 78th Legislature of the State of Texas, recognizing the uniqueness and significant cultural role of Mexic-Arte Museum, hereby designate it as the "Official Mexican and Mexican American Fine Art Museum of Texas"; and, be it further

RESOLVED, That a copy of this resolution be prepared for the members of the board of directors of Mexic-Arte Museum.

Amendment No. 1 was adopted without objection.

SCR 55, as amended, was adopted without objection.

HR 1654 - ADOPTED
(by Quintanilla)

Representative Quintanilla moved to suspend all necessary rules to take up and consider at this time **HR 1654**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 1654, In memory of Juanita S. Carrasco of El Paso.

HR 1654 was unanimously adopted by a rising vote.

ADJOURNMENT

Representative Corte moved that the house adjourn until 8:30 a.m. tomorrow.

The motion prevailed without objection.

The house accordingly, at 5:47 p.m., adjourned until 8:30 a.m. tomorrow.

ADDENDUM

SIGNED BY THE SPEAKER

The following bills and resolutions were today signed in the presence of the house by the speaker:

House List No. 50

HB 12, HB 13, HB 32, HB 42, HB 54, HB 124, HB 135, HB 136, HB 155, HB 162, HB 171, HB 177, HB 193, HB 208, HB 212, HB 240, HB 253, HB 254, HB 256, HB 274, HB 297, HB 298, HB 301, HB 390, HB 402, HB 415, HB 420, HB 424, HB 447, HB 469, HB 470, HB 500, HB 559, HB 560, HB 565, HB 567, HB 573, HB 616, HB 653, HB 670, HB 673, HB 674, HB 803, HB 946, HB 983, HB 1020, HB 1027, HB 1036, HB 1223, HB 1380, HB 1401, HB 1510, HB 1512, HB 1518, HB 1549, HB 1567, HB 1592, HB 1597, HB 1602, HB 1609, HB 1615, HB 1629, HB 1670, HB 1675, HB 1678, HB 1681, HB 1686, HB 1767, HB 1769, HB 1777, HB 1784, HB 1797, HB 1798, HB 1799, HB 1800, HB 1823, HB 1828, HB 1882, HB 1959, HB 2071, HB 2185, HB 2250, HB 2320, HB 2377, HB 2529, HB 2540, HB 2622, HB 2703, HB 3175, HB 3304, HB 3552, HCR 59

House List No. 51

HB 145, HB 403, HB 406, HB 408, HB 1372, HB 1697, HB 1709, HB 1713, HB 1749, HB 1791, HB 1945, HB 2112, HB 2154, HB 2162, HB 2409, HB 2496, HB 3014, HB 3024, HB 3338, HB 3461

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
Thursday, May 29, 2003

The Honorable Speaker of the House
House Chamber
Austin, Texas

Mr. Speaker:

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

THE SENATE HAS PASSED THE FOLLOWING MEASURES:

HB 76 Wise SPONSOR: Van de Putte
Relating to procedures adopted by a state entity to ensure an employment preference for veterans.
(Amended)

HB 179 Ellis SPONSOR: Ellis, Rodney

Relating to the qualification of a county fair association for an ad valorem tax exemption.

HB 518 Menendez SPONSOR: Whitmire
Relating to the service of citation by publication in a suit affecting the parent-child relationship.
(Amended)

HB 532 Giddings SPONSOR: Nelson
Relating to creating the offense of improper sexual relations between employees of a public or private primary or secondary school and certain students.
(Amended)

HB 651 Pitts SPONSOR: Williams
Relating to the creation of a savings incentive program for state agencies.
(Amended)

HB 736 Denny SPONSOR: Shapiro
Relating to use of the internal mail system of a governmental agency to deliver political advertising; providing a criminal penalty.
(Amended)

HB 1082 Talton SPONSOR: Staples
Relating to the appraisal of property by appraisal districts.
(Amended)

HB 1204 Baxter SPONSOR: Wentworth
Relating to the authority of municipalities and counties to regulate subdivisions and certain development in a municipality's extraterritorial jurisdiction.
(Committee Substitute/Amended)

HB 1314 Pitts SPONSOR: Averitt
Relating to placement of certain students in alternative education programs.
(Amended)

HB 1606 Wolens
Relating to ethics of public servants, including the functions and duties of the Texas Ethics Commission; the regulation of political contributions, political advertising, lobbying, and conduct of public servants; the reporting of political contributions and personal financial information; and the misuse of certain confidential information by governmental officers and employees; providing civil and criminal penalties.
(Committee Substitute/Amended)

HB 1691 Phillips SPONSOR: Zaffirini
Relating to use of the compensatory education allotment to fund certain programs for students who have dyslexia or a related disorder.
(Amended)

HB 2292 Wohlgemuth SPONSOR: Nelson
Relating to the provision of health and human services in this state, including the powers and duties of the Health and Human Services Commission and other state agencies; providing penalties.
(Committee Substitute/Amended)

HB 2444 West, George "Buddy" SPONSOR: Armbrister
Relating to certain purchases by the Railroad Commission of Texas.

HB 2933 Flores SPONSOR: Barrientos
Relating to the abolition of the Commission on Human Rights and the transfer of its functions to the Texas Workforce Commission.

(Committee Substitute/Amended)

HB 2971 Harper-Brown SPONSOR: Deuell
Relating to certain license plates issued by the Texas Department of
Transportation.
(Amended)

HB 3030 Van Arsdale SPONSOR: Lindsay
Relating to notice of groundwater contamination that may affect a drinking water
well.

HB 3168 Giddings SPONSOR: Carona
Relating to the determination of workers' compensation benefits and the
resolution of disputes regarding those benefits.
(Committee Substitute)

HB 3209 Heflin SPONSOR: Ratliff
Relating to the amount of financial assistance a student may receive under the
TEXAS grant and tuition equalization grant programs.
(Amended)

HB 3232 Smith, Todd SPONSOR: Brimer
Relating to the collection of costs incurred by a municipality in remedying
substandard conditions on a property.
(Amended)

HB 3257 Delisi SPONSOR: Duncan
Relating to a health reimbursement arrangement program for active school
employees.

HB 3305 Berman SPONSOR: Whitmire
Relating to certain surcharges assessed and collected by the Texas Alcoholic
Beverage Commission.
(Committee Substitute)

HB 3587 Callegari SPONSOR: Lindsay
Relating to powers, duties, and name of the Energy Corridor Management
District.
(Amended)

HB 3602 Bonnen SPONSOR: Jackson
Relating to the creation, administration, powers, duties, operation, and financing
of the Brazoria County Groundwater Conservation District.

HB 3629 Bohac SPONSOR: Whitmire
Relating to the creation of the Spring Branch Area Community Improvement
District; providing the authority to issue bonds.
(Amended)

Respectfully,
Patsy Spaw
Secretary of the Senate

Message No. 2

MESSAGE FROM THE SENATE
SENATE CHAMBER

Austin, Texas

Thursday, May 29, 2003 - 2

The Honorable Speaker of the House

House Chamber
Austin, Texas

Mr. Speaker:

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

THE SENATE HAS PASSED THE FOLLOWING MEASURES:

HCR 2 Deshotel SPONSOR: Williams
Recognizing the 10th anniversary of Southeast Texas Community Development Corporation, Inc.

HCR 24 Talton SPONSOR: Jackson
In memory of John Ray Harrison, Sr., of Pasadena.

HCR 58 Delisi SPONSOR: Nelson
Urging Congress to enact legislation to pass federal funds on to states via block grants for public welfare and Medicaid purposes.

HCR 101 Capelo SPONSOR: Van de Putte
Requesting that Congress enact a Medicare prescription drug benefit.

HCR 216 Lewis
Congratulating the Area III participants in the Fort Worth Independent School District's 2002 spelling bee contest.

HCR 252 Corte SPONSOR: Van de Putte
Calling a joint session of the legislature to honor all Texans killed during Operation Iraqi Freedom.

HCR 262 Smith, Todd SPONSOR: Brimer
Honoring Bob and Betty Stewart of Bedford on their 50th wedding anniversary.

HCR 264 Naishtat SPONSOR: Barrientos
Designating the Texas Music Museum the official music museum of the State of Texas.

HCR 271 Eissler SPONSOR: Williams
Honoring Second Lieutenant Cory Steele of The Woodlands for his service in Iraq.

HCR 272 Brown, Betty SPONSOR: Staples
Recalling **HB 2533**.

THE SENATE HAS CONCURRED IN HOUSE AMENDMENTS TO THE FOLLOWING MEASURES:

SB 10 (viva-voce vote)
SB 45 (viva-voce vote)
SB 144 (viva-voce vote)
SB 147 (31 Yeas, 0 Nays)
SB 161 (viva-voce vote)
SB 162 (31 Yeas, 0 Nays)
SB 236 (29 Yeas, 2 Nays)
SB 245 (viva-voce vote)
SB 467 (31 Yeas, 0 Nays)

SB 541	(viva-voce vote)
SB 591	(viva-voce vote)
SB 597	(viva-voce vote)
SB 669	(viva-voce vote)
SB 833	(viva-voce vote)
SB 895	(viva-voce vote)
SB 923	(31 Yeas, 0 Nays)
SB 1074	(viva-voce vote)
SB 1212	(viva-voce vote)
SB 1261	(31 Yeas, 0 Nays)
SB 1295	(31 Yeas, 0 Nays)
SB 1394	(viva-voce vote)
SB 1504	(viva-voce vote)
SB 1552	(viva-voce vote)
SJR 19	(31 Yeas, 0 Nays)
SJR 42	(28 Yeas, 3 Nays)

THE SENATE HAS REFUSED TO CONCUR IN HOUSE AMENDMENTS TO THE FOLLOWING MEASURES AND REQUESTS THE APPOINTMENT OF A CONFERENCE COMMITTEE TO ADJUST THE DIFFERENCES BETWEEN THE TWO HOUSES:

SB 361

Senate Conferees: Shapiro - Chair/Armbrister/Lindsay/Ratliff/Wentworth

THE SENATE HAS GRANTED THE REQUEST OF THE HOUSE FOR THE APPOINTMENT OF A CONFERENCE COMMITTEE ON THE FOLLOWING MEASURES:

HB 9

Senate Conferees: Shapiro - Chair/Gallegos/Hinojosa/Lindsay/Wentworth

HB 11

Senate Conferees: Shapiro - Chair/Armbrister/Deuell/Ellis, Rodney/Nelson

HB 1454

Senate Conferees: Janek - Chair/Brimer/Carona/Gallegos/Lindsay

HB 2415

Senate Conferees: Averitt - Chair/Armbrister/Duncan/Harris/Lucio

Respectfully,
Patsy Spaw
Secretary of the Senate

Message No. 3

MESSAGE FROM THE SENATE
 SENATE CHAMBER
 Austin, Texas
 Thursday, May 29, 2003 - 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 265 Hupp
 Honoring John Arthur Martinez of Marble Falls for his successful musical career.

Respectfully,
 Patsy Spaw
 Secretary of the Senate

Message No. 4

MESSAGE FROM THE SENATE
 SENATE CHAMBER
 Austin, Texas
 Thursday, May 29, 2003 - 4

The Honorable Speaker of the House
 House Chamber
 Austin, Texas

Mr. Speaker:

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

THE SENATE HAS PASSED THE FOLLOWING MEASURES:

HCR 273 Keel SPONSOR: Van de Putte
 Instructing the enrolling clerk of the house to make corrections to **HB 2192**.

Respectfully,
 Patsy Spaw
 Secretary of the Senate

APPENDIX

ENGROSSED

May 28 - HCR 208, HCR 218

ENROLLED

May 28 - HB 28, HB 554, HB 622, HB 1387, HB 1959, HB 2554,
 HB 3208, HB 3552, HB 3569