

HOUSE JOURNAL

SEVENTY-EIGHTH LEGISLATURE, REGULAR SESSION

PROCEEDINGS

EIGHTY-SECOND DAY — FRIDAY, MAY 30, 2003

The house met at 8:30 a.m. and, at the request of the speaker, was called to order by Representative Edwards.

The roll of the house was called and a quorum was announced present (Record 818).

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; Hope; 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.; Smithee; Solis; Solomons; Stick; Swinford; Talton; Taylor; Telford; Thompson; Truitt; Turner; Uresti; Van Arsdale; Villarreal; West; Wilson; Wise; Wohlgemuth; Wolens; Wong; Woolley; Zedler.

The invocation was offered by Father Bill Davis, pastor, Immaculate Heart of Mary Church, Houston.

HR 1702 - ADOPTED **(by J. Moreno)**

Representative J. Moreno moved to suspend all necessary rules to take up and consider at this time **HR 1702**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 1702, Recognizing Bill Davis as Pastor of the Day for May 30, 2003.

HR 1702 was adopted without objection.

HOUSE AT EASE

At 8:54 a.m., the chair announced that the house would stand at ease pending arrival of guests.

(Speaker in the chair)

MEMORIAL DAY TRIBUTE FOR OPERATION IRAQI FREEDOM (The House of Representatives and the Senate in Joint Session)

In accordance with the provisions of **HCR 252**, providing for a joint session of the senate and the house of representatives at 9 a.m. today, for the purpose of a Memorial Day tribute to fallen soldiers of Operation Iraqi Freedom, the Honorable David Dewhurst, lieutenant governor of the State of Texas and the honorable senators were announced at the door of the house and were admitted.

The senators occupied the seats arranged for them.

Lieutenant Governor Dewhurst called the senate to order.

A quorum of the senate was announced present.

The Honorable Tom Craddick, speaker of the house, called the house of representatives to order.

A quorum of the house was announced present.

The Honorable Rick Perry, governor of the State of Texas, was announced at the door of the house and was admitted. Governor Perry was escorted to the speaker's podium by Representative Frank Corte and Senator Leticia Van de Putte.

Speaker Craddick stated that the house and senate were in joint session pursuant to **HCR 252**, in honor of all Texans killed during Operation Iraqi Freedom.

The joint session and gallery rose for the posting of the colors.

Speaker Craddick presented the Lone Star Girl Scout Council and Billy Russell, eagle scout from Troop 405, who led the pledge of allegiance.

The "Air Force Band of the West" from Lackland Air Force Base played the national anthem.

Speaker Craddick presented Father Bill Davis, Immaculate Heart of Mary Church, Houston, who offered the invocation.

Speaker Craddick requested the reading clerk to read **HCR 261**, commemorating Memorial Day 2003.

HCR 261

WHEREAS, This Memorial Day, the Texas Legislature and citizens across America pause to honor those whose patriotism called them to active duty in our nation's armed forces, and we also join in solemn remembrance of those Texans who have been killed during Operation Iraqi Freedom; and

WHEREAS, The date we now know as Memorial Day was first observed on May 30, 1868, when flowers were placed with reverence on the graves of Union and Confederate soldiers; exactly one century later, the United States Congress declared the last Monday in May to be Memorial Day; and

WHEREAS, Throughout our nation's history, Texas servicemen and servicewomen have distinguished themselves as individuals of remarkable courage, dedication, and determination; today we are proud to honor the men and women from our state, as well as those posted to military bases within our state, who have left behind their loved ones and the comfort and security of their homes to heed our country's call to arms; during the Iraqi campaign, the members of the 78th Legislature have felt deep sorrow as a number of our fellow Texans have laid down their lives during the course of serving our country; and

WHEREAS, To date the United States Department of Defense has confirmed the deaths of more than 140 American soldiers and airmen who served in Operation Iraqi Freedom, including at least two dozen individuals with immediate ties to Texas; and

WHEREAS, Our state and our nation are fortunate to have men and women whose love of their country leads them to military service, yet the death of these heroic Texans is a sobering reminder that armed conflict is not without great and terrible cost; their deaths represent a tremendous loss to their families, friends, fellow soldiers, and the State of Texas, and their sacrifice in the meritorious service of our nation will not soon be forgotten; now, therefore, be it

RESOLVED, That the 78th Legislature of the State of Texas hereby pay special tribute to the memory of those Texans who died while serving in Operation Iraqi Freedom and those who came before them for their steadfast devotion to securing those freedoms all Americans hold dear; and, be it further

RESOLVED, That the Texas Legislature also express its heartfelt appreciation to all the brave men and women who have served, and who currently serve, in the United States armed forces.

Lieutenant Governor Dewhurst introduced Governor Perry.

Governor Perry addressed the joint session speaking as follows:

We gather today in remembrance of 29 brave souls from Texas towns and Texas bases who gave their lives in service to freedom. They represented the best America had to offer. They came from our border towns, our urban centers, our rural communities. They shared a dedication to the mission, a devotion to their country, a determination to see their duties to their completion.

To the loved ones they leave behind—parents who gave them life and direction, children whom they loved without condition, spouses with whom they shared their hopes and dreams—we offer our deepest sympathy. We cannot feel as you do, the full impact of this loss, but our hearts are heavy with grief, and our thoughts and prayers are with you every day. May God grant you comfort in your time of sorrow and, with the passage of time, may you find solace and peace.

Though they are no longer here, you will continue to feel their presence in your life when a favorite song comes on the radio, during news reports of their comrades, in the laughter of their children. And this you can always know: Your loved one fought and died for a great cause—to free an oppressed people and to defend the cause of freedom.

America will always be indebted to them for their willingness to serve, for their bravery in the face of danger, and for their supreme sacrifice described by the book of John as the greatest form of love. Generations upon generations of Americans have learned through tragedy and triumph that freedom is not free. It comes at a great cost, measured in human lives. The lives we commemorate today are part of an enduring American legacy—those who loved freedom so much that they would pay any price and bear any burden on its behalf.

Many of them paid that price in the dawn of their lives, sacrificing their future for ours. In the words of Lawrence Binyon, the author of *Poems for the Fallen*, "They shall not grow old, as we that are left grow old. Age shall not weary them, nor the years condemn. At the going down of the sun and in the morning we will remember them."

We gather here today to affirm that their heroic deeds will never be forgotten. We will remember always the lives they lived, the heroic deeds they performed, the gift they gave so we may be free. May they rest in eternal peace. May God comfort the loved ones they leave behind. And may the freedom they died for live on as a lasting tribute to their lives.

Senator Van De Putte and Representative Corte read the names of the fallen soldiers.

Governor Perry presented flags flown over the Capitol to family members of the fallen soldiers.

The joint session and gallery observed a moment of silence.

A cannon salute was offered by the Texas Army National Guard Salute Battery.

Taps was played by the "Air Force Band of the West".

Lieutenant Governor Dewhurst introduced Pastor Greg Matte, Breakaway Ministry, College Station, who offered the benediction as follows:

May God be our strength in times of trouble and grief. May we turn to him to fill our sense of loss. May your tears be seeds of faith that blossom in the tomorrows to come. We can trust that sorrow may last for the night, but joy comes in the morning because blessed are those who mourn for they will be comforted.

May we remember with a proud smile our brave soldiers who have fallen, and may we look forward with a deep trust in the future ahead. Now to him who is able to do immeasurably more than all we ask or imagine, according to his power that is at work within us, to him be glory and guard us with his peace that passes understanding.

"The Lord bless you and keep you; the Lord make his face shine upon you and be gracious to you; the Lord turn his face toward you and give you peace." (Numbers 6:24-26) Amen.

SENATE AT EASE

At 9:46 a.m., Lieutenant Governor Dewhurst stated that the purpose for which the joint session had been called had been completed, and that the senate would, in accordance with a previous motion, stand at ease until 11 a.m.

HOUSE AT EASE

At 9:46 a.m., the speaker announced that the house would stand at ease pending the departure of guests.

(Edwards in the chair)

The chair called the house to order at 10:30 a.m.

CAPITOL PHYSICIAN

The chair recognized Representative Hartnett who presented Dr. T. Dale Ragle of Dallas as the "Doctor for the Day."

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

(Berman in the chair)

HR 1665 - ADOPTED (by Giddings)

Representative Giddings moved to suspend all necessary rules to take up and consider at this time **HR 1665**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 1665, Commending Dr. Craig Thomas of Dallas for his service as optometrist of the day for the Texas House of Representatives.

HR 1665 was adopted without objection.

INTRODUCTION OF GUEST

The chair recognized Representative Giddings who introduced Dr. Craig Thomas.

HR 1180 - ADOPTED (by Eissler)

Representative Eissler moved to suspend all necessary rules to take up and consider at this time **HR 1180**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 1180, Congratulating Guy V. Lewis on his remarkable coaching career at the University of Houston and his outstanding contributions to collegiate basketball in the State of Texas.

HR 1180 was adopted without objection.

INTRODUCTION OF GUESTS

The chair recognized Representative Eissler who introduced Michael Young, assistant basketball coach at the University of Houston, and his wife Tina.

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).

HR 1672 - ADOPTED (by Allen)

Representative Allen moved to suspend all necessary rules to take up and consider at this time **HR 1672**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 1672, Commemorating the 20th anniversary of the Texas Legislature's cowboy boot tradition.

HR 1672 was adopted without objection.

INTRODUCTION OF GUESTS

The chair recognized Representative Allen who introduced Harry Henze, Jr. of Bunkhouse Boots and Bill and Virginia Carter.

HR 1441 - ADOPTED (by Gattis)

Representative Gattis moved to suspend all necessary rules to take up and consider at this time **HR 1441**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 1441, Honoring USAF Captain Nathan Howard, recipient of the Distinguished Flying Cross.

HR 1441 was adopted without objection.

INTRODUCTION OF GUESTS

The chair recognized Representatives Gattis and Krusee who introduced the parents of USAF Captain Nathan Howard.

INTRODUCTION OF GUESTS

The chair recognized Representative Mercer who introduced Bill Creech and his wife Tootsie. Mr. Creech served in the U.S. Army during World War II and participated in all five major campaigns including the relief of the First U.S. Army at Antwerp in the Battle of the Bulge.

HR 1697 - ADOPTED **(by Peña)**

Representative Peña moved to suspend all necessary rules to take up and consider at this time **HR 1697**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 1697, Congratulating Xavier Salinas on his election as president of the Edinburg Consolidated Independent School District board of trustees.

HR 1697 was adopted without objection.

HR 1698 - ADOPTED **(by Peña)**

Representative Peña moved to suspend all necessary rules to take up and consider at this time **HR 1698**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 1698, In memory of Dr. Thomas Esparza, Sr., of Edinburg.

HR 1698 was adopted without objection.

HR 1699 - ADOPTED **(by Peña)**

Representative Peña moved to suspend all necessary rules to take up and consider at this time **HR 1699**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 1699, Congratulating The University of Texas-Pan American president, Miguel Nevárez, on his selection as one of the 50 Most Important Hispanics in Business and Technology by Hispanic Engineer and Information Technology magazine.

HR 1699 was adopted without objection.

HR 1700 - ADOPTED **(by Peña)**

Representative Peña moved to suspend all necessary rules to take up and consider at this time **HR 1700**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 1700, Honoring Pete and Chita Leal of Edinburg on their 59th anniversary.

HR 1700 was adopted without objection.

HR 1710 - ADOPTED
(by Peña)

Representative Peña moved to suspend all necessary rules to take up and consider at this time **HR 1710**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 1710, Commending Senior Chief Petty Officer Jaime Garza Gutierrez for his service in the U.S. Navy.

HR 1710 was adopted without objection.

HR 1701 - ADOPTED
(by Wong)

Representative Wong moved to suspend all necessary rules to take up and consider at this time **HR 1701**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 1701, In memory of the Honorable Searcy Bracewell of Houston.

HR 1701 was unanimously adopted by a rising vote.

INTRODUCTION OF GUESTS

The chair recognized Representative Wong who introduced the family of the Honorable Searcy Bracewell.

HR 1090 - ADOPTED
(by Dawson)

Representative Dawson moved to suspend all necessary rules to take up and consider at this time **HR 1090**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 1090, Honoring Ruby Lee Sandars for being named 2002 Citizen of the Year by the Pearland Chamber of Commerce.

HR 1090 was adopted without objection.

HR 1705 - ADOPTED
(by Olivo)

Representative Olivo moved to suspend all necessary rules to take up and consider at this time **HR 1705**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 1705, Honoring civil rights advocate Tammie Lang Campbell of Missouri City.

HR 1705 was adopted without objection.

On motion of Representative Hodge, the names of all the members of the house were added to **HR 1705** as signers thereof.

INTRODUCTION OF GUESTS

The chair recognized Representative Olivo who introduced Tammie Lang Campbell and her family.

(Edwards in the chair)

CONGRATULATORY AND MEMORIAL CALENDAR

The following congratulatory resolutions were laid before the house:

HCR 267 was withdrawn.

HR 1469 (by Dawson), Congratulating Mary Belle Ingram of Bay City on her receipt of the Ruth Lester Lifetime Achievement Award from the Texas Historical Commission.

HR 1471 (by Wong), Honoring Kenneth and Lucille Wood of Houston on their 60th wedding anniversary.

HR 1472 (by Wong), Honoring the Duncan family of Houston for their philanthropic contribution to the Institute of Molecular Medicine for the Prevention of Human Diseases.

HR 1475 (by Bohac), Honoring the Sam Houston Area Council of the Boy Scouts of America and congratulating them on the opening of the Cockrell Scout Center in Houston.

HR 1477 (by B. Brown), Honoring staff members who assist in the duties on the house floor.

HR 1479 (by Bohac), Honoring Jim Mueller of Houston for his service in the Boy Scouts of America.

HR 1482 was previously adopted.

HR 1483 (by Hopson), Honoring J. N. Grimes and the late Ray Morrow, creators of the Dairy Queen "Dude" and "Country Basket."

HR 1486 (by Wilson), Honoring the Right Reverend Claude Edward Payne, Episcopal bishop of the Diocese of Texas, on the occasion of his retirement.

HR 1488 (by Telford and Ritter), Congratulating Michael Lehr on his tenure as executive director of the Texas Retired Teachers Association.

HR 1493 (by Quintanilla), Honoring the San Elizario Genealogy and Historical Society for its service to the community.

HR 1494 (by Quintanilla), Honoring Lenin Navar of El Paso for his scholastic achievements.

HR 1495 (by Quintanilla), Recognizing the Horizon City Kiwanis Club for its outstanding service to the community.

HR 1496 (by Quintanilla), Honoring Cody Rios of El Paso on his graduation from Eastwood High School.

HR 1497 (by Quintanilla), Congratulating students and their sponsors from the Socorro ISD on the students' performance in Business Professionals of America competition.

HR 1498 (by Quintanilla), Honoring the Vista Hills Rotary Club.

HR 1499 (by Quintanilla), Commending Abner Sanchez of Clint for his academic achievements.

HR 1501 (by Harper-Brown), Honoring Pizza Hut for being named "The Best Place to Work in Dallas-Fort Worth!" in 2003.

HR 1502 (by Wong), Honoring Elaine Lupovitch of Houston for receiving the 12th Annual Irving L. Samuels Outstanding Teacher Award.

HR 1503 (by Wong), Congratulating Christine Ehlig-Economides on her election to the National Academy of Engineering.

HR 1505 (by Wong), Honoring Frank G. Cook on his election as chairman of the board of Community National Bank of Bellaire.

HR 1506 (by Wong), Congratulating John Lienhard on his election to the National Academy of Engineering.

HR 1507 (by Wong), Recognizing the 67th Annual Meeting of the Jewish Federation of Greater Houston and congratulating the group's award recipients.

HR 1508 (by Wong), Congratulating Ann T. Hamilton on her receipt of the 2003 George R. Brown Memorial Award from The Park People.

HR 1512 (by Noriega), Honoring Rosalba Y. Castillo on her graduation from Milby High School in Houston.

HR 1513 (by Noriega), Congratulating Maricela L. Hinojosa of Humble on being named 2003 Special Education Teacher of the Year for the East District of the Houston I.S.D.

HR 1514 (by Noriega), Honoring Angelica Gonzalez, 2003 teacher of the year for the East District of Houston Independent School District.

HR 1516 (by Eissler and Riddle), Honoring Christopher Bauer of The Woodlands for his achievements.

HR 1518 (by Casteel), Recognizing the Central Texas Technology Center for the many benefits it will provide to New Braunfels and surrounding areas.

HR 1519 (by Casteel and Hilderbran), Recognizing the opening of the Fredericksburg Visitor Information Center.

HR 1522 (by Craddick), Honoring Robert and Mildred Burkett of Midland on their 65th wedding anniversary.

HR 1523 (by Craddick), Honoring G. K. "Bub" McDonald of Lamesa on his 90th birthday.

HR 1524 (by Craddick), Congratulating Joe and Ora Williams of Midland on the occasion of their 50th wedding anniversary.

HR 1525 (by Craddick), Honoring Bill and Wynnell Rickey of Midland on their 50th wedding anniversary.

HR 1526 (by Craddick), Congratulating Hulan and Virginia Harrison of Midland on the occasion of their 50th wedding anniversary.

HR 1527 (by Craddick), Honoring Calvin and Caroline White on their 60th wedding anniversary.

HR 1528 (by Craddick), Congratulating Wesley and Bertha Wright of Midland on the occasion of their 50th wedding anniversary.

HR 1529 (by Craddick), Honoring Weldon and Grace Shuck of Midland on their 50th wedding anniversary.

HR 1530 (by Craddick), Honoring George and Lola Moore of Midland on their 50th wedding anniversary.

HR 1531 (by Craddick), Congratulating James D. Ross, Sr., and Billie Ross on their 60th wedding anniversary.

HR 1532 (by Craddick), Congratulating Otto and Ida Lisenbee of Lamesa on their 71st wedding anniversary.

HR 1535 (by B. Brown), Congratulating Melissa Marfin and Jonathan English on their engagement and upcoming wedding.

HR 1537 (by Wise), Congratulating Jeanette Rodriguez on her selection to the All-State Band.

HR 1538 (by Wise), Congratulating Jeanette Castañeda on her selection to the All-State Tenor/Bass Choir.

HR 1539 (by Wise), Congratulating Ladyana Hernandez of Alamo for earning All-State Choir honors.

HR 1540 (by Wise), Honoring Alexandria Nicole Gonzalez of Mercedes for being named UIL District 32-4A spelling champ.

HR 1541 (by Wise), Honoring Blanca Hernandez of Garza-Pena Elementary School for receiving the Betty Scharff Memorial Award.

HR 1542 (by Madden), Congratulating Dmitry Schneider on winning the Frank P. Samford, Jr., chess fellowship.

HR 1543 (by Madden), Commending the Collin County Adult Literacy Council and other literacy providers for their important contributions to their communities.

HR 1544 (by Madden), Honoring Jerry Huffman Custom Builders on the company's 25th anniversary.

HR 1545 (by Madden), Honoring John S. Findley for his service as chairman of the Texas Dental Association's Council on Governmental Affairs.

HR 1547 (by Rodriguez), Congratulating Tabita Gutierrez on being named principal of Johnston High School in Austin.

HR 1551 (by Dutton), Honoring Catherine "Candy" Jones-Brooks of Houston for her achievements as principal of Dogan Elementary School.

HR 1554 (by R. Cook), Honoring Kenneth Earl Blaschke for his 50 years of service as a practicing pharmacist in Smithville.

HR 1555 was previously adopted.

HR 1556 was previously adopted.

HR 1557 (by Chavez), Congratulating Bobbie Telles on being inducted into the 2003 El Paso County Democratic Hall of Fame.

HR 1558 (by Chavez), Congratulating Jesus "Chuy" Reyes on being inducted into the 2003 El Paso County Democratic Hall of Fame.

HR 1559 (by Chavez), Congratulating Raymond Telles on being inducted into the 2003 El Paso County Democratic Hall of Fame.

HR 1560 (by Chavez), Congratulating Judge William "Bill" Moody on being inducted into the 2003 El Paso County Democratic Hall of Fame.

HR 1561 (by Chavez), Congratulating Belen Robles on being inducted into the 2003 El Paso County Democratic Hall of Fame.

HR 1562 (by Chavez), Congratulating Rosalba Saenz on being inducted into the 2003 El Paso County Democratic Hall of Fame.

HR 1563 (by Chavez), Congratulating Sheriff Leo Samaniego on being inducted into the 2003 El Paso County Democratic Hall of Fame.

HR 1564 (by Chavez), Congratulating Sonya Saunders on being inducted into the 2003 El Paso County Democratic Hall of Fame.

HR 1565 (by Chavez), Congratulating Rita Sarinana on being inducted into the 2003 El Paso County Democratic Hall of Fame.

HR 1566 (by Chavez), Congratulating Senator Eliot Shapleigh on being inducted into the 2003 El Paso County Democratic Hall of Fame.

HR 1567 (by Chavez), Congratulating Alice Woods on being inducted into the 2003 El Paso County Democratic Hall of Fame.

HR 1568 (by Chavez), Congratulating Beatriz Martinez on being inducted into the 2003 El Paso County Democratic Hall of Fame.

HR 1569 (by Chavez), Congratulating Sandra Martinez on being inducted into the 2003 El Paso County Democratic Hall of Fame.

HR 1570 (by Chavez), Congratulating Henry Irigoyen on being inducted into the 2003 El Paso County Democratic Hall of Fame.

HR 1571 (by Chavez), Congratulating Maria Guadalupe Ibarra on being inducted into the 2003 El Paso County Democratic Hall of Fame.

HR 1572 (by Chavez), Congratulating Otis Hopkins on being inducted into the 2003 El Paso County Democratic Hall of Fame.

HR 1573 (by Chavez), Congratulating Elvia Hernandez on being inducted into the 2003 El Paso County Democratic Hall of Fame.

HR 1574 (by Chavez), Congratulating Tito Gonzalez on being inducted into the 2003 El Paso County Democratic Hall of Fame.

HR 1575 (by Chavez), Congratulating Juan "Chacho" Gonzalez on being inducted into the 2003 El Paso County Democratic Hall of Fame.

HR 1576 (by Chavez), Congratulating Victor Flores on being inducted into the 2003 El Paso County Democratic Hall of Fame.

HR 1577 (by Chavez), Congratulating Mike Flores on being inducted into the 2003 El Paso County Democratic Hall of Fame.

HR 1578 (by Chavez), Congratulating Queta G. Fierro on being inducted into the 2003 El Paso County Democratic Hall of Fame.

HR 1579 (by Chavez), Congratulating Sandra Chiquito on being inducted into the 2003 El Paso County Democratic Hall of Fame.

HR 1580 (by Chavez), Congratulating Mayor Raymond Caballero on being inducted into the 2003 El Paso County Democratic Hall of Fame.

HR 1581 (by Chavez), Congratulating Mrs. Hermi Brown on being inducted into the 2003 El Paso County Democratic Hall of Fame.

HR 1582 (by Chavez), Congratulating County Judge Dolores Briones on being inducted into the 2003 El Paso County Democratic Hall of Fame.

HR 1583 (by Chavez), Honoring the Northeast El Paso Civic Association.

HR 1584 (by Chavez), Commending Ysleta Independent School District for its efforts to reduce the district's energy costs.

HR 1587 (by Hilderbran), Honoring Joe Jesse Huro II of Brady for his longtime service with the Texas Army National Guard.

HR 1588 (by Escobar), Honoring Alicia Garza Figueroa for her remarkable career in the field of education.

HR 1589 (by Escobar), Honoring Hipolito H. Garza of Kingsville on his 80th birthday.

HR 1590 (by Escobar), Honoring County Commissioner Romeo L. Lomas for his service to Kleberg County.

HR 1591 (by Flores), Honoring Nydia Alonzo of Leo Marcell Elementary School in Mission for her contributions to having tortilla chips and salsa designated as the official state snack of Texas.

HR 1593 (by B. Cook), Honoring Captain Hugh D. Whitaker on his retirement from the Freestone County Sheriff's Department.

HR 1597 (by Mercer), Honoring the U.S. Army's Second (Indian Head) Division for its valiant service.

HR 1599 (by J. Keffer), Honoring Dr. William O'Quin of Mineral Wells for his dedicated service to his community.

HR 1601 (by Madden), Honoring Roxanne Burchfiel on being named an outstanding teacher by the Plano Independent School District.

HR 1602 (by Madden), Honoring Marilyn Carruthers on being named an outstanding teacher by the Plano Independent School District.

HR 1603 (by Madden), Honoring Lori Christerson on being named an outstanding teacher by the Plano Independent School District.

HR 1604 (by Madden), Honoring David Farquhar on being named an outstanding teacher by the Plano Independent School District.

HR 1605 was withdrawn.

HR 1607 (by Stick), Congratulating Jeffery W. Haecker of Austin on becoming an Eagle Scout.

HR 1608 (by Stick), Congratulating David M. Conrad of Austin on becoming an Eagle Scout.

HR 1609 (by Stick), Congratulating Matthew C. Holder of Austin on becoming an Eagle Scout.

HR 1610 (by Madden), Honoring Andra Harris on being named an outstanding teacher by the Plano Independent School District.

HR 1611 (by Madden), Honoring Jan Edgley on being named an outstanding teacher by the Plano Independent School District.

HR 1613 (by Madden), Honoring Lynne Pennington on being named an outstanding teacher by the Plano Independent School District.

HR 1614 (by Madden), Honoring Dena McCutcheon on being named an outstanding teacher by the Plano Independent School District.

HR 1615 (by Madden), Honoring Karen Wilbanks on being named an outstanding teacher by the Plano Independent School District.

HR 1616 (by Madden), Honoring Colleen Kugler on being named an outstanding teacher by the Plano Independent School District.

HR 1617 (by Madden), Honoring Bettye Hashem on being named an outstanding teacher by the Plano Independent School District.

HR 1618 (by Madden), Honoring Megan Raspberry on being named an outstanding teacher by the Plano Independent School District.

HR 1619 (by Crownover), Congratulating Sally Wallace of Galveston for receiving the 2003 Steel Oleander Award.

HR 1621 (by Gutierrez and Peña), Honoring Arnoldo F. Benavides for his public service in the city of Edinburg.

HR 1622 (by Gutierrez and Peña), Honoring Roy Peña for his public service in the city of Edinburg.

HR 1623 (by Gutierrez and Peña), Honoring Joe Ochoa, mayor of Edinburg, on his service to his community and state.

HR 1624 (by Gutierrez), Recognizing J.C. Ramirez Co., Inc., in Roma for more than 150 years of business.

HR 1627 (by Hughes), Honoring Sam White of Quitman for his contributions to the community.

HR 1629 (by Wong, Woolley, Turner, Edwards, J. Moreno, et al.), Congratulating Rudy Tomjanovich on his retirement as head coach of the Houston Rockets.

HR 1631 (by Wise), Honoring Frank Yu of McAllen as the 2003 salutatorian of the Science Academy of South Texas.

HR 1632 (by Wise), Honoring Judy L. Dacquel of McAllen as the 2003 salutatorian of Donna High School.

HR 1633 (by Wise), Honoring Melissa Morales of San Juan as the 2003 valedictorian of Memorial High School.

HR 1634 (by Wise), Honoring Roman Hernandez of Weslaco as the 2003 valedictorian of Tech High School.

HR 1635 (by Wise), Honoring Oscar Servando Santos, Jr., of Pharr as the 2003 salutatorian of PSJA Memorial High School.

HR 1636 (by Wise), Honoring Abel Martinez of Mercedes as the 2003 salutatorian of Tech High School.

HR 1637 (by Wise), Honoring Paola Carrasco of McAllen as the 2003 salutatorian of Med High School.

HR 1638 (by Wise), Honoring Luis D. De Leon of Donna as the 2003 valedictorian of Donna High School.

HR 1639 (by Wise), Honoring Elvis Aaron Cavazos of Weslaco as the 2003 salutatorian of Weslaco High School.

HR 1640 (by Wise), Honoring Christina Uriegas of Edinburg as the 2003 valedictorian of PSJA North High School.

HR 1641 (by Wise), Honoring Emily Martinez of Mercedes as the 2003 salutatorian of Progreso High School.

HR 1642 (by Wise), Honoring Rebecca Gonzalez of Pharr as the 2003 valedictorian of PSJA High School.

HR 1643 (by Wise), Honoring William A. McCormick III of Raymondville as the 2003 valedictorian of Med High School.

HR 1644 (by Wise), Honoring Kurt Loidl of McAllen as the 2003 valedictorian of the Science Academy of South Texas.

HR 1645 (by Wise), Honoring JoAnne Garcia of Pharr as the 2003 salutatorian of PSJA North High School.

HR 1646 (by Wise), Honoring Marco Antonio Jilpas of Pharr as the 2003 salutatorian of PSJA High School.

HR 1647 (by Wise), Honoring David Rudy Rivera of Weslaco as the 2003 valedictorian of Weslaco High School.

HR 1648 (by Wise), Honoring Santos Garcia as the 2003 salutatorian of Med High School.

HR 1649 (by Wise), Honoring Arturo Pecina, Jr., of Weslaco as the 2003 valedictorian of Progreso High School.

The resolutions were adopted without objection.

The following memorial resolutions were laid before the house:

HR 1474 (by Corte), In memory of Jack Marion McGinnis of Boerne.

HR 1485 (by Capelo), Honoring the life of U.S. Army First Sergeant Joe Garza.

HR 1489 (by Kuempel), In memory of Virginia K. Engler of Seguin.

HR 1500 (by B. Cook), In memory of Deputy Shelby Leo Green, Jr., of Tennessee Colony who was killed in the line of duty on May 15, 2003.

HR 1504 (by Wong), Honoring the life of Linda Halliday Mafrige of Houston.

HR 1515 (by Noriega), In memory of Ponce Cruz Flores of Houston.

HR 1517 (by Casteel), In memory of Dana Gold of New Braunfels.

HR 1520 (by Geren), In memory of Lucille Neal.

HR 1521 (by Giddings), Recognizing the dedication of the DeSoto Independent School District Administration Building in memory of Dalton L. James.

HR 1553 (by R. Cook), In memory of Ruby Vance of Lexington.

HR 1586 (by Hilderbran), In memory of Arthur "Art" Lorfing of Kerrville.

HR 1606 was withdrawn.

HR 1625 (by Gutierrez), In memory of Eloisa "Locha" Rosa Garcia of Pharr.

HR 1626 (by Gutierrez), In memory of Pedro "Pipirin" Villarreal, Jr., of Mission.

HR 1630 (by Bohac), In memory of Milbert William "Bill" Held of Houston.

The resolutions were unanimously adopted by a rising vote.

HR 726 - ADOPTED
(by McClendon)

Representative McClendon moved to suspend all necessary rules to take up and consider at this time **HR 726**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 726, Recognizing June 2003 as Menopause Awareness Month in Texas.

HR 726 was adopted without objection.

INTRODUCTION OF GUESTS

The chair recognized Representative McClendon who introduced representatives of the Christus Santa Rosa Clinic.

HR 1605 - ADOPTED
(by Isett)

Representative Isett moved to suspend all necessary rules to take up and consider at this time **HR 1605**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 1605, Honoring Kimberly Lavon Irby of Pflugerville on her high school graduation.

HR 1605 was adopted without objection.

INTRODUCTION OF GUEST

The chair recognized Representative Isett who introduced Kimberly Lavon Irby.

INTRODUCTION OF GUEST

The chair recognized Representative Wise who introduced Dr. Frank Ashby.

HR 1292 - ADOPTED
(by Wise)

Representative Wise moved to suspend all necessary rules to take up and consider at this time **HR 1292**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 1292, Recognizing the grand opening of Texas A&M University's Lower Rio Grande Valley Prospective Student Center.

HR 1292 was adopted without objection.

INTRODUCTION OF GUESTS

The chair recognized Representatives Gutierrez and Peña who introduced Arnoldo F. Benavides and his wife Maria.

(Goodman in the chair)

SB 117 - REQUEST OF SENATE GRANTED CONFERENCE COMMITTEE APPOINTED

On motion of Representative Hope, the house granted the request of the senate for the appointment of a conference committee on **SB 117**.

The chair announced the appointment of the following conference committee, on the part of the house, on **SB 117**: Hope, chair; Hupp; Berman; Hopson; and Ellis.

SB 361 - REQUEST OF SENATE GRANTED CONFERENCE COMMITTEE APPOINTED

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

The chair announced the appointment of the following conference committee, on the part of the house, on **SB 361**: Hill, chair; Harper-Brown; Hamric; Krusee; and Garza.

HB 1538 - HOUSE REFUSES TO CONCUR IN SENATE AMENDMENTS CONFERENCE COMMITTEE APPOINTED

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

HB 1538, A bill to be entitled an Act relating to the continuation and functions of the Texas Funeral Service Commission, including certain functions transferred to the commission from the Texas Department of Health, and the powers and duties of the Texas Finance Commission and the banking commissioner of Texas regarding cemeteries; providing administrative and civil penalties.

Representative Chisum 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 1538**.

The motion prevailed without objection.

The chair announced the appointment of the following conference committee, on the part of the house, on **HB 1538**: Chisum, chair; Noriega; Hupp; Berman; and Christian.

**HB 3441 - HOUSE REFUSES TO CONCUR
IN SENATE AMENDMENTS
CONFERENCE COMMITTEE APPOINTED**

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

HB 3441, A bill to be entitled an Act relating to a reduction in expenditures of certain state governmental entities, including changes affecting the Commission on Human Rights, benefits under the state employees group benefits program, attorney general's office, management of certain accounts and funds, and certain election-related forms.

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 3441**.

The motion prevailed without objection.

The chair announced the appointment of the following conference committee, on the part of the house, on **HB 3441**: Pickett, chair; J. Davis; Isett; McClendon; and Hupp.

**HB 645 - HOUSE REFUSES TO CONCUR
IN SENATE AMENDMENTS
CONFERENCE COMMITTEE APPOINTED**

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

HB 645, A bill to be entitled an Act relating to prohibiting the creation or enforcement of certain restrictive covenants that undermine water conservation.

Representative Puente 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 645**.

The motion prevailed without objection.

The chair announced the appointment of the following conference committee, on the part of the house, on **HB 645**: Puente, chair; Mowery; Geren; Wolens; and Menendez.

**HB 3578 - HOUSE REFUSES TO CONCUR
IN SENATE AMENDMENTS
CONFERENCE COMMITTEE APPOINTED**

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

HB 3578, A bill to be entitled an Act relating to powers, duties, and name of the Upper Kirby Management District.

Representative Krusee 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 3578**.

The motion prevailed without objection.

The chair announced the appointment of the following conference committee, on the part of the house, on **HB 3578**: Wong, chair; Talton; Van Arsdale; Menendez; and Hunter.

**HB 727 - HOUSE REFUSES TO CONCUR
IN SENATE AMENDMENTS
CONFERENCE COMMITTEE APPOINTED**

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

HB 727, A bill to be entitled an Act relating to disease management programs for certain Medicaid recipients.

Representative Delisi 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 727**.

The motion prevailed without objection.

The chair announced the appointment of the following conference committee, on the part of the house, on **HB 727**: Delisi, chair; Gutierrez; Miller; Capelo; and Harper-Brown.

**HB 3042 - HOUSE REFUSES TO CONCUR
IN SENATE AMENDMENTS
CONFERENCE COMMITTEE APPOINTED**

Representative R. Cook called up with senate amendments for consideration at this time,

HB 3042, A bill to be entitled an Act relating to the administration of the Texas Building and Procurement Commission.

Representative R. Cook 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 3042**.

The motion prevailed without objection.

The chair announced the appointment of the following conference committee, on the part of the house, on **HB 3042**: R. Cook, chair; Solomons; Menendez; Chisum; and Casteel.

**HB 3442 - HOUSE REFUSES TO CONCUR
IN SENATE AMENDMENTS
CONFERENCE COMMITTEE APPOINTED**

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

HB 3442, A bill to be entitled an Act relating to granting statutory authority to certain governmental entities to reduce certain expenditures and to impose charges in amounts sufficient to recover costs.

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 3442**.

The motion prevailed without objection.

The chair announced the appointment of the following conference committee, on the part of the house, on **HB 3442**: Pickett, chair; J. Davis; Isett; McClendon; and Hupp.

**HB 3588 - HOUSE REFUSES TO CONCUR
IN SENATE AMENDMENTS
CONFERENCE COMMITTEE APPOINTED**

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

HB 3588, A bill to be entitled an Act relating to the construction, acquisition, financing, maintenance, management, operation, ownership, and control of transportation facilities and the progress, improvement, policing, and safety of transportation in the state.

Representative Krusee 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 3588**.

The motion prevailed without objection.

The chair announced the appointment of the following conference committee, on the part of the house, on **HB 3588**: Krusee, chair; Garza; Phillips; Hill; and Delisi.

**HB 3587 - HOUSE REFUSES TO CONCUR
IN SENATE AMENDMENTS
CONFERENCE COMMITTEE APPOINTED**

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

HB 3587, A bill to be entitled an Act relating to powers, duties, and name of the Energy Corridor Management District.

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 3587**.

The motion prevailed without objection.

The chair announced the appointment of the following conference committee, on the part of the house, on **HB 3587**: Callegari, chair; Bonnen; Wilson; Chisum; and McCall.

**HB 518 - HOUSE REFUSES TO CONCUR
IN SENATE AMENDMENTS
CONFERENCE COMMITTEE APPOINTED**

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

HB 518, A bill to be entitled an Act relating to the service of citation by publication in a suit affecting the parent-child relationship.

Representative Menendez 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 518**.

The motion prevailed without objection.

The chair announced the appointment of the following conference committee, on the part of the house, on **HB 518**: Menendez, chair; Goodman; Morrison; Reyna; and Dutton.

**HB 1204 - HOUSE REFUSES TO CONCUR
IN SENATE AMENDMENTS
CONFERENCE COMMITTEE APPOINTED**

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

HB 1204, A bill to be entitled an Act relating to the authority of municipalities and counties to regulate subdivisions and certain development in a municipality's extraterritorial jurisdiction.

Representative Baxter 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 1204**.

The motion prevailed without objection.

The chair announced the appointment of the following conference committee, on the part of the house, on **HB 1204**: Baxter, chair; Elkins; Howard; Haggerty; and Wohlgemuth.

**HB 1314 - HOUSE REFUSES TO CONCUR
IN SENATE AMENDMENTS
CONFERENCE COMMITTEE APPOINTED**

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

HB 1314, A bill to be entitled an Act relating to placement of certain students in alternative education programs.

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 1314**.

The motion prevailed without objection.

The chair announced the appointment of the following conference committee, on the part of the house, on **HB 1314**: Pitts, chair; Dawson; West; Grusendorf; and Branch.

**HB 2971 - HOUSE REFUSES TO CONCUR
IN SENATE AMENDMENTS
CONFERENCE COMMITTEE APPOINTED**

Representative Harper-Brown called up with senate amendments for consideration at this time,

HB 2971, A bill to be entitled an Act relating to certain license plates issued by the Texas Department of Transportation.

Representative Harper-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 2971**.

The motion prevailed without objection.

The chair announced the appointment of the following conference committee, on the part of the house, on **HB 2971**: Harper-Brown, chair; Laubenberg; Hamric; Krusee; and Garza.

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. 54).

RECESS

Representative Puente moved that the house recess until 2 p.m.

The motion prevailed without objection.

The house accordingly, at 11:51 a.m., recessed until 2 p.m.

AFTERNOON SESSION

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

(J. Davis in the chair)

**HR 1718 - ADOPTED
(by Luna)**

Representative Luna moved to suspend all necessary rules to take up and consider at this time **HR 1718**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 1718, In memory of Dr. Clotilde P. "Cleo" Garcia of Corpus Christi.

HR 1718 was unanimously adopted by a rising vote.

HR 1677 - ADOPTED
(by Hunter)

Representative Hunter moved to suspend all necessary rules to take up and consider at this time **HR 1677**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 1677, Commending James Parker for his many significant contributions to his fellow Texans and extending to him sincere best wishes for continued success and happiness.

HR 1677 was adopted without objection.

HR 1711 - ADOPTED
(by Goolsby)

Representative Goolsby moved to suspend all necessary rules to take up and consider at this time **HR 1711**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 1711, Congratulating William Lee "Billy" Atkins on his election as vice president of the North American Gaming Regulators Association.

HR 1711 was adopted without objection.

On motion of Representative Telford, the names of all the members of the house were added to **HR 1711** as signers thereof.

HR 1712 - ADOPTED
(by Goolsby and Kolkhorst)

Representatives Goolsby and Kolkhorst moved to suspend all necessary rules to take up and consider at this time **HR 1712**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 1712, Honoring Blue Bell Ice Cream for its many significant achievements.

HR 1712 was adopted without objection.

On motion of Representative Eissler, the names of all the members of the house were added to **HR 1712** as signers thereof.

HR 1717 - ADOPTED
(by Riddle)

Representative Riddle moved to suspend all necessary rules to take up and consider at this time **HR 1717**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 1717, In memory of Jeffrey Lee Royal of Houston.

HR 1717 was unanimously adopted by a rising vote.

On motion of Representative Wong, the names of all the members of the house were added to **HR 1717** as signers thereof.

COMMITTEE MEETING ANNOUNCEMENT

The following committee meeting was announced:

Public School Finance, Select, is rescheduling their meeting posted for today for 2 p.m. Monday, June 2.

HB 1204 - 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 1204**.

The chair announced the appointment of the following conference committee, on the part of the house, on **HB 1204**: Baxter, chair; Mowery; Howard; Haggerty; and Wohlgermuth.

SB 1413 - CONFERENCE COMMITTEE APPOINTED

On motion of Representative Hardcastle, the house appointed a conference committee on **SB 1413**.

The chair announced the appointment of the following conference committee, on the part of the house, on **SB 1413**: Hardcastle, chair; B. Brown; Miller; Howard; and Wise.

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 Nos. 52 and 53 and Senate List No. 40).

HR 1681 - ADOPTED

(by Gallego)

Representative Castro moved to suspend all necessary rules to take up and consider at this time **HR 1681**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 1681, In memory of Frank Ray McLaughlin of Alpine.

HR 1681 was unanimously adopted by a rising vote.

HR 1736 - ADOPTED

(by Marchant)

Representative Marchant moved to suspend all necessary rules to take up and consider at this time **HR 1736**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 1736, Congratulating the Honorable Robert D. "Bob" Hunter on the occasion of his upcoming 75th birthday.

HR 1736 was read and was adopted without objection.

On motion of Representative Riddle, the names of all the members of the house were added to **HR 1736** as signers thereof.

**HR 1735 - ADOPTED
(by Martinez Fischer)**

Representative Martinez Fischer moved to suspend all necessary rules to take up and consider at this time **HR 1735**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 1735, Offering condolences to the Dallas Mavericks on their loss of the 2003 NBA Western Conference Finals to the San Antonio Spurs.

HR 1735 was read and was adopted without objection.

On motion of Representative Hilderbran, the names of all the members of the house were added to **HR 1735** as signers thereof.

**SB 16 - REQUEST OF SENATE GRANTED
CONFERENCE COMMITTEE APPOINTED**

On motion of Representative Wilson, the house granted the request of the senate for the appointment of a conference committee on **SB 16**.

The chair announced the appointment of the following conference committee, on the part of the house, on **SB 16**: Woolley, chair; Madden; Grusendorf; Eissler; and Canales.

**SB 160 - REQUEST OF SENATE GRANTED
CONFERENCE COMMITTEE APPOINTED**

On motion of Representative Wilson, the house granted the request of the senate for the appointment of a conference committee on **SB 160**.

The chair announced the appointment of the following conference committee, on the part of the house, on **SB 160**: Capelo, chair; Naishtat; Laubenberg; McReynolds; and Zedler.

**SB 463 - REQUEST OF SENATE GRANTED
CONFERENCE COMMITTEE APPOINTED**

On motion of Representative Eiland, the house granted the request of the senate for the appointment of a conference committee on **SB 463**.

The chair announced the appointment of the following conference committee, on the part of the house, on **SB 463**: Eiland, chair; Deshotel; Bonnen; Ritter; and Seaman.

**SB 473 - REQUEST OF SENATE GRANTED
CONFERENCE COMMITTEE APPOINTED**

On motion of Representative Giddings, the house granted the request of the senate for the appointment of a conference committee on **SB 473**.

The chair announced the appointment of the following conference committee, on the part of the house, on **SB 473**: Giddings, chair; Talton; Elkins; Oliveira; and Corte.

**SB 610 - REQUEST OF SENATE GRANTED
CONFERENCE COMMITTEE APPOINTED**

On motion of Representative Wilson, the house granted the request of the senate for the appointment of a conference committee on **SB 610**.

The chair announced the appointment of the following conference committee, on the part of the house, on **SB 610**: Capelo, chair; Truitt; Laubenberg; Naishtat; and Zedler.

**SB 976 - REQUEST OF SENATE GRANTED
CONFERENCE COMMITTEE APPOINTED**

On motion of Representative Wilson, the house granted the request of the senate for the appointment of a conference committee on **SB 976**.

The chair announced the appointment of the following conference committee, on the part of the house, on **SB 976**: Morrison, chair; F. Brown; Goolsby; West; and Delisi.

**SB 631 - REQUEST OF SENATE GRANTED
CONFERENCE COMMITTEE APPOINTED**

On motion of Representative Talton, the house granted the request of the senate for the appointment of a conference committee on **SB 631**.

The chair announced the appointment of the following conference committee, on the part of the house, on **SB 631**: Talton, chair; Keel; Howard; Denny; and Ellis.

**SB 1015 - REQUEST OF SENATE GRANTED
CONFERENCE COMMITTEE APPOINTED**

On motion of Representative Talton, the house granted the request of the senate for the appointment of a conference committee on **SB 1015**.

The chair announced the appointment of the following conference committee, on the part of the house, on **SB 1015**: Elkins, chair; Keel; Wise; Talton; and Martinez Fischer.

**SB 1639 - REQUEST OF SENATE GRANTED
CONFERENCE COMMITTEE APPOINTED**

On motion of Representative Hope, the house granted the request of the senate for the appointment of a conference committee on **SB 1639**.

The chair announced the appointment of the following conference committee, on the part of the house, on **SB 1639**: Hope, chair; Geren; Miller; R. Cook; and Puente.

**HB 3588 - RULES SUSPENDED
CONFERENCE COMMITTEE INSTRUCTED**

Representative Wilson moved to suspend Rule 13, Section 8 of the House Rules in order to give instructions to the conference committee on **HB 3588** as follows:

To not present to the house any conference committee report that includes language that creates a new "SALES TAX PRESUMPTIVE VALUE" or "STANDARD PRESUMPTIVE VALUE" for the computation of sales taxes to be paid when purchasing an automobile in the state.

The motion prevailed.

LEAVE OF ABSENCE GRANTED

The following member was granted leave of absence for the remainder of today to attend his daughter's high school graduation:

Marchant on motion of Grusendorf.

**HB 2424 - HOUSE REFUSES TO CONCUR
IN SENATE AMENDMENTS
CONFERENCE COMMITTEE APPOINTED**

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

HB 2424, A bill to be entitled an Act relating to technical changes to taxes and fees administered by the comptroller; providing penalties.

Representative Madden 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 2424**.

The motion prevailed without objection.

The chair announced the appointment of the following conference committee, on the part of the house, on **HB 2424**: McCall, chair; J. Keffer; Pitts; Paxton; and Ritter.

**HB 109 - HOUSE REFUSES TO CONCUR
IN SENATE AMENDMENTS
CONFERENCE COMMITTEE APPOINTED**

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

HB 109, A bill to be entitled an Act relating to customs brokers.

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 109**.

The motion prevailed without objection.

The chair announced the appointment of the following conference committee, on the part of the house, on **HB 109**: Chavez, chair; Wilson; Mowery; Gutierrez; and Griggs.

**HB 2455 - HOUSE REFUSES TO CONCUR
IN SENATE AMENDMENTS
CONFERENCE COMMITTEE APPOINTED**

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

HB 2455, A bill to be entitled an Act relating to the governmental entities subject to, and the confidentiality of records under, the sunset review process.

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 2455**.

The motion prevailed without objection.

The chair announced the appointment of the following conference committee, on the part of the house, on **HB 2455**: Chisum, chair; Solomons; McCall; Hupp; and Berman.

**HB 1082 - HOUSE REFUSES TO CONCUR
IN SENATE AMENDMENTS
CONFERENCE COMMITTEE APPOINTED**

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

HB 1082, A bill to be entitled an Act relating to the appraisal of property by appraisal districts.

Representative Ellis 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 1082**.

The motion prevailed without objection.

The chair announced the appointment of the following conference committee, on the part of the house, on **HB 1082**: Talton, chair; Christian; Ellis; Hegar; and Reyna.

**HB 1606 - HOUSE REFUSES TO CONCUR
IN SENATE AMENDMENTS
CONFERENCE COMMITTEE APPOINTED**

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

HB 1606, A bill to be entitled an Act 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; and the reporting of political contributions and personal financial information; providing civil and criminal penalties.

Representative Wolens 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 1606**.

The motion prevailed without objection.

The chair announced the appointment of the following conference committee, on the part of the house, on **HB 1606**: Wolens, chair; Denny; Keel; Wilson; and Madden.

**SB 1059 - REQUEST OF SENATE GRANTED
CONFERENCE COMMITTEE APPOINTED**

On motion of Representative Madden, the house granted the request of the senate for the appointment of a conference committee on **SB 1059**.

The chair announced the appointment of the following conference committee, on the part of the house, on **SB 1059**: Marchant, chair; Lewis; B. Cook; Madden; and Elkins.

**HB 3035 - HOUSE REFUSES TO CONCUR
IN SENATE AMENDMENTS
CONFERENCE COMMITTEE INSTRUCTED
CONFERENCE COMMITTEE APPOINTED**

Representative R. Cook called up with senate amendments for consideration at this time,

HB 3035, A bill to be entitled an Act relating to the power of groundwater conservation districts to regulate the spacing of water wells and the production of groundwater.

Representative R. Cook 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 3035**.

The motion prevailed without objection.

Representative Puente moved to suspend Rule 13, Section 8 of the House Rules in order to give instructions to the conference committee on **HB 3035** as follows:

Exclude from the text of any conference committee report the substance of Senate Committee Amendment No. 3, Senate Floor Amendment No. 2, or those portions of Senate Committee Amendment No. 2 that:

(1) amend Section 1.11, Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, by adding a new Subsection (h); or

(2) amend Section 1.21, Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, by adding a new Subsection (e), or similar provisions that would purport to:

(1) restrict the power of a water district or water authority to regulate, control, or abate pollution of water or to regulate water quality;

(2) restrict in any way the authority of the Edwards Aquifer Authority to regulate the protection of water quality within its boundaries; or

(3) require the Edwards Aquifer Authority to apply proportional adjustments to permits issued under Section 1.16, Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, under the same terms and conditions as the application of proportional adjustments under Section 1.21, Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993.

The motion prevailed without objection.

The chair announced the appointment of the following conference committee, on the part of the house, on **HB 3035**: R. Cook, chair; Puente; Hilderbran; Hope; and Campbell.

SB 418 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Smithee submitted the conference committee report on **SB 418**.

Representative Smithee moved to adopt the conference committee report on **SB 418**.

A record vote was requested.

The motion prevailed by (Record 819): 146 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; Crabb; Crownover; Davis, J.(C); Davis, Y.; Dawson; Delisi; Denny; Deshotel; Driver; Dukes; Dunnam; Dutton; 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; Hope; 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; Martinez Fischer; McCall; McClendon; McReynolds; Menendez; Mercer; Merriitt; 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; Taylor; Telford; Thompson; Truitt; Turner; Uresti; Van Arsdale; Villarreal; West; Wilson; Wise; Wohlgemuth; Wolens; Wong; Woolley; Zedler.

Present, not voting — Mr. Speaker.

Absent, Excused — Marchant.

Absent — Edwards; Talton.

HB 1165 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Solomons submitted the following conference committee report on **HB 1165** :

Austin, Texas, May 28, 2003

The Honorable David Dewhurst
President of the Senate

The Honorable Tom Craddick
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the senate and the house of representatives on **HB 1165** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Janek

Fraser

Brimer

Armbrister

Deuell

On the part of the senate

Solomons

Elkins

Giddings

Kolkhorst

Bohac

On the part of the house

HB 1665, A bill to be entitled An Act relating to corporations.

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

SECTION 1. Section A, Article 1.02, Texas Business Corporation Act, is amended by adding Subsection (30) to read as follows:

(30) "Electronic transmission" means a form of communication that:

(a) does not directly involve the physical transmission of paper;

(b) creates a record that may be retained, retrieved, and reviewed by the recipient; and

(c) may be directly reproduced in paper form by the recipient through an automated process.

SECTION 2. Section A, Article 2.02, Texas Business Corporation Act, is amended to read as follows:

A. Subject to the provisions of Sections B and C of this Article, each corporation shall have power:

(1) To have perpetual succession by its corporate name unless a limited period of duration is stated in its articles of incorporation. Notwithstanding the articles of incorporation, the period of duration for any corporation incorporated before September 6, 1955, is perpetual if all fees and franchise taxes have been paid as provided by law.

(2) To sue and be sued, complain and defend, in its corporate name.

(3) To have a corporate seal which may be altered at pleasure, and to use the same by causing it, or a facsimile thereof, to be impressed on, affixed to, or in any manner reproduced upon, instruments of any nature required to be executed by its proper officers.

(4) To purchase, receive, lease, or otherwise acquire, own, hold, improve, use and otherwise deal in and with, real or personal property, or any interest therein, wherever situated, as the purposes of the corporation shall require.

(5) To sell, convey, mortgage, pledge, lease, exchange, transfer and otherwise dispose of all or any part of its property and assets.

(6) To lend money to, and otherwise assist, its employees, officers, and directors if such a loan or assistance reasonably may be expected to benefit, directly or indirectly, the lending or assisting corporation.

(7) To purchase, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, mortgage, lend, pledge, sell or otherwise dispose of, and otherwise use and deal in and with, shares or other interests in, or obligations of, other domestic or foreign corporations, associations, partnerships, or individuals, or direct or indirect obligations of the United States or of any other government, state, territory, government district, or municipality, or of any instrumentality thereof.

(8) To purchase or otherwise acquire its own bonds, debentures, or other evidences of its indebtedness or obligations; to purchase or otherwise acquire its own unredeemable shares and hold those acquired shares as treasury shares or cancel or otherwise dispose of those acquired shares; and to redeem or purchase shares made redeemable by the provisions of its articles of incorporation.

(9) To make contracts and incur liabilities, borrow money at such rates of interest as the corporation may determine, issue its notes, bonds, and other obligations, and secure any of its obligations by mortgage or pledge of all or any of its property, franchises, and income.

(10) To lend money for its corporate purposes, invest and reinvest its funds, and take and hold real and personal property as security for the payment of funds so loaned or invested.

(11) To conduct its business, carry on its operations, and have offices and exercise the powers granted by this Act, within or without this State.

(12) To elect or appoint officers and agents of the corporation for such period of time as the corporation may determine, and define their duties and fix their compensation.

(13) To make and alter bylaws, not inconsistent with its articles of incorporation or with the laws of this State, for the administration and regulation of the affairs of the corporation.

(14) To make donations for the public welfare or for charitable, scientific, or educational purposes.

(15) To transact any lawful business which the board of directors shall find will be in aid of government policy.

(16) To indemnify directors, officers, employees, and agents of the corporation and to purchase and maintain liability insurance for those persons.

(17) To pay pensions and establish pension plans, pension trusts, profit sharing plans, stock bonus plans, and other incentive plans for any or all of, or any class or classes of, its directors, officers, or employees.

(18) To be an organizer, partner, member, associate, or manager of any partnership, joint venture, or other enterprise, and to the extent permitted by [it] any other jurisdiction to be an incorporator of any other corporation of any type or kind.

(19) To cease its corporate activities and terminate its existence by voluntary dissolution.

(20) To renounce, in its articles of incorporation or by action of its board of directors, an interest or expectancy of the corporation in, or an interest or expectancy of the corporation in being offered an opportunity to participate in, specified business opportunities or specified classes or categories of business opportunities that are presented to the corporation or one or more of its officers, directors, or shareholders.

(21) Whether included in the foregoing or not, to have and exercise all powers necessary or appropriate to effect any or all of the purposes for which the corporation is organized.

SECTION 3. Sections F, K, and O, Article 2.02-1, Texas Business Corporation Act, are amended to read as follows:

F. A determination of indemnification under Section B of this article must be made:

(1) by a majority vote of the [a quorum consisting of] directors who at the time of the vote are not named defendants or respondents in the proceeding, regardless of whether the directors not named defendants or respondents constitute a quorum;

(2) [if such a quorum cannot be obtained,] by a majority vote of a committee of the board of directors, if:

(a) the committee is designated [to act in the matter] by a majority vote of the [all directors, consisting solely of two or more] directors who at the time of the vote are not named defendants or respondents in the proceeding, regardless of whether the directors not named defendants or respondents constitute a quorum; and

(b) the committee consists solely of one or more of the directors not named as defendants or respondents in the proceeding;

(3) by special legal counsel selected by the board of directors or a committee of the board by vote as set forth in Subsection (1) or (2) of this section~~[- or, if such a quorum cannot be obtained and such a committee cannot be established, by a majority vote of all directors]; or~~

(4) by the shareholders in a vote that excludes the shares held by directors who are named defendants or respondents in the proceeding.

K. Reasonable expenses incurred by a present director who was, is, or is threatened to be made a named defendant or respondent in a proceeding may be paid or reimbursed by the corporation, in advance of the final disposition of the proceeding and without the determination specified in Section F of this article or the authorization or determination specified in Section G of this article, after the corporation receives a written affirmation by the director of his good faith belief that he has met the standard of conduct necessary for indemnification under this article and a written undertaking by or on behalf of the director to repay the

amount paid or reimbursed if it is ultimately determined that he has not met that standard or if it is ultimately determined that indemnification of the director against expenses incurred by him in connection with that proceeding is prohibited by Section E of this article. Notwithstanding any authorization or determination specified in this article, reasonable expenses incurred by a former director or officer, or a present or former employee or agent of the corporation, who was, is, or is threatened to be made a named defendant or respondent in a proceeding may be paid or reimbursed by the corporation, in advance of the final disposition of the proceeding, on any terms the corporation considers appropriate. A provision contained in the articles of incorporation, the bylaws, a resolution of shareholders or directors, or an agreement that makes mandatory the payment or reimbursement permitted under this section shall be deemed to constitute authorization of that payment or reimbursement.

O. An officer of the corporation shall be indemnified as, and to the same extent, provided by Sections H, I, and J of this article for a director and is entitled to seek indemnification under those sections to the same extent as a director. A corporation may indemnify and advance expenses to an officer, employee, or agent of the corporation to the same extent that it may indemnify and advance expenses to directors under this article. A determination of indemnification for an employee or agent of the corporation is not required to be made in accordance with Section F of this article.

SECTION 4. Section A, Article 2.09, Texas Business Corporation Act, is amended to read as follows:

A. Each corporation shall have and continuously maintain in this State:

(1) A registered office which may be, but need not be, the same as its place of business.

(2) A registered agent, which agent may be either an individual resident in this State ~~[whose business office is identical with such registered office,]~~ or a domestic corporation, or other entity organized under the laws of this state or [a foreign corporation] authorized to transact business in this State that [which] has a business office identical with each such registered office that is generally open during normal business hours to accept service of process and otherwise perform the functions of a registered agent.

SECTION 5. Article 2.13, Texas Business Corporation Act, is amended by adding a new Section E and redesignating and amending existing Sections E and F as Sections F and G to read as follows:

E. If the articles of incorporation expressly authorize the board of directors to establish series of unissued shares of a class and if no shares of a series established by resolution of the board of directors have been issued, the board of directors may amend the designations, preferences, limitations, and relative rights, including voting rights, of the series, unless otherwise provided in the articles of incorporation. To amend the designations, preferences, limitations, and relative rights of a series, the board of directors shall adopt a resolution amending the designations, preferences, limitations, and relative rights of the series. Before the issuance of any shares of the series, the corporation shall file with the secretary of state a statement setting forth:

- (1) The name of the corporation.
- (2) That no shares of the series have been issued.
- (3) If the designation of the series is being changed, a statement of the original designation and the new designation.
- (4) A copy of the resolution amending the designations, preferences, limitations, or relative rights of the series.
- (5) The date of adoption of the resolution.
- (6) That the resolution was adopted by all necessary action on the part of the corporation.

F. A ~~[E. Such]~~ statement filed in accordance with Section D or E of this article shall be executed on behalf of the corporation by an officer. The original and a copy of the statement shall be delivered to the Secretary of State. If the Secretary of State finds that such statement conforms to law, he shall, when the appropriate filing fee is paid as prescribed by law:

- (1) Endorse on the original and the copy the word "Filed," and the month, day, and year of the filing thereof.
- (2) File the original in his office.
- (3) Return the copy to the corporation or its representative.

G ~~[F].~~ Upon the filing of a ~~[such]~~ statement described in Section D or E of this article by the Secretary of State, the resolution establishing and designating the series and fixing and determining the preferences, limitations, and relative rights thereof, the resolution fixing the new number of shares of each series in which the number of shares is increased or decreased, ~~[or]~~ the resolution eliminating a series and all references to such series from the articles of incorporation, or the resolution amending the preferences, limitations, and relative rights of the series, as appropriate, shall become an amendment of the articles of incorporation. The filing of the statement or the filing of a restated certificate of incorporation under Article 4.07 of this Act does not prohibit the board of directors from subsequently adopting a resolution as authorized by this article. An amendment of the articles of incorporation effected pursuant to this Article 2.13 is not subject to the procedure to amend the articles of incorporation contained in Article 4.02 of this Act.

SECTION 6. Article 2.14, Texas Business Corporation Act, is amended by amending Sections C and D and adding Section E to read as follows:

C. Acceptance of a subscription ~~[In the case of an existing corporation, acceptance]~~ shall be effected by a resolution of acceptance by the board of directors or by a written memorandum of acceptance executed by one authorized by the board of directors and delivered to the subscriber or his assignee.

D. Subscriptions for shares, whether made before or after the organization of a corporation, shall be paid in full at such time, or in such installments and at such times, as shall be determined by the board of directors unless the payment terms are specified by the subscription. Unless otherwise specified by the subscription, a ~~[Any]~~ call made by the board of directors for payment on subscriptions shall be uniform as to all shares of the same class or as to all shares of the same series, as the case may be, as far as practicable. In case of default in the payment of any installment or call when such payment is due, the corporation

may proceed to collect the amount due in the same manner as any debt due the corporation or declare the subscription forfeited if]. ~~The bylaws may prescribe other penalties for failure to pay installments or calls that may become due, but no penalty working a forfeiture of a subscription, or of the amounts paid thereon, shall be declared against any subscriber unless~~ the amount due remains [thereon shall remain] unpaid for a period of twenty (20) days after written demand has been made therefor to the subscriber. If mailed, such written demand shall be deemed to be made when deposited in the United States mail in a sealed envelope addressed to the subscriber at his last post office address known to the corporation, with postage thereon prepaid. ~~[If the demand remains unsatisfied for a period of twenty (20) days, and if the corporation is solvent, the corporation may declare the subscription to be forfeited.]~~ The effect of such declaration of forfeiture shall be to terminate all the rights and obligations of the subscriber as such, but the corporation may retain any amount previously paid on the subscription.

E. Before acquiring shares in a corporation, a person may commit to act in a specified manner with respect to the shares after the acquisition, including with respect to the voting of the shares or the retention or disposition of the shares. To be binding, the commitment must be in writing and be signed by the person acquiring the shares. A written commitment entered into under this section is a contract between the shareholder and the corporation.

SECTION 7. Article 2.14-1, Texas Business Corporation Act, is amended to read as follows:

Art. 2.14-1. STOCK RIGHTS, OPTIONS, AND CONVERTIBLE INDEBTEDNESS. A. Subject to any limitations in its articles of incorporation, a corporation may create and issue, whether or not in connection with the issuance and sale of any of its shares or other securities, (1) rights or options entitling the holders thereof to purchase or receive from the corporation any of its shares of any class, classes or series or other securities and (2) indebtedness convertible into any of its shares of any class, classes or series or other securities.

B. The terms of rights or options may:

(1) prohibit or limit the exercise, transfer, or receipt of the rights or options by certain persons or classes of persons, including:

(a) a person who beneficially owns or offers to acquire a specified number or percentage of the outstanding common shares, voting power, or other securities of the corporation; or

(b) a transferee of a person described by Paragraph (a) of this subsection; or

(2) invalidate the rights or options held by a person or transferee described by Subsection (1) of this section.

C. Such rights, options or indebtedness shall be evidenced in such manner as the board of directors shall approve and, subject to the provisions of the articles of incorporation, shall set forth:

(1) ~~[(a)]~~ in the case of rights or options, the terms upon which, the time or times within which, and any ~~[the]~~ consideration, including a formula by which the consideration may be determined, ~~[if any,]~~ for which~~[s]~~ such shares may be purchased or received from the corporation upon the exercise of any such right or option;~~[s]~~ or

(2) ~~[(b)]~~ in the case of convertible indebtedness, the terms and conditions upon which, the time or times within which, and the conversion ratio or ratios at which, such indebtedness may be converted into such shares.

D. In the absence of fraud in the transaction, the judgment of the board of directors as to the adequacy of the consideration received for such rights, options, or indebtedness shall be conclusive; provided that rights or options may be issued by a corporation to its shareholders, employees, or directors without consideration if, in the judgment of the board of directors, the issuance of those rights or options is in the interests of the corporation. The consideration to be received for any shares having a par value, other than treasury shares, to be issued upon the exercise of such rights or options shall not be less than the par value thereof. No privilege of conversion shall be conferred upon, or altered in respect to, any indebtedness that would result in receipt by the corporation of less than the minimum consideration required to be received upon issuance of the shares. The consideration for shares issued upon the exercise of convertible indebtedness shall be that provided in Section E of Article 2.15 of this Act. The consideration for shares issued upon the exercise of rights or options shall be that provided in Section F of Article 2.15 of this Act.

E. Except as provided by Section F of this article, the authority to grant, amend, redeem, extend, or replace the rights or options on behalf of a corporation is vested exclusively in the board of directors of the corporation. A bylaw may not require the board to grant, amend, redeem, extend, or replace the rights or options.

F. The terms of the rights or options or the agreement or plan under which the rights or options are issued may provide that the board of directors may by resolution authorize one or more officers of the corporation to do one or both of the following:

(1) designate officers and employees of the corporation or of any of its subsidiaries to receive rights or options created by the corporation; or

(2) determine the number of the rights or options to be received by the officers and employees.

G. A resolution adopted under Section F of this article authorizing an officer of the corporation to designate recipients of rights or options shall specify the total number of rights or options the officer may award. The board of directors may not authorize an officer to designate himself or herself as a recipient of any rights or options.

SECTION 8. Article 2.22, Texas Business Corporation Act, is amended by amending Sections B and D and adding Section H to read as follows:

B. A restriction on the transfer or registration of transfer of a security, or on the amount of the corporation's securities that may be owned by any person or group of persons, may be imposed by the articles of incorporation, or by-laws, or

a written agreement among any number of the holders of such securities, or a written agreement among any number of the holders and the corporation provided a counterpart of such agreement shall be placed on file by the corporation at its principal place of business or its registered office and shall be subject to the same right of examination by a shareholder of the corporation, in person or by agent, attorney or accountant, as are the books and records of the corporation. No restriction so imposed shall be valid with respect to any security issued prior to the adoption of the restriction unless the holder of the security voted in favor of the restriction or is a party to the agreement imposing it.

D. In particular and without limiting the general power granted in Sections B and C of this Article to impose reasonable restrictions, a restriction on the transfer or registration of transfer of securities of a corporation shall be valid if it reasonably:

(1) Obligates the holders of the restricted securities to offer to the corporation or to any other holders of securities of the corporation or to any other person or to any combination of the foregoing, a prior opportunity, to be exercised within a reasonable time, to acquire the restricted securities; or

(2) Obligates the corporation to the extent permitted by this Act or any holder of securities of the corporation or any other person, or any combination of the foregoing, to purchase the securities which are the subject of an agreement respecting the purchase and sale of the restricted securities; or

(3) Requires the corporation or the holders of any class of securities of the corporation to consent to any proposed transfer of the restricted securities or to approve the proposed transferee of the restricted securities for the purpose of preventing violations of federal or state laws; or

(4) Prohibits the transfer of the restricted securities to designated persons or classes of persons, and such designation is not manifestly unreasonable; or

(5) Maintains the status of the corporation as an electing small business corporation under Subchapter S of the United States Internal Revenue Code, maintains any other tax advantage to the corporation, or maintains the status of the corporation as a close corporation under Part Twelve of this Act; or

(6) Obligates the holder of the restricted securities to sell or transfer an amount of restricted securities to the corporation, to any other holders of securities of the corporation, or to any other person or combination of persons; or

(7) Causes or results in the automatic sale or transfer of an amount of restricted securities to the corporation, to any other holders of securities of the corporation, or to any other person or combination of persons.

H. A restriction on the transfer or the registration of a transfer of the securities of a corporation, the amount of securities of a corporation, or the amount of securities of a corporation that may be owned by a person or group of persons for any of the following purposes is conclusively presumed to be for a reasonable purpose:

(1) maintaining a local, state, federal, or foreign tax advantage to the corporation or its shareholders, including:

(a) maintaining the corporation's status as an electing small business corporation under Subchapter S of the Internal Revenue Code of 1986;

(b) maintaining or preserving any tax attribute, including net operating losses; or

(c) qualifying or maintaining the qualification of the corporation as a real estate investment trust under the Internal Revenue Code of 1986 or regulations adopted under the Internal Revenue Code of 1986; or

(2) maintaining a statutory or regulatory advantage or complying with a statutory or regulatory requirement under applicable local, state, federal, or foreign law.

SECTION 9. Article 2.22-1, Texas Business Corporation Act, is amended to read as follows:

Art. 2.22-1. SHAREHOLDERS' PREEMPTIVE RIGHTS. A. Except as provided by Section F of this article, the ~~The~~ shareholders of a corporation shall not have a preemptive right to acquire additional, unissued, or treasury shares of the corporation, or securities of the corporation convertible into or carrying a right to subscribe to or acquire shares, except to the extent provided ~~[limited or denied by this Article or]~~ by the articles of incorporation or by agreement.

B. The articles of incorporation may provide that the shareholders of a corporation shall have a preemptive right by including a statement that the corporation "elects to have a preemptive right" or a similar statement. Section C of this article applies to the shareholders' preemptive right except as otherwise provided by the articles of incorporation.

C. (1) If the shareholders of a corporation have a preemptive right under this article, the shareholders have a preemptive right to acquire proportional amounts of the corporation's additional unissued or treasury shares, or securities of the corporation convertible into or carrying a right to subscribe to or acquire shares on the decision of the corporation's board of directors to issue the shares.

(2) Unless otherwise provided in the articles of incorporation, no ~~[(1) No]~~ preemptive right shall exist with respect to:

(a) ~~[to acquire any]~~ shares issued or granted to a director, officer, agent, or employee of the corporation or a subsidiary or affiliate of the corporation ~~[to employees pursuant to approval by the affirmative vote of the holders of a majority of the shares entitled to vote thereon or when authorized by and consistent with a plan theretofore approved by such a vote of shareholders];~~ ~~[or]~~

(b) shares issued or granted to satisfy conversion or option rights created to provide compensation to a director, officer, agent, or employee of the corporation or a subsidiary or affiliate of the corporation;

(c) shares authorized in the corporation's articles of incorporation that are issued not later than the 180th day after the effective date of the corporation's formation; or

(d) [to acquire any] shares sold, issued, or granted by the corporation for consideration other than money ~~[otherwise than for cash].~~

(3) ~~(2)~~ Holders of shares of any class or series without general voting rights but that is preferred ~~[or limited]~~ as to distributions ~~[dividends or assets]~~ shall not be entitled to any preemptive right.

(4) ~~(3)~~ Holders of shares of any class or series with general voting rights that is not preferred ~~[or limited]~~ as to distributions ~~[dividends or assets]~~ shall not be entitled to any preemptive right to shares of any class or series that is preferred ~~[or limited]~~ as to distributions ~~[dividends or assets]~~ or to any obligations, unless the shares with preferential rights or obligations are convertible into ~~[shares of such class or series that is not preferred or limited]~~ or carry ~~[carrying]~~ a right to subscribe to or acquire shares without preferential rights ~~[of such class or series]~~.

~~[(4) Holders of shares without voting power shall have no preemptive right to shares with voting power.]~~

(5) The preemptive right shall be only an opportunity to acquire shares or other securities under such uniform terms and conditions as the board of directors may fix for the purpose of providing a fair and reasonable opportunity for the exercise of such right.

(6) For a one-year period beginning on the date on which the shares are offered to shareholders, shares subject to preemptive rights that are not acquired by a shareholder may be issued to a person for consideration set by the corporation's board of directors that is not lower than the consideration set for the exercise of preemptive rights. An offer at a lower consideration or after the expiration of the period prescribed by this subsection is subject to the shareholders' preemptive rights.

D ~~[C]~~. An action may not be brought against the corporation, its directors, officers, or agents, any holder of shares or securities of the corporation, or any owner of any beneficial interest in shares or securities of the corporation on account of any violation of any preemptive right of a shareholder to acquire any shares of the corporation, or any securities of the corporation convertible into or carrying a right to subscribe to or acquire shares, unless such action is brought within the earlier of:

(1) One year after the date on which written notice is given to each shareholder whose preemptive right was violated by the issuance, sale, or other distribution of those shares or securities, which notice shall be mailed to the shareholder at the address of the shareholder as it appears on the share transfer records of the corporation and shall inform the shareholder that the issuance, sale, or other distribution of those shares or securities was in violation of the preemptive right of the shareholder; and

(2) Four years after the date on which the corporation issued, sold, or otherwise distributed those shares or securities or August 28, 1989 ~~[the effective date of this provision]~~, whichever is later.

E ~~[D]~~. In the event of a transfer or other disposition of shares by any shareholder of a corporation whose preemptive right to acquire shares of the corporation, or securities of the corporation convertible into or carrying a right to subscribe to or acquire shares, shall have been violated, the transferee or

successor of the shareholder shall not acquire the preemptive right, or any right or claim based on that violation, unless the shareholder shall have assigned the preemptive right to the transferee or successor.

F. Subject to the articles of incorporation, shareholders of a corporation incorporated before September 1, 2003, have a preemptive right to acquire additional unissued or treasury shares of the corporation, or securities of the corporation convertible into or carrying a right to subscribe to or acquire shares, to the extent provided by Sections C, D, and E of this article. After September 1, 2003, a corporation may limit or deny the preemptive right of the shareholders of the corporation by amending the corporation's articles of incorporation.

G. A shareholder may waive a preemptive right granted to the shareholder. A written waiver of a preemptive right is irrevocable regardless of whether the waiver is supported by consideration.

SECTION 10. Sections A and B, Article 2.24, Texas Business Corporation Act, are amended to read as follows:

A. Meetings of shareholders may be held at such place within or without this State as may be stated in or fixed in accordance with the bylaws. If no other place is so stated or fixed, the board of directors of the corporation is not authorized to designate a place, or the board of directors chooses not to designate a place, meetings shall be held at the registered office of the corporation.

(1) If, under the articles of incorporation or the bylaws, the board of directors is authorized to determine the place of a meeting of shareholders, the board of directors may, in its discretion, determine that the meeting may be held solely by means of remote communication as provided by Subsection (2) of this section.

(2) If authorized by the board of directors, and subject to any guidelines and procedures adopted by the board of directors, shareholders not physically present at a meeting of shareholders, by means of remote communication:

(a) may participate in a meeting of shareholders; and

(b) may be considered present in person and may vote at a meeting of shareholders held at a designated place or held solely by means of remote communication if:

(i) the corporation implements reasonable measures to verify that each person considered present and permitted to vote at the meeting by means of remote communication is a shareholder;

(ii) the corporation implements reasonable measures to provide the shareholders at the meeting by means of remote communication a reasonable opportunity to participate in the meeting and to vote on matters submitted to the shareholders, including an opportunity to read or hear the proceedings of a meeting substantially concurrently with the proceedings; and

(iii) the corporation maintains a record of any shareholder vote or other action taken at the meeting by means of remote communication.

B. An annual meeting of the shareholders shall be held at such time as may be stated in or fixed in accordance with the bylaws. If the annual meeting is not held within any 13-month period and a written consent of shareholders has not been executed instead of the meeting, any court of competent jurisdiction in the

county in which the principal office of the corporation is located may, on the application of any shareholder, summarily order a meeting to be held unless the meeting is not required to be held under Section D of this article. Failure to hold the annual meeting at the designated time shall not work a dissolution of the corporation.

SECTION 11. Section A, Article 2.25, Texas Business Corporation Act, is amended to read as follows:

A. Written or printed notice stating the place, day and hour of the meeting, the means of any remote communications by which shareholders may be considered present and may vote at the meeting, and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than ten (10) days nor more than sixty (60) days before the date of the meeting, ~~[either]~~ personally, by electronic transmission, or by mail, by or at the direction of the president, the secretary, or the officer or person calling the meeting, to each shareholder entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail addressed to the shareholder at his address as it appears on the share transfer records of the corporation, with postage thereon prepaid.

SECTION 12. Sections A and C, Article 2.27, Texas Business Corporation Act, are amended to read as follows:

A. The officer or agent having charge of the share transfer records for shares of a corporation shall make, at least ten (10) days before each meeting of shareholders, a complete list of the shareholders entitled to vote at such meeting or any adjournment thereof, arranged in alphabetical order, with the address of and the number of shares held by each, which list, for a period of ten (10) days prior to such meeting, shall be kept on file at the registered office or principal place of business of the corporation and shall be subject to inspection by any shareholder at any time during usual business hours. Alternatively, the list of the shareholders may be kept on a reasonably accessible electronic network, if the information required to gain access to the list is provided with the notice of the meeting. This article does not require the corporation to include any electronic contact information of any shareholder on the list. If the corporation elects to make the list available on an electronic network, the corporation shall take reasonable steps to ensure that the information is available only to shareholders of the corporation. Such list shall also be produced and kept open at the time and place of the meeting and shall be subject to the inspection of any shareholder during the whole time of the meeting. If the meeting is held by means of remote communication, the list must be open to the examination of any shareholder for the duration of the meeting on a reasonably accessible electronic network, and the information required to access the list must be provided to shareholders with the notice of the meeting. The original share transfer records shall be prima-facie evidence as to who are the shareholders entitled to examine such list or transfer records or to vote at any meeting of shareholders.

C. An officer or agent having charge of the share transfer records who shall fail to prepare the list of shareholders or keep the same accessible to shareholders electronically or physically on file at the principal place of business for a period

of ten (10) days, or produce and keep it accessible ~~[open]~~ for inspection during ~~[at]~~ the meeting, as provided in this Article, shall be liable to any shareholder suffering damages ~~[damage]~~ on account of such failure, to the extent of such damage. In the event that such officer or agent does not receive notice of the date of the ~~[a]~~ meeting ~~[of shareholders sufficiently in advance of the date of such meeting]~~ reasonably to enable him to comply with the duties prescribed by this Article, the corporation, ~~[but]~~ not such officer or agent, shall be liable to any shareholder suffering damage on account of such failure, to the extent of such damage.

SECTION 13. Part 2, Texas Business Corporation Act, is amended by adding Article 2.25-1 to read as follows:

Art. 2.25-1. NOTICE BY ELECTRONIC TRANSMISSION. A. On consent of a shareholder, notice from a corporation under any provision of this Act, the articles of incorporation, or the bylaws may be given to the shareholder by electronic transmission. The shareholder may specify the form of electronic transmission to be used to communicate notice. The shareholder may revoke this consent by written notice to the corporation. The shareholder's consent is deemed to be revoked if the corporation is unable to deliver by electronic transmission two consecutive notices, and the secretary, assistant secretary, or transfer agent of the corporation, or another person responsible for delivering notice on behalf of the corporation knows that delivery of these two electronic transmissions was unsuccessful. The inadvertent failure to treat the unsuccessful transmissions as a revocation of shareholder consent does not invalidate a meeting or other action.

B. Notice under this article is deemed given when the notice is:

(1) transmitted to a facsimile number provided by the shareholder for the purpose of receiving notice;

(2) transmitted to an electronic mail address provided by the shareholder for the purpose of receiving notice;

(3) posted on an electronic network and a message is sent to the shareholder at the address provided by the shareholder for the purpose of alerting the shareholder of a posting; or

(4) communicated to the shareholder by any other form of electronic transmission consented to by the shareholder.

C. An affidavit of the secretary, assistant secretary, transfer agent, or other agent of the corporation that notice has been given by electronic transmission is, in the absence of fraud, prima facie evidence that the notice was given.

SECTION 14. Sections C and D, Article 2.29, Texas Business Corporation Act, are amended to read as follows:

C. Any shareholder may vote either in person or by proxy executed in writing by the shareholder. A telegram, telex, cablegram, or other form of electronic ~~[similar]~~ transmission, including telephone transmission, by the shareholder, or a photographic, photostatic, facsimile, or similar reproduction of a writing executed by the shareholder, shall be treated as an execution in writing for purposes of this Section. Any electronic transmission must contain or be accompanied by information from which it can be determined that the transmission was authorized by the shareholder. No proxy shall be valid after

eleven (11) months from the date of its execution unless otherwise provided in the proxy. A proxy shall be revocable unless the proxy form conspicuously states that the proxy is irrevocable and the proxy is coupled with an interest. Proxies coupled with an interest include the appointment as proxy of:

- (1) a pledgee;
- (2) a person who purchased or agreed to purchase, or owns or holds an option to purchase, the shares;
- (3) a creditor of the corporation who extended it credit under terms requiring the appointment;
- (4) an employee of the corporation whose employment contract requires the appointment; or
- (5) a party to a voting agreement created under Section B, Article 2.30, of this Act.

An irrevocable proxy, if noted conspicuously on the certificate representing the shares that are subject to the irrevocable proxy or, in the case of uncertificated shares, if notation of the irrevocable proxy is contained in the notice sent pursuant to Section D of Article 2.19 of this Act with respect to the shares that are subject to the irrevocable proxy, shall be specifically enforceable against the holder of those shares or any successor or transferee of the holder. Unless noted conspicuously on the certificate representing the shares that are subject to the irrevocable proxy or, in the case of uncertificated shares, unless notation of the irrevocable proxy is contained in the notice sent pursuant to Section D of Article 2.19 of this Act with respect to the shares that are subject to the irrevocable proxy, an irrevocable proxy, even though otherwise enforceable, is ineffective against a transferee for value without actual knowledge of the existence of the irrevocable proxy at the time of the transfer or against any subsequent transferee (whether or not for value), but such an irrevocable proxy shall be specifically enforceable against any other person who is not a transferee for value from and after the time that the person acquires actual knowledge of the existence of the irrevocable proxy.

D. (1) At each election for directors every shareholder entitled to vote at such election shall have the right (a) to vote the number of shares owned by him for as many persons as there are directors to be elected and for whose election he has a right to vote or (b) only if ~~unless~~ expressly permitted ~~[prohibited]~~ by the articles of incorporation (in general or with respect to a specified class or series of shares or group of classes or series of shares) and subject to subsection (2) of this Section D, to cumulate his votes by giving one candidate as many votes as the number of such directors multiplied by his shares shall equal, or by distributing such votes on the same principle among any number of such candidates.

(2) Cumulative voting shall not be allowed in an election of directors unless the articles of incorporation expressly grant that right, and a shareholder who intends to cumulate his votes as herein authorized shall have given written notice of such intention to the secretary of the corporation on or before the day preceding the election at which such shareholder intends to cumulate his votes. All shareholders entitled to vote cumulatively may cumulate their votes if any shareholder gives the written notice provided for herein.

(3) Except as provided by the articles of incorporation, a shareholder of a corporation incorporated before September 1, 2003, has the right to cumulatively vote the number of shares the shareholder owns in the election of directors to the extent permitted by this article. A corporation may limit or deny a shareholder's right to cumulatively vote any time after September 1, 2003, by amending its articles of incorporation.

SECTION 15. Article 2.32, Texas Business Corporation Act, is amended to read as follows:

Art. 2.32. NUMBER AND ELECTION OF DIRECTORS. A. The board of directors of a corporation shall consist of one or more members. The number of directors shall be fixed by, or in the manner provided in, the articles of incorporation or the bylaws, except as to the number constituting the initial board of directors, which number shall be fixed by the articles of incorporation. The number of directors may be increased or decreased from time to time by amendment to, or in the manner provided in, the articles of incorporation or the bylaws, but no decrease shall have the effect of shortening the term of any incumbent director. In the absence of a bylaw or a provision of the articles of incorporation fixing the number of directors or providing for the manner in which the number of directors shall be fixed, the number of directors shall be the same as the number constituting the initial board of directors as fixed by the articles of incorporation. The names and addresses of the members of the initial board of directors shall be stated in the articles of incorporation. Unless otherwise provided by the articles of incorporation or the bylaws, a director may resign at any time by giving notice in writing or by electronic transmission to the corporation. Absent resignation or removal ~~[removed]~~ in accordance with the provisions of the bylaws or the articles of incorporation, such persons shall hold office until the first annual meeting of shareholders, and until their successors shall have been elected and qualified. At the first annual meeting of shareholders and at each annual meeting thereafter, the holders of shares entitled to vote in the election of directors shall elect directors to hold office until the next succeeding annual meeting, except in case of the classification of directors as permitted by this Act.

B. The articles of incorporation may provide that the holders of any class or series of shares or any group of classes or series of shares shall be entitled to elect one or more directors, who shall hold office for such terms as shall be stated in the articles of incorporation. The articles of incorporation may provide that any directors elected by the holders of any such class or series of shares or any such group shall be entitled to more or less than one vote on all or any specified matters, in which case every reference in this Act (or in the articles of incorporation or bylaws, unless expressly stated otherwise therein) to a specified portion of the directors shall mean such portion of the votes entitled to be cast by the directors to which such reference is applicable. Absent resignation or removal ~~[Unless removed]~~ in accordance with provisions of the bylaws or the articles of incorporation, each director shall hold office for the term for which he is elected and until his successor shall have been elected and qualified.

C. Except as otherwise provided in this Article, the bylaws, or the articles of incorporation, ~~[may provide that]~~ at any meeting of shareholders called expressly for that purpose, any director or the entire board of directors may be removed, with or without cause, by a vote of the holders of a ~~[specified portion, but not less than a]~~ majority~~[5]~~ of the shares then entitled to vote at an election of ~~the director or directors~~ ~~[, subject to any further restrictions on removal that may be contained in the bylaws]~~. Whenever the holders of any class or series of shares or any such group are entitled to elect one or more directors by the provisions of the articles of incorporation, only the holders of shares of that class or series or group shall be entitled to vote for or against the removal of any director elected by the holders of shares of that class or series or group. In the case of a corporation having cumulative voting, if less than the entire board is to be removed, no one of the directors may be removed if the votes cast against his removal would be sufficient to elect him if then cumulatively voted at an election of the entire board of directors, or if there be classes of directors, at an election of the class of directors of which he is a part. In the case of a corporation whose directors have been classified as permitted by this Act, unless the articles of incorporation otherwise provide, a director may not be removed except for cause.

D. Notwithstanding Section B of this Article, a director of a corporation registered under the Investment Company Act, absent resignation or removal ~~[unless removed]~~ in accordance with the provisions of the articles of incorporation or bylaws, holds office for the term for which the director is elected and until the director's successor has been elected and qualified.

SECTION 16. Section A, Article 2.36, Texas Business Corporation Act, is amended to read as follows:

A. If the articles of incorporation or the bylaws so provide, the board of directors~~[, by resolution adopted by a majority of the full board of directors,]~~ may designate from among its members one or more committees, each of which shall be comprised of one or more of its members, and may designate one or more of its members as alternate members of any committee, who may, subject to any limitations imposed by the board of directors, replace absent or disqualified members at any meeting of that committee. Any such committee, to the extent provided in the [such] resolution of the board of directors or in the articles of incorporation or the bylaws, shall have and may exercise all of the authority of the board of directors, subject to the limitations set forth in Sections B and C of this Article.

SECTION 17. Article 2.37, Texas Business Corporation Act, is amended by adding Section C to read as follows:

C. On consent of a director, notice of the date, time, place, or purpose of a regular or special meeting of the board of directors may be given to the director by electronic transmission. The director may specify the form of electronic transmission to be used to communicate notice. The director may revoke this consent by written notice to the corporation. The director's consent is deemed to be revoked if the corporation is unable to deliver by electronic transmission two consecutive notices and the secretary of the corporation or other person responsible for delivering the notice on behalf of the corporation knows that the

delivery of these two electronic transmissions was unsuccessful. The inadvertent failure to treat the unsuccessful transmissions as a revocation of the director's consent does not invalidate a meeting or other action. An affidavit of the secretary or other agent of the corporation that notice has been given by electronic transmission is, in the absence of fraud, prima facie evidence that the notice was given. Notice under this section is deemed given when the notice is:

(1) transmitted to a facsimile number provided by the director for the purpose of receiving notice;

(2) transmitted to an electronic mail address provided by the director for the purpose of receiving notice;

(3) posted on an electronic network and a message is sent to the director at the address provided by the director for the purpose of alerting the director of a posting; or

(4) communicated to the director by any other form of electronic transmission consented to by the director.

SECTION 18. Section A, Article 2.41, Texas Business Corporation Act, is amended to read as follows:

A. In addition to any other liabilities imposed by law upon directors of a corporation:

(1) Directors of a corporation who vote for or assent to a distribution by the corporation that is not permitted by Article 2.38 of this Act shall be jointly and severally liable to the corporation for the amount by which the distributed amount exceeds the amount permitted by Article 2.38 of this Act to be distributed; provided that a director shall have no liability for the excess amount, or any part of that excess, if on any date after the date of the vote or assent authorizing the distribution, a distribution of that excess or that part would have been permitted by Article 2.38.

~~(2) [If the corporation shall commence business before it has received for the issuance of shares consideration of the value of at least One Thousand Dollars (\$1,000), consisting of money, labor done, or property actually received, the directors who assent thereto shall be jointly and severally liable to the corporation for such part of the required consideration as shall not have been received before commencing business, but such liability shall be terminated when the corporation has actually received the required consideration for the issuance of shares.~~

~~[(3)]~~ An action may not be brought against a director for liability imposed by this section after two years after the date on which the act alleged to give rise to the liability occurred.

SECTION 19. Section A, Article 2.44, Texas Business Corporation Act, is amended to read as follows:

A. Each corporation shall keep books and records of account and shall keep minutes of the proceedings of its shareholders, its board of directors, and each committee of its board of directors. Each corporation shall keep at its registered office or principal place of business, or at the office of its transfer agent or registrar, a record of the original issuance of shares issued by the corporation and a record of each transfer of those shares that have been presented to the

corporation for registration of transfer. Such records shall contain the names and addresses of all past and current shareholders of the corporation and the number and class or series of shares issued by the corporation held by each of them. Any books, records, minutes, and share transfer records may be in written form or in any other form capable of being converted into written paper form within a reasonable time. The principal place of business of a corporation, or the office of its transfer agent or registrar, may be located outside the State of Texas.

SECTION 20. Section A, Article 3.02, Texas Business Corporation Act, is amended to read as follows:

A. The articles of incorporation shall set forth:

(1) The name of the corporation;

(2) The period of duration, which may be perpetual;

(3) The purpose or purposes for which the corporation is organized which may be stated to be, or to include, the transaction of any or all lawful business for which corporations may be incorporated under this Act;

(4) The aggregate number of shares which the corporation shall have authority to issue; if such shares are to consist of one class only, the par value of each of such shares, or a statement that all of such shares are without par value; or, if such shares are to be divided into classes, the number of shares of each class, and a statement of the par value of the shares of each class or that such shares are to be without par value;

(5) If the shares are to be divided into classes, the designation of each class and statement of the preferences, limitations, and relative rights in respect of the shares of each class;

(6) If the corporation is to issue the shares of any class in series, then the designation of each series and a statement of the variations in the preferences, limitations and relative rights as between series insofar as the same are to be fixed in the articles of incorporation, and a statement of any authority to be vested in the board of directors to establish series and fix and determine the preferences, limitations and relative rights of each series;

(7) ~~[A statement that the corporation will not commence business until it has received for the issuance of shares consideration of the value of a stated sum which shall be at least One Thousand Dollars (\$1,000.00);~~

~~[(8)]~~ Any provision limiting or denying to shareholders the preemptive right to acquire additional or treasury shares of the corporation;

(8) ~~[(9)]~~ If a corporation elects to become a close corporation in conformance with Part Twelve of this Act, any provision (a) required or permitted by this Act to be stated in the articles of incorporation of a close corporation, but not in the articles of incorporation of an ordinary corporation, (b) contained or permitted to be contained in a shareholders' agreement in conformance with Part Twelve of this Act which the incorporators elect to set forth in articles of incorporation, or (c) that makes a shareholders' agreement in conformance with Part Twelve of this Act part of the articles of incorporation of a close corporation in the manner prescribed in Section F, Article 2.22 of this Act, but any such provision, other than the statement required by Section A, Article 12.11 of this

Act, shall be preceded by a statement that the provision shall be subject to the corporation remaining a close corporation in conformance with Part Twelve of this Act;

(9) ~~[(10)]~~ Any provision, not inconsistent with law, including any provision which under this Act is required or permitted to be set forth in the bylaws or which is permitted to be included pursuant to Article 2.30-1 of this Act, providing for the regulation of the internal affairs of the corporation;

(10) ~~[(11)]~~ The street address of its initial registered office and the name of its initial registered agent at such address;

(11) ~~[(12)]~~ Subject to Article 2.30-1 of this Act, the number of directors constituting the initial board of directors and the names and addresses of the person or persons who are to serve as directors until the first annual meeting of shareholders or until their successors be elected and qualify, or, in the case of a close corporation that, in conformance with Part Twelve of this Act, is to be managed in some other manner pursuant to a shareholders' agreement by the shareholders or by the persons empowered by the agreement to manage its business and affairs, the names and addresses of the person or persons who, pursuant to the shareholders' agreement, will perform the functions of the initial board of directors provided for by this Act;

(12) ~~[(13)]~~ The name and address of each incorporator, unless the corporation is being incorporated pursuant to a plan of conversion or a plan of merger, in which case the articles need not include such information; and

(13) ~~[(14)]~~ If the corporation is being incorporated pursuant to a plan of conversion or a plan of merger, a statement to that effect, and in the case of a plan of conversion, the name, address, date of formation, and prior form of organization and jurisdiction of incorporation or organization of the converting entity.

SECTION 21. Section A, Article 4.01, Texas Business Corporation Act, is amended to read as follows:

A. A corporation may amend its articles of incorporation, from time to time, in any and as many respects as may be desired, so long as its articles of incorporation as amended contain only such provisions as might be lawfully contained in original articles of incorporation at the time of making such amendment, and, if a change in shares or the rights of shareholders, or an exchange, reclassification, subdivision, combination, or cancellation of shares or rights of shareholders is to be made, such provisions as may be necessary to effect such change, exchange, reclassification, subdivision, combination, or cancellation.

SECTION 22. Section A, Article 4.02, Texas Business Corporation Act, is amended to read as follows:

A. The articles of incorporation may be amended in the following manner:

(1) The board of directors shall adopt a resolution setting forth the proposed amendment and, unless the amendment is undertaken under authority granted to the board of directors in the articles of incorporation in accordance with Article 2.13 of this Act, if shares have been issued, directing that it be submitted to a vote at a meeting of shareholders, which may be either an annual

or a special meeting. If no shares have been issued, the amendment shall be adopted by resolution of the board of directors and the provisions for adoption by shareholders shall not apply. The resolution may incorporate the proposed amendment in restated articles of incorporation which contain a statement that except for the designated amendment the restated articles of incorporation correctly set forth without change the corresponding provisions of the articles of incorporation as heretofore amended, and that the restated articles of incorporation together with the designated amendment supersede the original articles of incorporation and all amendments thereto.

(2) Written or printed notice setting forth the proposed amendment or a summary of the changes to be effected thereby shall be given to each shareholder of record entitled to vote thereon within the time and in the manner provided in this Act for the giving of notice of meetings of shareholders. If the meeting be an annual meeting, the proposed amendment or such summary may be included in the notice of such annual meeting.

(3) At such meeting a vote of the shareholders entitled to vote thereon shall be taken on the proposed amendment. The proposed amendment shall be adopted upon receiving the affirmative vote of the holders of at least two-thirds of the outstanding shares entitled to vote thereon, unless any class or series of shares is entitled to vote thereon as a class, in which event the proposed amendment shall be adopted upon receiving the affirmative vote of the holders of at least two-thirds of the shares within each class or series of outstanding shares entitled to vote thereon as a class and of at least two-thirds of the total outstanding shares entitled to vote thereon.

(4) The resolution authorizing a proposed amendment to the articles of incorporation may provide that at any time before the filing of the amendment with the secretary of state is effective, notwithstanding authorization of the proposed amendment by the shareholders of the corporation, the board of directors may abandon the proposed amendment without further action by the shareholders.

SECTION 23. Section B, Article 4.04, Texas Business Corporation Act, is amended to read as follows:

B. The articles of amendment shall set forth:

(1) The name of the corporation.

(2) If the amendment alters any provision of the original or amended articles of incorporation, an identification by reference or description of the altered provision and a statement of its text as it is amended to read. If the amendment is an addition to the original or amended articles of incorporation, a statement of that fact and the full text of each provision added.

(3) The date of the adoption of the amendment by the shareholders, or by the board of directors where no shares have been issued.

(4) A statement that the amendment has been approved in the manner required by this Act and the constituent documents of the corporation. ~~The number of shares outstanding, and the number of shares entitled to vote on the~~

~~amendment, and if the shares of any class or series are entitled to vote thereon as a class, the designation and number of outstanding shares entitled to vote thereon of each such class or series.~~

~~[(5) The number of shares voted for and against the amendment, respectively, and, if the shares of any class are entitled to vote thereon as a class or series, the number of shares of each such class or series voted for and against the amendment, respectively, or if no shares have been issued a statement to that effect.~~

~~[(6) If the amendment provides for an exchange, reclassification or cancellation of issued shares, and if the manner in which the same shall be effected is not set forth in the amendment, then a statement of the manner in which the same shall be effected.~~

~~[(7) If the amendment effects a change in the amount of stated capital, then a statement of the manner in which the same is effected and a statement, expressed in dollars, of the amount of stated capital as changed by the amendment.]~~

SECTION 24. Sections A and D, Article 4.10, Texas Business Corporation Act, are amended to read as follows:

A. When redeemable shares of a corporation are redeemed or purchased by the corporation, the redemption or purchase shall effect a cancellation of such shares~~[, and a statement of cancellation shall be filed as provided in this Article].~~ Thereupon such shares shall be restored to the status of authorized but unissued shares, unless the articles of incorporation provide that such shares when redeemed or purchased shall not be reissued, in which case the ~~[filing of the statement of cancellation shall operate as an amendment to the articles of incorporation and shall reduce the]~~ number of shares of the class so cancelled which the corporation is authorized to issue shall be reduced by the number of shares so cancelled. If the shares so redeemed and purchased constitute all the outstanding shares of any particular class of shares and if the articles of incorporation provide that the shares of such class when redeemed and repurchased shall not be reissued, the corporation may not issue any additional shares of the ~~[filing of the statement of cancellation shall operate as an amendment to the articles of incorporation by eliminating therefrom all reference to such]~~ class of shares ~~[and shall reduce the classes of shares which the corporation is authorized to issue accordingly].~~

D. The ~~[filing of the statement of]~~ cancellation of shares under this article shall effect a reduction of the stated capital of the corporation by an amount equal to that part of the stated capital which was, at the time of the cancellation, represented by the shares so cancelled.

SECTION 25. Sections A and D, Article 4.11, Texas Business Corporation Act, are amended to read as follows:

A. A corporation may, at any time, by resolution of its board of directors, cancel all or any part of its treasury shares~~[, and in such event a statement of cancellation shall be filed as provided in this Article].~~

D. Upon the ~~[filing of such statement of]~~ cancellation of the treasury shares, the stated capital of the corporation shall be deemed to be reduced by that part of the stated capital which was, at the time of such cancellation, represented by the shares so cancelled, and the shares so cancelled shall be restored to the status of authorized but unissued shares.

SECTION 26. Section D, Article 4.12, Texas Business Corporation Act, is amended to read as follows:

D. Upon the approval ~~[filing]~~ of such resolution by the shareholders ~~[statement]~~, the stated capital of the corporation shall be reduced as therein set forth.

SECTION 27. Section C, Article 5.01, Texas Business Corporation Act, is amended to read as follows:

C. The plan of merger may set forth:

(1) any amendments to the articles of incorporation of any surviving corporation;

(2) provisions relating to a share exchange; and

(3) any other provisions relating to the merger, including a provision requiring that the plan of merger be submitted to shareholders regardless of whether the board of directors determines after adopting the resolution or making the determination required by Section B, Article 5.03 of this Act, that the plan of merger is not advisable and recommends that the shareholders reject it.

SECTION 28. Section C, Article 5.02, Texas Business Corporation Act, is amended to read as follows:

C. The plan of exchange may set forth any other provisions relating to the exchange and may be contained in and be a part of a plan of merger, including a provision requiring that the plan of exchange be submitted to shareholders regardless of whether the board of directors determines after adopting the resolution or making the determination required by Section B, Article 5.03 of this Act, that the plan of exchange is not advisable and recommends that the shareholders reject it.

SECTION 29. Article 5.03, Texas Business Corporation Act, is amended by amending Sections C and H and adding Sections H-1 and M to read as follows:

C. The board of directors may condition its submission to shareholders of a plan of merger or exchange on any basis. If, after the adoption of a resolution recommending that the plan of merger or exchange be approved or after a determination by the board of directors that a recommendation should not be made, the board of directors determines that the plan of merger or exchange is not advisable, the plan of merger or exchange may be submitted to the shareholders with a recommendation that the shareholders not approve the plan of merger or exchange.

H. Unless the articles of incorporation otherwise require, approval by the shareholders of a corporation of a plan of merger shall not be required and Sections A, B, C, D, E, and F of this Article do not apply if:

(1) the merger is a merger of the corporation with or into a direct or indirect wholly owned subsidiary of the corporation and after the merger the corporation or its successor is a direct or indirect wholly owned subsidiary of a holding company;

(2) the corporation and the direct or indirect wholly owned subsidiary of the corporation are the only parties to the merger;

(3) each share or a fraction of a share of stock of the corporation outstanding immediately prior to the effectiveness of the merger is converted in the merger into a share or fraction of share of capital stock of the holding company having the same designations, preferences, limitations, and relative rights as a share of stock of the corporation being converted in the merger;

(4) the holding company and the corporation are domestic corporations and the direct or indirect wholly owned subsidiary that is the other party to the merger is a domestic corporation or domestic limited liability company;

(5) the articles of incorporation and bylaws of the holding company immediately following the effective time of the merger contain provisions identical to the articles of incorporation and bylaws of the corporation immediately prior to the effective time of the merger (other than provisions, if any, regarding the incorporator or incorporators, the corporate name, the registered office and agent, the initial board of directors, and the initial subscribers of shares and such provisions contained in any amendment to the certificate as were necessary to effect a change, exchange, reclassification, or cancellation of shares, if such change, exchange, reclassification, or cancellation has become effective);

(6) the organizational documents or corresponding documents ~~[articles of incorporation and bylaws]~~ of the surviving entity ~~[corporation]~~ immediately following the effective time of the merger contain provisions identical to the organizational documents or corresponding documents ~~[articles of incorporation and bylaws]~~ of the corporation immediately prior to the effective time of the merger (other than provisions, if any, regarding the incorporator or incorporators, the corporate or entity name, the registered office and agent, the initial board of directors, and the initial subscribers of shares, references to members rather than shareholders, references to interests, units, or similar property rather than stock or shares, references to managers, managing members, or other members of the governing body rather than directors, and such provisions contained in any amendment to the certificate as were necessary to effect a change, exchange, reclassification, or cancellation of shares, if such change, exchange, reclassification, or cancellation has become effective); provided, however, that:

(a) if the organizational documents ~~[articles of incorporation]~~ of the surviving entity do not contain the following provisions, they ~~[corporation]~~ shall be amended in the merger to contain provisions ~~[a provision]~~ requiring that:

(i) any act or transaction by or involving a surviving entity, other than the election or removal of directors or managers, managing members, or other members of the governing body of the surviving entity, ~~[corporation]~~ that requires for its approval under this Act or its organizational documents ~~[the corporation's articles of incorporation]~~ the approval of shareholders or members

of the surviving entity ~~[corporation]~~ shall, by specific reference to this section, require the approval of the shareholders of the holding company (or any successor by merger) by the same vote as is required by this Act or by ~~[and]~~ the organizational documents ~~[articles of incorporation]~~ of the surviving entity;

(ii) a surviving entity that is not a corporation obtain the approval of the shareholders of the holding company for any act or transaction by or involving the surviving entity, other than the election or removal of directors or managers, managing members, or other members of the governing body of the surviving entity, that would require the approval of the shareholders of the surviving entity if the surviving entity were a corporation subject to this Act;

(iii) any amendment of the organizational documents of a surviving entity that is not a corporation, that would, if adopted by a corporation subject to this Act, be required to be included in the articles of incorporation of the corporation, shall also require, by specific reference to this section, the approval of the shareholders of the holding company, or any successor by merger, by the same vote as is required by this Act or by the organizational documents of the surviving entity; and

(iv) the business affairs of a surviving entity that is not a corporation shall be managed by or under the direction of a board of directors, board of managers, or other governing body consisting of individuals who are subject to the same fiduciary duties applicable to directors of a corporation subject to this Act, and who are liable for breach of the duties to the same extent as directors of a corporation subject to this Act ~~[corporation]; [and]~~

(b) the organizational documents ~~[articles of incorporation]~~ of the surviving entity ~~[corporation]~~ may be amended in the merger to change the classes and series of shares and the number of shares that the surviving entity ~~[corporation]~~ is authorized to issue; and

(c) Subsection (6)(a) of this section or a provision of a surviving entity's organizational documents required by Subdivision (a) may not be construed as requiring approval of the shareholders of the holding company to elect or remove directors, managers, managing members, or other members of the governing body of the surviving entity;

(7) the directors of the corporation become or remain directors of the holding company on the effective time of the merger;

(8) the shareholders of the corporation will not recognize gain or loss for United States federal income tax purposes as determined by the board of directors of the corporation; and

(9) the board of directors of the corporation adopts a resolution approving the plan of merger.

H-1. The term "organizational documents," as used in Section H(6) of this article, means:

(1) in reference to a corporation, the articles of incorporation of the corporation; or

(2) in reference to a limited liability company, the limited liability company agreement of the limited liability company.

M. To the extent a shareholder of a corporation has standing to institute or maintain derivative litigation on behalf of the corporation immediately before a merger, nothing in this article may be construed to limit or extinguish the shareholder's standing.

SECTION 30. Section A, Article 5.06, Texas Business Corporation Act, is amended to read as follows:

A. When a merger takes effect:

(1) the separate existence of every domestic corporation that is a party to the merger, except any surviving or new domestic corporation, shall cease;

(2) all rights, title and interests to all real estate and other property owned by each domestic or foreign corporation and by each other entity that is a party to the merger shall be allocated to and vested in one or more of the surviving or new domestic or foreign corporations and other entities as provided in the plan of merger without reversion or impairment, without further act or deed, and without any transfer or assignment having occurred, but subject to any existing liens or other encumbrances thereon;

(3) all liabilities and obligations of each domestic or foreign corporation and other entity that is a party to the merger shall be allocated to one or more of the surviving or new domestic or foreign corporations and other entities in the manner set forth in the plan of merger, and each surviving or new domestic or foreign corporation, and each surviving or new other entity to which a liability or obligation shall have been allocated pursuant to the plan of merger, shall be the primary obligor therefor and, except as otherwise set forth in the plan of merger or as otherwise provided by law or contract, no other party to the merger, other than a surviving domestic or foreign corporation or other entity liable thereon at the time of the merger and no other new domestic or foreign corporation or other entity created thereby, shall be liable therefor;

(4) a proceeding pending by or against any domestic or foreign corporation or by or against any other entity that is a party to the merger may be continued as if the merger did not occur, or the surviving or new domestic or foreign corporation or corporations or the surviving or new other entity or other entities to which the liability, obligation, asset or right associated with such proceeding is allocated to and vested in pursuant to the plan of merger may be substituted in the proceeding;

(5) the articles of incorporation of each surviving corporation shall be amended to the extent provided in the plan of merger;

(6) each new domestic corporation, the articles of incorporation of which are set forth in the plan of merger pursuant to Article 5.01 of this Act, shall be incorporated as a corporation under this Act; and each other entity to be incorporated or organized under the laws of this State, the organizational documents of which are set forth in the plan of merger[;] shall, upon an executed copy of the articles of merger being delivered to or filed with any required governmental entity with which organizational documents of such other entity are required to be delivered or filed, and upon meeting such additional requirements, if any, of law for its incorporation or organization, shall be incorporated or organized as provided in the plan of merger; and

(7) the shares of each domestic or foreign corporation and the shares or evidences of ownership in each other entity that is a party to the merger that are to be converted or exchanged, in whole or part, into shares, obligations, evidences of ownership, rights to purchase securities or other securities of one or more of the surviving or new domestic or foreign corporations or other entities, into cash or other property, including shares, obligations, evidences of ownership, rights to purchase securities or other securities of any other person or entity, or into any combination of the foregoing, shall be so converted and exchanged and the former holders of the shares of each domestic corporation that is a party to the merger shall be entitled only to the rights provided in the plan ~~[articles]~~ of merger or to their rights under Article 5.11 of this Act.

SECTION 31. Section B, Article 5.11, Texas Business Corporation Act, is amended to read as follows:

B. Notwithstanding the provisions of Section A of this Article, a shareholder shall not have the right to dissent from any plan of merger in which there is a single surviving or new domestic or foreign corporation, or from any plan of exchange, if:

(1) the shares, or depository receipts in respect of the shares, held by the shareholder are part of a class or series, shares, or depository receipts in respect of the shares, of which are on the record date fixed to determine the shareholders entitled to vote on the plan of merger or plan of exchange:

(a) listed on a national securities exchange;

(b) listed on the Nasdaq Stock Market (or successor quotation system) or designated as a national market security on an interdealer quotation system by the National Association of Securities Dealers, Inc., or successor entity; or

(c) held of record by not less than 2,000 holders;

(2) the shareholder is not required by the terms of the plan of merger or plan of exchange to accept for the shareholder's shares any consideration that is different than the consideration (other than cash in lieu of fractional shares that the shareholder would otherwise be entitled to receive) to be provided to any other holder of shares of the same class or series of shares held by such shareholder; and

(3) the shareholder is not required by the terms of the plan of merger or the plan of exchange to accept for the shareholder's shares any consideration other than:

(a) shares, or depository receipts in respect of the shares, of a domestic or foreign corporation that, immediately after the effective time of the merger or exchange, will be part of a class or series, shares, or depository receipts in respect of the shares, of which are:

(i) listed, or authorized for listing upon official notice of issuance, on a national securities exchange;

(ii) approved for quotation as a national market security on an interdealer quotation system by the National Association of Securities Dealers, Inc., or successor entity; or

(iii) held of record by not less than 2,000 holders;

(b) cash in lieu of fractional shares otherwise entitled to be received; or

(c) any combination of the securities and cash described in Subdivisions (a) and (b) of this subsection.

SECTION 32. Section A, Article 5.16, Texas Business Corporation Act, is amended to read as follows:

A. In any case in which at least ninety (90%) per cent of the outstanding shares of each class and series of shares, membership interests, or other ownership interests of one or more domestic or foreign corporations or other entities, other than a corporation that has in its articles of incorporation the provision required by Article 5.03(H)(6)(a) of this Act, of which there are outstanding shares that would be entitled to vote on the merger absent this section, is owned by another domestic or foreign corporation or other entity, and at least one of the parent or subsidiary entities is a domestic corporation and the other or others are domestic corporations, foreign corporations, or other entities organized under the laws of a jurisdiction that permit such a merger or whose organizational documents or other constituent documents not inconsistent with those laws permit such a merger, the corporation or other entity ~~[having such share ownership]~~ may enter into a merger ~~[(1) merge such other domestic or foreign corporation or corporations or other entities into itself, (2) merge itself into any one or more of such other corporations or other entities, or (3) merge itself and any one or more of such entities or corporations into one or more of the other entities]:~~

(a) in the event that the corporation or other entity having at least 90 percent ownership will be a surviving entity in the merger, by executing and filing articles of merger in accordance with Section B of this Article; or

(b) in the event that the corporation or other entity having at least 90 percent ownership will not be a surviving entity in the merger, by the entity having such ownership adopting a plan of merger in the manner required by the laws of its jurisdiction of organization or formation and its organizational or other constituent documents, except that no action under Section 5.03 shall be required to be taken by the corporation or corporations whose shares are so owned, and executing and filing articles of merger in accordance with Section B of this Article.

SECTION 33. Section A, Article 6.04, Texas Business Corporation Act, is amended to read as follows:

A. Before filing articles of dissolution:

(1) The corporation shall cease to carry on its business, except insofar as may be necessary for the winding up thereof.

(2) The corporation shall cause written notice by registered or certified mail of its intention to dissolve to be mailed to each known claimant against the corporation.

(3) The directors of the corporation shall manage the process of winding up the business or affairs of the corporation. The corporation shall proceed to collect its assets, dispose of such of its properties as are not to be distributed in kind to its shareholders, pay, satisfy, or discharge all its debts,

liabilities, and obligations, or make adequate provision for payment, satisfaction, or discharge thereof, and do all other acts required to liquidate its business and affairs, except that if the properties and assets of the corporation are not sufficient to pay, satisfy, or discharge all the corporation's debts, liabilities, and obligations, the corporation shall apply its properties and assets so far as they will go to the just and equitable payment, satisfaction, or discharge of its debts, liabilities, and obligations or shall make adequate provision for such application. After paying, satisfying, or discharging all its debts, liabilities, and obligations, or making adequate provision for payment, satisfaction, or discharge thereof, the corporation shall then distribute the remainder of its properties and assets, either in cash or in kind, to its shareholders according to their respective rights and interests.

(4) The corporation, at any time during the liquidation of its business and affairs, may make application to any district court of this State in the county in which the registered office of the corporation is situated to have the liquidation continued under the supervision of such court as provided in this Act.

SECTION 34. Part Six, Texas Business Corporation Act, is amended by adding Article 6.08 to read as follows:

Art. 6.08. FRAUDULENT TERMINATION. A. Notwithstanding any other provision of this Act, a court may order the revocation of dissolution of a corporation that was dissolved as a result of actual or constructive fraud. In an action under this Article, any limitation period provided by law is tolled in accordance with the discovery rule.

B. The Secretary of State shall take any action necessary to implement an order under this Article.

SECTION 35. Section A, Article 8.05, Texas Business Corporation Act, is amended to read as follows:

A. In order to procure a certificate of authority to transact business in this State, a foreign corporation shall make application therefor to the Secretary of State, which application shall set forth:

(1) The name of the corporation and the State or country under the laws of which it is incorporated.

(2) If the name of the corporation does not contain the word "corporation," "company," "incorporated," or "limited," and does not contain an abbreviation of one (1) of such words, then the name of the corporation with the word or abbreviation which it elects to add thereto for use in this State; if the corporation is required to qualify under a name other than its corporate name, then the name under which the corporation is to be qualified.

(3) The date of incorporation and the period of duration of the corporation.

(4) The address of the principal office of the corporation in the state or country under the laws of which it is incorporated.

(5) The address of the registered office of the corporation in this State, and the name of its registered agent in this State at such address.

(6) The purpose or purposes of the corporation which it proposes to pursue in the transaction of business in this State and a statement that it is authorized to pursue such purpose or purposes in the state or country under the laws of which it is incorporated.

(7) The names and respective addresses of the directors and officers of the corporation.

(8) A statement that the corporation exists as a valid corporation under the laws of the corporation's jurisdiction of formation ~~[of the aggregate number of shares which the corporation has authority to issue, itemized by classes, par value of shares, shares without par value, and series, if any, within a class].~~

~~[(9) A statement of the aggregate number of issued shares itemized by classes, par value of shares, shares without par value, and series, if any, within a class.~~

~~[(10) A statement, expressed in dollars, of the amount of stated capital of the corporation, as defined in this Act.~~

~~[(11) A statement that consideration of the value of at least One Thousand Dollars (\$1,000) has been paid for the issuance of shares.]~~

SECTION 36. Section A, Article 8.06, Texas Business Corporation Act, is amended to read as follows:

A. The original and a copy of the application of the corporation for a certificate of authority shall be delivered to the Secretary of State~~], together with a certificate issued by an authorized officer of the jurisdiction of the corporation's incorporation evidencing its corporate existence. If the certificate is in a language other than English, a translation of the certificate, under the oath of the translator, must be attached to the certificate. The certificate must be dated after the 91st day preceding the date on which the application is filed].~~ If the Secretary of State finds that the application conforms to law, he shall, when the appropriate filing fee is paid as required by law:

(1) Endorse on the original and the copy the word "Filed," and the month, day, and year of the filing thereof.

(2) File in his office the original ~~[and the certificate evidencing corporate existence].~~

(3) Issue a certificate of authority to transact business in this State to which he shall affix the copy.

SECTION 37. Article 9.09, Texas Business Corporation Act, is amended to read as follows:

Art. 9.09. WAIVER OF NOTICE. ~~[A.]~~ Whenever any notice is required to be given to any shareholder or director of a corporation under the provisions of this Act or under the provisions of the articles of incorporation or bylaws of the corporation, a waiver thereof in writing signed by the person or persons entitled to such notice, or a waiver by electronic transmission by the person entitled to notice, whether before or after the time stated therein, shall be equivalent to the giving of such notice. The business to be transacted at a regular or special meeting of the shareholders, directors, or members of a committee of directors or

the purpose of a meeting is not required to be specified in a written waiver of notice or a waiver by electronic transmission unless required by the articles of incorporation or the bylaws.

SECTION 38. Sections A and B, Article 9.10, Texas Business Corporation Act, are amended to read as follows:

A.(1) Any action required by this Act to be taken at any annual or special meeting of shareholders, or any action which may be taken at any annual or special meeting of shareholders, may be taken without a meeting, without prior notice, and without a vote, if a consent or consents in writing, setting forth the action so taken, shall have been signed by the holder or holders of all the shares entitled to vote with respect to the action that is the subject of the consent. The articles of incorporation may provide that any action required by this Act to be taken at any annual or special meeting of shareholders, or any action which may be taken at any annual or special meeting of shareholders, may be taken without a meeting, without prior notice, and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the holder or holders of of ~~or~~ shares having not less than the minimum number of votes that would be necessary to take such action at a meeting at which ~~the~~ holders of all shares entitled to vote on the action were present and voted.

(2) Every written consent signed by the holders of less than all the shares entitled to vote with respect to the action that is the subject of the consent shall bear the date of signature of each shareholder who signs the consent. No written consent signed by the holder ~~holders~~ of less than all the shares entitled to vote with respect to the action that is the subject of the consent shall be effective to take the action that is the subject of the consent unless, within 60 days after the date of the earliest dated consent delivered to the corporation in a ~~the~~ manner required by this Article, a consent or consents signed by the holder or holders of shares having not less than the minimum number of votes that would be necessary to take the action that is the subject of the consent are delivered to the corporation by delivery to its registered office, registered agent, principal place of business, transfer agent, registrar, exchange agent or an officer or agent of the corporation having custody of the books in which proceedings of meetings of shareholders are recorded. Delivery shall be by hand or certified or registered mail, return receipt requested. Delivery to the corporation's principal place of business shall be addressed to the president or principal executive officer of the corporation.

(3) A telegram, telex, cablegram, or other electronic ~~[similar]~~ transmission by a shareholder consenting to an action to be taken is considered to be written, signed, and dated for the purposes of this article if the transmission sets forth or is delivered with information from which the corporation can determine that the transmission was transmitted by the shareholder and the date on which the shareholder transmitted the transmission. The date of transmission is the date on which the consent was signed. Consent given by telegram, telex, cablegram, or other electronic transmission may not be considered delivered until the consent is reproduced in paper form and the paper form is delivered to the corporation at its registered office in this state or its principal place of business, or

to an officer or agent of the corporation having custody of the book in which proceedings of shareholder meetings are recorded. Notwithstanding Subsection (2) of this section, consent given by telegram, telex, cablegram, or other electronic transmission may be delivered to the principal place of business of the corporation or to an officer or agent of the corporation having custody of the book in which proceedings of shareholder meetings are recorded to the extent and in the manner provided by resolution of the board of directors of the corporation.

(4) Any~~[, or a]~~ photographic, photostatic, facsimile, or similarly reliable [similar] reproduction of a consent in writing signed by a shareholder may be substituted or used instead of the original writing for any purpose for which the original writing could be used, if the reproduction is a complete reproduction of the entire original writing ~~[, shall be regarded as signed by the shareholder for purposes of this Section].~~

(5) ~~(4)~~ Prompt notice of the taking of any action by shareholders without a meeting by less than unanimous written consent shall be given to those shareholders who did not consent in writing to the action.

(6) ~~(5)~~ If any action by shareholders is taken by written consent, any articles or documents filed with the Secretary of State as a result of the taking of the action shall state, in lieu of any statement required by the [this] Act concerning the number of shares outstanding and entitled to vote on the action or concerning any vote of shareholders, that written consent has been given in accordance with the provisions of this Article and that any written notice required by this Article has been given.

B. Unless otherwise restricted by the articles of incorporation or bylaws ~~[by laws]~~, any action required or permitted to be taken at a meeting of the board of directors or any committee may be taken without a meeting if a consent in writing, setting forth the action so taken, is signed by all the members of the board of directors or committee, as the case may be. A telegram, telex, cablegram, or other electronic transmission by a director consenting to an action to be taken and transmitted by a director is considered written, signed, and dated for the purposes of this article if the transmission sets forth or is delivered with information from which the corporation can determine that the transmission was transmitted by the director and the date on which the director transmitted the transmission. Such consent shall have the same force and effect as a unanimous vote at a meeting, and may be stated as such in any document or instrument filed with the Secretary of State.

SECTION 39. Section A, Article 9.14, Texas Business Corporation Act, is amended to read as follows:

A. This Act applies to each domestic corporation and to each foreign corporation that is transacting business in this state, regardless of whether the foreign corporation is registered to transact business in this state. This Act does not apply to domestic corporations organized under any statute other than this Act or to any foreign corporations granted authority to transact business within this State under any statute other than this Act; provided, however, that if any domestic corporation was heretofore or is hereafter organized under or is governed by a statute other than this Act or the Texas Non-Profit Corporation Act

(Article 1396-1.01 et seq., Vernon's Texas Civil Statutes) that contains no provisions in regard to some of the matters provided for in this Act, or any foreign corporation was heretofore or is hereafter granted authority to transact business within this State under a statute other than this Act or the Texas Non-Profit Corporation Act that contains no provisions in regard to some of the matters provided for in this Act in respect of foreign corporations, or if such a statute specifically provides that the general laws for incorporation or for the granting of a certificate of authority to transact business in this State, as the case may be, shall supplement the provisions of such statute, then the provisions of this Act shall apply to the extent that they are not inconsistent with the provisions of such other statute; provided further, however, that this Act shall not apply to any domestic corporation organized under or governed by the Texas Non-Profit Corporation Act or any foreign corporation granted authority to transact business within this State under the Texas Non-Profit Corporation Act.

SECTION 40. Section A(4), Article 13.02, Texas Business Corporation Act, is amended to read as follows:

(4) "Business combination" means:

(a) any merger, share exchange, or conversion of an issuing public corporation or a subsidiary with:

(i) an affiliated shareholder;

(ii) a foreign or domestic corporation or other entity that is, or after the merger, share exchange, or conversion would be, an affiliate or associate of the affiliated shareholder; or

(iii) another domestic or foreign corporation or other entity, if the merger, share exchange, or conversion is caused by an affiliated shareholder, or an affiliate or associate of an affiliated shareholder, and as a result of the merger, share exchange, or conversion this part does not apply to the surviving corporation or other entity;

(b) a sale, lease, exchange, mortgage, pledge, transfer, or other disposition, in one transaction or a series of transactions, including an allocation of assets pursuant to a merger, to or with the affiliated shareholder, or an affiliate or associate of the affiliated shareholder, of assets of the issuing public corporation or any subsidiary that:

(i) have an aggregate market value equal to 10 percent or more of the aggregate market value of all the assets, determined on a consolidated basis, of the issuing public corporation;

(ii) have an aggregate market value equal to 10 percent or more of the aggregate market value of all the outstanding voting shares [~~common stock~~] of the issuing public corporation; or

(iii) represent 10 percent or more of the earning power or net income, determined on a consolidated basis, of the issuing public corporation;

(c) the issuance or transfer by an issuing public corporation or a subsidiary to an affiliated shareholder or an affiliate or associate of the affiliated shareholder, in one transaction or a series of transactions, of shares of the issuing public corporation or a subsidiary, except by the exercise of warrants or rights to

purchase shares of the issuing public corporation offered, or a share dividend paid, pro rata to all shareholders of the issuing public corporation after the affiliated shareholder's share acquisition date;

(d) the adoption of a plan or proposal for the liquidation or dissolution of an issuing public corporation proposed by, or pursuant to any agreement, arrangement, or understanding, whether or not in writing, with an affiliated shareholder or an affiliate or associate of the affiliated shareholder;

(e) a reclassification of securities, including a reverse share split or a share split-up, share dividend, or other distribution of shares, a recapitalization of the issuing public corporation, a merger of the issuing public corporation with a subsidiary or pursuant to which the assets and liabilities of the issuing public corporation are allocated among two or more surviving or new domestic or foreign corporations or other entities, or any other transaction, whether or not with, into, or otherwise involving the affiliated shareholder, proposed by, or pursuant to an agreement, arrangement, or understanding, whether or not in writing, with an affiliated shareholder or an affiliate or associate of the affiliated shareholder that has the effect, directly or indirectly, of increasing the proportionate ownership percentage of the outstanding shares of a class or series of voting shares or securities convertible into voting shares of the issuing public corporation that is beneficially owned by the affiliated shareholder or an affiliate or associate of the affiliated shareholder, except as a result of immaterial changes due to fractional share adjustments; or

(f) the direct or indirect receipt by an affiliated shareholder or an affiliate or associate of the affiliated shareholder of the benefit of a loan, advance, guarantee, pledge, or other financial assistance or a tax credit or other tax advantage provided by or through the issuing public corporation, except proportionately as a shareholder of the issuing public corporation.

SECTION 41. Section B, Article 13.07, Texas Business Corporation Act, is amended to read as follows:

B. The affirmative vote or concurrence of shareholders required for approval of an action required or permitted to be submitted for shareholder vote under Part 13 of this Act may be increased, but not decreased, under Article 2.28 of this Act.

SECTION 42. Section E, Article 2.23A, Texas Non-Profit Corporation Act (Article 1396-2.23A, Vernon's Texas Civil Statutes), is amended to read as follows:

E. This article does not apply to:

(1) a corporation that solicits funds only from its members;

(2) a corporation which does not intend to solicit and receive and does not actually raise or receive contributions from sources other than its own membership in excess of \$10,000 during a fiscal year;

(3) a proprietary school that has received a certificate of approval from the State Commissioner of Education, a public institution of higher education and foundations chartered for the benefit of such institutions or any component part

thereof, a private institution of higher education with a certificate of authority to grant a degree issued by the Coordinating Board, Texas College and University System, or an elementary or secondary school;

(4) religious institutions which shall be limited to churches, ecclesiastical or denominational organizations, or other established physical places for worship at which religious services are the primary activity and such activities are regularly conducted;

(5) a trade association or professional society whose income is principally derived from membership dues and assessments, sales, or services;

(6) any insurer licensed and regulated by the State Board of Insurance;

(7) ~~[an organization whose charitable activities relate to public concern in the conservation and protection of wildlife, fisheries, and allied natural resources];~~

~~[(8)]~~ an alumni association of a public or private institution of higher education in this state, provided that such association is recognized and acknowledged by the institution as its official alumni association.

SECTION 43. The Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes) is amended by adding Article 6.07 to read as follows:

Art. 6.07. FRAUDULENT TERMINATION. A. Notwithstanding any other provision of this Act, a court may order the revocation of dissolution of a corporation that was dissolved as a result of actual or constructive fraud. In an action under this article, any limitation period provided by law is tolled in accordance with the discovery rule.

B. The secretary of state shall take any action necessary to implement an order under this article.

SECTION 44. The following laws are repealed:

- (1) Section B, Article 2.14, Texas Business Corporation Act;
- (2) Article 3.05, Texas Business Corporation Act;
- (3) Sections B and C, Article 4.10, Texas Business Corporation Act;
- (4) Sections B and C, Article 4.11, Texas Business Corporation Act;
- (5) Sections B and C, Article 4.12, Texas Business Corporation Act;
- (6) Article 2.01, Texas Miscellaneous Corporation Laws Act (Article 1302-2.01, Vernon's Texas Civil Statutes);
- (7) Article 2.02, Texas Miscellaneous Corporation Laws Act (Article 1302-2.02, Vernon's Texas Civil Statutes);
- (8) Article 2.03, Texas Miscellaneous Corporation Laws Act (Article 1302-2.03, Vernon's Texas Civil Statutes);
- (9) Article 2.04, Texas Miscellaneous Corporation Laws Act (Article 1302-2.04, Vernon's Texas Civil Statutes);
- (10) Article 2.09, Texas Miscellaneous Corporation Laws Act (Article 1302-2.09, Vernon's Texas Civil Statutes);
- (11) Article 2.09A, Texas Miscellaneous Corporation Laws Act (Article 1302-2.02.09A, Vernon's Texas Civil Statutes);
- (12) Article 2.10, Texas Miscellaneous Corporation Laws Act (Article 1302-2.10, Vernon's Texas Civil Statutes);

(13) Article 3.02, Texas Miscellaneous Corporation Laws Act (Article 1302-3.02, Vernon's Texas Civil Statutes); and

(14) Article 3.03, Texas Miscellaneous Corporation Laws Act (Article 1302-3.03, Vernon's Texas Civil Statutes).

SECTION 45. This Act takes effect September 1, 2003.

Representative Solomons moved to adopt the conference committee report on **HB 1165**.

The motion prevailed.

HB 1702 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Taylor submitted the following conference committee report on **HB 1702** :

Austin, Texas, May 24, 2003

The Honorable David Dewhurst
President of the Senate

The Honorable Tom Craddick
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the senate and the house of representatives on **HB 1702** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Jackson
Van de Putte
Brimer
Armbrister

Taylor
Geren
W. Smith
J. Davis
Miller

On the part of the senate

On the part of the house

HB 1702, A bill to be entitled An Act relating to the sale and subsequent lease of property by certain counties.

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

SECTION 1. Section 263.053, Local Government Code, is amended to read as follows:

Sec. 263.053. SALE AND SUBSEQUENT LEASE OR LICENSE OF PROPERTY IN COUNTIES WITH POPULATION OF MORE THAN 250,000 [~~500,000~~]. (a) This section applies only to counties with a population of more than 250,000 [~~500,000~~].

(b) The commissioners court of the county may sell land, buildings, facilities, or equipment for the purpose of making contracts for the lease or rental of land, buildings, facilities, or equipment or for receiving services from others for county purposes. The commissioners court may pay regular monthly bills for utilities, such as electricity, gas, and water, for the property leased or rented or for the services received.

(c) The commissioners court of the county may enter into any for-profit or other licensing agreement with a seller of wireless communications service that may include a license to collocate wireless communications technology on property owned by the county.

(d) If a majority of the commissioners court determines that the facilities and equipment are essential for the proper administration of county government, the commissioners court may pay for the facilities and equipment and for the regular monthly bills from the general fund of the county. The commissioners court must make the payment by warrant in the manner that payments for other obligations of the county are made.

(e) ~~(d)~~ A construction project initiated for a purpose authorized by this section may be awarded only by a contract that provides for the payment of the prevailing wage for all mechanics, laborers, and others employed in the construction project. The commissioners court of Tarrant County shall set the prevailing wage, which must be the same prevailing wage set by the commissioners court of that county for all construction projects involving the expenditure of county funds.

(f) ~~(e)~~ On or before the expiration of a contract made under this section, the facilities may be purchased by the county and paid for from its general fund if a majority of the commissioners court agrees that the purchase price is reasonable.

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.

Representative Taylor moved to adopt the conference committee report on **HB 1702**.

A record vote was requested.

The motion prevailed by (Record 820): 135 Yeas, 0 Nays, 2 Present, not voting.

Yeas — Allen; Alonzo; Bailey; Baxter; Berman; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Burnam; Callegari; Campbell; Capelo; Casteel; Castro; Chavez; Chisum; Christian; Coleman; Cook, B.; Cook, R.; Corte; Crabb; Crownover; Davis, Y.; Dawson; Delisi; Denny; Deshotel; Driver; Dukes; Dunnam; Dutton; Eiland; Eissler; Ellis; Escobar; Farabee; Farrar; 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; Hope; Hopson; Howard; Hughes; Hunter; Hupp; Isett; Jones, D.; Jones, J.; Keel; Keffer, B.; Keffer, J.; King; Kolkhorst; Krusee; Laney; Laubenberg; Lewis; Luna; Madden; Martinez Fischer; McCall; McReynolds; Menendez; Mercer; Miller; Moreno, P.; Morrison; Mowery; Naishat; Nixon; Noriega; Oliveira; Olivo; Paxton; Peña; Phillips; Pickett; Pitts; Puente; Quintanilla; Raymond; Reyna;

Riddle; Ritter; Rodriguez; Rose; Smith, T.; Smith, W.; Smithee; Solis; Solomons; Stick; Swinford; Taylor; Telford; Thompson; Truitt; Turner; Uresti; Van Arsdale; Villarreal; West; Wilson; Wise; Wohlgemuth; Wolens; Wong; Woolley; Zedler.

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

Absent, Excused — Marchant.

Absent — Canales; Edwards; Elkins; Flores; Jones, E.; Kuempel; Mabry; McClendon; Merritt; Moreno, J.; Seaman; Talton.

STATEMENTS OF VOTE

When Record No. 820 was taken, I was in the house but away from my desk. I would have voted yes.

Kuempel

When Record No. 820 was taken, I was in the house but away from my desk. I would have voted yes.

McClendon

SB 827 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Keel submitted the conference committee report on **SB 827**.

Representative Keel moved to adopt the conference committee report on **SB 827**.

The motion prevailed.

HJR 51 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

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

HJR 51, A joint resolution proposing a constitutional amendment to establish a two-year period for the redemption of a mineral interest sold for unpaid ad valorem taxes at a tax sale.

On motion of Representative Flores, the house concurred in the senate amendments to **HJR 51** by (Record 821): 143 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; Christian; Cook, B.; Cook, R.; Corte; Crabb; Crownover; Davis, J.(C); Davis, Y.; 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; Hope; 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; 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.; Smithee; Solis; Solomons; Stick; Taylor; Telford; Thompson; Truitt; Turner; Uresti; Van Arsdale; Villarreal; West; Wilson; Wise; Wohlgemuth; Wolens; Wong; Woolley; Zedler.

Present, not voting — Mr. Speaker.

Absent, Excused — Marchant.

Absent — Chisum; Coleman; Dawson; Swinford; Talton.

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

Amend **HJR 51** (Senate committee printing) page 1, lines 51-56 by striking Section 3 and insert in its place the following:

SECTION 3. This proposed constitutional amendment shall be submitted to the voters at an election to be held September 13, 2003. The ballot shall be printed to permit voting for or against the proposition: "The constitutional amendment to establish a two-year period for the redemption of a mineral interest sold for unpaid ad valorem taxes at a tax sale."

HB 1887 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

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

HB 1887, A bill to be entitled An Act relating to funds received by institutions of higher education to cover overhead expenses of conducting research.

On motion of Representative Morrison, the house concurred in the senate amendments to **HB 1887** by (Record 822): 133 Yeas, 2 Nays, 3 Present, not voting.

Yeas — Allen; Alonzo; Bailey; Baxter; Berman; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Burnam; Callegari; Campbell; Canales; Capelo; Casteel; Castro; Chavez; Christian; Coleman; Cook, B.; Cook, R.; Corte; Crownover; Davis, J.(C); Davis, Y.; Dawson; Delisi; Denny; Deshotel; Driver; Dukes; Dunnam; Dutton; 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; Hegar; Hilderbran; Hochberg; Hodge; Homer; Hopson; Howard; Hunter; Hupp; Isett; Jones, D.; Jones, E.; Keel; Keffer, B.; Keffer, J.; King; Kolkhorst; Krusee; Kuempel; Laney; Laubenberg; Lewis; Luna; Mabry; Madden; Martinez Fischer; McCall; McClendon; McReynolds; Mercer; Merritt; Miller; Moreno, J.; Moreno, P.; Morrison; Mowery; Naishtat; Nixon; Noriega; Oliveira; Olivo; Paxton; Peña; Phillips; Pitts; Puente; Quintanilla; Raymond; Reyna; Riddle; Rodriguez; Rose; Seaman; Smith, T.; Smith, W.; Smithee; Solis; Solomons; Stick; Taylor; Truitt; Turner; Uresti; Van Arsdale; Villarreal; West; Wilson; Wise; Wohlgemuth; Wolens; Wong; Woolley; Zedler.

Nays — Ritter; Thompson.

Present, not voting — Mr. Speaker; Jones, J.; Menendez.

Absent, Excused — Marchant.

Absent — Chisum; Crabb; Edwards; Heflin; Hill; Hope; Hughes; Pickett; Swinford; Talton; Telford.

STATEMENTS OF VOTE

I was shown voting yes on Record No. 822. I intended to vote no.

Ellis

I was shown voting yes on Record No. 822. I intended to vote no.

Hilderbran

When Record No. 822 was taken, I was in the house but away from my desk. I would have voted yes.

Hughes

I was shown voting present, not voting on Record No. 822. I intended to vote no.

Menendez

I was shown voting yes on Record No. 822. I intended to vote no.

Noriega

When Record No. 822 was taken, I was in the house but away from my desk. I would have voted no.

Telford

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

Amend **HB 1887** by adding the following new SECTION 3 to the bill:

SECTION 3. Notwithstanding Section 2 of this Act, this Act takes effect only if **HB 3015** or similar legislation providing for deregulation of tuition charged by institutions of higher education to resident undergraduate students is enacted.

HB 2458 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

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

HB 2458, A bill to be entitled An Act relating to the collection of the motor fuel taxes; providing penalties.

On motion of Representative Krusee, the house concurred in the senate amendments to **HB 2458**.

Senate Committee Substitute

HB 2458, A bill to be entitled An Act relating to the collection of the motor fuel taxes; providing penalties.

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

SECTION 1. Subtitle E, Title 2, Tax Code, is amended by adding Chapter 162 to read as follows:

CHAPTER 162. MOTOR FUEL TAXES
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 162.001. DEFINITIONS. In this chapter:

(1) "Agricultural purpose" means a purpose associated with the following activities:

(A) cultivating the soil;

(B) producing crops for human food, animal feed, or planting seed or for the production of fibers;

(C) floriculture, viticulture, silviculture, and horticulture, including the cultivation of plants in containers or nonsoil media;

(D) raising, feeding, or keeping livestock or other animals for the production of food or fiber, leather, pelts, or other tangible products having a commercial value;

(E) wildlife management; and

(F) planting cover crops, including cover crops cultivated for transplantation, or leaving land idle for the purpose of participating in any governmental program or normal crop or livestock rotation procedure.

(2) "Alcohol" means motor fuel grade ethanol or a mixture of motor fuel grade ethanol and methanol, excluding denaturant and water, that is a minimum of 98 percent ethanol or methanol by volume.

(3) "Aviation fuel" means aviation gasoline or aviation jet fuel.

(4) "Aviation fuel dealer" means a person who:

(A) is the operator of an aircraft servicing facility;

(B) delivers gasoline or diesel fuel exclusively into the fuel supply tanks of aircraft or into equipment used solely for servicing aircraft and used exclusively off-highway; and

(C) does not use, sell, or distribute gasoline or diesel fuel on which a fuel tax is required to be collected or paid to this state.

(5) "Aviation gasoline" means motor fuel designed for use in the operation of aircraft other than jet aircraft and sold or used for that purpose.

(6) "Aviation jet fuel" means motor fuel designed for use in the operation of jet or turboprop aircraft and sold or used for that purpose.

(7) "Biodiesel fuel" means any motor fuel or mixture of motor fuels that is:

(A) derived wholly or partly from agricultural products, vegetable oils, recycled greases, or animal fats, or the wastes of those products or fats; and

(B) advertised, offered for sale, suitable for use, or used as a motor fuel in an internal combustion engine.

(8) "Blender" means a person who produces blended motor fuel outside the bulk transfer/terminal system.

(9) "Blending" means the mixing of one or more petroleum products with another product, regardless of the original character of the product blended, if the product obtained by the blending is capable of use in the generation of

power for the propulsion of a motor vehicle. The term does not include mixing that occurs in the process of refining by the original refiner of crude petroleum or the commingling of products during transportation in a pipeline.

(10) "Bulk plant" means a motor fuel storage and distribution facility that:

(A) is not an IRS-approved terminal; and

(B) from which motor fuel may be removed at a rack.

(11) "Bulk transfer" means a transfer of motor fuel from one location to another by pipeline tender or marine delivery within a bulk transfer/terminal system, including:

(A) a marine vessel movement of motor fuel from a refinery or terminal to a terminal;

(B) a pipeline movement of motor fuel from a refinery or terminal to a terminal;

(C) a book transfer of motor fuel within a terminal between licensed suppliers before completion of removal across the rack; and

(D) a two-party exchange between licensed suppliers or between licensed suppliers and permissive suppliers.

(12) "Bulk transfer/terminal system" means the motor fuel distribution system consisting of refineries, pipelines, marine vessels, and IRS-approved terminals. Motor fuel is in the bulk transfer/terminal system if the motor fuel is in a refinery, a pipeline, a terminal, or a marine vessel transporting motor fuel to a refinery or terminal. Motor fuel is not in the bulk transfer/terminal system if the motor fuel is in a motor fuel storage facility, including:

(A) a bulk plant that is not part of a refinery or terminal;

(B) the motor fuel supply tank of an engine or a motor vehicle;

(C) a marine vessel transporting motor fuel to a motor fuel storage facility that is not in the bulk transfer/terminal system; or

(D) a tank car, railcar, trailer, truck, or other equipment suitable for ground transportation.

(13) "Bulk user" means a person who maintains storage facilities for motor fuel and uses all or part of the stored motor fuel to operate a motor vehicle, vessel, or aircraft and for other uses.

(14) "Cargo tank" means an assembly that is used to transport, haul, or deliver liquids and that consists of a tank having one or more compartments mounted on a wagon, automobile, truck, trailer, or wheels. The term includes accessory piping, valves, and meters, but does not include a fuel supply tank connected to the carburetor or fuel injector of a motor vehicle.

(15) "Carrier" means an operator of a pipeline or marine vessel engaged in the business of transporting motor fuel above the terminal rack.

(16) "Compressed natural gas" means natural gas that has been compressed and dispensed into motor fuel storage containers and is advertised, offered for sale, suitable for use, or used as an engine motor fuel.

(17) "Dealer" means a person who sells motor fuel at retail or dispenses motor fuel at a retail location.

(18) "Destination state" means the state, territory, or foreign country to which motor fuel is directed for delivery into a storage facility, a receptacle, a container, or a type of transportation equipment for resale or use.

(19) "Diesel fuel" means kerosene or another liquid, or a combination of liquids blended together, that is suitable for or used for the propulsion of diesel-powered motor vehicles. The term includes products commonly referred to as kerosene, light cycle oil, #1 diesel fuel, #2 diesel fuel, dyed or undyed diesel fuel, aviation jet fuel, biodiesel, distillate fuel, cutter stock, or heating oil, but does not include gasoline, aviation gasoline, or liquefied gas.

(20) "Distributor" means a person who acquires motor fuel from a licensed supplier, permissive supplier, or another licensed distributor and who makes sales at wholesale and whose activities may also include sales at retail.

(21) "Diversion number" means the number assigned by the comptroller, or by a person to whom the comptroller delegates or appoints the authority to assign the number, that relates to a single cargo tank delivery of motor fuel that is diverted from the original destination state printed on the shipping document.

(22) "Dyed diesel fuel" means diesel fuel that:

(A) meets the dyeing and marking requirements of 26 U.S.C. Section 4082, regardless of how the diesel fuel was dyed; and

(B) is intended for off-highway use only.

(23) "Export" means to obtain motor fuel in this state for sale or use in another state, territory, or foreign country.

(24) "Exporter" means a person that exports motor fuel from this state. The seller is the exporter of motor fuel delivered out of this state by or for the seller, and the purchaser is the exporter of motor fuel delivered out of this state by or for the purchaser.

(25) "Fuel grade ethanol" means the ASTM standard in effect on the effective date of this chapter as the D-4806 specification for denatured motor fuel grade ethanol for blending with motor fuel.

(26) "Fuel supply tank" means a receptacle on a motor vehicle, nonhighway equipment, or a stationary engine from which motor fuel is supplied for the operation of its engine.

(27) "Gallon" means a unit of liquid measurement as customarily used in the United States and that contains 231 cubic inches by volume.

(28) "Gasohol" means a blended motor fuel composed of gasoline and motor fuel alcohol.

(29) "Gasoline" means any liquid or combination of liquids blended together, offered for sale, sold, or used as the fuel for a gasoline-powered engine. The term includes gasohol, aviation gasoline, and blending agents, but does not include racing gasoline, diesel fuel, aviation jet fuel, or liquefied gas.

(30) "Gasoline blend stocks" includes any petroleum product component of gasoline, such as naphtha, reformate, or toluene, listed in Treasury Regulation Section 48.4081-1(c)(3), that can be blended for use in a motor fuel.

The term does not include a substance that will be ultimately used for consumer nonmotor fuel use and is sold or removed in drum quantities of 55 gallons or less at the time of the removal or sale.

(31) "Gasoline blended fuel" means a mixture composed of gasoline and other liquids, including gasoline blend stocks, gasohol, ethanol, methanol, fuel grade alcohol, and resulting blends, other than a de minimus amount of a product such as carburetor detergent or oxidation inhibitor, that can be used as gasoline in a motor vehicle.

(32) "Gross gallons" means the total measured product, exclusive of any temperature or pressure adjustments, considerations, or deductions, in U.S. gallons.

(33) "Import" means to bring motor fuel into this state by motor vehicle, marine vessel, pipeline, or any other means. The term does not include bringing motor fuel into this state in the motor fuel supply tank of a motor vehicle if the motor fuel is used to power that motor vehicle.

(34) "Import verification number" means the number assigned by the comptroller, or by a person to whom the comptroller delegates or appoints the authority to assign the number, that relates to a single cargo tank delivery into this state from another state after a request for an assigned number by an importer or by the motor fuel transporter carrying taxable motor fuel into this state for the account of an importer.

(35) "Importer" means a person that imports motor fuel into this state. The seller is the importer for motor fuel delivered into this state from outside of this state by or for the seller, and the purchaser is the importer for motor fuel delivered into this state from outside of this state by or for the purchaser.

(36) "Interstate trucker" means a person who for commercial purposes operates in this state, other states, or other countries a motor vehicle that:

(A) has two axles and a registered gross weight in excess of 26,000 pounds;

(B) has three or more axles; or

(C) is used in combination and the registered gross weight of the combination exceeds 26,000 pounds.

(37) "Lessor" means a person:

(A) whose principal business is the leasing or renting of motor vehicles for compensation to the general public;

(B) who maintains established places of business; and

(C) whose lease or rental contracts require the motor vehicles to be returned to the established places of business at the termination of the lease.

(38) "License holder" means a person licensed by the comptroller under Section 162.105, 162.205, 162.304, 162.305, or 162.306.

(39) "Liquefied gas" means all combustible gases that exist in the gaseous state at 60 degrees Fahrenheit and at a pressure of 14.7 pounds per square inch absolute, but does not include gasoline or diesel fuel.

(40) "Liquefied gas tax decal user" means a person who owns or operates on the public highways of this state a motor vehicle capable of using liquefied gas for propulsion.

(41) "Motor carrier" means a person who operates a commercial vehicle used, designated, or maintained to transport persons or property.

(42) "Motor fuel" means gasoline, diesel fuel, liquefied gas, and other products that can be used to propel a motor vehicle.

(43) "Motor fuel transporter" means a person who transports gasoline, diesel fuel, or gasoline blended fuel outside the bulk transfer/terminal system by means of a transport vehicle, a railroad tank car, or a marine vessel.

(44) "Motor vehicle" means a self-propelled vehicle, trailer, or semitrailer that is designed or used to transport persons or property over a public highway.

(45) "Net gallons" means the amount of motor fuel measured in gallons when adjusted to a temperature of 60 degrees Fahrenheit and a pressure of 14.7 pounds per square inch.

(46) "Permissive supplier" means a person who elects, but is not required, to have a supplier's license and who:

(A) is registered under Section 4101, Internal Revenue Code, for transactions in motor fuel in the bulk transfer/terminal system; and

(B) is a position holder in motor fuel located only in another state or a person who receives motor fuel only in another state under a two-party exchange.

(47) "Position holder" means the person who holds the inventory position in motor fuel in a terminal, as reflected on the records of the terminal operator. A person holds the inventory position in motor fuel when that person has a contract with the terminal operator for the use of storage facilities and terminaling services for motor fuel at the terminal. The term includes a terminal operator who owns motor fuel in the terminal.

(48) "Public highway" means every way or place of whatever nature open to the use of the public for purposes of vehicular travel in this state, including the streets and alleys in towns and cities.

(49) "Racing gasoline" means gasoline that contains lead, has an octane rating of 110 or higher, does not have detergent additives, and is not suitable for use as a motor fuel in a motor vehicle used on a public highway.

(50) "Rack" means a mechanism for delivering motor fuel from a refinery, terminal, marine vessel, or bulk plant into a transport vehicle, railroad tank car, or other means of transfer that is outside the bulk transfer/terminal system.

(51) "Refinery" means a facility for the manufacture or reprocessing of finished or unfinished petroleum products usable as motor fuel and from which motor fuel may be removed by pipeline or marine vessel or at a rack.

(52) "Registered gross weight" means the total weight of the vehicle and carrying capacity shown on the registration certificate issued by the Texas Department of Transportation.

(53) "Removal" means a physical transfer other than by evaporation, loss, or destruction. A physical transfer to a transport vehicle or other means of conveyance outside the bulk transfer/terminal system is complete on delivery into the means of conveyance.

(54) "Sale" means a transfer of title, exchange, or barter of motor fuel, but does not include transfer of possession of motor fuel on consignment.

(55) "Shipping document" means a delivery document issued by a terminal or bulk plant operator in conjunction with the sale, transfer, or removal of motor fuel from the terminal or bulk plant. A shipping document issued by a terminal operator shall be machine printed. A shipping document issued by a bulk plant shall be typed or handwritten on a preprinted form or machine printed.

(56) "Solid waste refuse vehicle" means a motor vehicle equipped with a power takeoff or auxiliary power unit that provides power to compact the refuse, open the back of the container before ejection, and eject the compacted refuse.

(57) "Supplier" means a person that:

(A) is subject to the general taxing jurisdiction of this state;

(B) is registered under Section 4101, Internal Revenue Code, for transactions in motor fuel in the bulk transfer/terminal distribution system, and is:

(i) a position holder in motor fuel in a terminal or refinery in this state and may concurrently also be a position holder in motor fuel in another state; or

(ii) a person who receives motor fuel in this state under a two-party exchange; and

(C) may also be a terminal operator, provided that a terminal operator is not considered to also be a "supplier" based solely on the fact that the terminal operator handles motor fuel consigned to it within a terminal.

(58) "Terminal" means a motor fuel storage and distribution facility to which a terminal control number has been assigned by the Internal Revenue Service, to which motor fuel is supplied by pipeline or marine vessel, and from which motor fuel may be removed at a rack.

(59) "Terminal operator" means a person who owns, operates, or otherwise controls a terminal.

(60) "Transit company" means a business that:

(A) transports in a political subdivision persons in carriers designed for 12 or more passengers;

(B) holds a franchise from a political subdivision; and

(C) has its rates regulated by the political subdivision or is owned or operated by the political subdivision.

(61) "Transport vehicle" means a vehicle designed or used to carry motor fuel over a public highway and includes a straight truck, straight truck/trailer combination, and semitrailer combination rig.

(62) "Two-party exchange" means a transaction in which motor fuel is transferred from one licensed supplier or permissive supplier to another licensed supplier or permissive supplier under an exchange agreement, including a transfer from the person who holds the inventory position in taxable motor fuel in the terminal as reflected on the records of the terminal operator, and that is:

(A) completed before removal of the product from the terminal by the receiving exchange partner; and

(B) recorded on the terminal operator's books and records with the receiving exchange partner as the supplier that removes the motor fuel across the terminal rack for purposes of reporting the transaction to this state.

Sec. 162.002. TAX LIABILITY ON LEASED VEHICLES. (a) A user or interstate trucker is liable for the tax on motor fuel imported into this state in fuel supply tanks of leased motor vehicles and used on the public highways of this state to the same extent and in the same manner as motor fuel imported in the user's or interstate trucker's own motor vehicles and used on the public highways of this state, unless the person who owns the leased motor vehicles is liable under Subsection (b). If the owner of the leased motor vehicles is liable, the user or interstate trucker may exclude the leased motor vehicles from the person's return.

(b) A person who, in the regular course of business and for consideration, leases motor vehicles and equipment to motor carriers or others for interstate operation may be considered to be the user or interstate trucker under this chapter if the person supplies or pays for the motor fuel consumed in those leased motor vehicles or equipment, and the person may be issued a license as an interstate trucker by the comptroller. An application for an interstate trucker license may be accompanied by one copy of the form-lease or service contract entered into with various lessees. On receipt of the interstate trucker license, the person may assign to each motor vehicle leased for interstate operation a photocopy of the license to be carried in the cab compartment of the motor vehicle. The photocopy of the license must have typed or printed on the back the unit or motor number of the motor vehicle to which it is assigned and the name of the lessee. The lessor is responsible for the proper use of the photocopy of the license issued to the lessor and for its return with the motor vehicle to which it is assigned.

Sec. 162.003. COOPERATIVE AGREEMENTS WITH OTHER STATES. (a) The comptroller may enter into a cooperative agreement with another state for the collection of motor fuel taxes, the exchange of information, the auditing of users of motor fuel used in fleets of motor vehicles operated or intended for interstate operation, and the auditing of importers and exporters. An agreement or amendment of an agreement takes effect according to its terms, except that an agreement or amendment may not take effect until the proposed agreement or amendment is published in the Texas Register.

(b) An agreement may provide for:

- (1) determining the base state for motor fuel users;
- (2) user, importer, and exporter records requirements;
- (3) audit procedures;
- (4) exchange of information;
- (5) persons eligible for tax licensing;
- (6) licensing and license revocation procedures, permits, penalties, and fees;
- (7) defining qualified motor vehicles;
- (8) determining bonding procedures, types, and amounts;
- (9) specifying reporting requirements and periods;
- (10) defining refund procedures and limitations, including the payment of interest;

(11) defining uniform penalties, fees, and interest rates;

(12) determining methods for collecting motor fuel taxes and for collecting and forwarding motor fuel taxes, other than penalties, due to another jurisdiction;

(13) the temporary remittal of funds equal to the amount of the taxes and interest due to another jurisdiction but not otherwise collected, subject to appropriation of funds for that purpose; and

(14) other provisions to facilitate the administration of the agreement.

(c) The comptroller may, as required by the terms of an agreement, forward to an officer of another state any information in the comptroller's possession relating to the manufacture, receipts, sale, use, transportation, or shipment of motor fuel by any person. The comptroller may disclose to an officer of another state the location of officers, motor vehicles, and other real and personal property of users, importers, and exporters of motor fuel.

(d) An agreement may provide for each state to audit the records of a person based in this state to determine if the motor fuel taxes due each state that is a party to the agreement are properly reported and paid. An agreement may provide for each state to forward the findings of an audit performed on a person based in this state to each other state in which the person has taxable use of motor fuel, from which the person imports motor fuel into this state, or to which the person exports motor fuel from this state. For a person who is not based in this state and who has taxable use of motor fuel in this state or an import into or export out of this state, the comptroller may use an audit performed by another state that is a party to an agreement with this state to make an assessment of motor fuel taxes against the person.

(e) An agreement entered into under this section does not affect the authority of the comptroller to audit any person under any other law.

(f) An agreement entered into under this section prevails over an inconsistent rule of the comptroller. Except as otherwise provided by this section, a statute of this state prevails over an inconsistent provision of an agreement entered into under this section.

(g) The comptroller may segregate in a separate fund or account the amount of motor fuel taxes, other than penalties, estimated to be due to other jurisdictions, motor fuel taxes subject to refund during the fiscal year, licensing fees, and other costs collected under the agreement. On a determination of an amount held that is due to be remitted to another jurisdiction, the comptroller may issue a warrant or make an electronic transfer of the amount as necessary to carry out the purposes of the agreement. An auditing cost, membership fee, and other cost associated with the agreement may be paid from interest earned on funds segregated under this subsection. Any interest earnings in excess of the costs associated with the agreement shall be credited to general revenue.

(h) The legislature finds that it is in the public interest to enter into motor fuel tax agreements with other jurisdictions that may provide for the temporary remittal of amounts due other jurisdictions that exceed the amounts collected and for cooperation with other jurisdictions for the collection of taxes imposed by this

state and other jurisdictions on motor fuel that is imported into or exported out of this state. The comptroller shall ensure that reasonable measures are developed to recover motor fuel taxes and other amounts due this state during each biennium.

(i) The comptroller shall attempt to enter into a cooperative agreement with each state that borders this state to provide for the collection of taxes imposed by this state and the bordering state on motor fuel that is imported into this state from or exported from this state to the bordering state. The comptroller is encouraged to attempt to enter into similar cooperative agreements with states that do not border this state.

Sec. 162.004. MOTOR FUEL TRANSPORTATION: REQUIRED DOCUMENTS. (a) A person may not transport in this state any motor fuel by barge, vessel, railroad tank car, or transport vehicle unless the person has a shipping document for the motor fuel that complies with this section. A terminal operator or operator of a bulk plant shall give a shipping document to the person who operates the barge, vessel, railroad tank car, or transport vehicle into which motor fuel is loaded at the terminal rack or bulk plant rack.

(b) The shipping document issued by the terminal operator or operator of a bulk plant shall contain the following information and any other information required by the comptroller:

(1) the terminal control number of the terminal or physical address of the bulk plant from which the motor fuel was received;

(2) the name and license number of the purchaser;

(3) the date the motor fuel was loaded;

(4) the net gallons loaded, or the gross gallons loaded if the fuel was purchased from a bulk plant;

(5) the destination state of the motor fuel, as represented by the purchaser of the motor fuel or the purchaser's agent; and

(6) a description of the product being transported.

(c) In the event of an extraordinary circumstance, including an act of God, that temporarily interferes with the ability to issue an automated machine-generated shipping document, a manually prepared shipping document that contains all of the information required by Subsection (b) shall be substituted for the machine-generated shipping document.

(d) A terminal operator or bulk plant operator may rely on the representation made by the purchaser of motor fuel or the purchaser's agent concerning the destination state of the motor fuel. A purchaser is liable for any tax due as a result of the purchaser's diversion of motor fuel from the represented destination state.

(e) A person to whom a shipping document was issued shall:

(1) carry the shipping document in the barge, vessel, railroad tank car, or other transport vehicle for which the document was issued when transporting the motor fuel described in the document;

(2) show the shipping document on request to any law enforcement officer, representative of the comptroller, or other authorized individual, when transporting the motor fuel described;

(3) deliver the motor fuel to the destination state printed on the shipping document unless the person:

(A) notifies the comptroller and the destination state, if a diversion program is in place, before transporting the motor fuel into a state other than the printed destination state, that the person has received instructions after the shipping document was issued to deliver the motor fuel to a different destination state;

(B) receives from the comptroller and destination state, if a diversion program is in place, a diversion number authorizing the diversion; and

(C) writes on the shipping document the change in destination state and the diversion number; and

(4) give a copy of the shipping document to the person to whom the motor fuel is delivered.

(f) The purchaser is responsible for paying the applicable destination state taxes along with filing a refund with the origin state. The supplier may not refund any taxes due to the diversion of a product.

(g) The person to whom motor fuel is delivered by barge, vessel, railroad tank car, or transport vehicle may not accept delivery of the motor fuel if the destination state shown on the shipping document for the motor fuel is a state other than this state, except that the person may accept that delivery if the document contains a diversion number authorized by the comptroller and destination state, if applicable. The person to whom the motor fuel is delivered shall examine the shipping document to determine that the destination state is this state, and shall retain a copy of the shipping document at the delivery location or another place until the fourth anniversary of the date of delivery.

Sec. 162.005. CANCELLATION OR REFUSAL OF LICENSE. (a) The comptroller may cancel or refuse to issue or reissue a motor fuel license to any person who has violated or has failed to comply with a provision of this chapter or a rule of the comptroller.

(b) Before a license may be canceled, or the issuance or reissuance refused, the comptroller shall give the license holder or license applicant not less than 10 days' notice of a hearing at the office of the comptroller in Austin or at a specified comptroller's field office, granting the license holder or applicant an opportunity to show cause before the comptroller why the proposed action should not be taken. If a license is in effect, the license remains in force pending the determination of the show-cause hearing. Notice must be in writing and may be mailed by United States registered mail or certified mail to the license holder or applicant at the person's last known address, or may be delivered by the comptroller to the license holder or applicant, and no other notice is necessary. In case of service by mail of a notice required by this chapter, the service is complete at the time of deposit in the United States Post Office.

(c) The comptroller may prescribe rules of procedure and evidence for the hearings in accordance with Chapter 2001, Government Code.

(d) If, after the hearing or the opportunity to be heard, the license is canceled or the issuance or reissuance refused by the comptroller, all taxes that have been collected or that have accrued, although the taxes are not then due and

payable to the state, except by the provisions of this chapter, shall become due and payable concurrently with the notice of cancellation of the license. The license holder shall within five days make a report covering the period not covered by preceding reports filed by the license holder and ending with the date of cancellation, and shall remit and pay to the comptroller all taxes that have been collected and that have accrued from the sale, use, or distribution of motor fuel in this state.

(e) The comptroller may revoke a license if the license holder purchases for export motor fuel on which the tax was not paid under this chapter and subsequently diverts or causes the motor fuel to be diverted to a destination in this state or to any destination other than the originally designated state or country without first obtaining a diversion number.

Sec. 162.006. SUMMARY SUSPENSION OF LICENSE. (a) The comptroller may suspend a person's license without notice or a hearing for the person's failure to comply with this chapter or a rule adopted under this chapter if the person's continued operation constitutes an immediate and substantial threat to the collection of taxes imposed by this chapter and attributable to the person's operation.

(b) If the comptroller summarily suspends a person's license, proceedings for a preliminary hearing before the comptroller or the comptroller's representative must be initiated simultaneously with the summary suspension. The preliminary hearing shall be set for a date that is not later than the 10th day after the date of the summary suspension, unless the parties agree to a later date.

(c) At the preliminary hearing, the license holder must show cause why the license should not remain suspended pending a final hearing on suspension or revocation.

(d) Chapter 2001, Government Code, does not apply to a summary suspension under this section.

(e) To initiate a proceeding to suspend summarily a person's license, the comptroller shall serve notice on the license holder informing the license holder of the right to a preliminary hearing before the comptroller or the comptroller's representative and of the time and place of the preliminary hearing. The notice must be personally served on the license holder or an officer, employee, or agent of the license holder, or sent by certified or registered mail, return receipt requested, to the license holder's mailing address as it appears on the comptroller's records. The notice must state the alleged violations that constitute the grounds for summary suspension. The suspension is effective at the time the notice is served. If the notice is served in person, the license holder shall immediately surrender the license to the comptroller or to the comptroller's representative. If notice is served by mail, the license holder shall immediately return the license to the comptroller.

(f) Section 162.005, governing hearings for license cancellation or refusal to issue a license under this chapter, governs a final administrative hearing under this section.

Sec. 162.007. ENFORCEMENT OF LICENSE CANCELLATION, SUSPENSION, OR REFUSAL. (a) The comptroller may examine any books and records incident to the conduct of the business of a person whose license has been canceled or suspended on the person's failure to file the reports required by this chapter or to remit all taxes due. If necessary, the comptroller shall issue an audit deficiency determination for any tax amount due. If the amount is not paid on or before the 15th day after the deficiency determination becomes final, the bond or other security required under this chapter shall be forfeited. The demand for payment shall be addressed to both the surety or sureties and the person who owes the delinquency.

(b) If the forfeiture of the bond or other security does not satisfy the delinquency, the comptroller shall certify the taxes, penalty, and interest delinquent to the attorney general, who may file suit against the person or the person's surety, or both, to collect the amount due. After being given notice of an order of cancellation or summary suspension, it shall be unlawful for any person to continue to operate the person's business under a canceled or suspended license. The attorney general may file suit to enjoin the person from operating under the canceled or suspended license until the comptroller reissues a license.

(c) An appeal from an order of the comptroller canceling or suspending or refusing the issuance or reissuance of a license may be taken to a district court of Travis County by the aggrieved license holder or applicant. The trial shall be de novo under the same rules as ordinary civil suits, except that:

(1) an appeal must be perfected and filed within 30 days after the effective date of the order, decision, or ruling of the comptroller;

(2) the trial of the case shall begin within 10 days after its filing; and

(3) the order, decision, or ruling of the comptroller may be suspended or modified by the court pending a trial on the merits.

Sec. 162.008. INSPECTION OF PREMISES AND RECORDS. For the purpose of determining the amount of tax collected and payable to this state, the amount of tax accruing and due, and whether a tax liability has been incurred under this chapter, the comptroller may:

(1) inspect any premises where motor fuel, crude petroleum, natural gas, derivatives or condensates of crude petroleum, natural gas, or their products, methyl alcohol, ethyl alcohol, or other blending agents are produced, made, prepared, stored, transported, sold, or offered for sale or exchange;

(2) examine the books and records required to be kept and records incident to the business of any license holder or person required to be licensed, or any person receiving, possessing, delivering, or selling motor fuel, crude oil, derivatives or condensates of crude petroleum, natural gas, or their products, or any blending agents;

(3) examine and either gauge or measure the contents of all storage tanks, containers, and other property or equipment; and

(4) take samples of any and all of these products stored on the premises.

Sec. 162.009. AUTHORITY TO STOP AND EXAMINE. To enforce this chapter, the comptroller or a peace officer may stop a motor vehicle that appears to be operating with or transporting motor fuel to examine the shipping document, cargo manifest, or invoices required to be carried, examine a license or copy of a license that may be required to be carried, take samples from the fuel supply or cargo tanks, and make any other investigation that could reasonably be made to determine whether the taxes have been paid or accounted for by a license holder or a person required to be licensed. The comptroller, a peace officer, an employee of the attorney general's office, an employee of the Texas Commission on Environmental Quality, or an employee of the Department of Agriculture may take samples of motor fuel from a storage tank or container to:

- (1) determine if the fuel contains hazardous waste or is adulterated; or
- (2) allow the comptroller to determine whether taxes on the fuel have been paid or accounted for to this state.

Sec. 162.010. IMPOUNDMENT AND SEIZURE. (a) If after examination or other investigation, the comptroller believes that the owner or operator of a motor vehicle or cargo tank, or a person receiving, possessing, delivering, or selling gasoline or diesel fuel, has not paid all motor fuel taxes due, or does not have a valid license entitling that person to possess or transport tax-free motor fuel, the comptroller or peace officer may impound the fuel, the motor vehicle, cargo tank, storage tank, equipment, paraphernalia, or other tangible personal property used for or incident to the storage, sale, or transportation of that motor fuel. Unless proof is produced within three working days after the beginning of impoundment that the owner, operator, or other person has paid the taxes established by the comptroller to be due on the gasoline or diesel fuel stored, sold, used, or transported and any other taxes due to this state, or that the owner, operator, or other person holds a valid license to possess or transport tax-free motor fuel, the comptroller may demand payment of all taxes, penalties, and interest due to this state, and all costs of impoundment.

(b) If the owner or operator does not produce the required documentation or required license or pay the taxes, penalties, interest, and costs due within three working days after the beginning of the impoundment, the comptroller may seize the impounded property to satisfy the tax liability.

(c) The comptroller may seize:

(1) all motor fuel on which taxes are imposed by this chapter that is found in the possession, custody, or control of any person for the purpose of being sold, transported, removed, or used by the person in violation of this chapter;

(2) all motor fuel that is removed or is deposited, stored, or concealed in any place with intent to avoid payment of taxes;

(3) any automobile, truck, tank truck, boat, trailer conveyance, or other vehicle used in the removal or transportation of the motor fuel to avoid payment of taxes; and

(4) all equipment, paraphernalia, storage tanks, or tangible personal property incident to and used for avoiding the payment of taxes and found in the place, building, or vehicle where the motor fuel is found.

Sec. 162.011. SALE OF SEIZED PROPERTY. (a) The comptroller may sell property seized under Section 162.010.

(b) Notice of the time and place of a sale shall be given to the delinquent person in writing by certified mail at least 20 days before the date set for the sale. The notice shall be enclosed in an envelope addressed to the person at the person's last known address or place of business. It shall be deposited in the United States mail, postage prepaid. The notice shall also be published once a week for two consecutive weeks before the date of the sale in a newspaper of general circulation published in the county in which the property seized is to be sold. If there is no newspaper of general circulation in the county, notice shall be posted in three public places in the county 14 days before the date set for the sale. The notice must contain a description of the property to be sold, a statement of the amount due, including interest, penalties, and costs, the name of the delinquent, and the further statement that unless the amount due, interest, penalties, and costs are paid on or before the time fixed in the notice for the sale, the property, or as much of it as may be necessary, will be sold at public auction in accordance with the law and the notice.

(c) At the sale, the comptroller shall sell the property and shall deliver to the purchaser a bill of sale for personal property and a deed for real property sold. The bill of sale or deed vests the interest or title of the person liable for the amount in the purchaser. The unsold portion of any property seized may be left at the place of sale at the risk of the person liable for the amount.

(d) The proceeds of a sale shall be allocated according to the following priorities:

(1) the payment of expenses of seizure, appraisal, custody, advertising, auction, and any other expenses incident to the seizure and sale;

(2) the payment of the tax, penalty, and interest; and

(3) the repayment of the remaining balance to the person liable for the amount unless a claim is presented before the sale by any other person who has an ownership interest evidenced by a financing statement or lien, in which case the comptroller shall withhold the remaining balance pending a determination of the rights of the respective parties.

Sec. 162.012. PRESUMPTIONS. (a) A person licensed under this chapter or required to be licensed under this chapter, or other user, who fails to keep a record, issue an invoice, or file a return or report required by this chapter is presumed to have sold or used for taxable purposes all motor fuel shown by an audit by the comptroller to have been sold to the license holder or other user. Motor fuel unaccounted for is presumed to have been sold or used for taxable purposes. If an exporter claims an exemption under Section 162.104(a)(4)(B) or 162.204(a)(4)(B) and fails to produce proof of payment of tax to the destination state or proof that the transaction was exempt in the destination state, the exporter is presumed to have not paid the destination state's tax or this state's tax on the exported motor fuel and the comptroller shall assess the tax imposed by this chapter on the exported motor fuel against the exporter. The comptroller may fix or establish the amount of taxes, penalties, and interest due this state from the records of deliveries or from any records or information available. If a tax claim,

as developed from this procedure, is not paid, after the opportunity to request a redetermination, the claim and any audit made by the comptroller or any report filed by the license holder or other user is evidence in any suit or judicial proceedings filed by the attorney general and is prima facie evidence of the correctness of the claim or audit. A prima facie presumption of the correctness of the claim may be overcome at the trial by evidence adduced by the license holder or other user.

(b) In the absence of records showing the number of miles actually operated per gallon of motor fuel consumed, it is presumed that not less than one gallon of motor fuel was consumed for every four miles traveled. An interstate trucker may produce evidence of motor fuel consumption to establish another mileage factor. If an examination or audit made by the comptroller from the records of an interstate trucker shows that a greater amount of motor fuel was consumed than was reported by the interstate trucker for tax purposes, the interstate trucker is liable for the tax, penalties, and interest on the additional amount shown or the trucker is entitled to a credit or refund on overpayments of tax established by the audit.

Sec. 162.013. VENUE OF TAX COLLECTION SUITS. The venue of a suit, injunction, or other proceeding at law available for the establishment or collection of a claim for delinquent taxes, penalties, or interest accruing under this chapter and the enforcement of the terms and provisions of this chapter is in Travis County or in any other county having venue under existing venue statutes.

Sec. 162.014. OTHER MOTOR FUEL TAXES PROHIBITED. The taxes imposed by this chapter are in lieu of any other excise or occupation tax imposed by a political subdivision of this state on the sale, use, or distribution of gasoline, diesel fuel, or liquefied gas.

Sec. 162.015. ADDITIONAL TAX APPLIES TO INVENTORIES. (a) On the effective date of an increase in the rates of the taxes imposed by this chapter, a distributor or dealer that possesses for the purpose of sale 2,000 or more gallons of gasoline or diesel fuel at each business location on which the taxes imposed by this chapter at a previous rate have been paid shall report to the comptroller the volume of that gasoline and diesel fuel, and at the time of the report shall pay a tax on that gasoline and diesel fuel at a rate equal to the rate of the tax increase.

(b) On the effective date of a reduction of the rates of taxes imposed by this chapter, a distributor or dealer that possesses for the purpose of sale 2,000 or more gallons of gasoline or diesel fuel at each business location on which the taxes imposed by this chapter at the previous rate have been paid becomes entitled to a refund in an amount equal to the difference in the amount of taxes paid on that gasoline or diesel fuel at the previous rate and at the rate in effect on the effective date of the reduction in the tax rates. The rules of the comptroller shall provide for the method of claiming a refund under this chapter and may require that the refund for the dealer be paid through the distributor or supplier from whom the dealer received the fuel.

Sec. 162.016. IMPORTATION AND EXPORTATION OF MOTOR FUEL.

(a) A person may not import motor fuel to a destination in this state or export motor fuel to a destination outside this state by any means unless the person possesses a shipping document for that fuel created by the terminal or bulk plant at which the fuel was received. The shipping document must include:

(1) the name and physical address of the terminal or bulk plant from which the motor fuel was received for import or export;

(2) the name and federal employer identification number, or the social security number if the employer identification number is not available, of the carrier transporting the motor fuel;

(3) the date the motor fuel was loaded;

(4) the type of motor fuel;

(5) the number of gallons:

(A) in temperature-adjusted gallons if purchased from a terminal for export or import; or

(B) in temperature-adjusted gallons or in gross gallons if purchased from a bulk plant;

(6) the destination of the motor fuel as represented by the purchaser of the motor fuel and the number of gallons of the fuel to be delivered, if delivery is to only one state;

(7) the name, federal employer identification number, license number, and physical address of the purchaser of the motor fuel;

(8) the name of the person responsible for paying the tax imposed by this chapter, as given to the terminal by the purchaser if different from the licensed supplier or distributor; and

(9) any other information that, in the opinion of the comptroller, is necessary for the proper administration of this chapter.

(b) The terminal or bulk plant shall provide the shipping documents to the importer or exporter.

(c) If motor fuel is to be delivered to more than one state, the terminal shall document the split loads by issuing shipping documents that list the destination state of each portion of the motor fuel.

(d) A terminal, a bulk plant, the carrier, the licensed distributor or supplier, and the person that received the motor fuel shall:

(1) retain a copy of the shipping document until at least the fourth anniversary of the date the fuel is received; and

(2) provide a copy of the document to the comptroller or any law enforcement officer not later than the 10th working day after the date a request for the copy is received.

(e) An importer or exporter shall keep in the person's possession the shipping document issued by the terminal or bulk plant when transporting motor fuel imported into this state or for export from this state. The importer or exporter shall show the document to the comptroller or a peace officer on request. The comptroller may delegate authority to inspect the document to other governmental agencies. The importer or exporter shall provide a copy of the shipping document to the person that receives the fuel when it is delivered.

(f) The importer or exporter may deliver motor fuel only to the destination state or states indicated on the shipping document.

(g) An importer or exporter who wants to divert the delivery of a single cargo tank of motor fuel from the destination state printed on the shipping document must obtain a diversion number from the comptroller before diverting the delivery. The importer, exporter, or motor fuel transporter must write the diversion number on the shipping document issued for the fuel. A diversion number is required for each diverted delivery. The comptroller may appoint a person to assign diversion numbers or may delegate that authority to another person.

(h) An importer that acquires motor fuel for import by cargo tank must obtain an import verification number from the comptroller before importing the motor fuel. The importer must write the import verification number on the shipping document issued for the fuel. The importer must obtain a separate import confirmation number for each cargo tank delivery of motor fuel into this state. The comptroller may appoint a person to assign import verification numbers or may delegate that authority to another person.

(i) Each terminal or bulk plant shall post a notice in a conspicuous location proximate to the point of receipt of shipping papers that describes the duties of importers and exporters under this section. The comptroller may prescribe the language, type, style, and format of the notice.

[Sections 162.017-162.100 reserved for expansion]

SUBCHAPTER B. GASOLINE TAX

Sec. 162.101. POINT OF IMPOSITION OF GASOLINE TAX. (a) A tax is imposed on the removal of gasoline from the terminal using the terminal rack, other than by bulk transfer. The supplier or permissive supplier shall collect the tax imposed by this subchapter from the person who orders the withdrawal at the terminal rack.

(b) A tax is imposed at the time gasoline is imported into this state, other than by a bulk transfer, for delivery to a destination in this state. The permissive supplier shall collect the tax imposed by this subchapter from the person who imports the gasoline into this state. If the seller is not a permissive supplier, then the person who imports the gasoline into this state shall pay the tax.

(c) A tax is imposed on the sale or transfer of gasoline in the bulk transfer/terminal system in this state by a supplier to a person who does not hold a supplier's license. The supplier shall collect the tax imposed by this subchapter from the person who orders the sale or transfer in the bulk transfer terminal system.

(d) A tax is imposed on gasoline brought into this state in a motor fuel supply tank or tanks of a motor vehicle operated by a person required to be licensed as an interstate trucker.

(e) A tax is imposed on the blending of gasoline at the point gasoline blended fuel is made in this state outside the bulk transfer/terminal system. The blender shall pay the tax. The number of gallons of gasoline blended fuel on

which the tax is imposed is equal to the difference between the number of gallons of blended fuel made and the number of gallons of previously taxed gasoline used to make the blended fuel.

(f) A terminal operator in this state is considered a supplier for the purpose of the tax imposed under this subchapter unless at the time of removal:

(1) the terminal operator has a terminal operator's license issued for the facility from which the gasoline is withdrawn;

(2) the terminal operator verifies that the person who removes the gasoline has a supplier's license; and

(3) the terminal operator does not have a reason to believe that the supplier's license is not valid.

(g) In each subsequent sale of gasoline on which the tax has been paid, the amount of the tax shall be added to the selling price so that the tax is paid ultimately by the person using or consuming the gasoline. Gasoline is considered to be used when it is delivered into a fuel supply tank.

Sec. 162.102. TAX RATE. The gasoline tax rate is 20 cents for each net gallon or fractional part on which the tax is imposed under Section 162.101.

Sec. 162.103. BACKUP TAX; LIABILITY. (a) A backup tax is imposed at the rate prescribed by Section 162.102 on:

(1) a person who obtains a refund of tax on gasoline by claiming the gasoline was used for an off-highway purpose, but actually uses the gasoline to operate a motor vehicle on a public highway;

(2) a person who operates a motor vehicle on a public highway using gasoline on which tax has not been paid; and

(3) a person who sells to the ultimate consumer gasoline on which tax has not been paid and who knew or had reason to know that the gasoline would be used for a taxable purpose.

(b) If the motor vehicle described by Subsection (a)(2) is owned or leased by a person other than the operator, the tax shall be paid by either the operator or the motor vehicle's owner or lessee.

(c) The tax imposed under Subsection (a)(3) is also imposed on the ultimate consumer.

(d) A person who sells gasoline in this state on which tax has not been paid for any purpose other than a purpose exempt under Section 162.104 shall at the time of sale collect the tax from the purchaser or recipient of gasoline in addition to the selling price and is liable to this state for the taxes collected at the time and in the manner provided by this chapter.

(e) The tax liability imposed by this section is in addition to any penalty imposed under this chapter.

Sec. 162.104. EXEMPTIONS. (a) The tax imposed by this subchapter does not apply to gasoline:

(1) sold to the United States for its exclusive use, provided that the exemption does not apply with respect to fuel sold or delivered to a person operating under a contract with the United States;

(2) sold to a public school district in this state for the district's exclusive use;

(3) sold to a commercial transportation company that provides public school transportation services to a school district under Section 34.008, Education Code, and that uses the gasoline only to provide those services;

(4) exported by either a licensed supplier or a licensed exporter from this state to any other state, provided that:

(A) for gasoline in a situation described by Subsection (d), the bill of lading indicates the destination state and the supplier collects the destination state tax; or

(B) for gasoline in a situation described by Subsection (e), the bill of lading indicates the destination state, the gasoline is subsequently exported, and the exporter is licensed in the destination state to pay that state's tax and has an exporter's license issued under this subchapter;

(5) moved by truck or railcar between licensed suppliers or licensed permissive suppliers and in which the gasoline removed from the first terminal comes to rest in the second terminal, provided that the removal from the second terminal rack is subject to the tax imposed by this subchapter;

(6) delivered or sold into a storage facility of a licensed aviation fuel dealer from which gasoline will be delivered solely into the fuel supply tanks of aircraft or aircraft servicing equipment, or sold from one licensed aviation fuel dealer to another licensed aviation fuel dealer who will deliver the aviation fuel exclusively into the fuel supply tanks of aircraft or aircraft servicing equipment; or

(7) exported to a foreign country if the bill of lading indicates the foreign destination and the fuel is actually exported to the foreign country.

(b) The exemption provided by Subsection (a)(4) does not apply to gasoline that is transported and delivered outside this state in the motor fuel supply tank of a motor vehicle other than an interstate trucker.

(c) If an exporter described by Subsection (a)(4)(B) does not have an exporter's license issued under this subchapter, the supplier must collect the tax imposed under this subchapter.

(d) Subsection (a)(4)(A) applies only if the destination state recognizes, by agreement with this state or by statute or rule, a supplier in this state as a valid taxpayer for the motor fuel being exported to that state from this state. The comptroller shall publish a list that specifies for each state, other than this state, whether that state does or does not qualify under this subsection.

(e) Subsection (a)(4)(B) applies only until the date the destination state recognizes, by agreement with this state or by statute, the out-of-state supplier as a valid taxpayer for the motor fuel being exported to that state from this state, or until January 1, 2006, whichever date is earlier.

(f) The exemption provided by Subsection (a)(4)(A) does not apply to a sale by a distributor.

Sec. 162.105. PERSONS REQUIRED TO BE LICENSED. A person shall obtain the appropriate license or licenses issued by the comptroller before conducting the activities of:

(1) a supplier, who may also act as a distributor, importer, exporter, blender, motor fuel transporter, or aviation fuel dealer without securing a separate license, but who is subject to all other conditions, requirements, and liabilities imposed on those license holders;

(2) a permissive supplier, who may also act as a distributor, importer, exporter, blender, motor fuel transporter, or aviation fuel dealer without securing a separate license, but who is subject to all other conditions, requirements, and liabilities imposed on those license holders;

(3) a distributor, who may also act as an importer, exporter, blender, or motor fuel transporter without securing a separate license, but who is subject to all other conditions, requirements, and liabilities imposed on those license holders;

(4) an importer, who may also act as an exporter, blender, or motor fuel transporter without securing a separate license, but who is subject to all other conditions, requirements, and liabilities imposed on those license holders;

(5) a terminal operator;

(6) an exporter;

(7) a blender;

(8) a motor fuel transporter;

(9) an aviation fuel dealer; or

(10) an interstate trucker.

Sec. 162.106. TRIP PERMITS. (a) Instead of an annual interstate trucker's license, a person bringing a motor vehicle described by Section 162.001(36) into this state for commercial purposes may obtain a trip permit. The trip permit must be obtained before or at the time of entry into this state.

(b) Not more than five trip permits for each person may be issued during a calendar year.

(c) A fee for each trip permit shall be collected from the applicant and shall be in the amount of \$50 for each vehicle for each trip.

(d) A report is not required with respect to the vehicle.

(e) Operating a motor vehicle without a valid interstate trucker's license or trip permit may subject the operator to a penalty under Section 162.402.

Sec. 162.107. PERMISSIVE SUPPLIER REQUIREMENTS ON OUT-OF-STATE REMOVALS. (a) A person may elect to obtain a permissive supplier license to collect the tax imposed under this subchapter for gasoline that is removed at a terminal in another state and has this state as the destination state.

(b) With respect to gasoline that is removed by the licensed permissive supplier at a terminal located in another state and that has this state as the destination state, a licensed permissive supplier shall:

(1) collect the tax due to this state on the gasoline;

(2) waive any defense that this state lacks jurisdiction to require the supplier to collect the tax due to this state on the gasoline under this subchapter;

(3) report and pay the tax due on the gasoline in the same manner as if the removal had occurred at a terminal located in this state;

(4) keep records of the removal of the gasoline and submit to audits concerning the gasoline as if the removal had occurred at a terminal located in this state; and

(5) report sales by the permissive supplier to a person who is not licensed in this state.

(c) A permissive supplier must acknowledge in the person's license application that this state imposes the requirements listed in Subsection (b) under this state's general police power and that the permissive supplier submits to the jurisdiction of this state only for purposes related to the administration of this chapter.

Sec. 162.108. LICENSE APPLICATION PROCEDURE. (a) To obtain a license under this subchapter, an applicant shall file an application using a form adopted by the comptroller. The application must contain:

(1) the name under which the applicant transacts or intends to transact business;

(2) the applicant's principal office, residence, or place of business in this state, or other location of the applicant;

(3) if the applicant is not an individual, the names of the principal officers of an applicant corporation, or the names of the members of an applicant partnership, and the office, street, or post office addresses of each; and

(4) other information required by the comptroller.

(b) An applicant for a license as a supplier, permissive supplier, or terminal operator must have a federal certificate of registry issued under 26 U.S.C. Section 4101 that authorizes the applicant to enter into federal tax-free transactions of gasoline in the bulk terminal/transfer system. An applicant that is required to have a federal certificate of registry must include the registration number of the certificate on the application for a license. An applicant for a license as an importer, an exporter, or a distributor who has a federal certificate of registry issued under 26 U.S.C. Section 4101 must include the registration number of the certificate on the application for a license.

(c) An applicant for a license as an importer or distributor must list on the application each state from which the applicant intends to import gasoline and, if required by a listed state, must be licensed or registered for gasoline tax purposes in that state. If a listed state requires the applicant to be licensed or registered, the applicant must provide the applicant's license or registration number from that state.

(d) An applicant for a license as an exporter must designate an agent located in this state for service of process and provide the agent's name and address. An applicant for a license as an exporter or distributor must list on the application each state to which the applicant intends to export gasoline received in this state by means of a transfer that is outside the bulk transfer/terminal system and must be licensed or registered for gasoline tax purposes in that state. The applicant must provide the applicant's license or registration number from that state.

(e) An applicant for a license as a motor fuel transporter must list on the application each state from which and to which the applicant intends to transport motor fuel and, if required by a listed state, must be licensed or registered for

gasoline tax purposes in that state. If a listed state requires the applicant to be licensed or registered, the applicant must provide the applicant's license or registration number from that state.

Sec. 162.109. ISSUANCE AND DISPLAY OF LICENSE. (a) If the comptroller approves a license application, the comptroller shall issue a license to the applicant. A license must be posted in a conspicuous place or kept available for inspection at the principal place of business of the license holder. A copy of the license must be kept at each place of business or other place of storage from which gasoline is sold, distributed, or used and in each motor vehicle used by the license holder to transport gasoline purchased by the license holder for resale, distribution, or use.

(b) A person holding an interstate trucker's license shall reproduce the license and carry a photocopy with each motor vehicle being operated into or from this state.

Sec. 162.110. LICENSES AND TRIP PERMITS; PERIODS OF VALIDITY. (a) The license issued to a supplier, permissive supplier, distributor, importer, exporter, terminal operator, blender, or motor fuel transporter is permanent and is valid during the period the license holder has in force and effect the required bond or security and furnishes timely reports and supplements as required, or until the license is surrendered by the holder or canceled by the comptroller. The comptroller shall cancel a license under this subsection if a purchase, sale, or use of gasoline has not been reported by the license holder during the previous nine months.

(b) The license issued to an aviation fuel dealer is permanent and is valid until the license is surrendered by the holder or canceled by the comptroller.

(c) The license issued to an interstate trucker is valid from the date of its issuance through December 31 of each calendar year or until the license is surrendered by the holder or canceled by the comptroller. The comptroller may renew the license for each ensuing calendar year if the license holder furnishes timely reports as required.

(d) A trip permit is valid for the period stated on the permit as determined by the comptroller.

(e) A license issued under this subchapter is not transferable.

Sec. 162.111. BOND AND OTHER SECURITY FOR TAXES. (a) The comptroller shall determine the amount of security required of a supplier, permissive supplier, distributor, exporter, importer, or blender, taking into consideration the amount of tax that has or is expected to become due from the person, any past history of the person as a license holder under this chapter or its predecessor, and the necessity to protect this state against the failure to pay the tax as the tax becomes due.

(b) If it is determined that the posting of security is necessary to protect this state, the comptroller may require a license holder to post a bond. A license holder shall post a bond equal to two times the maximum amount of tax that could accrue on tax-free gasoline purchased or acquired during a reporting period. The minimum bond is \$30,000. The maximum bond is \$600,000 unless

the comptroller believes there is undue risk of loss of tax revenues, in which event the comptroller may require one or more bonds or securities in a total amount exceeding \$600,000.

(c) A license holder who has filed a bond or other security under this subchapter is entitled, on request, to have the comptroller return, refund, or release the bond or security if in the judgment of the comptroller the person has for four consecutive years continuously complied with the conditions of the bond or other security filed under this subchapter. However, if the comptroller determines that the revenues of this state would be jeopardized by the return, refund, or release of the bond or security, the comptroller may elect not to return, refund, or release the bond or security and may reimpose a requirement of a bond or other security as the comptroller determines necessary to protect the revenues of this state.

(d) A bond must be a continuing instrument, must constitute a new and separate obligation in the penal sum named in the bond for each calendar year or portion of a year while the bond is in force, and must remain in effect until the surety on the bond is released and discharged.

(e) Instead of filing a surety bond, an applicant for a license may substitute the following security:

(1) cash in the form of United States currency in an amount equal to the required bond to be deposited in the suspense account of the state treasury;

(2) an assignment to the comptroller of a certificate of deposit in any bank or savings and loan association in this state that is a member of the Federal Deposit Insurance Corporation in an amount at least equal to the bond amount required; or

(3) an irrevocable letter of credit to the comptroller from any bank or savings and loan association in this state that is a member of the Federal Deposit Insurance Corporation in an amount of credit at least equal to the bond amount required.

(f) If the amount of an existing bond becomes insufficient or a security becomes unsatisfactory or unacceptable, the comptroller may require the filing of a new or of an additional bond or security.

(g) A surety bond or other form of security may not be released until it is determined by examination or audit that a tax, penalty, or interest liability does not exist. The cash or securities shall be released within 60 days after the comptroller determines that liability does not exist.

(h) The comptroller may use the cash or certificate of deposit security to satisfy a final determination of delinquent liability or a judgment secured in any action by this state to recover gasoline taxes, costs, penalties, and interest found to be due to this state by a person in whose behalf the cash or certificate security was deposited.

(i) A surety on a bond furnished by a license holder shall be released and discharged from liability to this state accruing on the bond on the 31st day after the date on which the surety files with the comptroller a written request to be released and discharged. The request does not relieve, release, or discharge the surety from a liability that already accrued or that accrues before the expiration of

the 30-day period. The comptroller, promptly on receipt of the request, shall notify the license holder who furnished the bond, and unless the license holder, before the expiration date of the existing security, files with the comptroller a new bond with a surety company duly authorized to do business under the laws of this state, or other authorized security, in the amount required by this section, the comptroller shall cancel the license in the manner provided by this chapter.

(j) The comptroller shall notify immediately the issuer of a letter of credit of a final determination of the license holder's delinquent liability or a judgment secured in any action by this state to recover gasoline taxes, costs, penalties, and interest found to be due this state by a license holder in whose behalf the letter of credit was issued. The letter of credit allowed as security for the remittance of taxes under this subchapter shall contain a statement that the issuer agrees to respond to the comptroller's notice of liability with amounts to satisfy the comptroller's delinquency claim against the license holder.

(k) A license holder may request an examination or audit to obtain release of the security when the license holder relinquishes the license or when the license holder wants to substitute one form of security for an existing one.

Sec. 162.112. LICENSE HOLDER STATUS LIST. (a) The comptroller, on or before December 20 of each year, shall make available to all license holders an alphabetical list of licensed suppliers, permissive suppliers, distributors, aviation fuel dealers, importers, exporters, blenders, and terminal operators. A supplemental list of additions and deletions shall be made available to the license holders each month. A current and effective license or the list furnished by the comptroller is evidence of the validity of the license until the comptroller notifies license holders of a change in the status of a license holder.

(b) A licensed supplier or permissive supplier who sells gasoline tax-free to a person whose supplier's or permissive supplier's license has been canceled or revoked under this chapter is liable for any tax due on gasoline sold after receiving notice of the cancellation or revocation.

(c) The comptroller shall notify all license holders under this chapter when a canceled or revoked license is subsequently reinstated and include in the notice the effective date of the reinstatement. Sales to the supplier or permissive supplier after the effective date of the reinstatement may be made tax-free.

Sec. 162.113. REMITTANCE OF TAX TO SUPPLIER OR PERMISSIVE SUPPLIER; ALLOWANCES. (a) Each licensed distributor and licensed importer shall remit to the supplier or permissive supplier, as applicable, the tax imposed by Section 162.101 for gasoline removed at a terminal rack. A licensed distributor or licensed importer may elect to defer payment of the tax to the supplier or permissive supplier until two days before the date the supplier or permissive supplier is required to remit the tax to this state. The distributor or importer shall pay the taxes by electronic funds transfer.

(b) A supplier, a permissive supplier, or its representative that conducts electronic transactions to draft an account of a licensed distributor or licensed importer for the payment of taxes due under this section shall provide at least two

days' notice using an electronic means of the amount to be drafted from the account of the licensed distributor or licensed importer and the number of the account to be drafted from.

(c) If the supplier or permissive supplier cannot secure from the licensed distributor or licensed importer payment of taxes due for gasoline removed from the terminal during the previous reporting period and the supplier elects to take a credit against a subsequent payment of gasoline tax to this state for the taxes not remitted to the supplier or permissive supplier by the licensed distributor or licensed importer, the supplier or permissive supplier shall notify the comptroller of the licensed distributor's or licensed importer's failure to remit tax in conjunction with the report requesting a credit.

(d) The supplier or permissive supplier has the right, after notifying the comptroller of the licensed distributor's or licensed importer's failure to remit taxes under this section, to terminate the ability of the licensed distributor or licensed importer to defer the payment of gasoline tax. The supplier or permissive supplier shall reinstate without delay the right of the licensed distributor or licensed importer to defer the payment of gasoline tax after the comptroller provides to the supplier or permissive supplier notice that the licensed distributor or licensed importer is in good standing with the comptroller for the purposes of the gasoline tax imposed under this subchapter.

(e) A licensed distributor or licensed importer who makes timely payments of the gasoline tax imposed under this subchapter is entitled to retain an amount equal to 1.75 percent of the total taxes to be paid to the supplier or permissive supplier to cover administrative expenses.

(f) The license of a distributor, exporter, or importer who fails to pay the full amount of tax required by this subchapter is subject to cancellation as provided by Section 162.005.

Sec. 162.114. RETURNS AND PAYMENTS. (a) Except as provided by Subsection (b), each person who is liable for the tax imposed by this subchapter, a terminal operator, and a licensed distributor shall file a return on or before the 25th day of the month following the end of each calendar month.

(b) A motor fuel transporter and an interstate trucker shall file a return on or before the 25th day of the month following the end of the calendar quarter.

(c) The return required by this section shall be accompanied by a payment for the amount of tax reported due.

(d) An aviation fuel dealer is not required to file a return.

Sec. 162.115. RECORDS. (a) A supplier and permissive supplier shall keep:

(1) a record showing the number of gallons of:

(A) all gasoline inventories on hand at the first of each month;

(B) all gasoline refined, compounded, or blended;

(C) all gasoline purchased or received, showing the name of the seller and the date of each purchase or receipt;

(D) all gasoline sold, distributed, or used, showing the name of the purchaser and the date of the sale, distribution, or use; and

(E) all gasoline lost by fire, theft, or accident; and

(2) an itemized statement showing by load the number of gallons of all gasoline:

(A) received during the preceding calendar month for export and the location of the loading;

(B) exported from this state by destination state or country; and

(C) imported during the preceding calendar month by state or country of origin.

(b) A distributor shall keep:

(1) a record showing the number of gallons of:

(A) all gasoline inventories on hand at the first of each month;

(B) all gasoline blended;

(C) all gasoline purchased or received, showing the name of the seller and the date of each purchase or receipt;

(D) all gasoline sold, distributed, or used, showing the name of the purchaser and the date of the sale, distribution, or use; and

(E) all gasoline lost by fire, theft, or accident;

(2) an itemized statement showing by load the number of gallons of all gasoline:

(A) received during the preceding calendar month for export and the location of the loading;

(B) exported from this state by destination state or country; and

(C) imported during the preceding calendar month by state or country of origin; and

(3) for gasoline exported from this state, proof of payment of tax to the destination state in a form acceptable to the comptroller.

(c) An importer shall keep:

(1) a record showing the number of gallons of:

(A) all gasoline inventories on hand at the first of each month;

(B) all gasoline compounded or blended;

(C) all gasoline purchased or received, showing the name of the seller and the date of each purchase or receipt;

(D) all gasoline sold, distributed, or used, showing the name of the purchaser and the date of the sale, distribution, or use; and

(E) all gasoline lost by fire, theft, or accident; and

(2) an itemized statement showing by load the number of gallons of all gasoline:

(A) received during the preceding calendar month for export and the location of the loading;

(B) exported from this state by destination state or country; and

(C) imported during the preceding calendar month by state or country of origin.

(d) An exporter shall keep:

(1) a record showing the number of gallons of:

(A) all gasoline inventories on hand at the first of each month;

(B) all gasoline compounded or blended;

(C) all gasoline purchased or received, showing the name of the seller and the date of each purchase or receipt;

(D) all gasoline sold, distributed, or used, showing the name of the purchaser and the date of the sale or use; and

(E) all gasoline lost by fire, theft, or accident;

(2) an itemized statement showing by load the number of gallons of all gasoline:

(A) received during the preceding calendar month for export and the location of the loading; and

(B) exported from this state by destination state or country;

(3) proof of payment of tax to the destination state in a form acceptable to the comptroller; and

(4) if an exemption under Section 162.104(a)(4)(B) is claimed, proof of payment of tax to the destination state or proof that the transaction was exempt in the destination state, in a form acceptable to the comptroller.

(e) A blender shall keep a record showing the number of gallons of:

(1) all gasoline inventories on hand at the first of each month;

(2) all gasoline compounded or blended;

(3) all gasoline purchased or received, showing the name of the seller and the date of each purchase or receipt;

(4) all gasoline sold, distributed, or used, showing the name of the purchaser and the date of the sale or use; and

(5) all gasoline lost by fire, theft, or accident.

(f) A terminal operator shall keep:

(1) a record showing the number of gallons of:

(A) all gasoline inventories on hand at the first of each month, including the name and license number of each owner and the amount of gasoline held for each owner;

(B) all gasoline received, showing the name of the seller and the date of each purchase or receipt;

(C) all gasoline sold, distributed, or used, showing the name of the purchaser and the date of the sale, distribution, or use; and

(D) all gasoline lost by fire, theft, or accident; and

(2) an itemized statement showing by load the number of gallons of all gasoline:

(A) received during the preceding calendar month for export and the location of the loading;

(B) exported from this state by destination state or country; and

(C) imported during the preceding calendar month by state or country of origin.

(g) A motor fuel transporter shall keep a complete and separate record of each intrastate and interstate transportation of gasoline, showing:

(1) the date of transportation;

(2) the name of the consignor and consignee;

(3) the means of transportation;

(4) the quantity and kind of gasoline transported;

(5) full data concerning the diversion of shipments, including the number of gallons diverted from interstate to intrastate and intrastate to interstate commerce; and

(6) the points of origin and destination, the number of gallons shipped or transported, the date, the consignee and the consignor, and the kind of gasoline that has been diverted.

(h) A dealer shall keep a record showing the number of gallons of:

(1) gasoline inventories on hand at the first of each month;

(2) all gasoline purchased or received, showing the name of the seller and the date of each purchase or receipt;

(3) all gasoline sold or used, showing the date of the sale or use; and

(4) all gasoline lost by fire, theft, or accident.

(i) An interstate trucker shall keep a record of:

(1) the total miles traveled in all states by all vehicles traveling to or from this state and the total quantity of gasoline consumed in those vehicles; and

(2) the total miles traveled in this state and the total quantity of gasoline purchased and delivered into the fuel supply tanks of motor vehicles in this state.

(j) An aviation fuel dealer shall keep a record showing the number of gallons of:

(1) all gasoline inventories on hand at the first of each month;

(2) all gasoline purchased or received, showing the name of the seller and the date of each purchase or receipt;

(3) all gasoline sold or used in aircraft or aircraft servicing equipment;
and

(4) all gasoline lost by fire, theft, or accident.

(k) The records of an aviation fuel dealer made under Subsection (j)(3) must show:

(1) the name of the purchaser or user of gasoline;

(2) the date of the sale or use of gasoline; and

(3) the registration or "N" number of the airplane or a description or number of the aircraft or a description or number of the aircraft servicing equipment in which gasoline is used.

(l) The comptroller may require selective schedules from a supplier, permissive supplier, distributor, importer, exporter, blender, terminal operator, motor fuel transporter, dealer, aviation fuel dealer, and interstate trucker for any purchase, sale, or delivery of gasoline if the schedules are not inconsistent with the requirements of this chapter.

(m) The records required by this section must be kept until the fourth anniversary of the date they are created and are open to inspection at all times by the comptroller and the attorney general.

Sec. 162.116. INFORMATION REQUIRED ON SUPPLIER'S AND PERMISSIVE SUPPLIER'S RETURN; CREDITS AND ALLOWANCES. (a) The monthly return and supplements of each supplier and permissive supplier shall contain for the period covered by the return:

(1) the number of net gallons of gasoline received by the supplier or permissive supplier during the month, sorted by product code, seller, point of origin, destination state, carrier, and receipt date;

(2) the number of net gallons of gasoline removed at a terminal rack during the month from the account of the supplier, sorted by product code, person receiving the gasoline, terminal code, and carrier;

(3) the number of net gallons of gasoline removed during the month for export, sorted by product code, person receiving the gasoline, terminal code, destination state, and carrier;

(4) the number of net gallons of gasoline removed during the month from a terminal located in another state for conveyance to this state, as indicated on the shipping document for the gasoline, sorted by product code, person receiving the gasoline, terminal code, and carrier;

(5) the number of net gallons of gasoline the supplier or permissive supplier sold during the month in transactions exempt under Section 162.104, sorted by product code, carrier, purchaser, and terminal code;

(6) the number of net gallons of gasoline sold in the bulk transfer/terminal system in this state to any person not holding a supplier's or permissive supplier's license; and

(7) any other information required by the comptroller.

(b) A supplier or permissive supplier that timely pays the tax to this state may deduct from the amount of tax due a collection allowance equal to two percent of the amount of tax payable to this state.

(c) A supplier or permissive supplier may take a credit for any taxes that were not remitted in a previous period to the supplier or permissive supplier by a licensed distributor or licensed importer as required by Section 162.113. The supplier or permissive supplier is eligible to take the credit if the comptroller is notified of the default within 60 days after the default occurs. If a license holder pays to a supplier or permissive supplier the tax owed, but the payment occurs after the supplier or permissive supplier has taken a credit on its return, the supplier or permissive supplier shall remit the payment to the comptroller with the next monthly return after receipt of the tax, plus a penalty of 10 percent of the amount of unpaid taxes and interest at the rate provided by Section 111.060 beginning on the date the credit was taken.

(d) For purposes of Subsection (c), all payments or credits in reduction of a customer's account must be applied ratably between motor fuels and other goods sold to the customer, and the credit allowed will be the tax on the number of gallons represented by the motor fuel portion of the credit.

Sec. 162.117. DUTIES OF SUPPLIER OR PERMISSIVE SUPPLIER. (a) A supplier or permissive supplier who receives or collects tax holds the amount received or collected in trust for the benefit of this state and has a fiduciary duty to remit to the comptroller the amount of tax received or collected.

(b) A supplier or permissive supplier shall furnish the purchaser with an invoice, bill of lading, or other documentation as evidence of the number of gallons received by the purchaser.

(c) A supplier or permissive supplier who receives a payment of tax may not apply the payment of tax to a debt that the person making the payment owes for gasoline purchased from the supplier or permissive supplier.

Sec. 162.118. INFORMATION REQUIRED ON DISTRIBUTOR'S RETURN. The monthly return and supplements of each distributor shall contain for the period covered by the return:

(1) the number of net gallons of gasoline received by the distributor during the month, sorted by product code, seller, point of origin, destination state, carrier, and receipt date;

(2) the number of net gallons of gasoline removed at a terminal rack by the distributor during the month, sorted by product code, seller, terminal code, and carrier;

(3) the number of net gallons of gasoline removed by the distributor during the month for export, sorted by product code, terminal code, bulk plant address, destination state, and carrier;

(4) the number of net gallons of gasoline removed by the distributor during the month from a terminal located in another state for conveyance to this state, as indicated on the shipping document for the gasoline, sorted by product code, seller, terminal code, bulk plant address, and carrier;

(5) the number of net gallons of gasoline the distributor sold during the month in transactions exempt under Section 162.104, sorted by product code and purchaser; and

(6) any other information required by the comptroller.

Sec. 162.119. INFORMATION REQUIRED ON IMPORTER'S RETURN; ALLOWANCES. (a) The monthly return and supplements of an importer shall contain for the period covered by the return:

(1) the number of net gallons of imported gasoline acquired from a supplier or permissive supplier who collected the tax due to this state on the gasoline;

(2) the number of net gallons of imported gasoline acquired from a person who did not collect the tax due to this state on the gasoline, listed by source state, person, and terminal;

(3) the number of net gallons of imported gasoline acquired from a bulk plant outside this state, listed by bulk plant name, address, and product code; and

(4) any other information required by the comptroller.

(b) An importer of gasoline that timely files a return and payment may deduct from the amount of tax payable with the return a collection allowance equal to two percent of the amount of tax payable to this state.

Sec. 162.120. INFORMATION REQUIRED ON TERMINAL OPERATOR'S RETURN. (a) A terminal operator shall file with the comptroller a monthly information return and supplement showing the amount of gasoline received and removed from the terminal during the month. The return shall also contain the following summary information:

(1) the beginning and ending inventory that relates to the applicable reporting month;

(2) the number of net gallons of gasoline received in inventory at the terminal during the month;

(3) the number of net gallons of gasoline removed from inventory at the terminal during the month; and

(4) any other summary information required by the comptroller.

(b) The comptroller may accept the Federal ExSTARS terminal operator report provided to the Internal Revenue Service instead of the required state terminal operator report.

Sec. 162.121. INFORMATION REQUIRED ON MOTOR FUEL TRANSPORTER'S RETURN. The quarterly return and supplements of a motor fuel transporter shall contain for the period covered by the return:

(1) the name, license number, and terminal control number of each person or terminal from whom the transporter received gasoline outside this state for delivery in this state, the gross gallons of gasoline received, the date the gasoline was received, the product code, and the name and license number of the purchaser of the gasoline;

(2) the name, license number, and terminal control number of each person or terminal from whom the transporter received gasoline in this state for delivery outside this state, the gross gallons of gasoline delivered, the date the gasoline was delivered, the product code, and the destination state of the gasoline; and

(3) any other information required by the comptroller.

Sec. 162.122. INFORMATION REQUIRED ON EXPORTER'S RETURN AND PAYMENT OF TAX ON EXPORTS. The monthly return and supplements of an exporter shall contain for the period covered by the return:

(1) the number of net gallons of gasoline acquired from a supplier and exported during the month, including supplier name, terminal control number, and product code;

(2) the number of net gallons of gasoline acquired from a bulk plant and exported during the month, including bulk plant name and product code;

(3) the destination state of the gasoline exported during the month; and

(4) any other information required by the comptroller.

Sec. 162.123. INFORMATION REQUIRED ON BLENDER'S RETURN. The monthly return and supplements of each blender shall contain for the period covered by the return:

(1) the number of net gallons of gasoline received by the blender during the month, sorted by product code, seller, point of origin, carrier, and receipt date;

(2) the number of net gallons of product blended with gasoline during the month, sorted by product code, type of blending agent if no product code exists, seller, and carrier;

(3) the number of net gallons of blended gasoline sold during the month and the license number or name and address of the entity receiving the blended gasoline; and

(4) any other information required by the comptroller.

Sec. 162.124. INFORMATION REQUIRED ON INTERSTATE TRUCKER'S RETURN. The quarterly return and supplements of each interstate trucker shall contain for the period covered by the return:

(1) the total miles traveled in all states by all vehicles traveling to or from this state and the total quantity of gasoline consumed in those vehicles;

(2) the total miles traveled in this state and the total quantity of gasoline purchased and delivered into the fuel supply tanks of motor vehicles in this state; and

(3) any other information required by the comptroller.

Sec. 162.125. REFUND OR CREDIT FOR CERTAIN TAXES PAID. (a) A license holder may take a credit on a return for the period in which the sale occurred if the license holder paid tax on the purchase of gasoline and subsequently resells the gasoline without collecting the tax to:

(1) the United States government for its exclusive use, provided that a credit is not allowed for gasoline used by a person operating under contract with the United States;

(2) a public school district in this state for the district's exclusive use;

(3) an exporter licensed under this subchapter if the seller is a licensed supplier or distributor and the exporter subsequently exports the gasoline to another state;

(4) a licensed aviation fuel dealer if the seller is a licensed distributor;

or

(5) a commercial transportation company that provides public school transportation services to a school district under Section 34.008, Education Code, and that uses the gasoline exclusively to provide those services.

(b) For truck or railcar movements between licensed suppliers or licensed permissive suppliers in which the gasoline removed from the first terminal comes to rest in the second terminal and tax was paid on the first removal, the license holder who receives the gasoline in the second terminal may take the credit.

(c) A license holder may take a credit on a return for the period in which the purchase occurred, and a person who does not hold a license under this subchapter, other than a license as an aviation fuel dealer, may file a refund claim with the comptroller if the license holder or person paid tax on gasoline and the license holder or person:

(1) is the United States government and the gasoline is for its exclusive use, provided that a refund is not allowed for gasoline used by a license holder or person operating under a contract with the United States;

(2) is a public school district in this state and the gasoline is for the district's exclusive use;

(3) is a commercial transportation company that provides public school transportation services to a school district under Section 34.008, Education Code, and the gasoline is used exclusively to provide those services;

(4) uses the gasoline in off-highway equipment, in stationary engines, or for other nonhighway purposes and not in a motor vehicle operated or intended to be operated on the public highways;

(5) uses the gasoline in a motor vehicle that is operated exclusively off the public highways, except for incidental travel on the public highways as determined by the comptroller, provided that a refund may not be allowed for the portion used in the incidental highway travel; or

(6) is a licensed aviation fuel dealer who delivers the gasoline into the fuel supply tanks of aircraft or aircraft servicing equipment.

(d) A license holder may take a credit on a return for the period in which the purchase occurred if the license holder paid tax on gasoline and the license holder is a licensed interstate trucker who uses the gasoline outside this state in commercial vehicles operated under an interstate trucker license, provided that a credit or refund claimed under this subsection must be taken or filed within the limitation period provided by Section 162.128.

(e) A license holder may take credit on a return for the period in which the purchase occurred, and a person who does not hold a license may file a refund claim with the comptroller, if the license holder or person paid tax on gasoline and the gasoline is used in this state by auxiliary power units or power take-off equipment on any motor vehicle, if that use 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 or idle 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 credit or refund may not be allowed for the gasoline tax paid on any portion of the gasoline that is used for that purpose. A credit or refund may not be allowed for the gasoline tax paid on that portion of the gasoline used for idling.

(f) A person who paid tax on the purchase of gasoline may claim a credit or seek a refund with the comptroller if 100 or more gallons of gasoline is subsequently exported or lost by fire, theft, or accident. A credit or refund claimed under this subsection must be taken or filed within the limitation period provided by Section 162.128.

(g) A transit company that paid tax on the purchase of gasoline may seek a refund with the comptroller in an amount equal to one cent per gallon for gasoline used in transit vehicles.

(h) The right to receive a refund or take a credit under this section is not assignable.

(i) The comptroller may adopt rules specifying procedures and requirements that must be followed to claim a credit or refund under this section.

Sec. 162.126. REFUND FOR BAD DEBTS; CREDIT FOR NONPAYMENT. (a) A licensed distributor may file a refund claim with the comptroller if:

(1) the distributor has paid the taxes imposed by this subchapter on gasoline sold on account;

(2) the distributor determines that the account is uncollectible and worthless; and

(3) the account is written off as a bad debt on the accounting books of the distributor.

(b) A licensed supplier or permissive supplier may take a credit on the monthly report to be filed with the comptroller if:

(1) on a previous report, the supplier or permissive supplier paid the taxes imposed by this subchapter on gasoline sold on account;

(2) the person to whom the supplier or permissive supplier sold the gasoline has not remitted the tax to the supplier or permissive supplier; and

(3) at the time of the transaction, the person to whom the supplier or permissive supplier sold the gasoline held a license issued by the comptroller.

(c) The return on which the refund is claimed or the credit is taken must state, if applicable, the license number of the person whose account has been written off as a bad debt, or who failed to remit the tax, and any other information required by the comptroller. The amount of the refund or credit that may be claimed under Subsection (a) or (b) may equal but may not exceed the amount of taxes paid on the gasoline to which the written-off account or unpaid taxes apply.

(d) If, after a refund is received under Subsection (a) or a credit is taken under Subsection (b), the account on which the refund or credit was based is paid, or if the comptroller otherwise determines that the refund or credit was not authorized by Subsection (a) or (b), the unpaid taxes shall be paid by the distributor receiving the refund or the supplier or permissive supplier taking the credit, plus a penalty of 10 percent of the amount of the unpaid taxes and interest at the rate provided by Section 111.060 beginning on the day the refund was issued.

(e) This section does not apply to a sale of gasoline that is delivered into the fuel supply tank of a motor vehicle or motorboat and for which payment is made through the use and acceptance of a credit card.

(f) A refund under this section must be claimed at the time the account is written off as a bad debt, but may only be claimed before the expiration of the applicable limitation period as provided by Chapter 111.

(g) The comptroller may take action against a person in relation to whom a distributor, supplier, or permissive supplier has made a refund claim or taken a credit for collection of the tax owed and for penalty and interest as provided by Chapter 111.

Sec. 162.127. CLAIMS FOR REFUNDS. (a) A refund claim must be filed on a form provided by the comptroller, be supported by the original invoice issued by the seller, and contain:

(1) the stamped or preprinted name and address of the seller;

(2) the name of the purchaser;

(3) the date of delivery of the gasoline;

(4) the date of the issuance of the invoice, if different from the date of fuel delivery;

(5) the number of gallons of gasoline delivered;

(6) the amount of tax, either separately stated from the selling price or stated with a notation that the selling price includes the tax; and

(7) the type of vehicle or equipment, such as a motorboat, railway engine, motor vehicle, off-highway vehicle, or refrigeration unit or stationary engine, into which the fuel is delivered.

(b) The purchaser must obtain the original invoice from the seller of the gasoline not later than the 30th day after the date the gasoline is delivered to the purchaser. If the delivery of gasoline is made through an automated method in which the purchase is automatically applied to the purchaser's account, one invoice may be issued at the time of billing that covers multiple purchases made during a 30-day billing cycle.

(c) A distribution log filed with the comptroller to support the number of gallons of gasoline removed from a bulk user's own bulk storage must contain the name and address of the bulk user making the delivery stamped or preprinted on it and for each individual delivery from the bulk storage:

(1) the date of delivery;

(2) the number of gallons of gasoline delivered;

(3) the signature of the bulk user; and

(4) the type or description of off-highway equipment into which the gasoline was delivered, or the type of licensed motor vehicle into which the gasoline was delivered, including the state highway license plate number or vehicle identification number and odometer or hubmeter reading.

(d) A distributor or person who does not hold a license who files a valid refund claim with the comptroller shall be paid by a warrant issued by the comptroller. For purposes of this section, a distributor meets the requirement of filing a valid refund claim if the distributor designates the gallons of gasoline sold or used that are the subject of the refund claim on the monthly report submitted by the distributor to the comptroller.

(e) A person who files a claim for a tax refund on gasoline used for a purpose for which a tax refund is not authorized or who files an invoice supporting a refund claim on which the date, figures, or any material information has been falsified or altered forfeits the person's right to the entire amount of the refund claim filed unless the claimant provides proof satisfactory to the comptroller that the incorrect refund claim filed was due to a clerical or mathematical calculation error.

(f) After examination of the refund claim, the comptroller, before issuing a refund warrant, shall deduct from the amount of the refund the two percent deducted originally by the license holder on the first sale or distribution of the gasoline.

Sec. 162.128. WHEN GASOLINE TAX REFUND OR CREDIT MAY BE FILED. (a) Except as otherwise provided by this section, a claim for a refund must be filed with the comptroller before the first anniversary of the first day of the calendar month following the purchase, use, delivery, or export, or loss by fire, theft, or accident of gasoline, whichever period expires latest.

(b) If the amount of credit that an interstate trucker is entitled to take under Section 162.125 exceeds the amount of tax due on that reporting period, the excess credit amount may be claimed on any of three successive quarterly returns following the period in which the credit was established, or the interstate trucker

may seek a refund from the comptroller on or before the due date of the third successive quarterly return following the period in which the credit was established. A credit that is not claimed within the period prescribed by this subsection expires.

(c) If the comptroller assesses a supplier or permissive supplier for a tax-free sale that is taxable, and the supplier or permissive supplier subsequently collects the tax from the purchaser, the purchaser may file a refund claim before the first anniversary of the date the supplier's or permissive supplier's deficiency assessment becomes final if the purchaser used the gasoline in an exempt manner.

(d) A supplier or permissive supplier that determines taxes were erroneously reported and remitted or that paid more taxes than were due this state because of a mistake of fact or law may take a credit on the monthly tax report on which the error has occurred and tax payment made to the comptroller. The credit must be taken before the expiration of the applicable period of limitation as provided by Chapter 111.

[Sections 162.129-162.200 reserved for expansion]

SUBCHAPTER C. DIESEL FUEL TAX

Sec. 162.201. POINT OF IMPOSITION OF DIESEL FUEL TAX. (a) A tax is imposed on the removal of diesel fuel from the terminal using the terminal rack other than by bulk transfer. The supplier or permissive supplier shall collect the tax imposed by this subchapter from the person who orders the withdrawal at the terminal rack.

(b) A tax is imposed at the time diesel fuel is imported into this state, other than by a bulk transfer, for delivery to a destination in this state. The permissive supplier shall collect the tax imposed by this subchapter from the person who imports the diesel fuel into this state. If the seller is not a permissive supplier, the person who imports the diesel fuel into this state shall pay the tax.

(c) A tax is imposed on the sale or transfer of diesel fuel in the bulk transfer/terminal system in this state by a supplier to a person who does not hold a supplier's license. The supplier shall collect the tax imposed by this subchapter from the person who orders the sale or transfer in the bulk transfer/terminal system.

(d) A tax is imposed on diesel fuel brought into this state in the motor fuel supply tank or tanks of a motor vehicle operated by a person required to be licensed as an interstate trucker.

(e) A tax is imposed on the blending of diesel fuel at the point blended diesel fuel is made in this state outside the bulk transfer/terminal system. The blender shall pay the tax. The number of gallons of blended diesel fuel on which the tax is imposed is equal to the difference between the number of gallons of blended fuel made and the number of gallons of previously taxed diesel fuel used to make the blended fuel.

(f) The terminal operator in this state is considered a supplier for the purpose of the tax imposed under this subchapter unless at the time of removal:

(1) the terminal operator has a terminal operator's license issued for the facility from which the diesel fuel is withdrawn;

(2) the terminal operator verifies that the person who removes the diesel fuel has a supplier's license; and

(3) the terminal operator does not have a reason to believe that the supplier's license is not valid.

(g) In each subsequent sale of diesel fuel on which the tax has been paid, the amount of the tax shall be added to the selling price so that the tax is paid ultimately by the person using or consuming the diesel fuel. Diesel fuel is considered to be used when it is delivered into a fuel supply tank.

Sec. 162.202. TAX RATE. The diesel fuel tax rate is 20 cents for each net gallon or fractional part on which the tax is imposed under Section 162.201.

Sec. 162.203. BACKUP TAX; LIABILITY. (a) A backup tax is imposed at the rate prescribed by Section 162.202 on:

(1) a person who obtains a refund of tax on diesel fuel by claiming the diesel fuel was used for an off-highway purpose, but actually uses the diesel fuel to operate a motor vehicle on a public highway;

(2) a person who operates a motor vehicle on a public highway using diesel fuel on which tax has not been paid; and

(3) a person who sells to the ultimate consumer diesel fuel on which a tax has not been paid and who knew or had reason to know that the diesel fuel would be used for a taxable purpose.

(b) If the motor vehicle described by Subsection (a)(2) is owned or leased by a person other than the operator, the tax shall be paid by either the operator or the motor vehicle's owner or lessee.

(c) The tax imposed under Subsection (a)(3) is also imposed on the ultimate consumer.

(d) A person who sells diesel fuel in this state on which tax has not been paid for any purpose other than a purpose exempt under Section 162.204 shall at the time of sale collect the tax from the purchaser or recipient of diesel fuel in addition to the selling price and is liable to this state for the taxes collected at the time and in the manner provided by this chapter.

(e) The tax liability imposed by this section is in addition to any penalty imposed under this chapter.

Sec. 162.204. EXEMPTIONS. (a) The tax imposed by this subchapter does not apply to:

(1) diesel fuel sold to the United States for its exclusive use, provided that the exemption does not apply to diesel fuel sold or delivered to a person operating under a contract with the United States;

(2) diesel fuel sold to a public school district in this state for the district's exclusive use;

(3) diesel fuel sold to a commercial transportation company that provides public school transportation services to a school district under Section 34.008, Education Code, and that uses the diesel fuel only to provide those services;

(4) diesel fuel exported by either a licensed supplier or a licensed exporter from this state to any other state, provided that:

(A) for diesel fuel in a situation described by Subsection (d), the bill of lading indicates the destination state and the supplier collects the destination state tax; or

(B) for diesel fuel in a situation described by Subsection (e), the bill of lading indicates the destination state, the diesel fuel is subsequently exported, and the exporter is licensed in the destination state to pay that state's tax and has an exporter's license issued under this subchapter;

(5) diesel fuel moved by truck or railcar between licensed suppliers or licensed permissive suppliers and in which the diesel fuel removed from the first terminal comes to rest in the second terminal, provided that the removal from the second terminal rack is subject to the tax imposed by this subchapter;

(6) diesel fuel delivered or sold into a storage facility of a licensed aviation fuel dealer from which the diesel fuel will be delivered solely into the fuel supply tanks of aircraft or aircraft servicing equipment, or sold from one licensed aviation fuel dealer to another licensed aviation fuel dealer who will deliver the diesel fuel exclusively into the fuel supply tanks of aircraft or aircraft servicing equipment;

(7) diesel fuel exported to a foreign country if the bill of lading indicates the foreign destination and the fuel is actually exported to the foreign country;

(8) dyed diesel fuel sold or delivered by a supplier to another supplier and dyed diesel fuel sold or delivered by a supplier or distributor into the bulk storage facility of a dyed diesel fuel bonded user or to a purchaser who provides a signed statement as provided by Section 162.206;

(9) the volume of water, fuel ethanol, biodiesel, or mixtures thereof that are blended together with taxable diesel fuel when the finished product sold or used is clearly identified on the retail pump, storage tank, and sales invoice as a combination of diesel fuel and water, fuel ethanol, biodiesel, or mixtures thereof;

(10) dyed diesel fuel sold by a supplier or permissive supplier to a distributor, or by a distributor to another distributor;

(11) dyed diesel fuel delivered by a license holder into the fuel supply tanks of railway engines, motorboats, or refrigeration units or other stationary equipment powered by a separate motor from a separate fuel supply tank;

(12) dyed kerosene when delivered by a supplier, distributor, or importer into a storage facility at a retail business from which all deliveries are exclusively for heating, cooking, lighting, or similar nonhighway use; or

(13) diesel fuel used by a person, other than a political subdivision, who owns, controls, operates, or manages a commercial motor vehicle as defined by Section 548.001, Transportation Code, if the fuel:

(A) is delivered exclusively into the fuel supply tank of the commercial motor vehicle; and

(B) is used exclusively to transport passengers for compensation or hire between points in this state on a fixed route or schedule.

(b) The exemption provided by Subsection (a)(4) does not apply to diesel fuel that is transported and delivered outside this state in the motor fuel supply tank of a motor vehicle other than an interstate trucker.

(c) If an exporter described by Subsection (a)(4)(B) does not have an exporter's license issued under this subchapter, the supplier must collect the tax imposed under this subchapter.

(d) Subsection (a)(4)(A) applies only if the destination state recognizes, by agreement with this state or by statute or rule, a supplier in this state as a valid taxpayer for the motor fuel being exported to that state from this state. The comptroller shall publish a list that specifies for each state, other than this state, whether that state does or does not qualify under this subsection.

(e) Subsection (a)(4)(B) applies only until the date the destination state recognizes, by agreement with this state or by statute, the out-of-state supplier as a valid taxpayer for the motor fuel being exported to that state from this state, or until January 1, 2006, whichever date is earlier.

(f) The exemption provided by Subsection (a)(4)(A) does not apply to a sale by a distributor.

Sec. 162.205. PERSONS REQUIRED TO BE LICENSED. (a) A person shall obtain the appropriate license or licenses issued by the comptroller before conducting the activities of:

(1) a supplier, who may also act as a distributor, importer, exporter, blender, motor fuel transporter, or aviation fuel dealer without securing a separate license, but who is subject to all other conditions, requirements, and liabilities imposed on those license holders;

(2) a permissive supplier, who may also act as a distributor, importer, exporter, blender, motor fuel transporter, or aviation fuel dealer without securing a separate license but who is subject to all other conditions, requirements, and liabilities imposed on those license holders;

(3) a distributor, who may also act as an importer, exporter, blender, or motor fuel transporter without securing a separate license, but who is subject to all other conditions, requirements, and liabilities imposed on those license holders;

(4) an importer, who may also act as an exporter, blender, or motor fuel transporter without securing a separate license, but who is subject to all other conditions, requirements, and liabilities imposed on those license holders;

(5) a terminal operator;

(6) an exporter;

(7) a blender;

(8) a motor fuel transporter;

(9) an aviation fuel dealer;

(10) an interstate trucker; or

(11) a dyed diesel fuel bonded user.

(b) A person must obtain a license as a dyed diesel fuel bonded user to purchase dyed diesel fuel in amounts that exceed the limitations prescribed by Section 162.206(c). This subsection does not affect the right of a purchaser to purchase not more than 10,000 gallons of dyed diesel fuel each month for the purchaser's own use using a signed statement under Section 162.206.

Sec. 162.206. STATEMENT FOR PURCHASE OF DYED DIESEL FUEL. (a) The first removal of diesel fuel from a terminal in this state is taxable, except the sale of dyed diesel fuel may be made without collecting the tax if the purchaser furnishes to a licensed supplier or distributor a signed statement that includes an end user number issued by the comptroller. A person who wants to use a signed statement to purchase dyed diesel fuel must apply to the comptroller for an end user number to be used in conjunction with a signed statement. A licensed supplier or distributor may not make a tax-free sale of any diesel fuel to a purchaser using a signed statement unless the purchaser has an end user number issued by the comptroller under this section. A taxable sale or removal of dyed diesel fuel may not be made under this chapter, except as prescribed by Subsection (d).

(b) A sale of dyed diesel fuel may be made without collecting the tax if the purchaser furnishes to a licensed supplier or distributor a signed statement, including an end user number issued by the comptroller, that stipulates that:

(1) all of the dyed diesel fuel purchased on the signed statement will be consumed by the purchaser and will not be resold; and

(2) none of the dyed diesel fuel purchased on the signed statement will be delivered or permitted to be delivered into the fuel supply tank of a motor vehicle operated on the public highways of this state.

(c) A person may not make a tax-free purchase and a licensed supplier or distributor may not make a tax-free sale to a purchaser of any dyed diesel fuel under this section using a signed statement:

(1) for the purchase or the sale of more than 7,400 gallons of dyed diesel fuel in a single delivery; or

(2) in a calendar month in which the person has previously purchased from all sources or in which the licensed supplier has previously sold to that purchaser more than:

(A) 10,000 gallons of dyed diesel fuel;

(B) 25,000 gallons of dyed diesel fuel if the purchaser stipulates in the signed statement that all of the fuel will be consumed by the purchaser in the original production of, or to increase the production of, oil or gas and furnishes the supplier with a letter of exception issued by the comptroller; or

(C) 25,000 gallons of dyed diesel fuel if the purchaser stipulates in the signed statement that all of the fuel will be consumed by the purchaser in agricultural off-highway equipment.

(d) Any gallons purchased or sold in excess of the limitations prescribed by Subsection (c) constitute a taxable purchase or sale. The purchaser paying the tax on dyed diesel fuel in excess of the limitations prescribed by Subsection (c) may claim a refund of the tax paid on any dyed diesel fuel used for nonhighway purposes under Section 162.227. A purchaser that exceeds the limitations prescribed by Subsection (c) shall be required to obtain a dyed diesel fuel bonded user license.

(e) The signed statement and end user number from the purchaser relieves the licensed supplier or distributor from the burden of proof that the sale of dyed diesel fuel for a nonhighway purpose was not taxable to the purchaser and remains in effect unless:

(1) the statement is revoked in writing by the purchaser or licensed supplier or distributor;

(2) the comptroller notifies the licensed supplier or distributor in writing that the purchaser may no longer make tax-free purchases; or

(3) the licensed supplier or distributor is put on notice by making taxable sales of dyed diesel fuel to a purchaser who has previously furnished a signed statement to the licensed supplier or distributor.

(f) For purposes of Subsection (e)(3), a licensed supplier or distributor is not put on notice when taxable sales of dyed diesel fuel are made in accordance with Subsection (d).

(g) The statement must be signed by the purchaser or the purchaser's representative.

(h) The comptroller by rule may allow separate operating divisions of a corporation to give separate signed statements as if the divisions were different legal entities.

(i) The comptroller may adopt necessary forms and rules to administer and enforce this section.

(j) A taxable use of any part of the dyed diesel fuel purchased under a signed statement shall, in addition to application of any criminal penalty, forfeit the right of the person to purchase dyed diesel fuel tax-free for a period of one year from the date of the offense. Any tax, interest, and penalty found to be due through false or erroneous execution or continuance of a promissory statement by the purchaser, if assessed to the licensed supplier or distributor, is a debt of the purchaser to the licensed supplier or distributor until paid and is recoverable at law in the same manner as the purchase price of the fuel. The person may, however, claim a refund of the tax paid on any dyed diesel fuel used for nonhighway purposes under Section 162.227.

Sec. 162.207. TRIP PERMITS. (a) Instead of an annual interstate trucker's license, a person bringing a motor vehicle described by Section 162.001(36) into this state for commercial purposes may obtain a trip permit. The trip permit must be obtained before or at the time of entry into this state.

(b) Not more than five trip permits for each person may be issued during a calendar year.

(c) A fee for each trip permit shall be collected from the applicant and shall be in the amount of \$50 for each vehicle for each trip.

(d) A report is not required with respect to the vehicle.

(e) Operating a motor vehicle without a valid interstate trucker's license or trip permit may subject the operator to a penalty under Section 162.402.

Sec. 162.208. PERMISSIVE SUPPLIER REQUIREMENTS ON OUT-OF-STATE REMOVALS. (a) A person may elect to obtain a permissive supplier license to collect the tax imposed under this subchapter for diesel fuel that is removed at a terminal in another state and has this state as the destination state.

(b) With respect to diesel fuel that is removed by the licensed permissive supplier at a terminal located in another state and that has this state as the destination state, a licensed permissive supplier shall:

(1) collect the tax due to this state on the diesel fuel;

(2) waive any defense that this state lacks jurisdiction to require the supplier to collect the tax due to this state on the diesel fuel under this subchapter;

(3) report and pay the tax due on the diesel fuel in the same manner as if the removal had occurred at a terminal located in this state;

(4) keep records of the removal of the diesel fuel and submit to audits concerning the diesel fuel as if the removal had occurred at a terminal located in this state; and

(5) report sales by the permissive supplier to a person who is not licensed in this state.

(c) A permissive supplier must acknowledge in the supplier's license application that this state imposes the requirements listed in Subsection (b) under this state's general police power and that the permissive supplier submits to the jurisdiction of this state only for purposes related to the administration of this chapter.

Sec. 162.209. LICENSE APPLICATION PROCEDURE. (a) To obtain a license under this subchapter, an applicant shall file an application using a form adopted by the comptroller. The application must contain:

(1) the name under which the applicant transacts or intends to transact business;

(2) the applicant's principal office, residence, place of business in this state, or other location of the applicant;

(3) if the applicant is not an individual, the names of the principal officers of an applicant corporation, or the names of the members of an applicant partnership, and the office, street, or post office addresses of each; and

(4) other information required by the comptroller.

(b) An applicant for a license as a supplier, permissive supplier, or terminal operator must have a federal certificate of registry issued under 26 U.S.C. Section 4101 that authorizes the applicant to enter into federal tax-free transactions of diesel fuel in the bulk terminal/transfer system. An applicant that is required to have a federal certificate of registry must include the registration number of the certificate on the application for a license. An applicant for a license as an importer, exporter, or distributor who has a federal certificate of registry issued under 26 U.S.C. Section 4101 must include the registration number of the certificate on the application for a license.

(c) An applicant for a license as an importer or distributor must list on the application each state from which the applicant intends to import diesel fuel and, if required by a listed state, must be licensed or registered for diesel fuel tax

purposes in that state. If a listed state requires the applicant to be licensed or registered, the applicant must provide the applicant's license or registration number from that state.

(d) An applicant for a license as an exporter must designate an agent located in this state for service of process and provide the agent's name and address. An applicant for a license as an exporter or distributor must list on the application each state to which the applicant intends to export diesel fuel received in this state by means of a transfer that is outside the bulk terminal/transfer system and must be licensed or registered for diesel fuel tax purposes in that state. The applicant must provide the applicant's license or registration number from that state.

(e) An applicant for a license as a motor fuel transporter must list on the application each state from which and to which the applicant intends to transport motor fuel and, if required by a listed state, must be licensed or registered for diesel fuel tax purposes in that state. If a listed state requires the applicant to be licensed or registered, the applicant must provide the applicant's license or registration number from that state.

Sec. 162.210. ISSUANCE AND DISPLAY OF LICENSE. (a) If the comptroller approves a license application, the comptroller shall issue a license to the applicant. A license must be posted in a conspicuous place or kept available for inspection at the principal place of business of the license holder. A copy of the license must be kept at each place of business or other place of storage from which diesel fuel is sold, distributed, or used, and in each motor vehicle used by the license holder to transport diesel fuel purchased by the license holder for resale, distribution, or use.

(b) A person holding an interstate trucker's license shall reproduce the license and carry a photocopy with each motor vehicle being operated into or from this state.

Sec. 162.211. LICENSES AND TRIP PERMITS; PERIODS OF VALIDITY. (a) The license issued to a supplier, permissive supplier, distributor, importer, terminal supplier, exporter, blender, motor fuel transporter, or dyed diesel fuel bonded user is permanent and is valid during the period the license holder has in force and effect the required bond or security and furnishes timely reports and supplements as required, or until the license is surrendered by the holder or canceled by the comptroller. The comptroller shall cancel a license under this subsection if a purchase, sale, or use of diesel fuel has not been reported by the license holder during the previous nine months.

(b) The license issued to an aviation fuel dealer is permanent and is valid until the license is surrendered by the holder or canceled by the comptroller.

(c) The license issued to an interstate trucker is valid from the date of its issuance through December 31 of each calendar year or until the license is surrendered by the holder or canceled by the comptroller. The comptroller may renew the license for each ensuing calendar year if the license holder furnishes timely reports as required.

(d) A trip permit is valid for the period stated on the permit as determined by the comptroller.

(e) A license issued under this subchapter is not transferable.

Sec. 162.212. BOND AND OTHER SECURITY FOR TAXES. (a) The comptroller shall determine the amount of security required of a supplier, permissive supplier, distributor, exporter, importer, blender, or dyed diesel fuel bonded user, taking into consideration the amount of tax that has or is expected to become due from the person, any past history of the person as a license holder under this chapter and its predecessor, and the necessity to protect this state against the failure to pay the tax as the tax becomes due.

(b) If it is determined that the posting of security is necessary to protect this state, the comptroller may require a license holder to post a bond. A license holder shall post a bond equal to two times the maximum amount of tax that could accrue on tax-free diesel fuel purchased or acquired during a reporting period. The minimum bond is \$30,000, except that for a dyed diesel fuel bonded user the minimum bond is \$10,000. The maximum bond is \$600,000 unless the comptroller believes there is undue risk of loss of tax revenues, in which event the comptroller may require one or more bonds or securities in a total amount exceeding \$600,000.

(c) A license holder who has filed a bond or other security under this subchapter is entitled, on request, to have the comptroller return, refund, or release the bond or security if in the judgment of the comptroller the person has for four consecutive years continuously complied with the conditions of the bond or other security filed under this subchapter. However, if the comptroller determines that the revenues of this state would be jeopardized by the return, refund, or release of the bond or security, the comptroller may elect not to return, refund, or release the bond or security and may reimpose a requirement of a bond or other security as the comptroller determines necessary to protect the revenues of this state.

(d) A bond must be a continuing instrument, must constitute a new and separate obligation in the penal sum named in the bond for each calendar year or portion of a year while the bond is in force, and must remain in effect until the surety on the bond is released and discharged.

(e) Instead of filing a surety bond, an applicant for a license may substitute the following security:

(1) cash in the form of United States currency in an amount equal to the required bond to be deposited in the suspense account of the state treasury;

(2) an assignment to the comptroller of a certificate of deposit in any bank or savings and loan association in this state that is a member of the Federal Deposit Insurance Corporation in an amount at least equal to the bond amount required; or

(3) an irrevocable letter of credit to the comptroller from any bank or savings and loan association in this state that is a member of the Federal Deposit Insurance Corporation in an amount of credit at least equal to the bond amount required.

(f) If the amount of an existing bond becomes insufficient or a security becomes unsatisfactory or unacceptable, the comptroller may require the filing of a new or additional bond or security.

(g) A surety bond or other form of security may not be released until it is determined by examination or audit that a tax, penalty, or interest liability does not exist. The cash or securities shall be released within 60 days after the comptroller determines that liability does not exist.

(h) The comptroller may use the cash or certificate of deposit security to satisfy a final determination of delinquent liability or a judgment secured in any action by this state to recover diesel fuel taxes, costs, penalties, and interest found to be due to this state by a person in whose behalf the cash or certificate security was deposited.

(i) A surety on a bond furnished by a license holder shall be released and discharged from liability to this state accruing on the bond on the 31st day after the date the surety files with the comptroller a written request to be released and discharged. The request does not relieve, release, or discharge the surety from a liability already accrued, or that accrues before the expiration of the 30-day period. The comptroller, promptly on receipt of the request, shall notify the license holder who furnished the bond, and unless the license holder, before the expiration date of the existing security, files with the comptroller a new bond with a surety company duly authorized to do business under the laws of this state, or other authorized security, in the amount required in this section, the comptroller shall cancel the license in the manner provided by this chapter.

(j) The comptroller shall notify immediately the issuer of a letter of credit of a final determination of the license holder's delinquent liability or a judgment secured in any action by this state to recover diesel fuel taxes, costs, penalties, and interest found to be due this state by a license holder in whose behalf the letter of credit was issued. The letter of credit allowed as security for the remittance of taxes under this subchapter shall contain a statement that the issuer agrees to respond to the comptroller's notice of liability with amounts to satisfy the comptroller's delinquency claim against the license holder.

(k) A license holder may request an examination or audit to obtain release of the security when the license holder relinquishes the license or when the license holder wants to substitute one form of security for an existing one.

Sec. 162.213. LICENSE HOLDER STATUS LIST. (a) The comptroller, on or before December 20 of each year, shall make available to all license holders an alphabetical list of licensed suppliers, permissive suppliers, distributors, aviation fuel dealers, importers, exporters, blenders, terminal operators, and dyed diesel fuel bonded users. A supplemental list of additions and deletions shall be made available to the license holders each month. A current and effective license or the list furnished by the comptroller is evidence of the validity of the license until the comptroller notifies license holders of a change in the status of a license holder.

(b) A licensed supplier or permissive supplier who sells diesel fuel tax-free to a supplier or permissive supplier whose license has been canceled or revoked under this chapter, or who sells dyed diesel fuel to a dyed diesel fuel bonded user whose license has been canceled or revoked under this chapter, is liable for any tax due on diesel fuel sold after receiving notice of the cancellation or revocation.

(c) The comptroller shall notify all license holders under this chapter when a canceled or revoked license is subsequently reinstated and include in the notice the effective date of the reinstatement. Sales to a supplier, permissive supplier, distributor, or dyed diesel fuel bonded user after the effective date of the reinstatement may be made tax-free.

Sec. 162.214. REMITTANCE OF TAX TO SUPPLIER OR PERMISSIVE SUPPLIER; ALLOWANCES. (a) Each licensed distributor and licensed importer shall remit to the supplier or permissive supplier, as applicable, the tax imposed by Section 162.201 for diesel fuel removed at a terminal rack. A licensed distributor or licensed importer may elect to defer payment of the tax to the supplier or permissive supplier until two days before the date the supplier or permissive supplier is required to remit the tax to this state. The distributor or importer shall pay the taxes by electronic funds transfer.

(b) A supplier, a permissive supplier, or its representative that conducts electronic transactions to draft an account of a licensed distributor or licensed importer for the payment of taxes due under this section shall provide at least two days' notice using an electronic means of the amount to be drafted from the account of the licensed distributor or licensed importer and the number of the account to be drafted from.

(c) If the supplier or permissive supplier cannot secure from the licensed distributor or licensed importer payment of taxes due for diesel fuel removed from the terminal during the previous reporting period and the supplier elects to take a credit against a subsequent payment of diesel fuel tax to this state for the taxes not remitted to the supplier or permissive supplier by the licensed distributor or licensed importer, the supplier or permissive supplier shall notify the comptroller of the licensed distributor's or licensed importer's failure to remit tax in conjunction with the report requesting a credit.

(d) The supplier or permissive supplier has the right, after notifying the comptroller of the licensed distributor's or licensed importer's failure to remit taxes under this section, to terminate the ability of the licensed distributor or licensed importer to defer the payment of diesel fuel tax. The supplier or permissive supplier shall reinstate without delay the right of the licensed distributor or licensed importer to defer the payment of diesel fuel tax after the comptroller provides to the supplier or permissive supplier notice that the licensed distributor or licensed importer is in good standing with the comptroller for the purposes of diesel fuel tax imposed under this subchapter.

(e) A licensed distributor or licensed importer who makes timely payments of the diesel fuel tax imposed under this subchapter is entitled to retain an amount equal to 1.75 percent of the total taxes to be paid to the supplier or permissive supplier to cover administrative expenses.

(f) The license of a distributor, exporter, or importer who fails to pay the full amount of tax required by this subchapter is subject to cancellation as provided by Section 162.005.

Sec. 162.215. RETURNS AND PAYMENTS. (a) Except as provided by Subsection (b), each person who is liable for the tax imposed by this subchapter, a terminal operator, and a licensed distributor shall file a return on or before the 25th day of the month following the end of each calendar month.

(b) A motor fuel transporter, interstate trucker, and dyed diesel fuel bonded user shall file a return on or before the 25th day of the month following the end of the calendar quarter.

(c) The return required by this section shall be accompanied by a payment for the amount of tax reported due.

(d) An aviation fuel dealer is not required to file a return.

Sec. 162.216. RECORDS. (a) A supplier and permissive supplier shall keep:

(1) a record showing the number of gallons of:

(A) all diesel fuel inventories on hand at the first of each month;

(B) all diesel fuel refined, compounded, or blended;

(C) all diesel fuel purchased or received, showing the name of the seller and the date of each purchase or receipt;

(D) all diesel fuel sold, distributed, or used, showing the name of the purchaser and the date of the sale, distribution, or use; and

(E) all diesel fuel lost by fire, theft, or accident; and

(2) an itemized statement showing by load the number of gallons of all diesel fuel:

(A) received during the preceding calendar month for export and the location of the loading;

(B) exported from this state by destination state or country; and

(C) imported during the preceding calendar month, by state or country of origin.

(b) A distributor shall keep:

(1) a record showing the number of gallons of:

(A) all diesel fuel inventories on hand at the first of each month;

(B) all diesel fuel blended;

(C) all diesel fuel purchased or received, showing the name of the seller and the date of each purchase or receipt;

(D) all diesel fuel sold, distributed, or used, showing the name of the purchaser and the date of the sale, distribution, or use; and

(E) all diesel fuel lost by fire, theft, or accident;

(2) an itemized statement showing by load the number of gallons of all diesel fuel:

(A) received during the preceding calendar month for export and the location of the loading;

(B) exported from this state by destination state or country; and

(C) imported during the preceding calendar month, by state or country of origin; and

(3) for diesel fuel exported outside this state, proof of payment of tax to the destination state, in a form acceptable to the comptroller.

(c) An importer shall keep:

- (1) a record showing the number of gallons of:
 - (A) all diesel fuel inventories on hand at the first of each month;
 - (B) all diesel fuel compounded or blended;
 - (C) all diesel fuel purchased or received, showing the name of the seller and the date of each purchase or receipt;
 - (D) all diesel fuel sold, distributed, or used, showing the name of the purchaser and the date of the sale, distribution, or use; and
 - (E) all diesel fuel lost by fire, theft, or accident; and
 - (2) an itemized statement showing by load the number of gallons of all diesel fuel:
 - (A) received during the preceding calendar month for export and the location of the loading;
 - (B) exported from this state, by destination state or country; and
 - (C) imported during the preceding calendar month, by state or country of origin.
- (d) An exporter shall keep:
 - (1) a record showing the number of gallons of:
 - (A) all diesel fuel inventories on hand at the first of each month;
 - (B) all diesel fuel compounded or blended;
 - (C) all diesel fuel purchased or received, showing the name of the seller and the date of each purchase or receipt;
 - (D) all diesel fuel sold, distributed, or used, showing the name of the purchaser and the date of the sale or use; and
 - (E) all diesel fuel lost by fire, theft, or accident;
 - (2) an itemized statement showing by load the number of gallons of all diesel fuel:
 - (A) received during the preceding calendar month for export and the location of the loading; and
 - (B) exported from this state, by destination state or country;
 - (3) proof of payment of tax to the destination state in a form acceptable to the comptroller; and
 - (4) if an exemption under Section 162.204(a)(4)(B) is claimed, proof of payment of tax to the destination state or proof that the transaction was exempt in the destination state, in a form acceptable to the comptroller.
- (e) A blender shall keep a record showing the number of gallons of:
 - (1) all diesel fuel inventories on hand at the first of each month;
 - (2) all diesel fuel compounded or blended;
 - (3) all diesel fuel purchased or received, showing the name of the seller and the date of each purchase or receipt;
 - (4) all diesel fuel sold, distributed, or used, showing the name of the purchaser and the date of the sale, distribution, or use; and
 - (5) all diesel fuel lost by fire, theft, or accident.
- (f) A terminal operator shall keep:
 - (1) a record showing the number of gallons of:

(A) all diesel fuel inventories on hand at the first of each month, including the name and license number of each owner and the amount of diesel fuel held for each owner;

(B) all diesel fuel received, showing the name of the seller and the date of each purchase or receipt;

(C) all diesel fuel sold, distributed, or used, showing the name of the purchaser and the date of the sale, distribution, or use; and

(D) all diesel fuel lost by fire, theft, or accident; and

(2) an itemized statement showing by load the number of gallons of all diesel fuel:

(A) received during the preceding calendar month for export and the location of the loading;

(B) exported from this state, by destination state or country; and

(C) imported during the preceding calendar month, by state or country of origin.

(g) A motor fuel transporter shall keep a complete and separate record of each intrastate and interstate transportation of diesel fuel, showing:

(1) the date of transportation;

(2) the name of the consignor and consignee;

(3) the method of transportation;

(4) the quantity and kind of diesel fuel transported;

(5) full data concerning the diversion of shipments, including the number of gallons diverted from interstate to intrastate and intrastate to interstate commerce; and

(6) the points of origin and destination, the number of gallons shipped or transported, the date, the consignee and the consignor, and the kind of diesel fuel that has been diverted.

(h) A dealer shall keep a record showing the number of gallons of:

(1) diesel fuel inventories on hand at the first of each month;

(2) all diesel fuel purchased or received, showing the name of the seller and the date of each purchase or receipt;

(3) all diesel fuel sold or used, showing the date of the sale or use; and

(4) all diesel fuel lost by fire, theft, or accident.

(i) An interstate trucker shall keep a record of:

(1) the total miles traveled in all states by all vehicles traveling into or from this state and the total quantity of diesel fuel consumed in those vehicles; and

(2) the total miles traveled in this state and the total quantity of diesel fuel purchased and delivered into the fuel supply tanks of motor vehicles in this state.

(j) An aviation fuel dealer shall keep a record showing the number of gallons of:

(1) all diesel fuel inventories on hand at the first of each month;

(2) all diesel fuel purchased or received, showing the name of the seller and the date of each purchase or receipt;

(3) all diesel fuel sold or used in aircraft or aircraft servicing equipment; and

(4) all diesel fuel lost by fire, theft, or accident.

(k) The records of an aviation fuel dealer made under Subsection (j)(3) must show:

(1) the name of the purchaser or user of diesel fuel;

(2) the date of the sale or use of diesel fuel; and

(3) the registration or "N" number of the airplane or a description or number of the aircraft or a description or number of the aircraft servicing equipment in which diesel fuel is used.

(l) A dyed diesel fuel bonded user shall keep a record showing the number of gallons of:

(1) dyed and undyed diesel fuel inventories on hand at the first of each month;

(2) dyed and undyed diesel fuel purchased or received, showing the name of the seller and the date of each purchase or receipt;

(3) dyed and undyed diesel fuel delivered into the fuel supply tanks of motor vehicles;

(4) dyed and undyed diesel fuel used in off-highway equipment or for other nonhighway purposes; and

(5) dyed and undyed diesel fuel lost by fire, theft, or accident.

(m) The comptroller may require selective schedules from a supplier, permissive supplier, distributor, importer, exporter, blender, terminal operator, motor fuel transporter, dealer, aviation fuel dealer, dyed diesel fuel bonded user, and interstate trucker for any purchase, sale, or delivery of diesel fuel if the schedules are not inconsistent with the requirements of this chapter.

(n) The records required by this section must be kept until the fourth anniversary of the date they are created and are open to inspection at all times by the comptroller and the attorney general.

Sec. 162.217. INFORMATION REQUIRED ON SUPPLIER'S AND PERMISSIVE SUPPLIER'S RETURN; CREDITS AND ALLOWANCES. (a) The monthly return and supplements of each supplier and permissive supplier shall contain for the period covered by the return:

(1) the number of net gallons of diesel fuel received by the supplier or permissive supplier during the month, sorted by product code, seller, point of origin, destination state, carrier, and receipt date;

(2) the number of net gallons of diesel fuel removed at a terminal rack during the month from the account of the supplier, sorted by product code, person receiving the diesel fuel, terminal code, and carrier;

(3) the number of net gallons of diesel fuel removed during the month for export, sorted by product code, person receiving the diesel fuel, terminal code, destination state, and carrier;

(4) the number of net gallons of diesel fuel removed during the month from a terminal located in another state for conveyance to this state, as indicated on the shipping document for the diesel fuel, sorted by product code, person receiving the diesel fuel, terminal code, and carrier;

(5) the number of net gallons of diesel fuel the supplier or permissive supplier sold during the month in transactions exempt under Section 162.204, sorted by product code, carrier, purchaser, and terminal code;

(6) the number of net gallons of diesel fuel sold in the bulk transfer/terminal system in this state to any person not holding a supplier's or permissive supplier's license; and

(7) any other information required by the comptroller.

(b) A supplier or permissive supplier that timely pays the tax to this state may deduct from the amount of tax due a collection allowance equal to two percent of the amount of tax payable to this state.

(c) A supplier or permissive supplier may take a credit for any taxes that were not remitted in a previous period to the supplier or permissive supplier by a licensed distributor or licensed importer as required by Section 162.214. The supplier or permissive supplier is eligible to take this credit if the comptroller is notified of the default within 60 days after the default occurs. If a license holder pays to a supplier or permissive supplier the tax owed, but the payment occurs after the supplier or permissive supplier has taken a credit on its return, the supplier or permissive supplier shall remit the payment to the comptroller with the next monthly return after receipt of the tax, plus a penalty of 10 percent of the amount of unpaid taxes and interest at the rate provided by Section 111.060 beginning on the date the credit is taken.

(d) For the purpose of Subsection (c), all payments or credits in reduction of a customer's account must be applied ratably between motor fuels and other goods sold to the customer, and the credit allowed will be the tax on the number of gallons represented by the motor fuel portion of the credit.

Sec. 162.218. DUTIES OF SUPPLIER OR PERMISSIVE SUPPLIER. (a) A supplier or permissive supplier who receives or collects tax holds the amount received or collected in trust for the benefit of this state and has a fiduciary duty to remit to the comptroller the amount of tax received or collected.

(b) A supplier or permissive supplier shall furnish the purchaser with an invoice, bill of lading, or other documentation as evidence of the number of gallons received by the purchaser.

(c) A supplier or permissive supplier who receives a payment of tax may not apply the payment of tax to a debt that the person making the payment owes for diesel fuel purchased from the supplier or permissive supplier.

Sec. 162.219. INFORMATION REQUIRED ON DISTRIBUTOR'S RETURN. The monthly return and supplements of each distributor shall contain for the period covered by the return:

(1) the number of net gallons of diesel fuel received by the distributor during the month, sorted by product code, seller, point of origin, destination state, carrier, and receipt date;

(2) the number of net gallons of diesel fuel removed at a terminal rack by the distributor during the month, sorted by product code, seller, terminal code, and carrier;

(3) the number of net gallons of diesel fuel removed by the distributor during the month for export, sorted by product code, terminal code, bulk plant address, destination state, and carrier;

(4) the number of net gallons of diesel fuel removed by the distributor during the month from a terminal located in another state for conveyance to this state, as indicated on the shipping document for the diesel fuel, sorted by product code, seller, terminal code, bulk plant address, and carrier;

(5) the number of net gallons of diesel fuel the distributor sold during the month in transactions exempt under Section 162.204, dyed diesel fuel sold to a purchaser under a signed statement, or dyed diesel fuel sold to a dyed diesel fuel bonded user, sorted by product code and by the entity receiving the diesel fuel; and

(6) any other information required by the comptroller.

Sec. 162.220. INFORMATION REQUIRED ON IMPORTER'S RETURN; ALLOWANCES. (a) The monthly return and supplements of an importer shall contain for the period covered by the return:

(1) the number of net gallons of imported diesel fuel acquired from a supplier or permissive supplier who collected the tax due this state on the diesel fuel;

(2) the number of net gallons of imported diesel fuel acquired from a person who did not collect the tax due to this state on the diesel fuel, listed by product code, source state, person, and terminal;

(3) the number of net gallons of imported diesel fuel acquired from a bulk plant outside this state, listed by bulk plant name, address, and product code; and

(4) any other information required by the comptroller.

(b) An importer of diesel fuel that timely files a return and payment may deduct from the amount of tax payable with the return a collection allowance equal to two percent of the amount of tax payable to this state.

Sec. 162.221. INFORMATION REQUIRED ON TERMINAL OPERATOR'S RETURN. (a) A terminal operator shall file with the comptroller a monthly information return and supplement showing the amount of diesel fuel received and removed from the terminal during the month. The return also shall contain the following summary information:

(1) the beginning and ending inventory that relates to the applicable reporting month;

(2) the number of net gallons of diesel fuel received in inventory at the terminal during the month;

(3) the number of net gallons of diesel fuel removed from inventory at the terminal during the month; and

(4) any other summary information required by the comptroller.

(b) The comptroller may accept the Federal ExSTARS terminal operator report provided to the Internal Revenue Service instead of the required state terminal operator report.

Sec. 162.222. INFORMATION REQUIRED ON MOTOR FUEL TRANSPORTER'S RETURN. The quarterly return and supplements of a motor fuel transporter shall contain for the period covered by the return:

(1) the name, license number, and terminal control number of each person or terminal from whom the transporter received diesel fuel outside this state for delivery in this state, the gross gallons of diesel fuel received, the date the diesel fuel was received, the product code, and the name and license number of the purchaser of the diesel fuel;

(2) the name, license number, and terminal control number of each person or terminal from whom the transporter received diesel fuel in this state for delivery outside this state, the gross gallons of diesel fuel delivered, the date the diesel fuel was delivered, the product code, and the destination state of the diesel fuel; and

(3) any other information required by the comptroller.

Sec. 162.223. INFORMATION REQUIRED ON EXPORTER'S RETURN AND PAYMENT OF TAX ON IMPORTS. The monthly return and supplements of an exporter shall contain for the period covered by the return:

(1) the number of net gallons of diesel fuel acquired from a supplier and exported during the month, including supplier name, terminal control number, and product code;

(2) the number of net gallons of diesel fuel acquired from a bulk plant and exported during the month, including bulk plant name and product code;

(3) the destination state of the diesel fuel exported during the month;
and

(4) any other information the comptroller requires.

Sec. 162.224. INFORMATION REQUIRED ON BLENDER'S RETURN. The monthly return and supplements of each blender shall contain for the period covered by the return:

(1) the number of net gallons of diesel fuel received by the blender during the month, sorted by product code, seller, point of origin, carrier, and receipt date;

(2) the number of net gallons of product blended with diesel fuel during the month, sorted by product code, type of blending agent if no product code exists, seller, and carrier;

(3) the number of net gallons of blended diesel fuel sold during the month and the license number or name and address of the entity receiving the blended diesel fuel; and

(4) any other information required by the comptroller.

Sec. 162.225. INFORMATION REQUIRED ON INTERSTATE TRUCKER'S RETURN. The quarterly return and supplements of each interstate trucker shall contain for the period covered by the return:

(1) the total miles traveled in all states by all vehicles traveling into or from this state and the total quantity of diesel fuel consumed in those vehicles;

(2) the total miles traveled in this state and the total quantity of diesel fuel purchased and delivered into the fuel supply tanks of motor vehicles in this state; and

(3) any other information required by the comptroller.

Sec. 162.226. INFORMATION REQUIRED ON DYED DIESEL FUEL BONDED USER'S RETURN. The quarterly return and supplements of each dyed diesel fuel bonded user shall contain for the period covered by the return:

(1) the number of net gallons of tax-free dyed diesel fuel received by the dyed diesel fuel bonded user during the quarter, sorted by product code and receipt date;

(2) the number of net gallons of dyed diesel fuel used by the dyed diesel fuel bonded user during the quarter, sorted by product code; and

(3) any other information required by the comptroller.

Sec. 162.227. REFUND OR CREDIT FOR CERTAIN TAXES PAID. (a) A license holder may take a credit on a return for the period in which the sale occurred if the license holder paid tax on the purchase of diesel fuel and subsequently resells the diesel fuel without collecting the tax to:

(1) the United States government for its exclusive use, provided that a credit is not allowed for gasoline used by a person operating under a contract with the United States;

(2) a public school district in this state for the district's exclusive use;

(3) an exporter licensed under this subchapter if the seller is a licensed supplier or distributor and the exporter subsequently exports the diesel fuel to another state;

(4) a licensed aviation fuel dealer if the seller is a licensed distributor;

or

(5) a commercial transportation company that provides public school transportation services to a school district under Section 34.008, Education Code, and that uses the diesel fuel exclusively to provide those services.

(b) For truck or railcar movements between licensed suppliers or licensed permissive suppliers in which the diesel fuel removed from the first terminal comes to rest in the second terminal and tax was paid on the first removal, the license holder who receives the diesel fuel in the second terminal may take the credit.

(c) A license holder may take a credit on a return for the period in which the purchase occurred, and a person who does not hold a license under this subchapter, other than a license as an aviation fuel dealer, may file a refund claim with the comptroller if the license holder or person paid tax on diesel fuel and the license holder or person:

(1) is the United States government and the diesel fuel is for its exclusive use, provided that a refund is not allowed for diesel fuel used by a license holder or person operating under a contract with the United States;

(2) is a public school district in this state and the diesel fuel is for the district's exclusive use;

(3) is a commercial transportation company that provides public school transportation services to a school district under Section 34.008, Education Code, and the diesel fuel is used exclusively to provide those services; or

(4) is a licensed aviation fuel dealer who delivers the diesel fuel into the fuel supply tanks of aircraft or aircraft servicing equipment.

(d) A license holder may take a credit on a return for the period in which the purchase occurred if the license holder paid tax on the diesel fuel and the license holder is a licensed interstate trucker who uses the diesel fuel outside this state in commercial vehicles operated under an interstate trucker license, provided that a credit or refund claimed under this subdivision must be taken or filed within the limitations period as provided by Section 162.230.

(e) A person who paid tax on the purchase of diesel fuel may claim a credit or seek a refund with the comptroller if 100 or more gallons of diesel fuel is subsequently exported or lost by fire, theft, or accident. A credit or refund claimed under this subsection must be taken or filed within the limitations period provided by Section 162.230.

(f) A transit company who paid tax on the purchase of diesel fuel may seek a refund with the comptroller of one-half of one cent per gallon for diesel fuel used in transit vehicles.

(g) The right to receive a refund or take a credit under this section is not assignable.

(h) The comptroller may adopt rules specifying procedures and requirements that must be followed to claim a credit or refund under this section.

(i) A license holder may take a credit on a return for the period in which the purchase occurred, and a person who does not hold a license under this subchapter may file a refund claim with the comptroller, if the license holder or person paid tax on diesel fuel and the license holder or person uses the diesel fuel in off-highway equipment, in stationary engines, or for other nonhighway purposes and not in a motor vehicle operated or intended to be operated on the public highways or uses the diesel fuel in a motor vehicle that is operated exclusively off the public highways, except for incidental travel on the public highways as determined by the comptroller, provided that a refund may not be allowed for the portion used in the incidental highway travel. This subsection expires January 1, 2005.

Sec. 162.228. REFUND FOR BAD DEBTS; CREDIT FOR NONPAYMENT. (a) A licensed distributor may file a refund claim with the comptroller if:

(1) the distributor has paid the taxes imposed by this subchapter on diesel fuel sold on account;

(2) the distributor determines that the account is uncollectible and worthless; and

(3) the account is written off as a bad debt on the accounting books of the distributor.

(b) A licensed supplier or permissive supplier may take a credit on the monthly report to be filed with the comptroller if:

(1) on a previous report, the supplier or permissive supplier paid the taxes imposed by this subchapter on diesel fuel sold on account;

(2) the person to whom the supplier or permissive supplier sold the diesel fuel has not remitted the tax to the supplier or permissive supplier; and

(3) at the time of the transaction, the person to whom the supplier or permissive supplier sold the diesel fuel held a license issued by the comptroller.

(c) The return on which the refund is claimed or the credit is taken must state, if applicable, the license number of the person whose account has been written off as a bad debt, or who failed to remit the tax, and any other information required by the comptroller. The amount of the refund or credit that may be claimed under Subsection (a) or (b) may equal but may not exceed the amount of taxes paid on the diesel fuel to which the written-off account or unpaid taxes apply.

(d) If, after a refund is received under Subsection (a) or a credit is taken under Subsection (b), the account on which the refund or credit was based is paid, or if the comptroller otherwise determines that the refund or credit was not authorized by Subsection (a) or (b), the unpaid taxes shall be paid by the distributor receiving the refund or the supplier or permissive supplier taking the credit, plus a penalty of 10 percent of the amount of the unpaid taxes and interest at the rate provided by Section 111.060 beginning on the day the refund was issued.

(e) This section does not apply to a sale of diesel fuel that is delivered into the fuel supply tank of a motor vehicle or motorboat and for which payment is made through the use and acceptance of a credit card.

(f) A refund under this section must be claimed at the time the account is written off as a bad debt, but may only be claimed before the expiration of the applicable limitation period as provided by Chapter 111.

(g) The comptroller may take action against a person in relation to whom a distributor, supplier, or permissive supplier has made a refund claim or taken a credit for collection of the tax owed and for penalty and interest as provided by Chapter 111.

Sec. 162.229. CLAIMS FOR REFUNDS. (a) A refund claim must be filed on a form provided by the comptroller, be supported by the original invoice issued by the seller, and contain:

- (1) the stamped or preprinted name and address of the seller;
- (2) the name of the purchaser;
- (3) the date of delivery of the diesel fuel;
- (4) the date of the issuance of the invoice, if different from the date of fuel delivery;
- (5) the number of gallons of diesel fuel delivered;
- (6) the amount of tax, either separately stated from the selling price or stated with a notation that the selling price includes the tax; and
- (7) the type of vehicle or equipment into which the fuel is delivered.

(b) The purchaser must obtain the original invoice from the seller of diesel fuel not later than the 30th day after the date the diesel fuel is delivered to the purchaser. If the delivery of diesel fuel is made through an automated method in which the purchase is automatically applied to the purchaser's account, one invoice may be issued at the time of billing that covers multiple purchases made during a 30-day billing cycle.

(c) A distribution log filed with the comptroller to support the number of gallons of diesel fuel removed from a bulk user's own bulk storage must contain the name and address of the bulk user making the delivery stamped or preprinted on the log and, for each individual delivery from the bulk storage:

- (1) the date of delivery;
- (2) the number of gallons of diesel fuel delivered;
- (3) the signature of the bulk user; and
- (4) the type or description of off-highway equipment into which the diesel fuel was delivered, or the type of licensed motor vehicle into which the diesel fuel was delivered, including the state highway license plate number or vehicle identification number and odometer or hubmeter reading.

(d) A distributor or person who does not hold a license who files a valid refund claim with the comptroller shall be paid by a warrant issued by the comptroller. For purposes of this section, a distributor meets the requirement of filing a valid refund claim if the distributor designates the gallons of diesel fuel sold or used that are the subject of the refund claim on the monthly report submitted by the distributor to the comptroller.

(e) A person who files a claim for a tax refund on diesel fuel used for a purpose for which a tax refund is not authorized or who files an invoice supporting a refund claim on which the date, figures, or any material information has been falsified or altered forfeits the person's right to the entire amount of the refund claim filed unless the claimant provides proof satisfactory to the comptroller that the incorrect refund claim filed was due to a clerical or mathematical calculation error.

(f) After examination of the refund claim, the comptroller, before issuing a refund warrant, shall deduct from the amount of the refund the two percent deducted originally by the license holder on the first sale or distribution of the diesel fuel.

Sec. 162.230. WHEN DIESEL FUEL TAX REFUND OR CREDIT MAY BE FILED. (a) Except as otherwise provided by this section, a claim for a refund must be filed with the comptroller before the first anniversary of the first day of the calendar month following the purchase, use, delivery, or export, or loss by fire, theft, or accident of diesel fuel, whichever period expires latest.

(b) If the amount of credit that an interstate trucker is entitled to take under Section 162.227 exceeds the amount of tax due on that reporting period, the excess credit amount may be claimed on any of the three successive quarterly returns following the period in which the credit was established or the interstate trucker may file a refund claim with the comptroller on or before the due date of the third successive quarterly return following the period in which the credit was established. A credit that is not claimed within the period prescribed by this subsection expires.

(c) If the comptroller assesses a supplier or permissive supplier for a tax-free sale that is taxable, and the supplier or permissive supplier subsequently collects the tax from the purchaser, the purchaser may file a refund claim before

the first anniversary of the date the supplier's or permissive supplier's deficiency assessment becomes final if the purchaser used the diesel fuel in an exempt manner.

(d) A supplier or permissive supplier that determines taxes were erroneously reported and remitted or that paid more taxes than were due to this state because of a mistake of fact or law may take a credit on the monthly tax report on which the error has occurred and tax payment made to the comptroller. The credit must be taken before the expiration of the applicable period of limitation as provided by Chapter 111.

Sec. 162.231. NOTICE REGARDING DYED DIESEL FUEL. A notice stating "DYED DIESEL FUEL, NONTAXABLE USE ONLY, PENALTY FOR TAXABLE USE" must be:

(1) provided by a licensed supplier, permissive supplier, or distributor to a person who receives dyed diesel fuel;

(2) provided by a seller of dyed diesel fuel to the person's buyers; and

(3) posted by a seller on a retail pump or bulk plant at which the person sells dyed diesel fuel for use by the person's buyers.

Sec. 162.232. DYED DIESEL FUEL NOTICE REQUIRED ON SHIPPING DOCUMENTS, BILLS OF LADING, AND INVOICES. The form of notice required by Sections 162.231(1) and (2) must be provided when the dyed diesel fuel is removed or sold and must appear on each shipping document, bill of lading, cargo manifest, and invoice accompanying the sale or removal of the dyed diesel fuel.

Sec. 162.233. UNAUTHORIZED SALE OR USE OF DYED DIESEL FUEL. (a) A person may not sell or hold for sale dyed diesel fuel for any use that the person knows or has reason to know is a taxable use of the diesel fuel.

(b) A person may not use or hold for use dyed diesel fuel for a use other than a nontaxable use if the person knows or has reason to know that the diesel fuel is dyed diesel fuel.

Sec. 162.234. ALTERATION OF DYE OR MARKER IN DYED DIESEL FUEL PROHIBITED. A person, with the intent to evade payment of tax, may not alter or attempt to alter the strength or composition of a dye or marker in dyed diesel fuel.

Sec. 162.235. USE OF DYED FUEL PROHIBITED. (a) A person may not operate a motor vehicle on a public highway in this state with taxable motor fuel that contains dye in the fuel supply tank of the motor vehicle.

(b) This section does not apply to a use of dyed fuel that is lawful under the Internal Revenue Code and implementing regulations, including use in state and local government vehicles or buses, unless otherwise prohibited by this chapter.

[Sections 162.236-162.300 reserved for expansion]

SUBCHAPTER D. LIQUEFIED GAS TAX

Sec. 162.301. TAX IMPOSED; RATE. (a) A tax is imposed on the use of liquefied gas for the propulsion of motor vehicles on the public highways of this state.

(b) The liquefied gas tax rate is 15 cents a gallon.

Sec. 162.302. PAYMENT OF TAX. (a) A person using a liquefied gas-propelled motor vehicle, including a motor vehicle equipped to use liquefied gas interchangeably with another motor fuel, that is required to be licensed in this state for use on the public highways of this state shall prepay the liquefied gas tax to the comptroller on an annual basis. A person holding a motor vehicle dealer's liquefied gas tax decal or an interstate trucker whose vehicle is registered in this state but may operate in other states under a multistate tax agreement shall pay the tax to a licensed dealer at the time the fuel is delivered into the fuel supply tank of a motor vehicle.

(b) An interstate trucker operating a motor vehicle licensed in a base state other than this state and any other out-of-state user shall pay the excise tax on delivery of the liquefied gas into the fuel supply tanks of a motor vehicle.

Sec. 162.3021. SCHOOL DISTRICT TRANSPORTATION AND COUNTY EXEMPTION. (a) The tax imposed by this subchapter does not apply to the sale of liquefied petroleum gas to a public school district or county in this state or to the use of liquefied petroleum gas by a public school district or county in this state. A motor vehicle that uses liquefied petroleum gas and that is operated by a public school district or county in this state is not required to have a liquefied gas tax decal or a special use liquefied gas tax decal.

(b) The tax imposed by this subchapter does not apply to the sale of liquefied petroleum gas to a commercial transportation company that uses the gas exclusively to provide public school transportation services to a school district under Section 34.008, Education Code, or to the use of liquefied petroleum gas by that company for that purpose. A motor vehicle that uses liquefied petroleum gas and that is owned by a commercial transportation company and used exclusively to provide public school transportation services to a school district under Section 34.008, Education Code, is not required to have a liquefied gas tax decal or a special use liquefied gas tax decal.

Sec. 162.303. LICENSE; APPLICATION; DISPLAY. (a) A dealer who sells taxable liquefied gas, an interstate trucker, a liquefied gas tax decal user, or a motor vehicle dealer's liquefied gas tax decal license holder shall file an application with the comptroller for the kind and class of a nonassignable license required by this subchapter.

(b) An application for a license must be filed on a form provided by the comptroller showing the kind and class of license desired, the odometer reading of a Class A through F motor vehicle, and other information required by the comptroller.

(c) A license shall be posted in a conspicuous place or kept available for inspection at the principal place of business of the owner. A license holder shall reproduce the license and keep a copy on display at each additional place of business from which liquefied gas is sold, delivered, or used in motor vehicles. A person holding an interstate trucker's license shall reproduce the license and carry a copy with each motor vehicle being operated into or from this state. The liquefied gas tax decal user shall affix the decal in the lower right corner of the front windshield of the passenger side of the vehicle.

Sec. 162.304. DEALER'S LICENSE. A dealer's license authorizes a dealer to collect and remit taxes on liquefied gas delivered into the fuel supply tanks of motor vehicles displaying an out-of-state license plate, the motor vehicle of an interstate trucker licensed under an agreement entered into under Section 162.003, or a motor vehicle displaying a motor vehicle dealer's liquefied gas tax decal.

Sec. 162.305. LIQUEFIED GAS TAX DECAL LICENSE. (a) A user of liquefied gas for the propulsion of a motor vehicle on the public highways of this state shall pay in advance annually on each motor vehicle owned, operated, and licensed in this state by that person a tax based on the registered gross weight and mileage driven the previous year in the following schedule:

	Less than 5,000 miles \$ 30	5,000 to 9,999 miles \$ 60	10,000 to 14,999 miles \$ 90	15,000 miles and over \$120
<u>Class A: Less than 4,000 pounds</u>				
<u>Class B: 4,001 to 10,000 pounds</u>	<u>42</u>	<u>84</u>	<u>126</u>	<u>168</u>
<u>Class C: 10,001 to 15,000 pounds</u>	<u>48</u>	<u>96</u>	<u>144</u>	<u>192</u>
<u>Class D: 15,001 to 27,500 pounds</u>	<u>84</u>	<u>168</u>	<u>252</u>	<u>336</u>
<u>Class E: 27,501 to 43,500 pounds</u>	<u>126</u>	<u>252</u>	<u>378</u>	<u>504</u>
<u>Class F: 43,501 pounds and over</u>	<u>186</u>	<u>372</u>	<u>558</u>	<u>744</u>

(b) The first issuance of a liquefied gas tax decal for a Class A through F motor vehicle shall be issued on a basis of estimated miles that will be driven during the one-year period following the date of issuance of the decal.

(c) The following special-use liquefied gas tax decal and tax shall be required for the types of vehicles described below:

Class T: Transit carrier vehicles operated by a transit company - \$444

(d) An entity holding a registration under Chapter 503, Transportation Code, may obtain a decal for each liquefied gas-powered motor vehicle held for sale or resale and pay the tax per gallon to a licensed dealer on each delivery of liquefied gas into the fuel supply tank of the motor vehicle.

(e) An interstate trucker is not required to prepay the tax under Subsection (a) for a motor vehicle operated for commercial purposes and described by Section 162.001(36).

Sec. 162.306. INTERSTATE TRUCKER'S LICENSE. An interstate trucker's license authorizes a person who imports liquefied gas into this state in the fuel supply tanks of a motor vehicle owned or operated for commercial purposes and described by Section 162.001(36) to report and pay the tax due and to make sales or distributions in this state from the vehicle's cargo tanks, but a delivery may not be made in this state into the fuel supply tanks of motor vehicles that do not bear a current liquefied gas tax decal without first obtaining the required dealer's license to make taxable sales.

Sec. 162.307. LICENSES: PERIODS OF VALIDITY. (a) A dealer's license is permanent and valid during the period the license holder furnishes timely reports as required or until the license is surrendered by the holder or canceled by the comptroller.

(b) An interstate trucker's license is valid from the date of its issuance through December 31 of each calendar year or until the license is surrendered by the holder or canceled by the comptroller. The comptroller may renew the license for each ensuing calendar year if the license holder furnishes timely reports as required.

(c) A liquefied gas tax decal license is valid from the date of its initial issuance through the last day of the same month of the year following the year it was issued unless the motor vehicle for which the tax is prepaid is sold or is no longer used on a public highway. After its initial issuance, a liquefied gas tax decal license shall be issued annually and is valid for one year from the date of its issuance unless the motor vehicle for which the tax is prepaid is sold or is no longer used on the public highway. A liquefied gas tax decal license holder must apply for a new license each year. The ending odometer reading must be provided on the renewal application. In the absence of an ending odometer reading, the previous year's mileage of the motor vehicle shall be presumed to be at least 15,000 miles.

(d) A motor vehicle dealer's liquefied gas tax decal license shall be issued annually and is valid from the date of its issuance through December 31 of each calendar year unless the motor vehicle is sold, at which time the decal shall be removed by the dealer from the motor vehicle. A motor vehicle dealer's liquefied gas tax decal license holder must apply for a new license each year.

Sec. 162.308. COMPUTATION OF TAXES; ALLOWANCES. (a) A licensed dealer who makes a sale or delivery of liquefied gas into a fuel supply tank of a motor vehicle on which the tax is required to be collected is liable to this state for the tax imposed and shall report and pay the tax in the manner required by this subchapter.

(b) A licensed interstate trucker shall report and pay to this state the tax at the rate imposed on each gallon of liquefied gas delivered by the trucker into the fuel supply tank of a motor vehicle, unless the tax has been paid to a licensed dealer, and shall report and pay the tax on each gallon of liquefied gas imported into this state in the fuel supply tanks of motor vehicles owned or operated by the trucker and consumed in the operation of the motor vehicles on the public highways of this state.

(c) The tax on one percent of the taxable gallons of liquefied gas sold in this state shall be allocated to the licensed dealer making the sale for the expense of collecting, accounting for, reporting, and timely remitting the taxes collected and for keeping the records. The allocation allowance shall be deducted by the licensed dealer when paying the tax to this state.

(d) The tax of one-half of one percent of the taxable gallons of liquefied gas used in this state by persons licensed as interstate truckers shall be allocated to the interstate trucker making the use of the liquefied gas for the expense of accounting for, reporting, and timely remitting the taxes due.

Sec. 162.309. RECORDS. (a) A dealer shall keep for four years, open to inspection at all times by the comptroller and the attorney general, a complete record of all liquefied gas sold or delivered for taxable purposes.

(b) An interstate trucker shall keep for four years, open to inspection by the comptroller and the attorney general, a record of:

(1) the total miles traveled in all states by all the interstate trucker's motor vehicles traveling into or from this state and the total quantity of liquefied gas used in the motor vehicles; and

(2) the total miles traveled in this state and the total quantity of liquefied gas purchased in this state, showing both tax-paid fuel delivered into the fuel supply tanks of motor vehicles and tax-free fuel delivered into storage facilities in this state.

(c) Each taxable sale or delivery of liquefied gas into the fuel supply tanks of a motor vehicle, including deliveries by interstate truckers from bulk storage, shall be covered by an invoice. The invoice must be printed and contain:

(1) the preprinted or stamped name and address of the licensed dealer or interstate trucker;

(2) the date of the sale or delivery;

(3) the number of gallons sold or delivered;

(4) the mileage recorded on the odometer;

(5) the state and state highway license number;

(6) the signature of the driver of the motor vehicle; and

(7) the amount of tax paid or accounted for stated separately from the selling price.

(d) The invoice must be carried with the vehicle and will serve as a trip permit.

(e) A liquefied gas tax decal license holder required to report beginning and ending odometer readings may deduct the miles traveled outside this state from the total miles traveled. A record of miles traveled by the vehicle in states other than this state must be maintained and submitted with the renewal each year. A decal may not be renewed for an amount that is less than the rate for 4,999 miles annually.

Sec. 162.310. REPORTS AND PAYMENTS. (a) A licensed dealer, on or before the 25th day of the month following the end of each calendar quarter, shall file a report and remit the amount of tax due. A licensed dealer who has not made taxable sales during the reporting period shall file with the comptroller a report that includes those facts or that information.

(b) Every licensed interstate trucker, on or before the 25th day of the month following the end of each calendar quarter, shall file a report and remit the amount of tax due. A report shall be filed with the comptroller on forms provided for that purpose and must contain the number of miles traveled in this state, the number of miles traveled outside this state, and other information required by the comptroller. An interstate trucker who is required to file a report under this section and who has not made interstate trips or used liquefied gas in motor vehicles in this state during the reporting period shall file with the comptroller a report that includes those facts or that information.

Sec. 162.311. REFUNDS; TRANSFER OF DECALS. (a) If a motor vehicle bearing a liquefied gas tax decal is sold or transferred, the seller and purchaser shall promptly notify the comptroller of the sale or transfer and a new decal shall be issued in the new purchaser's name.

(b) If a motor vehicle bearing a liquefied gas tax decal is destroyed or the liquefied gas carburetor system is removed, the owner is entitled to a refund of the unused portion of the advance taxes paid for that year. The owner or operator shall submit to the comptroller an affidavit identifying the vehicle, the license number of the vehicle, the decal number assigned to the vehicle, the circumstances entitling the owner to a refund, and all other information required by the comptroller. On receipt of the affidavit and when satisfied as to the circumstances, the comptroller shall refund that portion of the tax payment that corresponds to the number of complete months remaining in the year for which the tax has been paid, beginning with the month following the date on which the vehicle or the liquefied gas carburetor was no longer used. A refund may not be made if the use of the vehicle ceased during the last month of the year.

(c) A licensed interstate trucker is entitled to a refund of the amount of the liquefied gas tax paid under this subchapter on each gallon of liquefied gas subsequently used outside this state. On verification by the comptroller that the interstate trucker's report was timely filed with all information required, the comptroller shall issue a warrant to the interstate trucker for the amount of the refund less the one percent deducted originally by the licensed dealer making the sale. An interstate trucker who fails to file an interstate trucker report by the 25th day of the month following the end of a calendar quarter forfeits the right to a refund.

[Sections 162.312-162.400 reserved for expansion]

SUBCHAPTER E. PENALTIES AND OFFENSES

Sec. 162.401. FAILURE TO PAY TAX OR FILE REPORT. (a) If a person having a license, or a person required to have a license, fails to file a report as required by this chapter or fails to pay a tax imposed by this chapter when due, the person forfeits five percent of the amount due as a penalty, and if the person fails to file the report or pay the tax within 30 days after the day on which the tax or report is due, the person forfeits an additional five percent.

(b) The comptroller may add a penalty of 75 percent of the amount of taxes, penalties, and interest due if failure to file the report or pay the tax when it becomes due is attributable to fraud or an intent to evade the application of this chapter or a rule adopted under this chapter or Chapter 111.

Sec. 162.402. PROHIBITED ACTS; CIVIL PENALTIES. (a) A person forfeits to the state a civil penalty of not less than \$25 and not more than \$200 if the person:

(1) refuses to stop and permit the inspection and examination of a motor vehicle transporting or using motor fuel on demand of a peace officer or the comptroller;

(2) operates a motor vehicle in this state without a valid interstate trucker's license or a trip permit when the person is required to hold one of those licenses or permits;

(3) operates a liquefied gas-propelled motor vehicle that is required to be licensed in this state, including motor vehicles equipped with dual carburetion, and does not display a current liquefied gas tax decal or multistate fuels tax agreement decal;

(4) makes a tax-free sale or delivery of liquefied gas into the fuel supply tank of a motor vehicle that does not display a current Texas liquefied gas tax decal;

(5) makes a taxable sale or delivery of liquefied gas without holding a valid dealer's license;

(6) makes a tax-free sale or delivery of liquefied gas into the fuel supply tank of a motor vehicle bearing out-of-state license plates;

(7) makes a delivery of liquefied gas into the fuel supply tank of a motor vehicle bearing Texas license plates and no Texas liquefied gas tax decal, unless licensed under a multistate fuels tax agreement;

(8) transports gasoline or diesel fuel in any cargo tank that has a connection by pipe, tube, valve, or otherwise with the fuel injector or carburetor of, or with the fuel supply tank feeding the fuel injector or carburetor of, the motor vehicle transporting the product;

(9) sells or delivers gasoline or diesel fuel from any fuel supply tank connected with the fuel injector or carburetor of a motor vehicle;

(10) owns or operates a motor vehicle for which reports or mileage records are required by this chapter without an operating odometer or other device in good working condition to record accurately the miles traveled;

(11) furnishes to a supplier a signed statement for purchasing diesel fuel tax-free and then uses the tax-free diesel fuel to operate a diesel-powered motor vehicle on a public highway;

(12) fails or refuses to comply with or violates a provision of this chapter;

(13) fails or refuses to comply with or violates a comptroller's rule for administering or enforcing this chapter;

(14) is an importer who does not obtain an import verification number when required by this chapter; or

(15) purchases motor fuel for export, on which the tax imposed by this chapter has not been paid, and subsequently diverts or causes the motor fuel to be diverted to a destination in this state or any other state or country other than the originally designated state or country without first obtaining a diversion number.

(b) An importer or exporter that violates a requirement of Section 162.016 is liable to this state for a civil penalty of \$2,000 or five times the amount of the unpaid tax, whichever is greater, for each violation.

(c) A person receiving motor fuel who accepts a shipping document that does not conform with the requirements of Section 162.016(a) is liable to this state for a civil penalty of \$2,000 or five times the amount of the unpaid tax, whichever is greater, for each occurrence.

(d) A person operating a bulk plant or terminal who issues a shipping document that does not conform with the requirements of Section 162.016(a) is liable to this state for a civil penalty of \$2,000 or five times the amount of the unpaid tax, whichever is greater, for each occurrence.

(e) A person operating a terminal or bulk plant who does not post notice as required by Section 162.016(i) is liable to this state for a civil penalty of \$100 for each day the notice is not posted as required by Section 162.016(i).

Sec. 162.403. CRIMINAL OFFENSES. Except as provided by Section 162.404, a person commits an offense if the person:

(1) refuses to stop and permit the inspection and examination of a motor vehicle transporting or using motor fuel on the demand of a peace officer or the comptroller;

(2) is required to hold a valid trip permit or interstate trucker's license, but operates a motor vehicle in this state without a valid trip permit or interstate trucker's license;

(3) operates a liquefied gas-propelled motor vehicle that is required to be licensed in this state, including a motor vehicle equipped with dual carburetion, and does not display a current liquefied gas tax decal or multistate fuels tax agreement decal;

(4) transports gasoline or diesel fuel in any cargo tank that has a connection by pipe, tube, valve, or otherwise with the fuel injector or carburetor or with the fuel supply tank feeding the fuel injector or carburetor of the motor vehicle transporting the product;

(5) sells or delivers gasoline or diesel fuel from a fuel supply tank that is connected with the fuel injector or carburetor of a motor vehicle;

(6) owns or operates a motor vehicle for which reports or mileage records are required by this chapter without an operating odometer or other device in good working condition to record accurately the miles traveled;

(7) sells or delivers dyed diesel fuel for the operation of a motor vehicle on a public highway;

(8) uses dyed diesel fuel for the operation of a motor vehicle on a public highway except as allowed under Section 162.235;

(9) makes a tax-free sale or delivery of liquefied gas into the fuel supply tank of a motor vehicle that does not display a current Texas liquefied gas tax decal;

(10) makes a sale or delivery of liquefied gas on which the person knows the tax is required to be collected, if at the time the sale is made the person does not hold a valid dealer's license;

(11) makes a tax-free sale or delivery of liquefied gas into the fuel supply tank of a motor vehicle bearing out-of-state license plates;

(12) makes a delivery of liquefied gas into the fuel supply tank of a motor vehicle bearing Texas license plates and no Texas liquefied gas tax decal, unless licensed under a multistate fuels tax agreement;

(13) refuses to permit the comptroller or the attorney general to inspect, examine, or audit a book or record required to be kept by a license holder, other user, or any person required to hold a license under this chapter;

(14) refuses to permit the comptroller or the attorney general to inspect or examine any plant, equipment, materials, or premises where motor fuel is produced, processed, blended, stored, sold, delivered, or used;

(15) refuses to permit the comptroller, the attorney general, an employee of either of those officials, a peace officer, an employee of the Texas Commission on Environmental Quality, or an employee of the Department of Agriculture to measure or gauge the contents of or take samples from a storage tank or container on premises where motor fuel is produced, processed, blended, stored, sold, delivered, or used;

(16) is a license holder, a person required to be licensed, or another user and fails or refuses to make or deliver to the comptroller a report required by this chapter to be made and delivered to the comptroller;

(17) is an importer who does not obtain an import verification number when required by this chapter;

(18) purchases motor fuel for export, on which the tax imposed by this chapter has not been paid, and subsequently diverts or causes the motor fuel to be diverted to a destination in this state or any other state or country other than the originally designated state or country without first obtaining a diversion number;

(19) conceals motor fuel with the intent of engaging in any conduct proscribed by this chapter or refuses to make sales of motor fuel on the volume-corrected basis prescribed by this chapter;

(20) refuses, while transporting motor fuel, to stop the motor vehicle the person is operating when called on to do so by a person authorized to stop the motor vehicle;

(21) refuses to surrender a motor vehicle and cargo for impoundment after being ordered to do so by a person authorized to impound the motor vehicle and cargo;

(22) mutilates, destroys, or secretes a book or record required by this chapter to be kept by a license holder, other user, or person required to hold a license under this chapter;

(23) is a license holder, other user, or other person required to hold a license under this chapter, or the agent or employee of one of those persons, and makes a false entry or fails to make an entry in the books and records required under this chapter to be made by the person or fails to retain a document as required by this chapter;

(24) transports in any manner motor fuel under a false cargo manifest or shipping document, or transports in any manner motor fuel to a location without delivering at the same time a shipping document relating to that shipment;

(25) engages in a motor fuel transaction that requires that the person have a license under this chapter without then and there holding the required license;

(26) makes and delivers to the comptroller a report required under this chapter to be made and delivered to the comptroller, if the report contains false information;

(27) forges, falsifies, or alters an invoice prescribed by law;

(28) makes any statement, knowing said statement to be false, in a claim for a tax refund filed with the comptroller;

(29) furnishes to a supplier a signed statement for purchasing diesel fuel tax-free and then uses the tax-free diesel fuel to operate a diesel-powered motor vehicle on a public highway;

(30) holds an aviation fuel dealer's license and makes a taxable sale or use of any gasoline or diesel fuel;

(31) fails to remit any tax funds collected by a license holder, another user, or any other person required to hold a license under this chapter;

(32) makes a sale of diesel fuel tax-free into a storage facility of a person who:

(A) is not licensed as a distributor, as an aviation fuel dealer, or as a dyed diesel fuel bonded user; or

(B) does not furnish to the licensed supplier or distributor a signed statement prescribed in Section 162.206;

(33) makes a sale of gasoline tax-free to any person who is not licensed as an aviation fuel dealer;

(34) is a dealer who purchases any motor fuel tax-free when not authorized to make a tax-free purchase under this chapter;

(35) is a dealer who purchases motor fuel with the intent to evade any tax imposed by this chapter or who accepts a delivery of motor fuel by any means and does not at the same time accept or receive a shipping document relating to the delivery;

(36) transports motor fuel for which a cargo manifest or shipping document is required to be carried without possessing or exhibiting on demand by an officer authorized to make the demand a cargo manifest or shipping document containing the information required to be shown on the manifest or shipping document;

(37) imports, sells, uses, blends, distributes, or stores motor fuel within this state on which the taxes imposed by this chapter are owed but have not been first paid to or reported by a license holder, another user, or any other person required to hold a license under this chapter;

(38) blends products together to produce a blended fuel that is offered for sale, sold, or used and that expands the volume of the original product to evade paying applicable motor fuel taxes; or

(39) evades or attempts to evade in any manner a tax imposed on motor fuel by this chapter.

Sec. 162.404. CRIMINAL OFFENSES: SPECIAL PROVISIONS AND EXCEPTIONS. (a) A person does not commit an offense under Section 162.403 unless the person intentionally or knowingly engaged in conduct as the definition of the offense requires, except that no culpable mental state is required for an offense under Section 162.403(6).

(b) Each day that a refusal prohibited under Section 162.403(13), (14), or (15) continues is a separate offense.

(c) The prohibition under Section 162.403(32) does not apply to the tax-free sale or distribution of diesel fuel authorized by Section 162.204(1), (2), or (3).

(d) The prohibition under Section 162.403(33) does not apply to the tax-free sale or distribution of gasoline under Section 162.104(1), (2), or (3).

Sec. 162.405. CRIMINAL PENALTIES. (a) An offense under Section 162.403(1), (2), (3), (4), (5), (6), (7), or (8) is a Class C misdemeanor.

(b) An offense under Section 162.403(9), (10), (11), (12), (13), (14), (15), (16), (17), or (18) is a Class B misdemeanor.

(c) An offense under Section 162.403(19), (20), or (21) is a Class A misdemeanor.

(d) An offense under Section 162.403(22), (23), (24), (25), (26), (27), (28), or (29) is a felony of the third degree.

(e) An offense under Section 162.403(30), (31), (32), (33), (34), (35), (36), (37), (38), or (39) is a felony of the second degree.

(f) Violations of three or more separate offenses under Sections 162.403(22) through (29) committed pursuant to one scheme or continuous course of conduct may be considered as one offense and punished as a felony of the second degree.

Sec. 162.406. CRIMINAL PENALTIES: CORPORATIONS AND ASSOCIATIONS. (a) Except as provided by Subsection (b), Subchapter E, Chapter 12, Penal Code, applies to offenses under this chapter committed by a corporation or association.

(b) The court may not fine a corporation or association under Section 12.51(c), Penal Code, unless the amount of the fine under that subsection is greater than the amount that could be fixed by the court under Section 12.51(b), Penal Code.

(c) In addition to a sentence imposed on a corporation, the court shall give notice of the conviction to the attorney general as required by Article 17A.09, Code of Criminal Procedure.

Sec. 162.407. VENUE OF CRIMINAL PROSECUTIONS. The venue for a prosecution under this subchapter is in Travis County or in the county where the offense occurred.

Sec. 162.408. NEGATION OF EXCEPTION: INFORMATION, COMPLAINT, OR INDICTMENT. An information, complaint, or indictment charging a violation of this chapter need not negate an exception to an act prohibited by this chapter, but the exception may be urged by the defendant as a defense to the offense charged.

Sec. 162.409. ISSUANCE OF BAD CHECK TO LICENSED DISTRIBUTOR OR LICENSED SUPPLIER. (a) A person commits an offense if:

(1) the person issues or passes a check or similar sight order for the payment of money knowing that the issuer does not have sufficient funds in or on deposit with the bank or other drawee for the payment in full of the check or order as well as all other checks or orders outstanding at the time of issuance;

(2) the payee on the check or order is a licensed distributor or licensed supplier; and

(3) the payment is for an obligation or debt that includes a tax under this chapter to be collected by the licensed distributor or licensed supplier.

(b) Sections 32.41(b), (c), (d), (e), and (g), Penal Code, apply to an offense under this section in the same manner as those provisions are applicable to the offense under Section 32.41(a), Penal Code.

(c) An offense under this section is a Class C misdemeanor.

(d) A person who makes payment on an obligation or debt that includes a tax under this chapter and pays with an insufficient funds check issued to a licensed distributor or licensed supplier may be held liable for a penalty equal to the total amount of tax not paid to the licensed distributor or licensed supplier.

[Sections 162.410-162.500 reserved for expansion]

SUBCHAPTER F. ALLOCATION OF TAXES

Sec. 162.501. TAX ADMINISTRATION FUND. (a) Before any other allocation of the taxes collected under this chapter is made, one percent of the gross amount of the taxes shall be deposited in the state treasury in a special fund, subject to the use of the comptroller in the administration and enforcement of this chapter.

(b) The unexpended portion of the special fund shall revert, at the end of the fiscal year, to the other funds to which revenue is allocated by this subchapter in proportion to the amounts originally derived from the respective sources.

Sec. 162.502. ALLOCATION OF UNCLAIMED REFUNDABLE GASOLINE TAXES. (a) On or before the fifth workday after the end of each month, the comptroller, after making the deductions for refund purposes, shall determine as accurately as possible, for the period since the latest determination under this subsection, the number of gallons of fuel used in motorboats on which the gasoline tax has been paid to this state, on which refund of the tax has not been made, and against which limitation has run for filing claim for refund of the tax. From the number of gallons so determined the comptroller shall compute the amount of taxes that would have been refunded under the law had refund claims been filed in accordance with the law.

(b) The comptroller shall allocate and deposit these unclaimed refunds as follows:

(1) 25 percent of the revenues based on unclaimed refunds of taxes paid on motor fuel used in motorboats shall be deposited to the credit of the available school fund; and

(2) the remaining 75 percent of the revenue shall be deposited to the credit of the general revenue fund.

(c) Money deposited to the credit of the general revenue fund under Subsection (b)(2) may be appropriated only to the Parks and Wildlife Department for any lawful purpose.

Sec. 162.5025. ALLOCATION OF OTHER UNCLAIMED REFUNDABLE NONDEDICATED TAXES. (a) The comptroller by rule shall devise a method of determining as accurately as possible the:

(1) number of gallons of fuel that are not used to propel a motor vehicle on the public highways; and

(2) amount of taxes collected under this chapter from fuel that is not used to propel a motor vehicle on the public highways that would have been refunded under this chapter if refund claims had been filed in accordance with this chapter and that is not subject to allocation under Section 162.502.

(b) The comptroller shall allocate to the general revenue fund the amount determined under Subsection (a)(2).

(c) The determination and allocation shall be made periodically as prescribed by rule.

Sec. 162.503. ALLOCATION OF GASOLINE TAX. On or before the fifth workday after the end of each month, the comptroller, after making all deductions for refund purposes and for the amounts allocated under Sections 162.502 and 162.5025, shall allocate the net remainder of the taxes collected under Subchapter B as follows:

(1) one-fourth of the tax shall be deposited to the credit of the available school fund;

(2) one-half of the tax shall be deposited to the credit of the state highway fund for the construction and maintenance of the state road system under existing law; and

(3) from the remaining one-fourth of the tax the comptroller shall:

(A) deposit to the credit of the county and road district highway fund all the remaining tax receipts until a total of \$7,300,000 has been credited to the fund each fiscal year; and

(B) after the amount required to be deposited to the county and road district highway fund has been deposited, deposit to the credit of the state highway fund the remainder of the one-fourth of the tax, the amount to be provided on the basis of allocations made each month of the fiscal year, which sum shall be used by the Texas Department of Transportation for the construction, improvement, and maintenance of farm-to-market roads.

Sec. 162.504. ALLOCATION OF DIESEL FUEL TAX. On or before the fifth workday after the end of each month, the comptroller, after making deductions for refund purposes, for the administration and enforcement of this chapter, and for the amounts allocated under Section 162.5025, shall allocate the remainder of the taxes collected under Subchapter C as follows:

(1) one-fourth of the taxes shall be deposited to the credit of the available school fund; and

(2) three-fourths of the taxes shall be deposited to the credit of the state highway fund.

Sec. 162.5045. ALLOCATION OF TAXES PAID ON UNDYED DIESEL FUEL USED OFF-HIGHWAY. On or before the fifth workday after the end of each month, the comptroller shall determine as accurately as possible for the period since the latest determination under this section the number of gallons of undyed diesel fuel used for purposes other than to propel a motor vehicle on the public highways of this state. From the number of gallons so determined, the comptroller shall compute the amount of taxes that were paid on that undyed diesel fuel and shall allocate and deposit that amount to the credit of the general revenue fund.

Sec. 162.505. ALLOCATION OF LIQUEFIED GAS TAX. On or before the fifth workday after the end of each month, the comptroller, after making deductions for refund purposes and for the administration and enforcement of this chapter, shall allocate the remainder of the taxes collected under Subchapter D as follows:

(1) one-fourth of the taxes shall be deposited to the credit of the available school fund; and

(2) three-fourths of the taxes shall be deposited to the credit of the state highway fund.

SECTION 2. Chapter 153, Tax Code, is repealed. A reference in law to Chapter 153, Tax Code, means Chapter 162, Tax Code, as added by this Act.

SECTION 3. (a) Not later than January 1, 2004, the comptroller shall report to the legislature on the comptroller's efforts during 2003 to enter into cooperative agreements under Section 153.017, Tax Code. The report must include a summary of the terms of any agreements the comptroller entered into during 2003.

(b) Not later than January 1, 2005, the comptroller shall report to the legislature on the comptroller's efforts during 2004 to enter into cooperative agreements under Section 162.003, Tax Code, as added by this Act. The report must include a summary of the terms of any agreements the comptroller entered into during 2004.

(c) This section takes effect September 1, 2003.

SECTION 4. (a) Except as provided by Section 3 of this Act, this Act takes effect January 1, 2004.

(b) On or before February 25, 2004, each person who possessed gasoline or undyed diesel fuel on which the taxes imposed by Chapter 162, Tax Code, as added by this Act, have not been paid shall report and pay to the comptroller the tax imposed by that chapter on the volume of tax-free gasoline or undyed diesel fuel in the person's possession if the person held a permit under Chapter 153, Tax Code, as that chapter existed on December 31, 2003, and:

(1) the person is a gasoline distributor;

(2) the person is a diesel fuel supplier;

(3) the person is an agricultural bonded user; or

(4) the person is a diesel fuel tax prepaid user and the volume of tax-free undyed diesel fuel in the person's possession is 2,000 gallons or more.

(c) A person that possessed gasoline or undyed diesel fuel on which the taxes imposed by Chapter 162, Tax Code, as added by this Act, have not been paid on the effective date of this Act may not be required to report and pay to the comptroller the tax imposed by that chapter if:

(1) the person is a licensed supplier, permissive supplier, or aviation fuel dealer as provided by Chapter 162, Tax Code, as added by this Act;

(2) the person held an active agricultural exemption number as previously provided under Chapter 153, Tax Code, as that chapter existed on December 31, 2003; or

(3) the person is exempt from the tax as provided by Section 162.104(a)(1), (2), (3), or (5) or Section 162.204(a)(1), (2), (3), (9), or (10), Tax Code, as added by this Act.

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

Amend **CSHB 2458** (Senate Committee Printing) as follows:

(1) In Section 162.125(c)(1), Tax Code, as added by SECTION 1 of the bill (page 26, line 22), strike "provided that a refund" and substitute "provided that a credit or refund".

(2) In Section 162.125(c)(5), Tax Code, as added by SECTION 1 of the bill (page 26, line 38), strike "provided that a refund" and substitute "provided that a credit or refund".

(3) In Section 162.227(c)(1), Tax Code, as added by SECTION 1 of the bill (page 43, line 38), strike "provided that a refund" and substitute "provided that a credit or refund".

(4) In Section 162.227(i), Tax Code, as added by SECTION 1 of the bill (page 44, line 13), strike "provided that a refund" and substitute "provided that a credit or refund".

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

Amend **CSHB 2458** in SUBCHAPTER F, Sec. 162.501, Tax Code (page 54, line 54-55, committee printing) by inserting a new subsection (c) to read as follows:

(c) In October of each even-numbered year, the comptroller, will report to the legislature on the use of the special fund in the administration and enforcement of this chapter. The report shall be reviewed by the State Auditor and the Legislative Budget Board. The report shall include:

1) the total amount expended from the special fund for administration and enforcement of motor fuels taxes;

2) any other uses of the special fund;

3) the amount of the unexpended portion reverted to other funds as provided by this chapter;

4) the methods used by the comptroller to enforce this chapter, including number of internal auditors, external auditors, and other full time employees, and;

5) recommendations for improving and enhancing the collection of motor fuels taxes in this state.

HB 1247 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

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

HB 1247, A bill to be entitled An Act relating to the creation, funding, and operation of a fire fighter and police officer home loan program.

On motion of Representative Ritter, the house concurred in the senate amendments to **HB 1247** by (Record 823): 145 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, 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; Hope; 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; Martinez Fischer; McCall; McClendon; McReynolds; Menendez; 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; Taylor; Telford; Thompson; Truitt; Turner; Uresti; Van Arsdale; Villarreal; West; Wilson; Wise; Wohlgemuth; Wolens; Wong; Woolley; Zedler.

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

Absent, Excused — Marchant.

Absent — Miller; Talton.

Senate Committee Substitute

HB 1247, A bill to be entitled An Act relating to the creation, funding, and operation of a fire fighter and police officer home loan program.

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

SECTION 1. Subchapter B, Chapter 1372, Government Code, is amended by adding Section 1372.0222 to read as follows:

Sec. 1372.0222. DEDICATION OF PORTION OF STATE CEILING FOR FIRE FIGHTER AND POLICE OFFICER HOME LOAN PROGRAM. Until August 1, out of that portion of the state ceiling that is available exclusively for reservations by issuers of qualified mortgage bonds under Section 1372.022, \$25 million shall be allotted each year and made available exclusively to the Texas State Affordable Housing Corporation for the purpose of issuing qualified mortgage bonds in connection with the fire fighter and police officer home loan program established under Section 2306.563.

SECTION 2. Sections 2306.553(a) and (b), Government Code, are amended to read as follows:

(a) The public purpose of the corporation is to perform activities and services that the corporation's board of directors determines will promote the public health, safety, and welfare through the provision of adequate, safe, and sanitary housing primarily for individuals and families of low, very low, and

extremely low income, ~~[and]~~ for teachers under the teachers home loan program as provided by Section 2306.562, and for fire fighters and police officers under the fire fighter and police officer home loan program as provided by Section 2306.563. The activities and services shall include engaging in mortgage banking activities and lending transactions and acquiring, holding, selling, or leasing real or personal property.

(b) The corporation's primary public purpose is to facilitate the provision of housing and the making of affordable loans to individuals and families of low, very low, and extremely low income, ~~[and]~~ to teachers under the teachers home loan program, and to fire fighters and police officers under the fire fighter and police officer home loan program. The corporation may make first lien, single family purchase money mortgage loans for single family homes only to individuals and families of low, very low, and extremely low income if the individual's or family's household income is not more than the greater of 60 percent of the median income for the state, as defined by the United States Department of Housing and Urban Development, or 60 percent of the area median family income, adjusted for family size, as defined by that department. The corporation may make loans for multifamily developments if:

(1) at least 40 percent of the units in a multifamily development are affordable to individuals and families with incomes at or below 60 percent of the median family income, adjusted for family size; or

(2) at least 20 percent of the units in a multifamily development are affordable to individuals and families with incomes at or below 50 percent of the median family income, adjusted for family size.

SECTION 3. Subchapter Y, Chapter 2306, Government Code, is amended by adding Section 2306.563 to read as follows:

Sec. 2306.563. FIRE FIGHTER AND POLICE OFFICER HOME LOAN PROGRAM. (a) In this section:

(1) "Fire fighter" has the meaning assigned by Section 143.003, Local Government Code.

(2) "Home" means a dwelling in this state in which a fire fighter or police officer intends to reside as the fire fighter's or police officer's principal residence.

(3) "Mortgage lender" has the meaning assigned by Section 2306.004.

(4) "Police officer" has the meaning assigned by Section 143.003, Local Government Code.

(5) "Program" means the fire fighter and police officer home loan program.

(b) The corporation shall establish a program to provide eligible fire fighters and police officers with low-interest home mortgage loans.

(c) To be eligible for a loan under this section, at the time a person files an application for the loan, the person must:

(1) be a fire fighter or police officer;

(2) reside in this state; and

(3) have an income of not more than 115 percent of area median family income, adjusted for family size.

(d) The corporation may contract with other agencies of the state or with private entities to determine whether applicants qualify as fire fighters or police officers under this section or otherwise to administer all or part of this section.

(e) The board of directors of the corporation may set and collect from each applicant any fees the board considers reasonable and necessary to cover the expenses of administering the program.

(f) The board of directors of the corporation shall adopt rules governing:

(1) the administration of the program;

(2) the making of loans under the program;

(3) the criteria for approving mortgage lenders;

(4) the use of insurance on the loans and the homes financed under the program, as considered appropriate by the board to provide additional security for the loans;

(5) the verification of occupancy of the home by the fire fighter or police officer as the fire fighter's or police officer's principal residence; and

(6) the terms of any contract made with any mortgage lender for processing, originating, servicing, or administering the loans.

(g) The corporation shall ensure that a loan under this section is structured in a way that complies with any requirements associated with the source of the funds used for the loan.

(h) In addition to funds set aside for the program under Section 1372.0222, the corporation may solicit and accept funding for the program from the following sources:

(1) gifts and grants for the purposes of this section;

(2) available money in the housing trust fund established under Section 2306.201, to the extent available to the corporation;

(3) federal block grants that may be used for the purposes of this section, to the extent available to the corporation;

(4) other state or federal programs that provide money that may be used for the purposes of this section; and

(5) amounts received by the corporation in repayment of loans made under this section.

(i) This section expires September 1, 2014.

SECTION 4. The Texas State Affordable Housing Corporation shall:

(1) aggressively pursue funding for the fire fighter and police officer home loan program required by Section 2306.563, Government Code, as added by this Act; and

(2) implement the fire fighter and police officer home loan program required by that section not later than September 1, 2004.

SECTION 5. If before January 1, 2005, the legislature finds in a scheduled review of the Texas State Affordable Housing Corporation by the Sunset Advisory Commission under Section 2306.5521, Government Code, that the corporation should be abolished, the fire fighter and police officer home loan program under Section 2306.563, Government Code, as added by this Act, shall be administered by the Texas Department of Housing and Community Affairs in the manner provided by this Act.

SECTION 6. 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.

**HB 1660 - HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS**

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

HB 1660, A bill to be entitled An Act relating to a report to the legislature regarding the installation and operation of video camera surveillance systems in county jails.

On motion of Representative Flores, the house concurred in the senate amendments to **HB 1660**.

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

Amend **HB 1660** (engrossed version), on page 2, between lines 12 and 13, by inserting a new subsection (b), Section 351.016, Local Government Code, to read as follows and redesignating existing Subsection (b) of that Subsection (c):

(b) The Commission on Jail Standards shall include in the report submitted under Subsection (a) information stating by county:

(1) the number of suicides committed by inmates confined in the county jail;

(2) the number of assaults committed against inmates confined in the county jail;

(3) the number of assaults committed by inmates confined in the county jail against the sheriff or an officer or employee of the county jail;

(4) the number of lawsuits filed against the county as a result of suicides and assaults;

(5) the costs incurred by the county in defending those lawsuits; and

(6) the judgments awarded against the county in those lawsuits.

**HB 1858 - HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS**

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

HB 1858, A bill to be entitled An Act relating to the promotion and marketing of Texas products.

On motion of Representative Wise, the house concurred in the senate amendments to **HB 1858** by (Record 824): 146 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; Crabb; Crownover; Davis, J.(C); 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; 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.; Smithee; Solis; Solomons; Stick; Swinford; Taylor; Telford; Thompson; Truitt; Turner; Uresti; Van Arsdale; Villarreal; West; Wilson; Wise; Wohlgemuth; Wolens; Wong; Woolley; Zedler.

Present, not voting — Mr. Speaker.

Absent, Excused — Marchant.

Absent — Hope; Talton.

Senate Committee Substitute

HB 1858, A bill to be entitled An Act relating to the promotion and marketing of Texas products.

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

SECTION 1. Section 12.002, Agriculture Code, is amended to read as follows:

Sec. 12.002. DEVELOPMENT OF AGRICULTURE. The department shall encourage the proper development and promotion of agriculture, horticulture, and other [related] industries that grow, process, or produce products in this state.

SECTION 2. The heading of Section 12.0175, Agriculture Code, is amended to read as follows:

Sec. 12.0175. GROWN OR PRODUCED IN TEXAS PROGRAM.

SECTION 3. Sections 12.0175(a) and (b), Agriculture Code, are amended to read as follows:

(a) The department by rule may establish programs ~~[a program]~~ to promote and market agricultural products and other products grown, [or] processed, or produced in the state ~~[or products made from ingredients grown in the state]~~.

(b) The department may charge a membership fee, as provided by department rule, for each participant in a ~~[the]~~ program.

SECTION 4. The heading to Chapter 47, Agriculture Code, is amended to read as follows:

CHAPTER 47. TEXAS OYSTER AND SHRIMP PROGRAM

SECTION 5. Sections 47.001 and 47.002, Agriculture Code, are redesignated as Subchapter A, Chapter 47, Agriculture Code, and a heading is added to that subchapter to read as follows:

SUBCHAPTER A. TEXAS OYSTER PROGRAM

SECTION 6. Chapter 47, Agriculture Code, is amended by adding Subchapter B to read as follows:

SUBCHAPTER B. TEXAS SHRIMP MARKETING ASSISTANCE
PROGRAM IN
DEPARTMENT OF AGRICULTURE

Sec. 47.051. DEFINITIONS. In this subchapter:

- (1) "Advisory committee" means the shrimp advisory committee.
- (2) "Coastal waters" means all the salt water of the state, including the portion of the Gulf of Mexico that is within the jurisdiction of the state.
- (3) "Program" means the Texas shrimp marketing assistance program.
- (4) "Shrimp marketing account" means the account in the general revenue fund established under Section 77.002(b), Parks and Wildlife Code.
- (5) "Texas-produced shrimp" means shrimp harvested from coastal waters and produced within the borders of the state.

Sec. 47.052. PROGRAM ESTABLISHED. (a) The Texas shrimp marketing assistance program is established in the department to assist the Texas shrimp industry in promoting and marketing Texas-produced shrimp and educating the public about the Texas shrimp industry and Texas-produced shrimp.

(b) The commissioner, in consultation with the advisory committee established under Section 47.053, shall adopt rules as necessary to implement the program.

(c) The department may accept grants, gifts, and gratuities from any source, including any governmental entity, any private or public corporation, and any other person, in furtherance of the program. Any funds received as a grant, gift, or gratuity shall be deposited in the shrimp marketing account under Section 77.002, Parks and Wildlife Code.

(d) The program shall be funded at a minimum level of \$250,000 per fiscal year with funds deposited into the shrimp marketing account under Section 77.002, Parks and Wildlife Code. The department may not expend more than two percent of the annual program budget on out-of-state travel.

Sec. 47.053. ADVISORY COMMITTEE. (a) The commissioner shall appoint a shrimp advisory committee to assist the commissioner in implementing the program established under this subchapter and in the expenditure of funds appropriated for the purpose of this subchapter.

(b) The advisory committee shall be composed of the following 10 members:

- (1) two owners of commercial bay shrimp boats;
- (2) two owners of commercial gulf shrimp boats;
- (3) one member of the Texas shrimp aquaculture industry;
- (4) one retail fish dealer;
- (5) one wholesale fish dealer;
- (6) one person employed by an institution of higher education as a researcher or instructor specializing in the area of food science, particularly seafood;
- (7) one member of the seafood restaurant industry; and

(8) one representative of the public.

(c) The members of the advisory committee serve without compensation but may be reimbursed for expenses incurred in the direct performance of their duties on approval by the commissioner.

(d) An advisory committee member serves a three-year term, with the terms of three or four members expiring August 31 of each year. The commissioner may reappoint a member to the advisory committee.

(e) The members of the advisory committee shall elect a presiding officer from among the members and shall adopt rules governing the operation of the committee. The rules shall specify that five members of the advisory committee constitute a quorum sufficient to conduct the meetings and business of the committee.

(f) The advisory committee shall meet as necessary, but not less frequently than once each calendar year, to provide guidance to the commissioner in establishing and implementing the program.

Sec. 47.054. PROGRAM STAFF. (a) The commissioner shall employ one or more persons as employees of the department to staff the program.

(b) Unless otherwise expressly provided by the legislature, the source of funding for the payment of employee salaries shall be funds generated from the program, including the 10 percent license fee increase authorized by Section 77.002, Parks and Wildlife Code, and the surcharge on license fees authorized by Section 134.014.

Sec. 47.055. PROMOTION, MARKETING, AND EDUCATION. The program shall promote and advertise the Texas shrimp industry by:

(1) developing and maintaining a database of Texas shrimp wholesalers that sell Texas-produced shrimp;

(2) operating a toll-free telephone number to:

(A) receive inquiries from persons who wish to purchase a particular type of Texas-produced shrimp; and

(B) make information about the Texas shrimp industry available to the public;

(3) developing a shrimp industry marketing plan to increase the consumption of Texas-produced shrimp;

(4) educating the public about Texas-produced shrimp by providing publicity about the information in the program's database to the public and making the information available to the public through the department's toll-free telephone number and electronically through the Internet;

(5) promoting the Texas shrimp industry; and

(6) promoting and marketing, and educating consumers about, Texas-produced shrimp using any other method the commissioner determines appropriate.

SECTION 7. Section 134.014, Agriculture Code, is amended to read as follows:

Sec. 134.014. LICENSE FEES. (a) The department shall issue an aquaculture license or a fish farm vehicle license on completion of applicable license requirements and the payment of a fee by the applicant, as provided by department rule.

(b) In addition to the fees under Subsection (a), the department shall assess and collect a surcharge on the annual license fee for aquaculture facilities producing shrimp for the purpose of funding the Texas shrimp marketing assistance program created under Subchapter B, Chapter 47. The amount of the surcharge shall be set each year, as provided by department rule, in an amount equal to 10 percent of the fees generated by the Parks and Wildlife Department under Section 77.002(c), Parks and Wildlife Code.

(c) The department shall deposit at the end of each quarter, to the credit of the shrimp marketing account, the fees received under Subsection (b) for use by the department to conduct and operate the Texas shrimp marketing assistance program created under Subchapter B, Chapter 47.

SECTION 8. Section 77.002, Parks and Wildlife Code, is amended to read as follows:

Sec. 77.002. LICENSE FEES. (a) License fees provided in this chapter are a privilege tax on catching, buying, selling, unloading, transporting, or handling shrimp within the jurisdiction of this state.

(b) The shrimp marketing account is an account in the general revenue fund to be used by the Department of Agriculture solely for the purpose of the Texas shrimp marketing assistance program established under Subchapter B, Chapter 47, Agriculture Code. The account consists of funds deposited to the account under this section and Section 134.014(b), Agriculture Code. The account is exempt from the application of Section 11.032 of this code and Section 403.095, Government Code.

(c) Except as provided by Sections 47.021 and 77.049, in addition to fee increases the department is authorized to make under this code, the department shall increase by 10 percent the fee, as of September 1, 2003, for the following licenses and shall deposit the amount of the increase to the credit of the shrimp marketing account:

- (1) a wholesale fish dealer's license issued under Section 47.009;
- (2) a wholesale truck dealer's fish license issued under Section 47.010;
- (3) a retail fish dealer's license issued under Section 47.011;
- (4) a retail dealer's truck license issued under Section 47.013;
- (5) a commercial bay shrimp boat license issued under Section 77.031;

and

- (6) a commercial gulf shrimp boat license issued under Section 77.035.

(d) Money in the shrimp marketing account may be used only for implementing, maintaining, and conducting, including hiring program staff employees for, the Texas shrimp marketing assistance program created under Subchapter B, Chapter 47, Agriculture Code. The Department of Agriculture may allocate not more than \$100,000 per fiscal year of the money in the account to cover administrative and personnel costs of the Department of Agriculture associated with the program.

(e) The department shall deposit at the end of each quarter to the credit of the shrimp marketing account, fees received under Subsection (c) for use by the Department of Agriculture to conduct and operate the Texas shrimp marketing assistance program created under Subchapter B, Chapter 47, Agriculture Code.

SECTION 9. Subchapter A, Chapter 47, Parks and Wildlife Code, is amended by adding Section 47.021 to read as follows:

Sec. 47.021. LICENSE FEES. (a) Fees for licenses issued under Sections 47.009, 47.011, and 47.013 may not be increased by more than 10 percent of the amount of the fee set by the commission and effective on September 1, 2002.

(b) This section expires September 1, 2005.

SECTION 10. Subchapter C, Chapter 77, Parks and Wildlife Code, is amended by adding Section 77.049 to read as follows:

Sec. 77.049. LICENSE FEES. (a) Fees for licenses issued under Sections 77.031 and 77.035 may not be increased by more than 10 percent of the amount of the fee set by the commission and effective on September 1, 2002.

(b) This section expires September 1, 2005.

SECTION 11. The Parks and Wildlife Department shall transfer a minimum amount of \$250,000 each year of the biennium to the shrimp marketing account for use by the Department of Agriculture to conduct and operate the Texas shrimp marketing assistance program created under Subchapter B, Chapter 47, Agriculture Code, as added by this Act. All unexpended balances remaining from appropriations for fiscal year 2004 may be carried forward to fiscal year 2005.

SECTION 12. 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.

(Menendez in the chair)

HB 1614 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

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

HB 1614, A bill to be entitled An Act relating to the reporting of medical errors and the establishment of a patient safety program in hospitals, ambulatory surgical centers, and mental hospitals.

On motion of Representative Truitt, the house concurred in the senate amendments to **HB 1614** by (Record 825): 141 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; Dukes; Dunnam; Dutton; Edwards; Eiland; 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; Homer; Hope; 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; Martinez Fischer; McCall; McClendon; Mercer; Merritt; Miller; Moreno, J.; Moreno, P.; Morrison; Mowery; Naishtat; Nixon; Noriega; Oliveira; Olivo; Paxton; Peña; Phillips; Pickett; Pitts; Puente; Quintanilla; Raymond; Reyna; Riddle; Rodriguez; Rose; Seaman; Smith, T.; Smith, W.; Smithee; Solis; Solomons; Stick; Swinford; Taylor; Telford; Thompson; Truitt; Turner; Uresti; Van Arsdale; Villarreal; West; Wilson; Wise; Wohlgemuth; Wolens; Wong; Woolley; Zedler.

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

Absent, Excused — Marchant.

Absent — Driver; Eissler; Hodge; McReynolds; Ritter; Talton.

Senate Committee Substitute

HB 1614, A bill to be entitled An Act relating to the reporting of medical errors and the establishment of a patient safety program in hospitals, ambulatory surgical centers, and mental hospitals; providing an administrative penalty.

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

SECTION 1. The purpose of this Act is to establish a program to:

(1) promote public accountability through the detection of statewide trends in the occurrence of certain medical errors by:

(A) requiring hospitals, ambulatory surgical centers, and mental hospitals to report errors;

(B) providing the public with access to statewide summaries of the reports; and

(C) requiring hospitals, ambulatory surgical centers, and mental hospitals to implement risk-reduction strategies; and

(2) encourage hospitals, ambulatory surgical centers, and mental hospitals to share best practices and safety measures that are effective in improving patient safety.

SECTION 2. Chapter 241, Health and Safety Code, is amended by adding Subchapter H to read as follows:

SUBCHAPTER H. PATIENT SAFETY PROGRAM

Sec. 241.201. DUTIES OF DEPARTMENT. (a) The department shall develop a patient safety program for hospitals. The program must:

(1) be administered by the hospital licensing program within the department; and

(2) serve as an information clearinghouse for hospitals concerning best practices and quality improvement strategies.

(b) The department shall group hospitals by size for the reports required by this chapter as follows:

(1) less than 50 beds;

(2) 50 to 99 beds;

- (3) 100 to 199 beds;
- (4) 200 to 399 beds; and
- (5) 400 beds or more.

(c) The department shall combine two or more categories described by Subsection (b) if the number of hospitals in any category falls below 40.

Sec. 241.202. ANNUAL REPORT. (a) On renewal of a license under this chapter, a hospital shall submit to the department an annual report that lists the number of occurrences at the hospital or at an outpatient facility owned or operated by the hospital of each of the following events during the preceding year:

(1) a medication error resulting in a patient's unanticipated death or major permanent loss of bodily function in circumstances unrelated to the natural course of the illness or underlying condition of the patient;

(2) a perinatal death unrelated to a congenital condition in an infant with a birth weight greater than 2,500 grams;

(3) the suicide of a patient in a setting in which the patient received care 24 hours a day;

(4) the abduction of a newborn infant patient from the hospital or the discharge of a newborn infant patient from the hospital into the custody of an individual in circumstances in which the hospital knew, or in the exercise of ordinary care should have known, that the individual did not have legal custody of the infant;

(5) the sexual assault of a patient during treatment or while the patient was on the premises of the hospital or facility;

(6) a hemolytic transfusion reaction in a patient resulting from the administration of blood or blood products with major blood group incompatibilities;

(7) a surgical procedure on the wrong patient or on the wrong body part of a patient;

(8) a foreign object accidentally left in a patient during a procedure; and

(9) a patient death or serious disability associated with the use or function of a device designed for patient care that is used or functions other than as intended.

(b) The department may not require the annual report to include any information other than the number of occurrences of each event listed in Subsection (a).

Sec. 241.203. ROOT CAUSE ANALYSIS AND ACTION PLAN. (a) In this section, "root cause analysis" means the process that identifies basic or causal factors underlying a variation in performance leading to an event listed in Section 241.202 and that:

(1) focuses primarily on systems and processes;

(2) progresses from special causes in clinical processes to common causes in organizational processes; and

(3) identifies potential improvements in processes or systems.

(b) Not later than the 45th day after the date a hospital becomes aware of the occurrence of an event listed in Section 241.202, the hospital shall:

(1) conduct a root cause analysis of the event; and
(2) develop an action plan that identifies strategies to reduce the risk of a similar event occurring in the future.

(c) The department may review a root cause analysis or action plan related to an event listed in Section 241.202 during a survey, inspection, or investigation of a hospital.

(d) The department may not require a root cause analysis or action plan to be submitted to the department.

(e) The department or an employee or agent of the department may not in any form, format, or manner remove, copy, reproduce, redact, or dictate from any part of a root cause analysis or action plan.

Sec. 241.204. CONFIDENTIALITY; ABSOLUTE PRIVILEGE. (a) Except as provided by Sections 241.205 and 241.206, all information and materials obtained or compiled by the department under this subchapter or compiled by a hospital under this subchapter, including the root cause analysis, annual hospital report, action plan, best practices report, department summary, and all related information and materials, are confidential and:

(1) are not subject to disclosure under Chapter 552, Government Code, or discovery, subpoena, or other means of legal compulsion for release to any person, subject to Section 241.203(c); and

(2) may not be admitted as evidence or otherwise disclosed in any civil, criminal, or administrative proceeding.

(b) The confidentiality protections under Subsection (a) apply without regard to whether the information or materials are obtained from or compiled by a hospital or an entity that has an ownership or management interest in a hospital.

(c) The transfer of information or materials under this subchapter is not a waiver of a privilege or protection granted under law.

(d) Information reported by a hospital under this subchapter and analyses, plans, records, and reports obtained, prepared, or compiled by a hospital under this subchapter and all related information and materials are subject to an absolute privilege and may not be used in any form against the hospital or the hospital's agents, employees, partners, assignees, or independent contractors in any civil, criminal, or administrative proceeding, regardless of the means by which a person came into possession of the information, analysis, plan, record, report, or related information or material. A court shall enforce this privilege for all matters covered by this subsection.

(e) The provisions of this section regarding the confidentiality of information or materials compiled or reported by a hospital in compliance with or as authorized under this subchapter do not restrict access, to the extent authorized by law, by the patient or the patient's legally authorized representative to records of the patient's medical diagnosis or treatment or to other primary health records.

Sec. 241.205. ANNUAL DEPARTMENT SUMMARY. The department annually shall compile and make available to the public a summary of the events reported by hospitals as required by Section 241.202. The summary may contain only aggregated information and may not directly or indirectly identify:

(1) a specific hospital or group of hospitals;

(2) an individual; or

(3) a specific reported event or the circumstances or individuals surrounding the event.

Sec. 241.206. BEST PRACTICES REPORT AND DEPARTMENT SUMMARY. (a) A hospital shall provide to the department at least one report of the best practices and safety measures related to a reported event.

(b) A hospital may provide to the department a report of other best practices and the safety measures, such as marking a surgical site and involving the patient in the marking process, that are effective in improving patient safety.

(c) The department by rule may prescribe the form and format of a best practices report. The department may not require a best practices report to exceed one page in length. The department shall accept, in lieu of a report in the form and format prescribed by the department, a copy of a report submitted by a hospital to a patient safety organization.

(d) The department periodically shall:

(1) review the best practices reports;

(2) compile a summary of the best practices reports determined by the department to be effective and recommended as best practices; and

(3) make the summary available to the public.

(e) The summary may not directly or indirectly identify:

(1) a specific hospital or group of hospitals;

(2) an individual; or

(3) a specific reported event or the circumstances or individuals surrounding the event.

Sec. 241.207. PROHIBITION. The hospital annual report, the department summary, or the best practices report may not distinguish between an event that occurred at an outpatient facility owned or operated by the hospital and an event that occurred at a hospital facility.

Sec. 241.208. REPORT TO LEGISLATURE. (a) Not later than December 1, 2006, the commissioner of public health shall:

(1) evaluate the patient safety program established under this subchapter; and

(2) report the results of the evaluation and make recommendations to the legislature.

(b) The commissioner of public health shall conduct the evaluation in consultation with hospitals licensed under this chapter.

(c) The evaluation must address:

(1) the degree to which the department was able to detect statewide trends in errors based on the types and numbers of events reported;

(2) the degree to which the statewide summaries of events compiled by the department were accessed by the public;

(3) the effectiveness of the department's best practices summary in improving hospital patient care; and

(4) the impact of national studies on the effectiveness of state or federal systems of reporting medical errors.

Sec. 241.209. GIFTS, GRANTS, AND DONATIONS. The department may accept and administer a gift, grant, or donation from any source to carry out the purposes of this subchapter.

Sec. 241.210. EXPIRATION. Unless continued in existence, this subchapter expires September 1, 2007.

SECTION 3. Sections 243.001 through 243.016, Health and Safety Code, are designated as Subchapter A, Chapter 243, Health and Safety Code, and a heading to Subchapter A is added to read as follows:

SUBCHAPTER A. GENERAL PROVISIONS; LICENSING AND PENALTIES

SECTION 4. Chapter 243, Health and Safety Code, is amended by adding Subchapter B to read as follows:

SUBCHAPTER B. PATIENT SAFETY PROGRAM

Sec. 243.051. DUTIES OF DEPARTMENT. The department shall develop a patient safety program for ambulatory surgical centers. The program must:

(1) be administered by the ambulatory surgical center licensing program within the department; and

(2) serve as an information clearinghouse for ambulatory surgical centers concerning best practices and quality improvement strategies.

Sec. 243.052. ANNUAL REPORT. (a) On renewal of a license under this chapter, an ambulatory surgical center shall submit to the department an annual report that lists the number of occurrences at the center or at an outpatient facility owned or operated by the center of each of the following events during the preceding year:

(1) a medication error resulting in a patient's unanticipated death or major permanent loss of bodily function in circumstances unrelated to the natural course of the illness or underlying condition of the patient;

(2) the suicide of a patient;

(3) the sexual assault of a patient during treatment or while the patient was on the premises of the center or facility;

(4) a hemolytic transfusion reaction in a patient resulting from the administration of blood or blood products with major blood group incompatibilities;

(5) a surgical procedure on the wrong patient or on the wrong body part of a patient;

(6) a foreign object accidentally left in a patient during a procedure; and

(7) a patient death or serious disability associated with the use or function of a device designed for patient care that is used or functions other than as intended.

(b) The department may not require the annual report to include any information other than the number of occurrences of each event listed in Subsection (a).

Sec. 243.053. ROOT CAUSE ANALYSIS AND ACTION PLAN. (a) In this section, "root cause analysis" means the process that identifies basic or causal factors underlying a variation in performance leading to an event listed in Section 243.052 and that:

(1) focuses primarily on systems and processes;
(2) progresses from special causes in clinical processes to common causes in organizational processes; and

(3) identifies potential improvements in processes or systems.
(b) Not later than the 45th day after an ambulatory surgical center becomes aware of the occurrence of an event listed in Section 243.052, the center shall:

(1) conduct a root cause analysis of the event; and
(2) develop an action plan that identifies strategies to reduce the risk of a similar event occurring in the future.

(c) The department may review a root cause analysis or action plan related to an event listed in Section 243.052 during a survey, inspection, or investigation of an ambulatory surgical center.

(d) The department may not require a root cause analysis or action plan to be submitted to the department.

(e) The department or an employee or agent of the department may not in any form, format, or manner remove, copy, reproduce, redact, or dictate from any part of a root cause analysis or action plan.

Sec. 243.054. CONFIDENTIALITY; ABSOLUTE PRIVILEGE. (a) Except as provided by Sections 243.055 and 243.056, all information and materials obtained or compiled by the department under this subchapter or compiled by an ambulatory surgical center under this subchapter, including the root cause analysis, annual report of an ambulatory surgical center, action plan, best practices report, department summary, and all related information and materials, are confidential and:

(1) are not subject to disclosure under Chapter 552, Government Code, or discovery, subpoena, or other means of legal compulsion for release to any person, subject to Section 243.053(c); and

(2) may not be admitted as evidence or otherwise disclosed in any civil, criminal, or administrative proceeding.

(b) The confidentiality protections under Subsection (a) apply without regard to whether the information or materials are obtained from or compiled by an ambulatory surgical center or an entity that has an ownership or management interest in an ambulatory surgical center.

(c) The transfer of information or materials under this subchapter is not a waiver of a privilege or protection granted under law.

(d) Information reported by an ambulatory surgical center under this subchapter and analyses, plans, records, and reports obtained, prepared, or compiled by the center under this subchapter and all related information and materials are subject to an absolute privilege and may not be used in any form against the center or the center's agents, employees, partners, assignees, or independent contractors in any civil, criminal, or administrative proceeding, regardless of the means by which a person came into possession of the information, analysis, plan, record, report, or related information or material. A court shall enforce this privilege for all matters covered by this subsection.

(e) The provisions of this section regarding the confidentiality of information or materials compiled or reported by an ambulatory surgical center in compliance with or as authorized under this subchapter do not restrict access, to the extent authorized by law, by the patient or the patient's legally authorized representative to records of the patient's medical diagnosis or treatment or to other primary health records.

Sec. 243.055. ANNUAL DEPARTMENT SUMMARY. The department annually shall compile and make available to the public a summary of the events reported by ambulatory surgical centers as required by Section 243.052. The summary may contain only aggregated information and may not directly or indirectly identify:

- (1) a specific ambulatory surgical center or group of centers;
- (2) an individual; or
- (3) a specific reported event or the circumstances or individuals surrounding the event.

Sec. 243.056. BEST PRACTICES REPORT AND DEPARTMENT SUMMARY. (a) An ambulatory surgical center shall provide to the department at least one report of best practices and safety measures related to a reported event.

(b) An ambulatory surgical center may provide to the department a report of other best practices and the safety measures, such as marking a surgical site and involving the patient in the marking process, that are effective in improving patient safety.

(c) The department by rule may prescribe the form and format of a best practices report. The department may not require a best practices report to exceed one page in length. The department shall accept, in lieu of a report in the form and format prescribed by the department, a copy of a report submitted by an ambulatory surgical center to a patient safety organization.

- (d) The department periodically shall:
- (1) review the best practices reports;
 - (2) compile a summary of the best practices reports determined by the department to be effective and recommended as best practices; and
 - (3) make the summary available to the public.

(e) The summary may not directly or indirectly identify:

- (1) a specific ambulatory surgical center or group of centers;
- (2) an individual; or
- (3) a specific reported event or the circumstances or individuals surrounding the event.

Sec. 243.057. PROHIBITION. The annual report of an ambulatory surgical center, the department summary, or the best practices report may not distinguish between an event that occurred at an outpatient facility owned or operated by the center and an event that occurred at a center facility.

Sec. 243.058. REPORT TO LEGISLATURE. (a) Not later than December 1, 2006, the commissioner of public health shall:

- (1) evaluate the patient safety program established under this subchapter; and

(2) report the results of the evaluation and make recommendations to the legislature.

(b) The commissioner of public health shall conduct the evaluation in consultation with ambulatory surgical centers.

(c) The evaluation must address:

(1) the degree to which the department was able to detect statewide trends in errors based on the types and numbers of events reported;

(2) the degree to which the statewide summaries of events compiled by the department were accessed by the public;

(3) the effectiveness of the department's best practices summary in improving patient care; and

(4) the impact of national studies on the effectiveness of state or federal systems of reporting medical errors.

Sec. 243.059. GIFTS, GRANTS, AND DONATIONS. The department may accept and administer a gift, grant, or donation from any source to carry out the purposes of this subchapter.

Sec. 243.060. EXPIRATION. Unless continued in existence, this subchapter expires September 1, 2007.

SECTION 5. Sections 577.001 through 577.019, Health and Safety Code, are designated as Subchapter A, Chapter 577, Health and Safety Code, and a heading to Subchapter A is added to read as follows:

SUBCHAPTER A. GENERAL PROVISIONS; LICENSING AND PENALTIES

SECTION 6. Chapter 577, Health and Safety Code, is amended by adding Subchapter B to read as follows:

SUBCHAPTER B. PATIENT SAFETY PROGRAM

Sec. 577.051. DUTIES OF DEPARTMENT. The department shall develop a patient safety program for mental hospitals licensed under Section 577.001(a). The program must:

(1) be administered by the licensing program within the department;
and

(2) serve as an information clearinghouse for hospitals concerning best practices and quality improvement strategies.

Sec. 577.052. ANNUAL REPORT. (a) On renewal of a license under this chapter, a mental hospital shall submit to the department an annual report that lists the number of occurrences at the hospital or at an outpatient facility owned or operated by the hospital of each of the following events during the preceding year:

(1) a medication error resulting in a patient's unanticipated death or major permanent loss of bodily function in circumstances unrelated to the natural course of the illness or underlying condition of the patient;

(2) the suicide of a patient in a setting in which the patient received care 24 hours a day;

(3) the sexual assault of a patient during treatment or while the patient was on the premises of the hospital or facility;

(4) a hemolytic transfusion reaction in a patient resulting from the administration of blood or blood products with major blood group incompatibilities; and

(5) a patient death or serious disability associated with the use or function of a device designed for patient care that is used or functions other than as intended.

(b) The department may not require the annual report to include any information other than the number of occurrences of each event listed in Subsection (a).

Sec. 577.053. ROOT CAUSE ANALYSIS AND ACTION PLAN. (a) In this section, "root cause analysis" means the process that identifies basic or causal factors underlying a variation in performance leading to an event listed in Section 577.052 and that:

(1) focuses primarily on systems and processes;

(2) progresses from special causes in clinical processes to common causes in organizational processes; and

(3) identifies potential improvements in processes or systems.

(b) Not later than the 45th day after the date a mental hospital becomes aware of an event listed in Section 577.052, the hospital shall:

(1) conduct a root cause analysis of the event; and

(2) develop an action plan that identifies strategies to reduce the risk of a similar event occurring in the future.

(c) The department may review a root cause analysis or action plan related to an event listed in Section 577.052 during a survey, inspection, or investigation of a mental hospital.

(d) The department may not require a root cause analysis or action plan to be submitted to the department.

(e) The department or an employee or agent of the department may not in any form, format, or manner remove, copy, reproduce, redact, or dictate from all or any part of a root cause analysis or action plan.

Sec. 577.054. CONFIDENTIALITY; ABSOLUTE PRIVILEGE. (a) Except as provided by Sections 577.055 and 577.056, all information and materials obtained or compiled by the department under this subchapter or compiled by a mental hospital under this subchapter, including the root cause analysis, annual report of the hospital, action plan, best practices report, department summary, and all related information and materials, are confidential and:

(1) are not subject to disclosure under Chapter 552, Government Code, or discovery, subpoena, or other means of legal compulsion for release to any person, subject to Section 577.053(c); and

(2) may not be admitted as evidence or otherwise disclosed in any civil, criminal, or administrative proceeding.

(b) The confidentiality protections under Subsection (a) apply without regard to whether the information or materials are obtained from or compiled by a mental hospital or an entity that has an ownership or management interest in a hospital.

(c) The transfer of information or materials under this subchapter is not a waiver of a privilege or protection granted under law.

(d) Information reported by a mental hospital under this subchapter and analyses, plans, records, and reports obtained, prepared, or compiled by a hospital under this subchapter and all related information and materials are subject to an absolute privilege and may not be used in any form against the hospital or the hospital's agents, employees, partners, assignees, or independent contractors in any civil, criminal, or administrative proceeding, regardless of the means by which a person came into possession of the information, analysis, plan, record, report, or related information or material. A court shall enforce this privilege for all matters covered by this subsection.

(e) The provisions of this section regarding the confidentiality of information or materials compiled or reported by a mental hospital in compliance with or as authorized under this subchapter do not restrict access, to the extent authorized by law, by the patient or the patient's legally authorized representative to records of the patient's medical diagnosis or treatment or to other primary health records.

Sec. 577.055. ANNUAL DEPARTMENT SUMMARY. The department annually shall compile and make available to the public a summary of the events reported by mental hospitals as required by Section 577.052. The summary may contain only aggregated information and may not directly or indirectly identify:

- (1) a specific mental hospital or group of hospitals;
- (2) an individual; or
- (3) a specific reported event or the circumstances or individuals surrounding the event.

Sec. 577.056. BEST PRACTICES REPORT AND DEPARTMENT SUMMARY. (a) A mental hospital shall provide to the department at least one report of best practices and safety measures related to a reported event.

(b) A mental hospital may provide to the department a report of other best practices and the safety measures that are effective in improving patient safety.

(c) The department by rule may prescribe the form and format of a best practices report. The department may not require a best practices report to exceed one page in length. The department shall accept, in lieu of a report in the form and format prescribed by the department, a copy of a report submitted by a mental hospital to a patient safety organization.

- (d) The department periodically shall:
- (1) review the best practices reports;
 - (2) compile a summary of the best practices reports determined by the department to be effective and recommended as best practices; and
 - (3) make the summary available to the public.

(e) The summary may not directly or indirectly identify:

- (1) a specific mental hospital or group of hospitals;
- (2) an individual; or
- (3) a specific reported event or the circumstances or individuals surrounding the event.

Sec. 577.057. PROHIBITION. The annual report of a mental hospital, the department summary, or the best practices report may not distinguish between an event that occurred at an outpatient facility owned or operated by the hospital and an event that occurred at a hospital facility.

Sec. 577.058. REPORT TO LEGISLATURE. (a) Not later than December 1, 2006, the commissioner of public health shall:

(1) evaluate the patient safety program established under this subchapter; and

(2) report the results of the evaluation and make recommendations to the legislature.

(b) The commissioner of public health shall conduct the evaluation in consultation with mental hospitals licensed under this chapter.

(c) The evaluation must address:

(1) the degree to which the department was able to detect statewide trends in errors based on the types and numbers of events reported;

(2) the degree to which the statewide summaries of events compiled by the department were accessed by the public;

(3) the effectiveness of the department's best practices summary in improving hospital patient care; and

(4) the impact of national studies on the effectiveness of state or federal systems of reporting medical errors.

Sec. 577.059. GIFTS, GRANTS, AND DONATIONS. The department may accept and administer a gift, grant, or donation from any source to carry out the purposes of this subchapter.

Sec. 577.060. ADMINISTRATIVE PENALTY. (a) The department may assess an administrative penalty against a person who violates this subchapter or a rule adopted under this subchapter.

(b) The penalty may not exceed \$1,000 for each violation. Each day of a continuing violation constitutes a separate violation.

(c) In determining the amount of an administrative penalty assessed under this section, the department shall consider:

(1) the seriousness of the violation;

(2) the history of previous violations;

(3) the amount necessary to deter future violations;

(4) efforts made to correct the violation;

(5) any hazard posed to the public health and safety by the violation;

and

(6) any other matters that justice may require.

(d) All proceedings for the assessment of an administrative penalty under this subchapter are considered to be contested cases under Chapter 2001, Government Code.

Sec. 577.061. NOTICE; REQUEST FOR HEARING. (a) If, after investigation of a possible violation and the facts surrounding that possible violation, the department determines that a violation has occurred, the department shall give written notice of the violation to the person alleged to have committed the violation. The notice shall include:

(1) a brief summary of the alleged violation;
(2) a statement of the amount of the proposed penalty based on the factors set forth in Section 577.060(c); and

(3) a statement of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(b) Not later than the 20th day after the date on which the notice is received, the person notified may accept the determination of the department made under this section, including the proposed penalty, or make a written request for a hearing on that determination.

(c) If the person notified of the violation accepts the determination of the department, the commissioner of public health or the commissioner's designee shall issue an order approving the determination and ordering that the person pay the proposed penalty.

Sec. 577.062. HEARING; ORDER. (a) If the person notified fails to respond in a timely manner to the notice under Section 577.061(b) or if the person requests a hearing, the department shall:

(1) set a hearing;

(2) give written notice of the hearing to the person; and

(3) designate a hearings examiner to conduct the hearing.

(b) The hearings examiner shall make findings of fact and conclusions of law and shall promptly issue to the commissioner of public health or the commissioner's designee a proposal for decision as to the occurrence of the violation and a recommendation as to the amount of the proposed penalty if a penalty is determined to be warranted.

(c) Based on the findings of fact and conclusions of law and the recommendations of the hearings examiner, the commissioner of public health or the commissioner's designee by order may find that a violation has occurred and may assess a penalty or may find that no violation has occurred.

Sec. 577.063. NOTICE AND PAYMENT OF ADMINISTRATIVE PENALTY; JUDICIAL REVIEW; REFUND. (a) The department shall give notice of the order under Section 577.062(c) to the person notified. The notice must include:

(1) separate statements of the findings of fact and conclusions of law;

(2) the amount of any penalty assessed; and

(3) a statement of the right of the person to judicial review of the order.

(b) Not later than the 30th day after the date on which the decision is final as provided by Chapter 2001, Government Code, the person shall:

(1) pay the penalty;

(2) pay the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty; or

(3) without paying the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(c) Within the 30-day period, a person who acts under Subsection (b)(3) may:

(1) stay enforcement of the penalty by:

(A) paying the penalty to the court for placement in an escrow account; or

(B) giving to the court a supersedeas bond that is approved by the court for the amount of the penalty and that is effective until all judicial review of the order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the amount of the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the department by certified mail.

(d) If the department receives a copy of an affidavit under Subsection (c)(2), the department may file with the court, within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty and to give a supersedeas bond.

(e) If the person does not pay the penalty and the enforcement of the penalty is not stayed, the department may refer the matter to the attorney general for collection of the penalty.

(f) Judicial review of the order:

(1) is instituted by filing a petition as provided by Subchapter G, Chapter 2001, Government Code; and

(2) is under the substantial evidence rule.

(g) If the court sustains the occurrence of the violation, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty. If the court does not sustain the occurrence of the violation, the court shall order that no penalty is owed.

(h) When the judgment of the court becomes final, the court shall proceed under this subsection. If the person paid the amount of the penalty under Subsection (b)(2) and if that amount is reduced or is not upheld by the court, the court shall order that the department pay the appropriate amount plus accrued interest to the person. The rate of the interest is the rate charged on loans to depository institutions by the New York Federal Reserve Bank, and the interest shall be paid for the period beginning on the date the penalty was paid and ending on the date the penalty is remitted. If the person paid the penalty under Subsection (c)(1)(A) or gave a supersedeas bond under Subsection (c)(1)(A) and if the amount of the penalty is not upheld by the court, the court shall order the release of the escrow account or bond. If the person paid the penalty under Subsection (c)(1)(A) and the amount of the penalty is reduced, the court shall order that the amount of the penalty be paid to the department from the escrow

account and that the remainder of the account be released. If the person gave a supersedeas bond and if the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the amount.

Sec. 577.064. EXPIRATION. Unless continued in existence, this subchapter expires September 1, 2007.

SECTION 7. (a) Not later than January 1, 2004, the Texas Department of Health, using existing resources available to the department, shall establish a patient safety program as required under Subchapter H, Chapter 241, Health and Safety Code, as added by this Act, under Subchapter B, Chapter 243, Health and Safety Code, as added by this Act, and under Subchapter B, Chapter 577, Health and Safety Code, as added by this Act.

(b) Beginning July 1, 2004, a hospital, ambulatory surgical center, or mental hospital on renewal of a license under Chapter 241 or 243 or Section 577.001(a), Health and Safety Code, shall submit the annual report required by Section 241.202, 243.052, or 577.052, Health and Safety Code, as added by this Act.

SECTION 8. The expiration of Subchapter H, Chapter 241, Health and Safety Code, as added by this Act, Subchapter B, Chapter 243, Health and Safety Code, as added by this Act, and Subchapter B, Chapter 577, Health and Safety Code, as added by this Act, in accordance with Sections 241.210, 243.060, and 577.064, Health and Safety Code, as added by this Act, does not affect the confidentiality of and privilege applicable to information and materials or the authorized disclosure of summary reports of that information and materials under Sections 241.204, 241.205, 241.206, 241.208, 243.054, 243.055, 243.056, 243.058, 577.054, 577.055, 577.056, and 577.058, Health and Safety Code, as added by this Act, and these laws are continued in effect for this purpose.

SECTION 9. 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.

HB 1696 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

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

HB 1696, A bill to be entitled An Act relating to the hours of service of a poll watcher on election day.

On motion of Representative Denny, the house concurred in the senate amendments to **HB 1696**.

Senate Committee Substitute

HB 1696, A bill to be entitled An Act relating to the hours of service of a poll watcher on election day.

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

SECTION 1. Section 33.052(a), Election Code, is amended to read as follows:

~~[(a)]~~ A watcher at a precinct polling place may begin service at any time after the presiding judge arrives at the polling place on election day and may remain at the polling place until the presiding judge and the clerks complete their duties there. A watcher that serves for more than five continuous hours may serve at the polling place during the hours the watcher chooses, except that if the watcher is present at the polling place when ballots are counted, the watcher may not leave until the counting is complete ~~[may not be accepted for service unless the watcher is present at the time the polls are opened for voting].~~

SECTION 2. Sections 33.052(b), (c), (d), and (e), Election Code, are repealed.

SECTION 3. This Act takes effect September 1, 2003.

HB 1650 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

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

HB 1650, A bill to be entitled An Act relating to student fees charged at The University of Texas at San Antonio.

On motion of Representative Mercer, the house concurred in the senate amendments to **HB 1650** by (Record 826): 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; 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; Homer; Hope; 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; Martinez Fischer; McCall; McClendon; 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; Swinford; Taylor; Telford; Thompson; Truitt; Turner; Uresti; Van Arsdale; Villarreal; West; Wilson; Wise; Wohlgemuth; Wolens; Wong; Woolley; Zedler.

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

Absent, Excused — Marchant.

Absent — Hodge; McReynolds; Stick; Talton.

Senate Committee Substitute

HB 1650, A bill to be entitled An Act relating to student fees charged at The University of Texas at San Antonio.

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

SECTION 1. Sections 54.532(a) and (c), Education Code, are amended to read as follows:

(a) The board of regents of The University of Texas System may levy a student union fee of not less than \$20 or more than \$150 [~~\$75~~] for each semester or summer session, assessed in proportion to the number of credit hours for which a student registers, for the sole purpose of financing, operating, maintaining, and improving a student union building for The University of Texas at San Antonio. This fee may be levied in addition to any other use or service fee.

(c) The board may not increase the amount of the student union fee ~~[by more than 10 percent]~~ in any academic year unless the amount of the increase is approved by a majority of the students voting in an election held for that purpose and by a majority of the student government of the institution.

SECTION 2. Section 54.543, Education Code, is amended by amending Subsection (a) and adding Subsection (g) to read as follows:

(a) The board of regents of The University of Texas System may charge each student enrolled at The University of Texas at San Antonio a recreational facility fee not to exceed \$100 [~~\$30~~] for each semester of the regular term or summer session to finance, construct, operate, maintain, or improve student recreational facilities at the university.

(g) The board may not increase the amount of the recreational facility fee in any academic year unless the amount of the increase is approved by a majority vote of the students participating in a general student election held for that purpose.

SECTION 3. (a) Subject to Subsection (b), the change in law made by this Act applies only to fees imposed for a semester or term that begins on or after the effective date of this Act.

(b) The change in law made by this Act in amending Section 54.532(a), Education Code, applies only to fees imposed under that subsection beginning with the 2007 fall semester.

SECTION 4. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2003.

**HB 1661 - HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS**

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

HB 1661, A bill to be entitled An Act relating to the carrying of certain weapons by a person who holds a security officer commission issued by the Texas Commission on Private Security.

On motion of Representative Haggerty, the house concurred in the senate amendments to **HB 1661**.

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

Amend **HB 1661** by striking SECTION 2 and renumbering the subsequent sections accordingly.

**HB 1940 - HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS**

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

HB 1940, A bill to be entitled An Act relating to longevity pay for assistant prosecutors.

On motion of Representative Luna, the house concurred in the senate amendments to **HB 1940**.

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

Amend **HB 1940** (House engrossment) as follows:

(1) In SECTION 4 of the bill, in proposed Subsection (b), Section 41.258, Government Code (page 3, line 24), immediately before the period, insert "provided the cost does not exceed \$30 for all bail bonds posted at that time for an individual and the cost is not required on the posting of a personal or cash bond."

(2) In SECTION 4 of the bill, in proposed Section 41.258, Government Code (page 4, between lines 11 and 12), insert the following new subsection (f) and reletter subsequent subsections of Section 41.258 accordingly:

(f) A surety paying a cost under Subsection (b) may apply for and is entitled to a refund of the cost not later than the 181st day after the date the state declines to prosecute an individual or the grand jury declines to indict an individual.

Senate Amendment No. 2 (Senate Committee Amendment No. 2)

Amend **HB 1940** (House engrossment) as follows:

(1) In SECTION 4 of the bill, in the heading to proposed Section 41.258, Government Code (page 3, line 18), after "FUND", insert "AND FAIR DEFENSE ACCOUNT".

(2) In SECTION 4 of the bill, in proposed Section 41.258(b), Government Code (page 3, line 23), strike "\$10" and substitute "\$15".

(3) In SECTION 4 of the bill, in proposed Section 41.258, Government Code (page 4, lines 21 and 22), strike Subsection (h) and substitute the following:

(h) The comptroller shall deposit two-thirds of the funds received under this section in the felony prosecutor supplement fund and one-third of the funds received under this section to the fair defense account. A county may not reduce the amount of funds provided for indigent defense services in the county because of funds provided under this subsection.

(4) In SECTION 4 of the bill, in proposed Section 41.258(i), Government Code (page 4, line 23), in the first sentence, between "the" and "fund", insert "felony prosecutor supplement".

**HB 3303 - HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS**

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

HB 3303, A bill to be entitled An Act relating to the validation of certain acts and proceedings of the City of McAllen relating to the creation of two boards of trustees for the management of its international bridges.

On motion of Representative Gutierrez, the house concurred in the senate amendments to **HB 3303** by (Record 827): 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; 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; Hope; 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; Martinez Fischer; McCall; McClendon; McReynolds; Mercer; Merritt; Miller; Moreno, J.; Moreno, P.; Morrison; Mowery; Naishtat; Noriega; Oliveira; Olivo; Paxton; Peña; Phillips; Pickett; Pitts; Puente; Quintanilla; Raymond; Riddle; Ritter; Rodriguez; Rose; Seaman; Smith, T.; Smith, W.; Smithee; Solis; Solomons; Stick; Swinford; Taylor; Telford; Truitt; Turner; Uresti; Van Arsdale; Villarreal; West; Wilson; Wise; Wohlgemuth; Wolens; Wong; Woolley; Zedler.

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

Absent, Excused — Marchant.

Absent — Denny; Nixon; Reyna; Talton; Thompson.

Senate Committee Substitute

HB 3303, A bill to be entitled An Act relating to the validation of certain acts and proceedings of the City of McAllen.

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

SECTION 1. (a) All governmental acts and proceedings of the City of McAllen authorizing the creation of the two boards of trustees, conveying real property to the United States for construction of federal facilities relating to toll bridges, and providing for the management and control of the international bridge system that includes the Hidalgo-McAllen-Reynosa International Bridge and the Anzalduas International Crossing, are validated as of the dates on which they occurred.

(b) This Act does not apply to any matter that, on the effective date of this Act:

(1) is involved in litigation if the litigation ultimately results in the matter being held invalid by a final judgment of a court of competent jurisdiction; or

(2) has been held invalid by a final judgment of a court of competent jurisdiction.

SECTION 2. This Act takes effect September 1, 2003.

HB 3325 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

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

HB 3325, A bill to be entitled An Act relating to the creation and administration of the community telecommunications alliance program.

On motion of Representative J. Keffer, the house concurred in the senate amendments to **HB 3325**.

Senate Committee Substitute

HB 3325, A bill to be entitled An Act relating to the creation and administration of the community telecommunications alliance program.

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

SECTION 1. Chapter 487, Government Code, is amended by adding Subchapter O to read as follows:

SUBCHAPTER O. COMMUNITY TELECOMMUNICATIONS ALLIANCE PROGRAM

Sec. 487.651. DEFINITIONS. In this subchapter:

(1) "Board" means the Telecommunications Infrastructure Fund Board.

(2) "Community telecommunications alliance" means an association of public and private entities created to share resources, promote innovative school health technology, promote economic development opportunities for the community, and improve the overall quality of life within a local community through telecommunications and information services provided by the private sector.

(3) "Program" means the community telecommunications alliance program.

Sec. 487.652. MEMORANDUM OF UNDERSTANDING. (a) The office and the board by rule shall adopt a memorandum of understanding establishing the community telecommunications alliance program. The program shall:

(1) assist local communities in the creation and development of community telecommunications alliances, including alliances established to pursue rural economic development or innovative rural school health technology projects, by providing advice and assistance in assessing local uses of and local demands or needs for local telecommunications and information services of private sector providers; and

(2) assist community telecommunications alliances in applying for grant funding for projects, including:

(A) assisting alliances in securing matching private sector funding for projects; and

(B) requiring alliances to develop sustainable plans:

(i) that demonstrate how the alliance will continue to obtain private sector services once the grant funding terminates;

(ii) that do not directly compete with local businesses, telecommunications providers, or information services providers; and

(iii) that prohibit a network created with assistance from the alliance or other public funding from being sold to a direct competitor of a private sector provider.

(b) Each community telecommunications alliance established under this section shall have an advisory council with representation from each of the following:

(1) a local nonprofit organization;

(2) a local county-elected official;

(3) a local city-elected official;

(4) a local telecommunications provider;

(5) a local economic development group;

(6) the local financial community; and

(7) a local information services provider.

(c) This chapter may not be construed to:

(1) expand eligibility for private network services under Section 58.253(a) or 59.072(a), Utilities Code, to persons not eligible to purchase the services; or

(2) permit the direct or indirect sharing or resale of private network services with persons not eligible to purchase the services.

(d) A community telecommunications alliance created under this section shall offer the following local entities the opportunity to be included in the alliance:

(1) a library, as defined by Section 57.042, Utilities Code;

(2) a public school, as defined by Section 57.042, Utilities Code;

(3) a public not-for-profit health care facility, as defined by Section 57.042, Utilities Code; and

(4) a local institution of higher education, as defined by Section 57.042, Utilities Code.

Sec. 487.653. REPORT TO LEGISLATURE. Not later than January 1 of each odd-numbered year, the office and the board jointly shall submit to the legislature a report detailing the grant activities of the program and grant recipients. The report must include:

(1) the criteria used to quantify the effect grant funds had in advancing telecommunications connectivity and technology;

(2) data and performance measures used to quantify the achievement of program objectives; and

(3) a description of and results from a grant monitoring risk assessment and on-site review process.

Sec. 487.654. PROHIBITION. A community telecommunications alliance may not directly or indirectly:

- (1) provide telecommunications or information services to the public;
- (2) resell or share telecommunications or information services obtained through grants or loans received under Chapter 57, Utilities Code, with persons not eligible for the grants or loans; or
- (3) provide or support the provision of telecommunications or information services in competition with a private sector provider.

SECTION 2. Section 57.047(c), Utilities Code, is amended to read as follows:

(c) In awarding a grant or loan under this subchapter, the board shall give priority to a project or proposal that:

- (1) represents collaborative efforts involving more than one school, university, or library;
- (2) contributes matching funds from another source;
- (3) shows promise of becoming self-sustaining;
- (4) helps users of information learn new ways to acquire and use information through telecommunications;
- (5) extends specific educational information and knowledge services to a group not previously served, especially a group in an economically depressed, [✱] rural, or remote area;
- (6) results in more efficient or effective learning than through conventional teaching;
- (7) improves the effectiveness and efficiency of health care delivery; [✱]
- (8) takes advantage of distance learning opportunities in a rural or urban school district with a:
 - (A) disproportionate number of at-risk youths; or
 - (B) high dropout rate; or
- (9) assists the community telecommunications alliance program created under Subchapter O, Chapter 487, Government Code.

SECTION 3. This Act takes effect September 1, 2003.

HB 3563 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

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

HB 3563, A bill to be entitled An Act relating to the creation of the Waller County Road Improvement District No. 1; providing authority to impose a tax and issue bonds.

On motion of Representative Hegar, the house concurred in the senate amendments to **HB 3563** by (Record 828): 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; 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; Hegar; Hilderbran; Hill; Hochberg; Hodge; Homer; Hope; 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; Martinez Fischer; McCall; McClendon; McReynolds; 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; Taylor; Telford; Thompson; Turner; Uresti; Van Arsdale; Villarreal; West; Wilson; Wise; Wohlgemuth; Wolens; Wong; Woolley; Zedler.

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

Absent, Excused — Marchant.

Absent — Deshotel; Heflin; Talton; Truitt.

STATEMENT OF VOTE

When Record No. 828 was taken, I was in the house but away from my desk. I would have voted yes.

Truitt

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

Amend **HB 3563** on page 17, line 9, between "Code," and "or", by inserting the words "a cable operator as defined by 47 U.S.C. Section 522, as amended,"

HB 1621 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

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

HB 1621, A bill to be entitled An Act relating to authorizing a public junior college to waive a portion of the tuition and fees for a student enrolled in a course for joint high school-junior college credit.

On motion of Representative Flores, the house concurred in the senate amendments to **HB 1621** by (Record 829): 142 Yeas, 0 Nays, 2 Present, not voting.

Yeas — 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; Escobar; Farabee;

Farrar; Flores; Flynn; Gallego; Garza; Gattis; Geren; Giddings; Goodman; Goolsby; Griggs; Grusendorf; Guillen; Gutierrez; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Hegar; Hilderbran; Hochberg; Hodge; Homer; Hope; 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; Martinez Fischer; McCall; McClendon; McReynolds; 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; Taylor; Telford; Thompson; Truitt; Turner; Uresti; Van Arsdale; Villarreal; West; Wilson; Wise; Wohlgemuth; Wolens; Wong; Woolley; Zedler.

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

Absent, Excused — Marchant.

Absent — Allen; Ellis; Heflin; Hill; Talton.

STATEMENT OF VOTE

When Record No. 829 was taken, my vote failed to register. I would have voted yes.

Ellis

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

Amend **HB 1621** by adding the following sections.

SECTION __: Chapter 130.123(e), Education Code, is amended to read as follows:

Sec. 130.123(e) In addition to the revenues, fees, and other resources authorized to be pledged to the payment of bonds issued hereunder, each board further shall be authorized to pledge irrevocably to such payment, out of the tuition charges required or permitted by law to be imposed at its institution or institutions, an amount not exceeding ~~[\$15]~~ 25 percent of the tuition charges collected from each enrolled student for each [regular] semester or [and \$7.50 from each enrolled student for each summer] term, and each board also shall be authorized to pledge to such payment all or any part of any grant, donation, or income received or to be received from the United States government or any other public or private source, whether pursuant to an agreement or otherwise.

SECTION __: Chapter 56.033(a), Education Code, is amended to read as follows:

Sec. 56.033(a) The governing board of each institution of higher education, including the Texas State Technical College System, shall cause to be set aside:

(1) not less than 15 percent nor more than 20 percent out of each resident student's tuition charge under Section 54.051 as provided by the General Appropriations Act for the applicable academic year;

(2) three percent out of each nonresident student's tuition charge under Section 54.051;

(3) not less than six percent nor more than 20 percent out of each resident student's hourly tuition charge exclusive of out of district charges, and \$1.50 out of each nonresident student's hourly tuition charge, for academic courses at a public community or junior college; and

(4) not less than six percent nor more than 20 percent of hourly tuition charges exclusive of out of district charges for vocational-technical courses at a public community or junior college.

HB 3577 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

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

HB 3577, A bill to be entitled An Act relating to the County Court at Law of Randall County.

On motion of Representative Smithee, the house concurred in the senate amendments to **HB 3577**.

Senate Amendment No. 1 (Senate Committee Amendment No. 2)

Amend **HB 3577** on page 1, line 24 by adding the words "to conduct arraignments, conduct pretrial hearings, and accept guilty pleas" between "cases" and ".".

On page 2, lines 5 through 7 by removing the words "The county may not reduce the compensation paid to the judge of a county court at law during the judge's term in office."

HB 2718 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

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

HB 2718, A bill to be entitled An Act relating to the allocation and use of municipal hotel occupancy taxes in certain municipalities bordering bays.

On motion of Representative W. Smith, the house concurred in the senate amendments to **HB 2718**.

Senate Committee Substitute

HB 2718, A bill to be entitled An Act relating to the allocation and use of municipal hotel occupancy taxes in certain municipalities bordering bays.

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

SECTION 1. Subchapter B, Chapter 351, Tax Code, is amended by adding Section 351.104 to read as follows:

Sec. 351.104. ALLOCATION OF REVENUE: CERTAIN MUNICIPALITIES BORDERING BAYS. (a) This section applies only to a home-rule municipality that borders a bay, that has a population of less than 80,000, and that is not an eligible coastal municipality.

(b) In this section:

(1) "Adjacent public land" means land that:

(A) is owned by this state or a local governmental entity; and
(B) is located adjacent to a bay that is bordered by a municipality
to which this section applies.

(2) "Clean and maintain" means the collection and removal of litter and debris and the supervision and elimination of sanitary and safety conditions that would pose a threat to personal health or safety if not removed or otherwise corrected.

(c) Notwithstanding any other provision of this chapter and subject to Subsections (d) and (e), a municipality to which this section applies may use not more than 10 percent of the revenue derived from the tax imposed under this chapter:

(1) for a purpose described by Section 351.105(a)(1) or (2);

(2) to clean and maintain adjacent public land; or

(3) to mitigate coastal erosion on adjacent public land.

(d) A municipality to which this section applies may not reduce the amount of revenue that it uses for a purpose described by Section 351.101(a)(3) to an amount that is less than the average amount of revenue used by the municipality for that purpose during the 36-month period that precedes the municipality's use of revenue under Subsection (c).

(e) A municipality that uses revenue from the tax imposed under this chapter for a purpose provided by this section must spend the same amount of revenue for the same purpose from a source other than that tax.

SECTION 2. This Act takes effect September 1, 2003.

HB 1575 - HOUSE CONCURS IN SENATE AMENDMENTS

TEXT OF SENATE AMENDMENTS

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

HB 1575, A bill to be entitled An Act relating to cost-based transportation rates for natural gas.

On motion of Representative Ritter, the house concurred in the senate amendments to **HB 1575** by (Record 830): 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; Dukes; Dunnam; Dutton; Edwards; Eiland; Eissler; Elkins; Ellis; 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; Hope; Hopson; Howard; Hunter; Hupp; Isett; Jones, D.; Jones, E.; Jones, J.; Keel; Keffer, B.; Keffer, J.; King; Kolkhorst; Krusee; Kuempel; Laney; Laubenberg; Lewis; Luna; Mabry; Madden; Martinez Fischer; McCall; McClendon; McReynolds; 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; Taylor; Telford; Thompson; Truitt; Turner; Uresti; Van Arsdale; Villarreal; West; Wilson; Wise; Wohlgenuth; Wolens; Wong; Woolley; Zedler.

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

Absent, Excused — Marchant.

Absent — Driver; Escobar; Hughes; Moreno, P.; Talton.

Senate Committee Substitute

HB 1575, A bill to be entitled An Act relating to cost-based transportation rates for natural gas.

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

SECTION 1. Section 104.2545, Utilities Code, is amended to read as follows:

Sec. 104.2545. REQUIRED SERVICE TO PUBLIC RETAIL CUSTOMER ~~[SCHOOL DISTRICT]~~. (a) In this section, "service site" means facilities or buildings operated by a public retail customer ~~[school district]~~ or a group of adjacent facilities or buildings operated by a public retail customer ~~[school district]~~ within one contiguous geographical area.

(b) Unless the utility is prohibited by other law from providing the service and if sufficient pipeline capacity is available on an existing facility of the utility to provide the service, a gas utility or municipally owned utility may not refuse to provide service to a public retail customer ~~[school district]~~ at a service site, at rates established as provided by Subsection (c), the following services:

(1) the sale of gas;

(2) the transportation of an annual average of 25 ~~[40]~~ million British thermal units or more each day of gas that is:

(A) taken as a royalty in kind; and

(B) owned by the state or managed by a marketing program operated by the state or by a state agency; or

(3) a combination of the services described by Subdivisions (1) and (2).

(c) A utility shall provide a service described by Subsection (b) at rates provided by a written contract negotiated between the utility and the state or a state agency. If the utility and the state or state agency are not able to agree to a contract rate, a fair and reasonable rate may be determined for the public retail customer ~~[school district]~~, as a rate for a separate class of service, by the railroad commission or, for municipally owned gas utilities, by the relevant regulatory body under this chapter.

(d) In this section, "public retail customer" has the meaning assigned by Section 35.101.

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.

**HB 999 - HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS**

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

HB 999, A bill to be entitled An Act relating to electronic reporting of political contributions and expenditures.

On motion of Representative Madden, the house concurred in the senate amendments to **HB 999**.

Senate Committee Substitute

HB 999, A bill to be entitled An Act relating to electronic reporting of political contributions and expenditures.

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

SECTION 1. Section 254.036(b), Election Code, is amended to read as follows:

(b) Except as provided by Subsection ~~[(e)]~~ (d), (e), (f), or (g), each report filed under this chapter with the commission must be filed by computer diskette, modem, or other means of electronic transfer, using computer software provided by the commission or computer software that meets commission specifications for a standard file format.

SECTION 2. Section 254.0401(b), Election Code, is amended to read as follows:

(b) Except as otherwise provided by this subsection, the commission may not make a report filed with the commission under Section 254.036(b) for a reporting deadline by any candidate for a particular office or by a specific-purpose committee for supporting or opposing only one candidate for a particular office available to the public on the Internet until each candidate for that office and each specific-purpose committee for supporting or opposing only one candidate for that office, other than a candidate or committee to which Section 254.036 ~~[254.036(e) or]~~ (d) applies, has filed a report for that reporting deadline. Regardless of whether each candidate for a particular office and each specific-purpose committee for supporting or opposing only one candidate for that office has filed a report for a filing deadline, the commission shall make each report in connection with that office available on the Internet and by any other electronic means on:

(1) the 21st day after the date of the filing deadline, for a report other than a report required to be filed under Section 254.064(c); or

(2) the fourth day after the date of the filing deadline, for a report required to be filed under Section 254.064(c).

SECTION 3. Section 254.036(c), Election Code, is repealed.

SECTION 4. This Act takes effect September 1, 2003, and applies only to a report filed under Chapter 254, Election Code, on or after that date.

**HB 1232 - HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS**

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

HB 1232, A bill to be entitled An Act relating to the expiration of alcoholic beverage permits and licenses.

On motion of Representative Geren, the house concurred in the senate amendments to **HB 1232**.

Senate Committee Substitute

HB 1232, A bill to be entitled An Act relating to the expiration of alcoholic beverage permits and licenses.

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

SECTION 1. Section 11.09, Alcoholic Beverage Code, is amended by adding Subsection (d) to read as follows:

(d) The commission by rule shall provide an expiration date for a class of renewed permits that is two years after the date on which the permits would otherwise expire under this code if the fee for the permits is increased proportionately.

SECTION 2. Section 61.03, Alcoholic Beverage Code, is amended by amending Subsection (a) and adding Subsection (d) to read as follows:

(a) Except as provided by Subsection (b) or (d), a license may not be issued for a term longer than one year. Any license except a branch, importer's, importer's carrier's, or temporary license expires one year after the date on which it is issued.

(d) The commission by rule shall provide an expiration date for a class of renewed licenses that is two years after the date on which the licenses would otherwise expire under this code if the fee for the licenses is increased proportionately.

SECTION 3. This Act takes effect September 1, 2003.

**HB 1268 - HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS**

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

HB 1268, A bill to be entitled An Act relating to outpatient drug benefit coverage in certain health insurance policies and discount drug programs.

On motion of Representative Geren, the house concurred in the senate amendments to **HB 1268**.

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

Amend **HB 1268** as follows:

In SECTION 1 of the bill, on page 1 line 37, strike "under an agreement made between an insurer and" and substitute "pursuant to an agreement made with a participating pharmacy".

HB 1743 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

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

HB 1743, A bill to be entitled An Act relating to prevention of fraud and abuse under the medical assistance program; creating an offense.

On motion of Representative Delisi, the house concurred in the senate amendments to **HB 1743**.

Senate Committee Substitute

HB 1743, A bill to be entitled An Act relating to prevention of fraud and abuse under the medical assistance program; creating an offense.

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

SECTION 1. Subchapter B, Chapter 32, Human Resources Code, is amended by adding Section 32.0291 to read as follows:

Sec. 32.0291. PREPAYMENT REVIEWS AND POSTPAYMENT HOLDS. (a) Notwithstanding any other law, the department may:

(1) perform a prepayment review of a claim for reimbursement under the medical assistance program to determine whether the claim involves fraud or abuse; and

(2) as necessary to perform that review, withhold payment of the claim for not more than five working days without notice to the person submitting the claim.

(b) Notwithstanding any other law, the department may impose a postpayment hold on payment of future claims submitted by a provider if the department has reliable evidence that the provider has committed fraud or wilful misrepresentation regarding a claim for reimbursement under the medical assistance program. The department must notify the provider of the postpayment hold not later than the fifth working day after the date the hold is imposed.

(c) On timely written request by a provider subject to a postpayment hold under Subsection (b), the department shall file a request with the State Office of Administrative Hearings for an expedited administrative hearing regarding the hold. The provider must request an expedited hearing under this subsection not later than the 10th day after the date the provider receives notice from the department under Subsection (b). The administrative law judge shall order the department to discontinue imposing the hold unless the department makes a prima facie showing at the hearing that the evidence relied on by the department in imposing the hold is relevant, reliable, credible, and material to the issue of fraud or wilful misrepresentation.

(d) The department shall adopt rules that allow a provider subject to a postpayment hold under Subsection (b) to seek an informal resolution of the issues identified by the department in the notice provided under that subsection. A provider must seek an informal resolution under this subsection not later than the deadline prescribed by Subsection (c). A provider's decision to seek an informal resolution under this subsection does not extend the time by which the

provider must request an expedited administrative hearing under Subsection (c). However, the department may request that any hearing initiated under Subsection (c) be stayed until the informal resolution process is completed.

SECTION 2. Section 32.032, Human Resources Code, is amended to read as follows:

Sec. 32.032. PREVENTION AND DETECTION OF FRAUD AND ABUSE. The department shall adopt reasonable rules for minimizing the opportunity for fraud and abuse, for establishing and maintaining methods for detecting and identifying situations in which a question of fraud or abuse in the program may exist, and for referring cases where fraud or abuse appears to exist to the appropriate law enforcement agencies for prosecution.

SECTION 3. Section 32.0321(a), Human Resources Code, is amended to read as follows:

(a) The department by rule may require each provider of medical assistance in a provider type that has demonstrated significant potential for fraud or abuse to file with the department a surety bond in a reasonable amount. The department by rule shall require a provider of medical assistance to file with the department a surety bond in a reasonable amount if the department identifies a pattern of suspected fraud or abuse involving criminal conduct relating to the provider's services under the medical assistance program that indicates the need for protection against potential future acts of fraud or abuse.

SECTION 4. Section 32.039(a), Human Resources Code, is amended by adding Subdivision (1-a) to read as follows:

(1-a) "Inducement" includes a service, cash in any amount, entertainment, or any item of value.

SECTION 5. Section 32.039, Human Resources Code, is amended by amending Subsections (b), (u), and (v) and adding Subsections (w) and (x) to read as follows:

(b) A person commits a violation if the person:

(1) presents or causes to be presented to the department a claim that contains a statement or representation the person knows or should know to be false;

(1-a) engages in conduct that violates Section 102.001, Occupations Code;

(1-b) solicits or receives, directly or indirectly, overtly or covertly any remuneration, including any kickback, bribe, or rebate, in cash or in kind for referring an individual to a person for the furnishing of, or for arranging the furnishing of, any item or service for which payment may be made, in whole or in part, under the medical assistance program, provided that this subdivision does not prohibit the referral of a patient to another practitioner within a multispecialty group or university medical services research and development plan (practice plan) for medically necessary services;

(1-c) solicits or receives, directly or indirectly, overtly or covertly any remuneration, including any kickback, bribe, or rebate, in cash or in kind for purchasing, leasing, or ordering, or arranging for or recommending the purchasing, leasing, or ordering of, any good, facility, service, or item for which payment may be made, in whole or in part, under the medical assistance program;

(1-d) offers or pays, directly or indirectly, overtly or covertly any remuneration, including any kickback, bribe, or rebate, in cash or in kind to induce a person to refer an individual to another person for the furnishing of, or for arranging the furnishing of, any item or service for which payment may be made, in whole or in part, under the medical assistance program, provided that this subdivision does not prohibit the referral of a patient to another practitioner within a multispecialty group or university medical services research and development plan (practice plan) for medically necessary services;

(1-e) offers or pays, directly or indirectly, overtly or covertly any remuneration, including any kickback, bribe, or rebate, in cash or in kind to induce a person to purchase, lease, or order, or arrange for or recommend the purchase, lease, or order of, any good, facility, service, or item for which payment may be made, in whole or in part, under the medical assistance program;

(1-f) provides or offers an inducement in a manner or for a purpose not otherwise prohibited by this section or Section 102.001, Occupations Code, to an individual, including a recipient, provider, or employee of a provider, for the purpose of influencing a decision regarding selection of a provider or receipt of a good or service under the medical assistance program or for the purpose of otherwise influencing a decision regarding the use of goods or services provided under the medical assistance program; or

(2) is a managed care organization that contracts with the department to provide or arrange to provide health care benefits or services to individuals eligible for medical assistance and:

(A) fails to provide to an individual a health care benefit or service that the organization is required to provide under the contract with the department;

(B) fails to provide to the department information required to be provided by law, department rule, or contractual provision;

(C) engages in a fraudulent activity in connection with the enrollment in the organization's managed care plan of an individual eligible for medical assistance or in connection with marketing the organization's services to an individual eligible for medical assistance; or

(D) engages in actions that indicate a pattern of:

(i) wrongful denial of payment for a health care benefit or service that the organization is required to provide under the contract with the department; or

(ii) wrongful delay of at least 45 days or a longer period specified in the contract with the department, not to exceed 60 days, in making payment for a health care benefit or service that the organization is required to provide under the contract with the department.

(u) Except as provided by Subsection (w), a [A] person found liable for a violation under Subsection (c) that resulted in injury to an elderly person, as defined by Section 48.002(a)(1) [48.002(1)], a disabled person, as defined by Section 48.002(a)(8)(A) [48.002(8)(A)], or a person younger than 18 years of age may not provide or arrange to provide health care services under the medical assistance program for a period of 10 years. The department by rule may provide for a period of ineligibility longer than 10 years. The period of ineligibility begins on the date on which the determination that the person is liable becomes final. ~~[This subsection does not apply to a person who operates a nursing facility or an ICF-MR facility.]~~

(v) Except as provided by Subsection (w), a [A] person found liable for a violation under Subsection (c) that did not result in injury to an elderly person, as defined by Section 48.002(a)(1) [48.002(1)], a disabled person, as defined by Section 48.002(a)(8)(A) [48.002(8)(A)], or a person younger than 18 years of age may not provide or arrange to provide health care services under the medical assistance program for a period of three years. The department by rule may provide for a period of ineligibility longer than three years. The period of ineligibility begins on the date on which the determination that the person is liable becomes final~~[. This subsection does not apply to a person who operates a nursing facility or an ICF-MR facility].~~

(w) The department by rule may prescribe criteria under which a person described by Subsection (u) or (v) is not prohibited from providing or arranging to provide health care services under the medical assistance program. The criteria may include consideration of:

- (1) the person's knowledge of the violation;
- (2) the likelihood that education provided to the person would be sufficient to prevent future violations;
- (3) the potential impact on availability of services in the community served by the person; and
- (4) any other reasonable factor identified by the department.

(x) Subsections (b)(1-b) through (1-f) do not prohibit a person from engaging in:

(1) generally accepted business practices, as determined by department rule, including:

- (A) conducting a marketing campaign;
- (B) providing token items of minimal value that advertise the person's trade name; and

(C) providing complimentary refreshments at an informational meeting promoting the person's goods or services;

(2) the provision of a value-added service if the person is a managed care organization; or

(3) other conduct specifically authorized by law, including conduct authorized by federal safe harbor regulations (42 C.F.R. Section 1001.952).

SECTION 6. Subchapter B, Chapter 32, Human Resources Code, is amended by adding Section 32.0391 to read as follows:

Sec. 32.0391. CRIMINAL OFFENSE. (a) A person commits an offense if the person intentionally or knowingly commits a violation under Section 32.039(b)(1-b), (1-c), (1-d), or (1-e).

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

(c) If conduct constituting an offense under this section also constitutes an offense under another provision of law, including a provision in the Penal Code, the person may be prosecuted under either this section or the other provision.

(d) With the consent of the appropriate local county or district attorney, the attorney general has concurrent jurisdiction with that consenting local prosecutor to prosecute an offense under this section.

SECTION 7. Subchapter B, Chapter 32, Human Resources Code, is amended by adding Section 32.060 to read as follows:

Sec. 32.060. THIRD-PARTY BILLING VENDORS. (a) A third-party billing vendor may not submit a claim with the department for reimbursement on behalf of a provider of medical services under the medical assistance program unless the vendor has entered into a contract with the department authorizing that activity.

(b) To the extent practical, the contract shall contain provisions comparable to the provisions contained in contracts between the department and providers of medical services, with an emphasis on provisions designed to prevent fraud or abuse under the medical assistance program. At a minimum, the contract must require the third-party billing vendor to:

(1) provide documentation of the vendor's authority to bill on behalf of each provider for whom the vendor submits claims;

(2) submit a claim in a manner that permits the department to identify and verify the vendor, any computer or telephone line used in submitting the claim, any relevant user password used in submitting the claim, and any provider number referenced in the claim; and

(3) subject to any confidentiality requirements imposed by federal law, provide the department, the office of the attorney general, or authorized representatives with:

(A) access to any records maintained by the vendor, including original records and records maintained by the vendor on behalf of a provider, relevant to an audit or investigation of the vendor's services or another function of the department or office of attorney general relating to the vendor; and

(B) if requested, copies of any records described by Paragraph (A) at no charge to the department, the office of the attorney general, or authorized representatives.

(c) On receipt of a claim submitted by a third-party billing vendor, the department shall send a remittance notice directly to the provider referenced in the claim. The notice must:

(1) include detailed information regarding the claim submitted on behalf of the provider; and

(2) require the provider to review the claim for accuracy and notify the department promptly regarding any errors.

(d) The department shall take all action necessary, including any modifications of the department's claims processing system, to enable the department to identify and verify a third-party billing vendor submitting a claim for reimbursement under the medical assistance program, including identification and verification of any computer or telephone line used in submitting the claim, any relevant user password used in submitting the claim, and any provider number referenced in the claim.

SECTION 8. Subchapter C, Chapter 531, Government Code, is amended by adding Section 531.1011 to read as follows:

Sec. 531.1011. DEFINITIONS. For purposes of this subchapter:

(1) "Fraud" means an intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to that person or some other person, including any act that constitutes fraud under applicable federal or state law.

(2) "Furnished" refers to items or services provided directly by, or under the direct supervision of, or ordered by a practitioner or other individual (either as an employee or in the individual's own capacity), a provider, or other supplier of services, excluding services ordered by one party but billed for and provided by or under the supervision of another.

(3) "Hold on payment" means the temporary denial of reimbursement under the Medicaid program for items or services furnished by a specified provider.

(4) "Practitioner" means a physician or other individual licensed under state law to practice the individual's profession.

(5) "Program exclusion" means the suspension of a provider from being authorized under the Medicaid program to request reimbursement of items or services furnished by that specific provider.

(6) "Provider" means a person, firm, partnership, corporation, agency, association, institution, or other entity that was or is approved by the commission to:

(A) provide medical assistance under contract or provider agreement with the commission; or

(B) provide third-party billing vendor services under a contract or provider agreement with the commission.

SECTION 9. Section 531.102, Government Code, is amended by amending Subsections (a) and (d) and adding Subsections (f) and (g) to read as follows:

(a) The commission, through the commission's office of investigations and enforcement, is responsible for the investigation of fraud and abuse in the provision of health and human services and the enforcement of state law relating to the provision of those services.

(d) The commission may require employees of health and human services agencies to provide assistance to the commission in connection with the commission's duties relating to the investigation of fraud and abuse in the provision of health and human services.

(f)(1) If the commission receives a complaint of Medicaid fraud or abuse from any source, it must conduct an integrity review to determine whether there is sufficient basis to warrant a full investigation. An integrity review must commence not later than 60 days after the commission receives a complaint or has reason to believe that fraud or abuse has occurred. An integrity review shall be completed not later than 90 days after it has commenced.

(2) If the findings of an integrity review give the commission reason to believe that an incident of fraud or abuse involving possible criminal conduct has occurred in the Medicaid program, the commission must take the following action, as appropriate, not later than 30 days after the completion of the integrity review:

(A) if a provider is suspected of fraud or abuse involving criminal conduct, the commission must refer the case to the state's Medicaid fraud control unit, provided that such criminal referral does not preclude the commission from continuing its investigation of the provider, which investigation may lead to the imposition of appropriate administrative or civil sanctions; or

(B) if there is reason to believe that a recipient has defrauded the Medicaid program, the commission may conduct a full investigation of the suspected fraud.

(g)(1) Whenever the commission learns or has reason to suspect that a provider's records are being withheld, concealed, destroyed, fabricated, or in any way falsified, the commission shall immediately refer the case to the state's Medicaid fraud control unit. However, such criminal referral does not preclude the commission from continuing its investigation of the provider, which investigation may lead to the imposition of appropriate administrative or civil sanctions.

(2) In addition to other instances authorized under state or federal law, the commission shall impose without prior notice a hold on payment of claims for reimbursement submitted by a provider to compel production of records or when requested by the state's Medicaid fraud control unit, as applicable. The commission must notify the provider of the hold on payment not later than the fifth working day after the date the payment hold is imposed.

(3) On timely written request by a provider subject to a hold on payment under Subdivision (2), other than a hold requested by the state's Medicaid fraud control unit, the commission shall file a request with the State Office of Administrative Hearings for an expedited administrative hearing regarding the hold. The provider must request an expedited hearing under this subdivision not later than the 10th day after the date the provider receives notice from the commission under Subdivision (2).

(4) The commission shall adopt rules that allow a provider subject to a hold on payment under Subdivision (2), other than a hold requested by the state's Medicaid fraud control unit, to seek an informal resolution of the issues identified by the commission in the notice provided under that subdivision. A provider must seek an informal resolution under this subdivision not later than the deadline prescribed by Subdivision (3). A provider's decision to seek an informal resolution under this subdivision does not extend the time by which the provider

must request an expedited administrative hearing under Subdivision (3). However, the commission may request that any hearing initiated under Subdivision (3) be stayed until the informal resolution process is completed.

(5) The commission shall, in consultation with the state's Medicaid fraud control unit, establish guidelines under which holds on payment or program exclusions:

(A) may permissively be imposed on a provider; or

(B) shall automatically be imposed on a provider.

SECTION 10. Section 531.103(f), Government Code, is amended to read as follows:

(f) A ~~The~~ district attorney, county attorney, city attorney, or private collection agency may collect and retain costs associated with a ~~the~~ case referred to the attorney or agency and 20 percent of the amount of the penalty, restitution, or other reimbursement payment collected.

SECTION 11. Section 531.104, Government Code, is amended by adding Subsection (c) to read as follows:

(c) The memorandum of understanding must ensure that no barriers to direct fraud referrals to the state's Medicaid fraud control unit by Medicaid agencies or unreasonable impediments to communication between Medicaid agency employees and the state's Medicaid fraud control unit will be imposed.

SECTION 12. Section 531.107(b), Government Code, is amended to read as follows:

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

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

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

(3) Department of Public Safety, appointed by the public safety director;

(4) state auditor's office, appointed by the state auditor;

(5) commission, appointed by the commissioner of health and human services;

(6) Texas Department of Human Services, appointed by the commissioner of human services; ~~and~~

(7) Texas Department of Insurance, appointed by the commissioner of insurance; and

(8) Texas Department of Health, appointed by the commissioner of public health.

SECTION 13. Section 31.03, Penal Code, is amended by adding Subsection (j) to read as follows:

(j) With the consent of the appropriate local county or district attorney, the attorney general has concurrent jurisdiction with that consenting local prosecutor to prosecute an offense under this section that involves the state Medicaid program.

SECTION 14. Section 32.45, Penal Code, is amended by adding Subsection (d) to read as follows:

(d) With the consent of the appropriate local county or district attorney, the attorney general has concurrent jurisdiction with that consenting local prosecutor to prosecute an offense under this section that involves the state Medicaid program.

SECTION 15. Section 32.46, Penal Code, is amended by adding Subsection (e) to read as follows:

(e) With the consent of the appropriate local county or district attorney, the attorney general has concurrent jurisdiction with that consenting local prosecutor to prosecute an offense under this section that involves the state Medicaid program.

SECTION 16. Section 37.10, Penal Code, is amended by adding Subsection (i) to read as follows:

(i) With the consent of the appropriate local county or district attorney, the attorney general has concurrent jurisdiction with that consenting local prosecutor to prosecute an offense under this section that involves the state Medicaid program.

SECTION 17. Articles 59.01(1) and (2), Code of Criminal Procedure, are amended to read as follows:

(1) "Attorney representing the state" means the prosecutor with felony jurisdiction in the county in which a forfeiture proceeding is held under this chapter or, in a proceeding for forfeiture of contraband as defined under Subdivision (2)(B)(iv) of this article, the city attorney of a municipality if the property is seized in that municipality by a peace officer employed by that municipality and the governing body of the municipality has approved procedures for the city attorney acting in a forfeiture proceeding. In a proceeding for forfeiture of contraband as defined under Subdivision (2)(B)(vii) of this article, the term includes the attorney general.

(2) "Contraband" means property of any nature, including real, personal, tangible, or intangible, that is:

(A) used in the commission of:

- (i) any first or second degree felony under the Penal Code;
- (ii) any felony under Section 15.031(b), 21.11, 38.04, 43.25, or 43.26 or Chapter 29, 30, 31, 32, 33, 33A, or 35, Penal Code; or
- (iii) any felony under The Securities Act (Article 581-1 et seq., Vernon's Texas Civil Statutes);

(B) used or intended to be used in the commission of:

- (i) any felony under Chapter 481, Health and Safety Code (Texas Controlled Substances Act);
- (ii) any felony under Chapter 483, Health and Safety Code;
- (iii) a felony under Chapter 153, Finance Code;
- (iv) any felony under Chapter 34, Penal Code;
- (v) a Class A misdemeanor under Subchapter B, Chapter 365, Health and Safety Code, if the defendant has been previously convicted twice of an offense under that subchapter; ~~or~~
- (vi) any felony under Chapter 152, Finance Code; or

(vii) any felony under Chapter 31, 32, or 37, Penal Code, that involves the state Medicaid program, or any felony under Chapter 36, Human Resources Code;

(C) the proceeds gained from the commission of a felony listed in Paragraph (A) or (B) of this subdivision or a crime of violence; or

(D) acquired with proceeds gained from the commission of a felony listed in Paragraph (A) or (B) of this subdivision or a crime of violence.

SECTION 18. Article 59.06, Code of Criminal Procedure, is amended by adding Subsection (p) to read as follows:

(p) Notwithstanding Subsection (a), and to the extent necessary to protect the commission's ability to recover amounts wrongfully obtained by the owner of the property and associated damages and penalties to which the commission may otherwise be entitled by law, the attorney representing the state shall transfer to the Health and Human Services Commission all forfeited property defined as contraband under Article 59.01(2)(B)(vii). If the forfeited property consists of property other than money or negotiable instruments, the attorney representing the state may, if approved by the commission, sell the property and deliver to the commission the proceeds from the sale, minus costs attributable to the sale. The sale must be conducted in a manner that is reasonably expected to result in receiving the fair market value for the property.

SECTION 19. (a) The Medicaid and Public Assistance Fraud Oversight Task Force, with the participation of the Texas Department of Health's Bureau of Vital Statistics and other agencies designated by the comptroller, shall study procedures and documentation requirements used by the state in confirming a person's identity for purposes of establishing entitlement to Medicaid and other benefits provided through health and human services programs.

(b) Not later than December 1, 2004, the Medicaid and Public Assistance Fraud Oversight Task Force, with assistance from the agencies participating in the study required by Subsection (a) of this section, shall submit a report to the legislature containing recommendations for improvements in the procedures and documentation requirements described by Subsection (a) of this section that would strengthen the state's ability to prevent fraud and abuse in the Medicaid program and other health and human services programs.

SECTION 20. Not later than December 1, 2003, the Office of the Attorney General and the Health and Human Services Commission shall amend the memorandum of understanding required by Section 531.104, Government Code, as necessary to comply with Section 531.104(c), Government Code, as added by this Act.

SECTION 21. The changes in law made by this Act through amending Section 32.039(b), Human Resources Code, and adding Section 32.0391, Human Resources Code, apply only to a violation committed on or after the effective date of this Act. For purposes of this section, a violation is committed on or after the effective date of this Act only if each element of the violation occurs on or after that date. A violation committed before the effective date of this Act is covered by the law in effect when the violation was committed, and the former law is continued in effect for that purpose.

SECTION 22. If before implementing any provision of this Act a state agency determines that a waiver or authorization from a federal agency is necessary for implementation of that provision, the agency affected by the provision shall request the waiver or authorization and may delay implementing that provision until the waiver or authorization is granted.

SECTION 23. Section 531.103(e), Government Code, is repealed.

SECTION 24. (a) Except as otherwise provided by Subsection (b) of this section, this Act takes effect September 1, 2003.

(b) Section 32.060, Human Resources Code, as added by this Act, takes effect January 1, 2004.

HB 1971 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

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

HB 1971, A bill to be entitled An Act relating to convictions barring employment in certain facilities serving the elderly or persons with disabilities.

On motion of Representative Uresti, the house concurred in the senate amendments to **HB 1971**.

Senate Committee Substitute

HB 1971, A bill to be entitled An Act relating to convictions barring employment in certain facilities serving the elderly or persons with disabilities.

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

SECTION 1. Section 250.006(b), Health and Safety Code, is amended to read as follows:

(b) A person [~~convicted of an offense under Chapter 31, Penal Code, that is punishable as a felony~~] may not be employed in a position the duties of which involve direct contact with a consumer in a facility before the fifth anniversary of the date the person is convicted of:

(1) an offense under Section 22.01, Penal Code (assault), that is punishable as a Class A misdemeanor or as a felony;

(2) an offense under Section 30.02, Penal Code (burglary);

(3) an offense under Chapter 31, Penal Code (theft), that is punishable as a felony;

(4) an offense under Section 32.45, Penal Code (misapplication of fiduciary property or property of a financial institution), that is punishable as a Class A misdemeanor or a felony; or

(5) an offense under Section 32.46, Penal Code (securing execution of a document by deception), that is punishable as a Class A misdemeanor or a felony [the conviction].

SECTION 2. The change in law made by this Act to Section 250.006, Health and Safety Code, does not apply to a person who is employed by a facility on the effective date of this Act for the period during which the person is continuously employed by that facility.

SECTION 3. This Act takes effect September 1, 2003.

HB 2343 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

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

HB 2343, A bill to be entitled An Act relating to the transfer of certain state property from the Texas Department of Criminal Justice to Walker County.

On motion of Representative Kolkhorst, the house concurred in the senate amendments to **HB 2343**.

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

Amend **HB 2343** as follows:

(1) In SECTION 1 of the bill, in proposed Subsection (b) (page 1, line 9) strike "may" and insert "shall".

(2) In SECTION 1 of the bill, in proposed Subsection (b) (page 1, lines 10-11) strike "a purpose that benefits the public interest of the state" and insert "the construction and operation of a museum which memorializes veterans".

(3) In SECTION 1 of the bill, in proposed Subsection (c)(1)(B) (page 1, lines 23-24) strike "a purpose that benefits the public interest of the state" and insert "the purpose specified in Subsection (b)".

HB 3061 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

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

HB 3061, A bill to be entitled An Act relating to regulation of the disposal of animal remains.

On motion of Representative Flores, the house concurred in the senate amendments to **HB 3061** by (Record 831): 145 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; 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; Homer; Hope; 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; Martinez Fischer; McCall; McClendon; McReynolds; 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; Taylor; Telford; Thompson; Truitt; Turner; Uresti; Van Arsdale; Villarreal; West; Wilson; Wise; Wohlgemuth; Wolens; Wong; Woolley; Zedler.

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

Absent, Excused — Marchant.

Absent — Hodge; Talton.

Senate Committee Substitute

HB 3061, A bill to be entitled An Act relating to regulation of the disposal of animal remains.

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

SECTION 1. Section 161.004, Agriculture Code, is amended to read as follows:

Sec. 161.004. DISPOSAL OF DISEASED LIVESTOCK CARCASS.

(a) A person who is the owner or caretaker of livestock that die from a disease listed in Section 161.041 of this code, or who owns or controls the land on which the livestock die or on which the carcasses are found, shall, within 24 hours after the carcasses are found:

(1) bury the carcass of each animal by digging a grave five feet deep, placing the carcass in the grave, covering the carcass with lime, and filling the grave with dirt; or

(2) set fire to the carcass of each animal and burn it until it is thoroughly consumed.

(b) The Texas Commission on Environmental Quality may not adopt a rule related to the disposal of livestock under this section unless the rule is developed in cooperation with and is approved by the Texas Animal Health Commission.

SECTION 2. Section 161.0415, Agriculture Code, is amended by adding Subsection (d) to read as follows:

(d) The Texas Commission on Environmental Quality may not adopt a rule related to the disposal of livestock under this section unless the rule is developed in cooperation with and is approved by the Texas Animal Health Commission.

SECTION 3. Section 801.361, Occupations Code, is amended by adding Subsection (d) to read as follows:

(d) The Texas Commission on Environmental Quality may not adopt a rule that relates to the disposal of animal remains under this section unless the rule is developed in cooperation with and is approved by the Texas Animal Health Commission.

SECTION 4. This Act takes effect September 1, 2003.

HB 1053 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

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

HB 1053, A bill to be entitled An Act relating to the confidentiality of social security numbers in certain circumstances.

On motion of Representative Rodriguez, the house concurred in the senate amendments to **HB 1053**.

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

Amend **HB 1053**, SECTION 1, Sec. 145.001, Civil Practice and Remedies Code, page 1, line 16, by adding new subsection (c) to read as follows:

(c) This chapter does not apply to (1) court records; (2) public records.

**HB 1517 - HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS**

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

HB 1517, A bill to be entitled An Act relating to publicizing a list of voters' rights.

On motion of Representative J. Jones, the house concurred in the senate amendments to **HB 1517**.

Senate Committee Substitute

HB 1517, A bill to be entitled An Act relating to publicizing a list of voters' rights.

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

SECTION 1. Section 31.0055(b), Election Code, is amended to read as follows:

(b) A notice informing voters of the telephone number and the purpose for the number shall be included in the notice of voters' rights publicized under Section 62.0115 ~~[continuously posted in a prominent location at each polling place during the early voting period and on election day for each election held on a uniform election date. The secretary of state shall prescribe the form for the notice under this subsection].~~

SECTION 2. Chapter 62, Election Code, is amended by adding Section 62.0115 to read as follows:

Sec. 62.0115. PUBLIC NOTICE OF VOTERS' RIGHTS. (a) The secretary of state shall adopt rules providing for publicizing voters' rights as prescribed by this section. The rules must require that a notice of those rights be publicized:

(1) by being posted by an election officer in a prominent location at each polling place;

(2) on the Internet website of the secretary of state;

(3) through material published by the secretary of state; or

(4) in another manner designed to give voters notice of their rights.

(b) Except as revised by the secretary of state under Subsection (d), the notice must state that a voter has the right to:

(1) receive a ballot with written instructions on how to cast a ballot, if the ballot is a paper ballot or an electronic system ballot on which a voter indicates a vote by punching a hole in the ballot;

(2) vote in secret and free from intimidation;

(3) receive up to two additional ballots if the voter mismarks, damages, or otherwise spoils a ballot;

(4) request instructions on how to cast a ballot, but not to receive suggestions on how to vote;

(5) bring an interpreter to translate the ballot and any instructions from election officials;

(6) receive assistance in casting the ballot if the voter:

(A) has a physical disability that renders the voter unable to write or see; or

(B) cannot read the language in which the ballot is written;

(7) cast a ballot on executing an affidavit as provided by law, if the voter's eligibility to vote is questioned;

(8) report an existing or potential abuse of voting rights to the secretary of state or the local election official;

(9) except as provided by Section 85.066(b), Election Code, vote at any early voting location in the county in which the voter resides in an election held at county expense, a primary election, or a special election ordered by the governor;

(10) register to vote if the voter has been convicted of a felony and has been fully discharged of the sentence for that offense;

(11) be permitted reasonable time to vote on election day if the voter is a sequestered juror; and

(12) leave the voter's place of employment on election day for the purpose of voting, unless the polls are open on election day for two consecutive hours outside of the voter's working hours.

(c) The notice must also state:

(1) the information relating to the voting rights hotline required under Section 31.0055; and

(2) any other information that the secretary of state considers important for a voter to know.

(d) The secretary of state shall prescribe the form and content of the notice in accordance with this section. The secretary of state shall revise the content of the notice as necessary to ensure that the notice accurately reflects the law in effect at the time the notice is publicized.

SECTION 3. This Act takes effect September 1, 2003, and applies only to an election ordered on or after that date.

HB 1590 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

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

HB 1590, A bill to be entitled An Act relating to multiple-party accounts.

On motion of Representative Paxton, the house concurred in the senate amendments to **HB 1590**.

Senate Committee Substitute

HB 1590, A bill to be entitled An Act relating to multiple-party accounts.

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

SECTION 1. Section 442, Texas Probate Code, is amended to read as follows:

Sec. 442. **RIGHTS OF CREDITORS; PLEDGE OF ACCOUNT.** No multiple-party account will be effective against an estate of a deceased party to transfer to a survivor sums needed to pay debts, taxes, and expenses of administration, including statutory allowances to the surviving spouse and minor children, if other assets of the estate are insufficient. No multiple-party account will be effective against the claim of a secured creditor who has a lien on the account. A party to a multiple-party account may pledge the account or otherwise create a security interest in the account without the joinder of, as appropriate, a P.O.D. payee, a beneficiary, a convenience signer, or any other party to a joint account, regardless of whether there is a right of survivorship. A convenience signer may not pledge or otherwise create a security interest in an account. Not later than the 30th day after the date on which a security interest on a multiple-party account is perfected, a secured creditor that is a financial institution the accounts of which are insured by the Federal Deposit Insurance Corporation shall provide written notice of the pledge of the account to any other party to the account who did not create the security interest. The notice must be sent by certified mail to any other party at the last address the party provided to the depository bank and is not required to be provided to a P.O.D. payee, a beneficiary, or a convenience signer. A party, P.O.D. payee, or beneficiary who receives payment from a multiple-party account after the death of a deceased party shall be liable to account to the deceased party's personal representative for amounts the decedent owned beneficially immediately before his death to the extent necessary to discharge the claims and charges mentioned above remaining unpaid after application of the decedent's estate, but is not liable in an amount greater than the amount that the party, P.O.D. payee, or beneficiary received from the multiple-party account. No proceeding to assert this liability shall be commenced unless the personal representative has received a written demand by a surviving spouse, a creditor, or one acting for a minor child of the decedent, and no proceeding shall be commenced later than two years following the death of the decedent. Sums recovered by the personal representative shall be administered as part of the decedent's estate. This section shall not affect the right of a financial institution to make payment on multiple-party accounts according to the terms thereof, or make it liable to the estate of a deceased party unless before payment the institution received written notice from the personal representative stating the sums needed to pay debts, taxes, and expenses of administration.

SECTION 2. This Act takes effect September 1, 2003, and applies only to an account created on or after the effective date of this Act. An account created before the effective date of this Act is governed by the law in effect when the account was created, and the former law is continued in effect for that purpose.

**HB 1534 - HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS**

Representative R. Cook called up with senate amendments for consideration at this time,

HB 1534, A bill to be entitled An Act relating to certain powers of groundwater conservation districts.

On motion of Representative R. Cook, the house concurred in the senate amendments to **HB 1534**.

Senate Committee Substitute

HB 1534, A bill to be entitled An Act relating to certain powers of groundwater conservation districts.

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

SECTION 1. Section 36.103(b), Water Code, is amended to read as follows:

(b) A district may:

- (1) acquire land to erect dams or to drain lakes, draws, and depressions;
- (2) construct dams;
- (3) drain lakes, depressions, draws, and creeks;
- (4) install pumps and other equipment necessary to recharge a groundwater reservoir or its subdivision; and
- (5) provide necessary facilities for water conservation purposes ~~the purchase, sale, transportation, and distribution of water~~.

SECTION 2. Section 36.104, Water Code, is amended to read as follows:

Sec. 36.104. PURCHASE, SALE, TRANSPORTATION, AND DISTRIBUTION OF WATER. A district may purchase, sell, transport, and distribute surface water or groundwater ~~for any purpose~~.

SECTION 3. Sections 36.105(a) and (b), Water Code, are amended to read as follows:

(a) A district may exercise the power of eminent domain to acquire by condemnation a fee simple or other interest in property if that property interest is:

- (1) within the boundaries of the district; and
- (2) necessary for conservation purposes, including recharge and reuse ~~[to the exercise of the authority conferred by this chapter]~~.

(b) The power of eminent domain authorized in this section may not be used for the condemnation of land for the purpose of:

- (1) acquiring rights to groundwater, surface water or water rights; or
- (2) production, sale, or distribution of groundwater or surface water.

SECTION 4. Section 36.106, Water Code, is amended to read as follows:

Sec. 36.106. SURVEYS. A district may make surveys of the groundwater reservoir or subdivision and surveys of the facilities ~~[for development, production, transportation, distribution, and use of the water]~~ in order to determine the quantity of water available for production and use and to determine the improvements, development, and recharging needed by a reservoir or its subdivision.

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

(b) The change in law made by this Act to Sections 36.103(b), 36.104, 36.105, and 36.106, Water Code, does not affect a contract entered into before the effective date of this Act. Such a contract is governed by the law in effect when the contract was entered into, and the former law is continued in effect for that purpose.

(c) The change in law made by this Act to Section 36.105, Water Code, does not affect an eminent domain action initiated before the effective date of this Act. Such an action is governed by the law in effect when the action was initiated, and the former law is continued in effect for that purpose.

HB 1733 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

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

HB 1733, A bill to be entitled An Act relating to certain records kept by persons who weigh cargo transported by commercial motor vehicles.

On motion of Representative Hamric, the house concurred in the senate amendments to **HB 1733** by (Record 832): 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; Hope; 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; Martinez Fischer; McClendon; McReynolds; 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; Seaman; Smith, T.; Smith, W.; Smithee; Solis; Solomons; Stick; Swinford; Taylor; Telford; Thompson; Truitt; Turner; Uresti; Van Arsdale; Villarreal; West; Wilson; Wise; Wohlgemuth; Wolens; Wong; Woolley; Zedler.

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

Absent, Excused — Marchant.

Absent — Eiland; McCall; Puente; Rose; Talton.

Senate Committee Substitute

HB 1733, A bill to be entitled An Act relating to certain records kept by persons who weigh cargo transported by commercial motor vehicles.

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

SECTION 1. Section 621.410(e), Transportation Code, is amended to read as follows:

(e) This section does not apply to a vehicle that:

(1) transports material regulated under Section 623.161;

(2) is weighed by a weight enforcement officer;

(3) is weighed on scales owned by the state or a political subdivision of the state; or

(4) is weighed on scales owned by an enterprise principally engaged in the retail sale of motor fuels to the general public.

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.

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 2400 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

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

HB 2400, A bill to be entitled An Act relating to military leave and military leave time accounts for certain municipal fire fighters and police officers.

On motion of Representative Noriega, the house concurred in the senate amendments to **HB 2400** by (Record 833): 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; Eiland; Eissler; Elkins; Ellis; Escobar; Farabee; Farrar; Flores; Flynn; Gallego; Garza; Gattis; Geren; Giddings; Goodman; Goolsby; Griggs; Grusendorf; Guillen; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Heflin; Hegar; Hilderbran; Hill; Hodge; Homer; Hope; 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; Martinez Fischer; McCall; McClendon; McReynolds; 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; Seaman; Smith, T.; Smith, W.; Smithee; Solis; Solomons; Stick; Swinford; Taylor; Telford; Thompson; Truitt; Turner; Uresti; Van Arsdale; Villarreal; West; Wilson; Wise; Wohlgemuth; Wolens; Wong; Woolley; Zedler.

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

Absent, Excused — Marchant.

Absent — Gutierrez; Hochberg; Rose; Talton.

STATEMENT OF VOTE

When Record No. 833 was taken, I was in the house but away from my desk. I would have voted yes.

Rose

Senate Committee Substitute

HB 2400, A bill to be entitled An Act relating to military leave and military leave time accounts for certain municipal fire fighters and police officers.

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

SECTION 1. Section 143.072, Local Government Code, is amended by amending Subsection (a) and adding Subsections (g) and (h) to read as follows:

(a) On written application of a fire fighter or police officer, the commission shall grant the person a military leave of absence without pay, subject to Section 143.075, to enable the person to enter a branch of the United States military service. The leave of absence may not exceed the period of compulsory military service or the basic minimum enlistment period for the branch of service the fire fighter or police officer enters.

(g) If a fire fighter or police officer employed by a municipality is called to active military duty for any period, the employing municipality must continue to maintain any health, dental, or life insurance coverage and any health or dental benefits coverage that the fire fighter or police officer received through the municipality on the date the fire fighter or police officer was called to active military duty until the municipality receives written instructions from the fire fighter or police officer to change or discontinue the coverage.

(h) In addition to other procedures prescribed by this section, a fire fighter or police officer may, without restriction as to the amount of time, voluntarily substitute for a fire fighter or police officer described by Sections 143.075(b)(1) and (2) who has been called to active federal military duty for a period expected to last 12 months or longer. A fire fighter or police officer who voluntarily substitutes under this subsection must be qualified to perform the duties of the absent fire fighter or police officer.

SECTION 2. Subchapter E, Chapter 143, Local Government Code, is amended by adding Section 143.075 to read as follows:

Sec. 143.075. MILITARY LEAVE TIME ACCOUNTS. (a) A municipality shall maintain military leave time accounts for the fire and police departments and must maintain a separate military leave time account for each department.

(b) A military leave time account shall benefit a fire fighter or police officer who:

(1) is a member of the Texas National Guard or the armed forces reserves of the United States;

(2) was called to active federal military duty while serving as a fire fighter or police officer for the municipality;

(3) has served on active duty for a period of 12 continuous months or longer; and

(4) has exhausted the balance of the person's vacation, holiday, and compensatory leave time accumulations.

(c) A fire fighter or police officer may donate any amount of accumulated vacation, holiday, sick, or compensatory leave time to the military leave time account in that fire fighter's or police officer's department to help provide salary continuation for fire fighters or police officers who qualify as eligible beneficiaries of the account under Subsection (b). A fire fighter or police officer who wishes to donate time to an account under this section must authorize the donation in writing on a form provided by the fire or police department and approved by the municipality.

(d) A municipality shall equally distribute the leave time donated to a military leave time account among all fire fighters or police officers who are eligible beneficiaries of that account. The municipality shall credit and debit the applicable military leave time account on an hourly basis regardless of the cash value of the time donated or used.

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.

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

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

HB 2525, A bill to be entitled An Act relating to the punishment of certain assaults committed against persons who contract with government and employees of those persons.

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

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

Amend **HB 2525** (engrossed version) as follows:

On page 1, line 20, after the word "service" insert "in a facility as defined by Section 1.07(a)(14), Penal Code; Section 51.02(13), Family Code; or Section 51.02(14), Family Code".

HB 2795 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

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

HB 2795, A bill to be entitled An Act relating to the release on bond of certain persons arrested without a warrant.

On motion of Representative Riddle, the house concurred in the senate amendments to **HB 2795** by (Record 834): 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; 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; Hope; Hopson; Howard; Hughes; Hunter; Hupp; Isett; Jones, D.; Jones, E.; Jones, J.; Keel; Keffer, B.; Keffer, J.; King; Kolkhorst; Krusee; Kuempel; Laney; Laubenberg; Luna; Mabry; Madden; Martinez Fischer; McCall; McClendon; McReynolds; 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, W.; Smithee; Solis; Solomons; Stick; Swinford; Taylor; Telford; Thompson; Truitt; Uresti; Van Arsdale; Villarreal; West; Wilson; Wise; Wohlgemuth; Wolens; Wong; Woolley; Zedler.

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

Absent, Excused — Marchant.

Absent — Lewis; Puente; Smith, T.; Talton; Turner.

Senate Committee Substitute

HB 2795, A bill to be entitled An Act relating to the release on bond of certain persons arrested without a warrant.

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

SECTION 1. Article 17.033, Code of Criminal Procedure, is amended by adding Subsection (d) to read as follows:

(d) The time limits imposed by Subsections (a) and (b) do not apply to a person arrested without a warrant who is taken to a hospital, clinic, or other medical facility before being taken before a magistrate under Article 15.17. For a person described by this subsection, the time limits imposed by Subsections (a) and (b) begin to run at the time, as documented in the records of the hospital, clinic, or other medical facility, that a physician or other medical professional releases the person from the hospital, clinic, or other medical facility.

SECTION 2. (a) 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 change in law made by this Act applies only to an arrest made on or after the effective date of this Act, regardless of when the offense giving rise to the arrest was committed. An arrest made before the effective date of this Act is covered by the law in effect when the arrest was made, and the former law is continued in effect for that purpose.

HB 249 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

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

HB 249, A bill to be entitled An Act relating to the returned check fee collected by a county clerk.

On motion of Representative Goolsby, the house concurred in the senate amendments to **HB 249**.

Senate Committee Substitute

HB 249, A bill to be entitled An Act relating to the returned check fee collected by a county clerk.

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

SECTION 1. Section 3.506(a), Business & Commerce Code, is amended to read as follows:

(a) On return of a check to the holder following dishonor of the check by a payor, the holder, the holder's assignee, agent, or representative, or any other person retained by the holder to seek collection of the face value of the dishonored check may charge the drawer or endorser a reasonable processing fee of not more than \$30 [~~\$25~~].

SECTION 2. Section 118.011(b), Local Government Code, is amended to read as follows:

(b) The county clerk may set and collect the following fee from any person:

(1) Returned Check (Sec. 118.0215) not less than \$15 or more than \$30 [~~\$25~~]

(2) Records Management and Preservation Fee (Sec. 118.0216)
.. not more than \$5

(3) Mental Health Background Check for License to Carry a Concealed Weapon (Sec. 118.0217) not more than \$2

SECTION 3. The changes in law made by this Act apply only to a check issued on or after the effective date of this Act. A check issued before the effective date of this Act is governed by the law in effect at the time the check was issued, and the former law is continued in effect for that purpose.

SECTION 4. This Act takes effect September 1, 2003.

HB 948 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

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

HB 948, A bill to be entitled An Act relating to a veterinarian member of the Texas Racing Commission.

On motion of Representative Crownover, the house concurred in the senate amendments to **HB 948**.

Senate Committee Substitute

HB 948, A bill to be entitled An Act relating to the composition of the Texas Racing Commission.

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

SECTION 1. Section 2.02(a), Texas Racing Act (Article 179e, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) The commission consists of seven ~~six~~ members appointed by the governor with the advice and consent of the senate and two ex officio members who shall have the right to vote. The ex officio members are:

(1) the chairman of the Public Safety Commission or a member of the Public Safety Commission designated by the chairman of the Public Safety Commission; and

(2) the comptroller of public accounts or the comptroller's designee.

SECTION 2. Section 2.03(a), Texas Racing Act (Article 179e, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) Appointed members hold office for staggered terms of six years with two or three members' terms expiring February 1 of each odd-numbered year. A member holds office until that member's successor is appointed and qualifies.

SECTION 3. Section 2.05(a), Texas Racing Act (Article 179e, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) Five ~~Four~~ of the appointed members of the commission must be representatives of the general public and have general knowledge of business or agribusiness. At least one of those appointed members may be a veterinarian, and being licensed as a veterinarian satisfies the requirement that the person have general knowledge of business or agribusiness. One additional appointed member must have special knowledge or experience related to greyhound racing and one additional appointed member must have special knowledge or experience related to horse racing. A person is not eligible for appointment as a member of the commission if the person or the person's spouse:

(1) is licensed by the commission, except as a commissioner;

(2) is employed by the commission or participates in the management of a business entity or other organization regulated by the commission or receiving funds from or through the commission;

(3) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by the commission or receiving funds from or through the commission; or

(4) uses or receives a substantial amount of tangible goods, services, or funds from or through the commission, other than compensation or reimbursement authorized by law for commission membership, attendance, or expenses.

SECTION 4. (a) This Act takes effect September 1, 2003.

(b) The change in law made by this Act relating to the qualifications for membership on the Texas Racing Commission does not affect the eligibility of a member of the commission serving immediately before the effective date of this Act to continue to serve on the commission for the term to which the member was appointed. As soon as possible on or after September 1, 2003, the governor shall appoint an additional public member to the Texas Racing Commission for a term expiring on February 1, 2009.

HB 1895 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

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

HB 1895, A bill to be entitled An Act relating to the compensation provided to an immediate family member or a household member of a deceased victim for funeral attendance and bereavement leave or certain other crime victims' services.

On motion of Representative Hope, the house concurred in the senate amendments to **HB 1895**.

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

Amend **HB 1895** (House engrossment) as follows:

(1) In SECTION 1 of the bill, in amended Article 56.32(a)(2), Code of Criminal Procedure (page 1, lines 19 and 20), strike "~~[or household member]~~" and substitute "or household member".

(2) In SECTION 1 of the bill, in amended Article 56.32(a)(9), Code of Criminal Procedure (page 2, line 26), between "member" and "of", insert "or household member".

(3) In SECTION 1 of the bill, in amended Article 56.32(a)(9), Code of Criminal Procedure (page 3, line 19), between "member" and "of", insert "or household member".

(4) In SECTION 2 of the bill, in proposed Article 56.42(e), Code of Criminal Procedure (page 3, line 22), between "member" and "of", insert "or household member".

(5) In SECTION 2 of the bill, in proposed Article 56.42(e), Code of Criminal Procedure (page 3, line 24), between "family" and "member", insert "or household".

HB 3565 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

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

HB 3565, A bill to be entitled An Act relating to the creation, administration, powers, duties, operation, and financing of the Lazy Nine Municipal Utility District.

On motion of Representative Keel, the house concurred in the senate amendments to **HB 3565**.

Senate Committee Substitute

HB 3565, A bill to be entitled An Act relating to the creation, administration, powers, duties, operation, and financing of the Lazy Nine Municipal Utility District.

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

SECTION 1. DEFINITIONS. In this Act:

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

(2) "District" means the Lazy Nine Municipal Utility District.

SECTION 2. CREATION. (a) A municipal utility district, to be known as the Lazy Nine Municipal Utility District, is created in Travis County, subject to approval at a confirmation election under Section 9 of this Act.

(b) The district is a governmental agency and a political subdivision of this state.

SECTION 3. FINDINGS OF BENEFIT AND PUBLIC PURPOSE. (a) The district is created to serve a public use and benefit.

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

(c) All of the land and other property included within the boundaries of the district will be benefited by the works and projects that are to be accomplished by the district under powers conferred by Section 59, Article XVI, Texas Constitution.

SECTION 4. BOUNDARIES. The boundaries of the district are as follows: A 1,719.449 acre tract of land out of and part of the following eight (8) surveys: F. Sterzing survey no. 62, H. Pruett survey no. 51, Sam Wildy survey no. 527, c. J. Strother survey no. 606, Seale-Morris & Seale survey no. 61, W. A. Barlow survey no. 86, J. H. Johman survey no. 524 and E. Hallman survey no. 61, situated in Travis County, Texas, being a portion of those certain tracts of land called first tract and second tract conveyed to Mrs. O. H. Davenport by deed of record in volume 1214, page 472 of the deed records of Travis County, Texas (the "deed records"); said 1,719.449 acre tract being more particularly described by metes and bounds as follows:

BEGINNING, at a concrete highway monument found in the southerly right-of-way of State Highway No. 71 (R.O.W. varies), being the northeasterly corner of that certain 453.54 acre tract of land conveyed to Gregory A. Kozmetsky by deed of record in Volume 8132, Page 262 of the Real Property Records of Travis County, Texas (The "Real Property Records"), same being the most northerly corner of said First Tract for the most northerly corner hereof;

THENCE, S51°09'02"E, along the southerly line of State Highway No. 71, being the northerly line of said First Tract, same being the northerly line hereof, a distance of 590.29 feet to a 60d nail found at the northwesterly corner of that certain 2.766 acre tract of land called Tract 2 conveyed to Arthur Lee Sanders by deed of record in Volume 8522, Page 125 of the Real Property Records for an angle point hereof;

THENCE, S00°26'50"W, leaving the southerly line of State Highway No. 71, and continuing along the northerly line hereof, being the northerly line of said First Tract, same being the westerly line of said Tract 2 and the westerly

line of that certain 0.364 acre tract of land called Tract 1 conveyed to Arthur Lee Sanders by deed of record in Volume 8522, Page 125 of the Real Property Records, a distance of 747.71 feet to a 1/2 inch iron pipe found at the southwesterly corner of said Tract 1 for an angle point hereof;

THENCE, continuing along the northerly line hereof, along and with a fence, being the northerly line of said First Tract, same being the southerly line of said Tract 1, in part the southerly line of said Tract 2, the southerly of that certain 2.34 acre tract of land called Tract 3 conveyed to Arthur Lee Sanders by deed of record in Volume 8522, Page 125 of the Real Property Records, the southerly line of that certain 3.91 acre tract of land conveyed to John W. Combs by deed of record in Volume 5829, Page 966 of the Deed records, the southerly line of that certain 4.1 acre tract of land conveyed to William Otto Combs by deed of record in Volume 2019, Page 514 of the Deed Records and the southerly line of that certain 2.1 acre tract of land conveyed to William Otto Combs by deed of record in Volume 1881, Page 194 of the Deed Records, the following ten (10) courses and distances:

- 1) S89°16'04"E, passing at a distance of 181.53 feet a fence post found at the beginning of a fence and continuing for a total distance of 514.91 feet to a fence post found for an angle point;
- 2) S86°12'59"E, a distance of 202.86 feet to a 1/2 inch iron rod found for an angle point;
- 3) S79°49'24"E, a distance of 143.52 feet to a 1/2 inch iron rod found for an angle point;
- 4) S88°06'26"E, a distance of 138.97 feet to a 1/2 inch iron rod found for an angle point;
- 5) N83°35'08"E, a distance of 181.40 feet to a 1/2 inch iron rod found for an angle point;
- 6) N84°27'36"E, a distance of 171.27 feet to a fence post found for an angle point;
- 7) S85°42'15"E, a distance of 37.57 feet to a fence post found for an angle point;
- 8) S75°25'37"E, a distance of 66.50 feet to a fence post found for an angle point;
- 9) N84°57'37"E, a distance of 174.95 feet to a fence post found for an angle point;
- 10) S89°11'36"E, a distance of 418.46 feet to a 1/2 inch iron pipe found at the northwesterly corner of that certain 5.375 acre tract of land conveyed to James Aaron Hudson by deed of record in Volume 12926, Page 2404 of the Real Property Records;

THENCE, continuing along the northerly line hereof, being the northerly line of said First Tract, same being the westerly and southerly lines of said Hudson 5.375 acre tract, the following two (2) courses and distances:

- 1) S01°58'32"E, a distance of 471.85 feet to a 3/4 inch iron pipe found at the southwesterly corner of said Hudson 5.375 acre tract for an angle point hereof;

2) N88°27'05"E, a distance of 778.62 feet to a 1/2 inch iron rod found in the southerly line of State Highway No. 71, being the southeasterly corner of said Hudson 5.375 acre tract for an angle point hereof;

THENCE, continuing along the northerly line hereof, being in part the northerly line of said First Tract and in part the northerly line of said Second Tract, same being the southerly line of State Highway No. 71, the following twenty (20) courses and distances:

1) Along a non-tangent curve to the right having a radius of 3819.84, a central angle of 01°24'04", an arc distance of 93.40 feet and a chord which bears S48°33'39"E, a distance of 93.40 feet to a concrete highway monument for the end of said curve;

2) S47°43'40"E, a distance of 471.66 feet to a concrete highway monument found for the point of curvature of a non-tangent curve to the left;

3) Along said non-tangent curve to the left having a radius of 2009.75 feet, a central angle of 17°14'18", an arc distance of 604.67 feet and a chord which bears S56°23'51"E, a distance of 602.39 feet to a concrete highway monument found for the end of said curve;

4) S65°00'59"E, a distance of 386.46 feet to a 1/2 inch iron rod set with cap for the point of curvature of a curve to the right;

5) Along said curve to the right having a radius of 1045.92 feet, a central angle of 19°27'13", an arc distance of 355.12 feet and a chord which bears S55°12'32"E, a distance of 353.42 feet to a 1/2 inch iron rod set with cap for the end of said curve;

6) S45°32'07"E, a distance of 492.28 feet to a concrete highway monument found for the point of curvature of a non-tangent curve to the left;

7) Along said non-tangent curve to the left having a radius of 1245.92 feet, a central angle of 20°04'19", an arc distance of 436.47 and a chord which bears S55°28'17"E, a distance of 434.24 feet to a concrete highway monument found for the end of said curve;

8) S65°34'29"E, a distance of 406.32 feet to a 1/2 inch iron rod set with cap for the point of curvature of a non-tangent curve to the right;

9) Along said non-tangent curve to the right having a radius of 1045.92 feet, a central angle of 24°05'24", an arc distance of 439.76 feet and a chord which bears S53°31'12"E, a distance of 436.52 feet to a concrete highway monument found for the end of said curve;

10) S41°34'34"E, a distance of 372.97 feet to a concrete highway monument found for the point of curvature of a non-tangent curve to the left;

11) Along said non-tangent curve to the left having a radius of 1245.85, a central angle of 28°41'02", an arc distance of 623.71 and a chord which bears S55°51'42"E, a distance of 617.21 feet to a 1/2 inch iron rod set with cap for the end of said curve;

12) S70°09'46"E, a distance of 279.53 feet to a concrete highway monument found for the point of curvature of a non-tangent curve to the right;

13) Along said non-tangent curve to the right having a radius of 5629.58, a central angle of $07^{\circ}56'42''$, an arc distance of 780.63 feet and a chord which bears $S66^{\circ}12'39''E$, a distance of 780.00 feet to a point for the end of said curve;

THENCE, leaving the southerly line of State Highway No. 71, over and across said Second Tract, same being the easterly line hereof, the following six (6) courses and distances:

- 1) $S01^{\circ}57'57''E$, a distance of 608.00 feet to an angle point;
- 2) $S51^{\circ}05'31''E$, a distance of 523.00 feet to an angle point;
- 3) $S04^{\circ}28'34''E$, a distance of 1298.00 feet to an angle point;
- 4) $S17^{\circ}44'05''E$, a distance of 571.00 feet to an angle point;
- 5) $S00^{\circ}06'48''E$, a distance of 810.00 feet to an angle point;
- 6) $S14^{\circ}11'47''E$ a distance of 764.00 feet to a point in the westerly line of that certain 122.61 acre tract of land conveyed to Dudley D. McCalla by deed of record in Volume 5337, Page 469 of the Deed Records, being in the southerly line of said Second Tract for an angle point hereof;

THENCE, continuing along the easterly line hereof, being the southerly line of said Second Tract, same being the westerlyline of said McCalla 122.61 acre tract, along and with a fence, the following ten (10) courses and distances:

- 1) $S16^{\circ}38'51''W$, a distance of 552.00 feet to a 1/2 inch iron rod set with cap for an angle point;
- 2) $S20^{\circ}22'32''W$, a distance of 101.01 feet to a 1/2 inch iron rod set with cap for an angle point;
- 3) $S23^{\circ}26'28''W$, a distance of 90.43 feet to a 1/2 inch iron rod set with cap for an angle point;
- 4) $S30^{\circ}43'32''W$, a distance of 31.30 feet to a 14 inch Cedar tree at a fence angle for an angle point hereof;
- 5) $S47^{\circ}59'22''W$, a distance of 30.05 feet to a 60d nail found at the most westerly corner of said McCalla 122.61 acre tract for an angle point;
- 6) $S44^{\circ}10'51''E$, a distance of 692.15 feet to a 1/2 inch iron rod set with cap for an angle point;
- 7) $S58^{\circ}40'21''E$, a distance of 259.20 feet to a 1/2 inch iron rod found for an angle point;
- 8) $S02^{\circ}07'19''E$, a distance of 261.57 feet to a 16 inch Cedar tree at a fence angle for an angle point hereof;
- 9) $S10^{\circ}50'02''E$, a distance of 84.28 feet to a 1/2 inch iron rod set with cap for an angle point;
- 10) $S04^{\circ}52'47''E$, a distance of 298.75 feet to a 1/2 inch iron rod found at the southwesterly corner of said McCalla 122.61 acre tract, being a point in the northerly line of that certain 327.341 acre tract of land conveyed to Henry R. Heffington by deed of record in Volume 5246, Page 2045 of the Deed Records for the southeasterly corner hereof;

THENCE, continuing along the southerly line hereof, being the northerly line of said Heffington 327.341 acre tract, southerly line of said Second Tract, same being along and with a fence, the following two (2) courses and distances:

1) S84°40'07"W, a distance of 396.25 feet to a 1/2 inch iron rod found for an angle point;

2) S39°52'13"W, a distance of 643.37 feet to a 1/2 inch iron rod found at northeasterly corner of that certain 226.240 acre tract of land conveyed to F/M 255 Joint Venture by deed of record in Volume 12801, Page 81 of the Real Property Records for an angle point;

THENCE, along the southerly line hereof, being the southerly line of said Second Tract, same being the northerly line of said F/M 255 Joint Venture 226.240 acre tract, continuing along and with a fence, the following twenty-two (22) courses and distances:

1) N45°32'29"W, a distance of 135.38 feet to a 1/2 inch iron rod found for an angle point;

2) N32°13'05"W, a distance of 77.83 feet to a 12 inch Live Oak tree at a fence angle for an angle point hereof;

3) N28°17'27"W, a distance of 68.02 feet to a 1/2 inch iron rod found for an angle point;

4) N29°39'13"W, a distance of 59.82 feet to a 1/2 inch iron rod found for an angle point;

5) N25°51'34"W, a distance of 51.41 feet to a 22 inch Cedar tree at a fence angle for an angle point hereof;

6) N27°58'18"W, a distance of 61.26 feet to a 1/2 inch iron rod found for an angle point;

7) N26°22'18"W, a distance of 19.69 feet to a 16 inch Live Oak tree at a fence angle for an angle point hereof;

8) N23°05'26"W, a distance of 92.03 feet to a 1/2 inch iron rod found for an angle point;

9) N27°33'17"W, a distance of 47.34 feet to a 1/2 inch iron rod set with cap for an angle point;

10) N29°42'38"W, a distance of 45.51 feet to a 1/2 inch iron rod found for an angle point;

11) N33°01'45"W, a distance of 20.27 feet to a 1/2 inch iron rod found for an angle point;

12) N36°03'00"W, a distance of 118.14 feet to a 1/2 inch iron rod found for an angle point;

13) N43°23'00"W, a distance of 53.33 feet to a 1/2 inch iron rod found for an angle point;

14) N49°44'51"W, a distance of 58.51 feet to a 14 inch Live Oak tree at a fence angle for an angle point hereof;

15) N42°18'26"W, a distance of 63.88 feet to a 1/2 inch iron rod set with cap for an angle point;

16) N35°47'19"W, a distance of 417.51 feet to a 1/2 inch iron rod found for an angle point;

17) N35°55'57"W, a distance of 264.76 feet to a 1/2 inch iron rod found for an angle point;

18) N35°23'52"W, a distance of 452.03 feet to a 1/2 inch iron rod found for an angle point;

19) N39°49'00"W, a distance of 439.63 feet to a 1/2 inch iron rod found for an angle point;

20) N51°32'45"W, a distance of 855.86 feet to a 1/2 inch iron rod found at the most northerly corner of said F/M 255 Joint Venture 226.240 acre tract for an angle point;

21) S50°49'26"W, a distance of 943.88 feet to a 60d nail found for an angle point;

22) S82°56'43"W, a distance of 862.76 feet to a 1/2 inch iron rod found in the easterly line of that certain 443.7304 acre tract of land conveyed to Jan M. Harris, Sara Lee Harris Wallace and Kay Harris by deed of record in Volume 12542, Page 260 of the Real Property Records, being the northwesterly corner of said F/M 255 Joint Venture 226.240 acre tract, same being the southwesterly corner of said Second Tract for an angle point;

THENCE, continuing along the southerly line hereof, being in part the westerly line of said Second Tract, same being in part the easterly line of said Harris 443.7304 acre tract, continuing along and with a fence, the following fourteen (14) courses and distances:

1) N04°41'49"W, a distance of 1732.66 feet to a 1/2 inch iron rod set with cap for an angle point;

2) N04°47'02"W, a distance of 280.16 feet to a 1/2 inch iron rod set with cap for an angle point;

3) N03°29'21"W, a distance of 340.14 feet to a 1/2 inch iron rod set with cap for an angle point;

4) N03°25'43"W, a distance of 259.11 feet to a 1/2 inch iron rod set with cap for an angle point;

5) N01°55'24"W, a distance of 88.08 feet to a 20 inch Cedar tree at a fence angle for an angle point hereof;

6) N82°09'10"W, a distance of 29.32 feet to a 60d nail found for an angle point;

7) N28°51'28"W, a distance of 17.03 feet to a 60d nail found for an angle point;

8) N05°05'20"W, a distance of 20.23 feet to a 1/2 inch iron rod found for an angle point;

9) N08°48'44"E, a distance of 41.12 feet to a 1/2 inch iron rod found for an angle point;

10) N10°37'54"E, a distance of 135.21 feet to a 1/2 inch iron rod found for an angle point;

11) N19°41'13"E, a distance of 40.58 feet to a 60d nail found for an angle point;

12) N37°34'24"E, a distance of 72.42 feet to a 60d nail found for an angle point;

13) N12°02'45"E, a distance of 124.13 feet to a 60d nail found for an angle point;

14) N04°13'45"E, a distance of 27.86 feet to a 1/2 inch iron rod found at the northeasterly corner of said Harris 443.7304 acre tract, being the southeasterly corner of said First Tract for an angle point;

THENCE, continuing along the southerly line hereof, being the southerly line of said First Tract, same being the northerly line of said Harris 443.7304 acre tract, continuing along and with a fence, the following two (2) courses and distances:

1) S89°05'48"W, a distance of 69.31 feet to a 1/2 inch iron rod found for an angle point;

2) S88°10'16"W, a distance of 2328.58 feet to a 1/2 inch iron pipe found at the northeasterly corner of that certain 1128.30 acre tract called Tract 1 conveyed to Jerome N. Gregoire by deed of record in Volume 13401, Page 596 of the Real Property Records, being the northwesterly corner of said Harris 443.7304 acre tract for an angle point;

THENCE, S88°11'40"W, continuing along the southerly line hereof, being the southerly line of said First Tract, same being the northerly line of said Gregoire 1128.30 acre tract, continuing along and with a fence, a distance of 3316.76 feet to a 1/2 inch iron pipe found in the irregular easterly line of that certain 2601.5 acre tract of land called First Tract conveyed to William Michael Peacock by deed of record in Volume 12851, Page 635 of the Real Property Records for an angle point;

THENCE, continuing along the southerly line hereof, being the southerly line of said First Tract, same being in part the irregular easterly and northerly lines of said 2601.5 acre Peacock tract, continuing along and with a fence, the following five (5) courses and distances:

1) N03°38'26"W, a distance of 638.53 feet to a 1/2 inch iron rod set with cap for an angle point;

2) N04°19'32"W, a distance of 752.53 feet to a cotton spindle found at the northeasterly corner of said 2601.5 acre Peacock tract for an angle point;

3) S88°17'27"W, a distance of 1347.71 feet to a fence post found for an angle point;

4) S28°22'30"W, a distance of 730.45 feet to a cotton spindle found for an angle point;

5) N61°34'59"W, a distance of 1595.89 feet to a fence post found in the easterly line of that certain 320 acre tract of land called Second Tract conveyed to William Michael Peacock by deed of record in Volume 12851, Page 635 of the Real Property Records, being the southwesterly corner of said First Tract for the southwesterly corner hereof;

THENCE, along the westerly line hereof, being the westerly line of said First Tract, same being in part the easterly and northerly lines of said Peacock 320 acre tract, continuing along and with a fence, the following two (2) courses and distances:

1) N26°42'35"E, a distance of 428.73 feet to a cotton spindle found at the northeasterly corner of said Peacock 320 acre tract for an angle point;

2) N62°04'20"W, a distance of 3584.02 feet to a 1/2 inch iron rod found at the southeasterly corner of that certain 109.733 acre tract of land conveyed to Gregory A. Kozmetsky by deed of record in Volume 7986, Page 412 of the Real Property Records for an angle point;

THENCE, N28°15'21"E, continuing along the westerly line hereof, being the westerly line of said First Tract, same being the easterly line of said Kozmetsky 109.733 acre tract, a distance of 2638.72 feet to a 1/2 inch iron rod found in the southerly line of said Kozmetsky 453.54 acre tract, being the northeasterly corner of said Kozmetsky 109.733 acre tract for an angle point;

THENCE, continuing along the westerly line hereof, being the westerly line of said First Tract, same being in part the southerly and easterly lines of said Kozmetsky 453.54 acre tract, continuing along and with a fence, the following three (3) courses and distances:

- 1) S61°52'07"E, a distance of 3589.01 feet to a fence post found at the southeasterly corner of said kozmetsky 453.54 acre tract for an angle point;
- 2) N28°13'55"E, a distance of 2904.91 feet to a fence post found for an angle point;
- 3) N88°32'20"E, a distance of 1379.32 feet to the POINT OF BEGINNING, containing an area of 1,719.449 acres (74,899,209 sq. ft.) of land, more or less, within these metes and bounds.

SECTION 5. FINDINGS RELATIVE TO BOUNDARIES. The legislature finds that the boundaries and field notes of the district form a closure. If a mistake is made in the field notes or in copying the field notes in the legislative process, the mistake does not affect in any way:

- (1) the organization, existence, or validity of the district;
- (2) the right of the district to impose taxes; or
- (3) the legality or operation of the district or the board.

SECTION 6. APPLICABILITY OF OTHER LAW. This Act prevails over any provision of general law that is in conflict or inconsistent with this Act.

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

(b) Temporary directors serve until directors are elected under Section 9 of this Act.

(c) Temporary directors of the district, or of a new district created by division of the district under Section 13 of this Act, are not required to own land in or be residents of the district.

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

(e) Each director must qualify to serve as director in the manner provided by Section 49.055, Water Code.

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

- (1) C.A. Elder;
- (2) Gary Valdez;
- (3) Vincent Huebinger;
- (4) Bill Simpson; and
- (5) Cord Shifflett.

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

SECTION 9. CONFIRMATION AND INITIAL DIRECTORS' ELECTION. (a) The temporary board shall call and hold an election to confirm establishment of the district and to elect initial directors under Section 49.102, Water Code.

(b) At the confirmation and initial directors' election the board may submit to the voters a proposition to authorize:

- (1) an issuance of bonds;
- (2) a maintenance tax; or
- (3) a tax to fund payments required under a contract.

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

SECTION 10. ELECTION OF DIRECTORS. (a) On the first Saturday in May of the first even-numbered year after the year in which the district is authorized to be created at a confirmation election, an election shall be held in the district for the election of two directors to replace the two initial directors serving shorter terms from the confirmation election.

(b) On the first Saturday in May of each subsequent even-numbered year following the election, the appropriate number of directors shall be elected.

SECTION 11. GENERAL POWERS. The district has all of the rights, powers, privileges, authority, functions, and duties provided by the general law of this state, including Chapters 30, 49, 50, and 54, Water Code, applicable to municipal utility districts created under Section 59, Article XVI, Texas Constitution.

SECTION 12. ANNEXATION. The board may annex land as provided by Chapter 49 or Chapter 54, Water Code.

SECTION 13. DIVISION OF DISTRICT. (a) Notwithstanding any other law, either before or after annexing land into the district under Section 12 of this Act, and before issuing indebtedness secured by taxes or net revenues, the board may divide the territory of the district, including any annexed territory, into two or more new districts.

(b) A new district created by division of the district must be at least 100 acres in size.

SECTION 14. ELECTION FOR DIVISION OF DISTRICT. (a) On a board resolution consenting to the terms and conditions of a division under Section 13 of this Act, including a plan for payment and performance of any outstanding obligations of the district, and a metes and bounds description of the proposed new districts, the board shall order an election to be held in the district to determine if the district should be divided as proposed.

(b) The board shall give notice of the election not later than the 20th day before the election in the manner provided by Section 49.102, Water Code.

(c) Not later than the 30th day after the date of the election the district shall provide written notice of the plan for division to:

- (1) the Texas Commission on Environmental Quality;
- (2) the attorney general;
- (3) the commissioners court of each county in which each new district is located; and
- (4) any municipality having extraterritorial jurisdiction over the land within each new district.

SECTION 15. GOVERNANCE OF DISTRICTS AFTER DIVISION. (a) On a vote of a majority of the qualified electors in the district in favor of dividing the district in an election held under Section 14 of this Act, the district shall be divided.

(b) The resulting new districts shall be assigned consecutive letters, corresponding to the number of the new district.

(c) The resulting new districts shall be separate districts and shall be governed as separate districts.

(d) Until the 91st day after the date of the election approving the division of the district, the board shall continue to act on behalf of the district to wind up the affairs of the district.

SECTION 16. ELECTION OF DIRECTORS OF NEW DISTRICT. (a) After an election approving the division of the district, the directors of the board shall:

- (1) continue to act as directors of one of the new districts; and
- (2) appoint temporary directors for each of the other new districts not later than the 90th day after the date of the election approving the division of the district.

(b) Temporary directors appointed under Subsection (a) of this section shall serve until an election for permanent directors is held on the next uniform election date under Section 41.001(a), Election Code. The temporary directors of each new district must qualify under Section 49.055, Water Code, not later than the 90th day after the date of the election approving the district. The temporary directors shall take office at the expiration of this 90-day period.

(c) On election of directors under Subsection (b) of this section, the three directors receiving the greatest number of votes shall serve until May of the first even-numbered year that is four years after the date of the election and two directors shall serve until May of the first even-numbered year that is two years after the date of the election.

(d) The board of each new district shall approve the bond of each of its directors.

SECTION 17. CONTINUING POWERS AND OBLIGATIONS OF NEW DISTRICTS. (a) Each new district shall have the power to incur and pay debts and shall in every respect have the full power and authority of the district created and governed by this Act.

(b) If the district is divided in an election under Section 14 of this Act, the current obligations and any bond authorizations of the district are not impaired. The debts shall be paid by taxes, revenues, or assessments levied on the land in

the district as if the district had not been divided or by contributions from each new district on terms stated and agreed to in the division plan proposed by the board and approved by an election under Section 14 of this Act.

(c) Any other obligation of the district shall be divided pro rata among the new districts on an acreage basis or on other terms that are satisfactory to the new districts.

SECTION 18. CONTRACT AUTHORITY OF NEW DISTRICTS. The new districts may contract with each other for water, wastewater, and any other matters the board of each new district considers appropriate.

SECTION 19. BOND ISSUANCE BY NEW DISTRICT. (a) A new district that is created as a result of an election approving the division of the district as provided by Section 14 of this Act may issue bonds payable wholly or partially from ad valorem taxes on the approval of a majority of the residents voting in an election called and held for that purpose.

(b) Notice of the bond election shall be given as provided by Section 49.106, Water Code.

SECTION 20. MAINTENANCE TAX APPROVAL FOR NEW DISTRICT. A new district that is created as a result of an election approving the division of the district as provided by Section 14 of this Act may levy a maintenance tax on the approval of a majority of the residents voting in an election called and held for that purpose.

SECTION 21. FINDINGS RELATED TO PROCEDURAL REQUIREMENTS. (a) The legal notice of the intention to introduce this Act, setting forth the general substance of this Act, has been published as provided by law, and the notice and a copy of this Act have been furnished to all persons, agencies, officials, or entities to which they are required to be furnished under Section 59, Article XVI, Texas Constitution, and Chapter 313, Government Code. The governor, one of the required recipients, has submitted the notice and Act to the Texas Commission on Environmental Quality.

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

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

SECTION 22. EFFECTIVE DATE; EXPIRATION DATE. (a) This Act takes effect September 1, 2003.

(b) If the creation of the district is not confirmed at a confirmation election held under Section 9 of this Act before September 1, 2005, this Act expires on that date.

HB 236 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

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

HB 236, A bill to be entitled An Act relating to the punishment for the offense of obscenity and to certain consequences related to convictions for certain sex offenses.

On motion of Representative West, the house concurred in the senate amendments to **HB 236**.

Senate Committee Substitute

HB 236, A bill to be entitled An Act relating to the punishment for the offense of obscenity and to certain consequences related to convictions for certain sex offenses.

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

SECTION 1. Section 43.23, Penal Code, is amended by amending Subsections (b) and (d) and adding Subsections (h), (i), and (j) to read as follows:

(b) Except as provided by Subsection (h), an ~~Am~~ offense under Subsection (a) is a state jail felony.

(d) Except as provided by Subsection (h), an ~~Am~~ offense under Subsection (c) is a Class A misdemeanor.

(h) The punishment for an offense under Subsection (a) is increased to the punishment for a felony of the third degree and the punishment for an offense under Subsection (c) is increased to the punishment for a state jail felony if it is shown on the trial of the offense that obscene material that is the subject of the offense visually depicts activities described by Section 43.21(a)(1)(B) engaged in by:

(1) a child younger than 18 years of age at the time the image of the child was made;

(2) an image that to a reasonable person would be virtually indistinguishable from the image of a child younger than 18 years of age; or

(3) an image created, adapted, or modified to be the image of an identifiable child.

(i) In this section, "identifiable child" means a person, recognizable as an actual person by the person's face, likeness, or other distinguishing characteristic, such as a unique birthmark or other recognizable feature:

(1) who was younger than 18 years of age at the time the visual depiction was created, adapted, or modified; or

(2) whose image as a person younger than 18 years of age was used in creating, adapting, or modifying the visual depiction.

(j) An attorney representing the state who seeks an increase in punishment under Subsection (h)(3) is not required to prove the actual identity of an identifiable child.

SECTION 2. Section 12.42(c)(2), Penal Code, is amended to read as follows:

(2) A defendant shall be punished by imprisonment in the institutional division for life if:

(A) the defendant is convicted of an offense:

(i) under Section 22.021 or 22.011, Penal Code;

(ii) under Section 20.04(a)(4), Penal Code, if the defendant committed the offense with the intent to violate or abuse the victim sexually; or

(iii) under Section 30.02, Penal Code, punishable under Subsection (d) of that section, if the defendant committed the offense with the intent to commit a felony described by Subparagraph (i) or (ii) or a felony under Section 21.11 or 22.011, Penal Code; and

(B) the defendant has been previously convicted of an offense:

(i) under Section 43.25 or 43.26, Penal Code, or an offense under Section 43.23, Penal Code, punishable under Subsection (h) of that section;

(ii) under Section 21.11, 22.011, 22.021, or 25.02, Penal Code;

(iii) under Section 20.04(a)(4), Penal Code, if the defendant committed the offense with the intent to violate or abuse the victim sexually;

(iv) under Section 30.02, Penal Code, punishable under Subsection (d) of that section, if the defendant committed the offense with the intent to commit a felony described by Subparagraph (ii) or (iii); or

(v) under the laws of another state containing elements that are substantially similar to the elements of an offense listed in Subparagraph (i), (ii), (iii), or (iv).

SECTION 3. Section 25.08(c), Penal Code, is amended to read as follows:

(c) An offense under this section is a felony of the third degree, except that the offense is a felony of the second degree if the actor commits the offense with intent to commit an offense under Section 43.25.

SECTION 4. Sections 43.25(a)(2) and (7), Penal Code, are amended to read as follows:

(2) "Sexual conduct" means sexual contact, actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, sado-masochistic abuse, or lewd exhibition of the genitals, the anus, or any portion of the female breast below the top of the areola.

(7) "Deviate sexual intercourse" and "sexual contact" have the meanings assigned ~~[has the meaning defined]~~ by Section 43.01.

SECTION 5. Section 43.25(f), Penal Code, is amended to read as follows:

(f) It is an affirmative defense to a prosecution under this section that:

(1) ~~[the defendant, in good faith, reasonably believed that the child who engaged in the sexual conduct was 18 years of age or older;~~

~~[(2)]~~ the defendant was the spouse of the child at the time of the offense;

~~[(2)]~~ ~~[(3)]~~ the conduct was for a bona fide educational, medical, psychological, psychiatric, judicial, law enforcement, or legislative purpose; or

~~[(3)]~~ ~~[(4)]~~ the defendant is not more than two years older than the child.

SECTION 6. Subchapter B, Chapter 43, Penal Code, is amended by adding Section 43.27 to read as follows:

Sec. 43.27. DUTY TO REPORT. (a) For purposes of this section, "visual material" has the meaning assigned by Section 43.26.

(b) A business that develops or processes visual material and determines that the material may be evidence of a criminal offense under this subchapter shall report the existence of the visual material to a local law enforcement agency.

SECTION 7. Article 59.01(2), Code of Criminal Procedure, is amended to read as follows:

(2) "Contraband" means property of any nature, including real, personal, tangible, or intangible, that is:

(A) used in the commission of:

(i) any first or second degree felony under the Penal Code;

(ii) any felony under Section 15.031(b), 21.11, 38.04, Subchapter B of Chapter 43, [43.25, or 43.26] or Chapter 29, 30, 31, 32, 33, 33A, or 35, Penal Code; or

(iii) any felony under The Securities Act (Article 581-1 et seq., Vernon's Texas Civil Statutes);

(B) used or intended to be used in the commission of:

(i) any felony under Chapter 481, Health and Safety Code (Texas Controlled Substances Act);

(ii) any felony under Chapter 483, Health and Safety Code;

(iii) a felony under Chapter 153, Finance Code;

(iv) any felony under Chapter 34, Penal Code;

(v) a Class A misdemeanor under Subchapter B, Chapter 365, Health and Safety Code, if the defendant has been previously convicted twice of an offense under that subchapter; or

(vi) any felony under Chapter 152, Finance Code;

(C) the proceeds gained from the commission of a felony listed in Paragraph (A) or (B) of this subdivision or a crime of violence; or

(D) acquired with proceeds gained from the commission of a felony listed in Paragraph (A) or (B) of this subdivision or a crime of violence.

SECTION 8. Articles 62.01(5) and (6), Code of Criminal Procedure, are amended to read as follows:

(5) "Reportable conviction or adjudication" means a conviction or adjudication, regardless of the pendency of an appeal, that is:

(A) a conviction for a violation of Section 21.11 (Indecency with a child), 22.011 (Sexual assault), 22.021 (Aggravated sexual assault), or 25.02 (Prohibited sexual conduct), Penal Code;

(B) a conviction for a violation of Section 43.05 (Compelling prostitution), 43.25 (Sexual performance by a child), or 43.26 (Possession or promotion of child pornography), Penal Code;

(C) a conviction for a violation of Section 20.04(a)(4) (Aggravated kidnapping), Penal Code, if the defendant committed the offense with intent to violate or abuse the victim sexually;

(D) a conviction for a violation of Section 30.02 (Burglary), Penal Code, if the offense is punishable under Subsection (d) of that section and the defendant committed the offense with intent to commit a felony listed in Paragraph (A) or (C);

(E) a conviction for a violation of Section 20.02 (Unlawful restraint), 20.03 (Kidnapping), or 20.04 (Aggravated kidnapping), Penal Code, if the judgment in the case contains an affirmative finding under Article 42.015;

(F) the second conviction for a violation of Section 21.08 (Indecent exposure), Penal Code;

(G) a conviction for an attempt, conspiracy, or solicitation, as defined by Chapter 15, Penal Code, to commit an offense listed in Paragraph (A), (B), (C), (D), or (E);

(H) an adjudication of delinquent conduct:

(i) based on a violation of one of the offenses listed in Paragraph (A), (B), (C), (D), or (G) or, if the order in the hearing contains an affirmative finding that the victim or intended victim was younger than 17 years of age, one of the offenses listed in Paragraph (E); or

(ii) for which two violations of the offense listed in Paragraph (F) are shown;

(I) a deferred adjudication for an offense listed in:

(i) Paragraph (A), (B), (C), (D), or (G); or

(ii) Paragraph (E) if the papers in the case contain an affirmative finding that the victim or intended victim was younger than 17 years of age;

(J) a conviction under the laws of another state, federal law, the laws of a foreign country, or the Uniform Code of Military Justice for an offense containing elements that are substantially similar to the elements of an offense listed under Paragraph (A), (B), (C), (D), (E), or (G);

(K) an adjudication of delinquent conduct under the laws of another state, ~~or~~ federal law, or the laws of a foreign country based on a violation of an offense containing elements that are substantially similar to the elements of an offense listed under Paragraph (A), (B), (C), (D), (E), or (G);

(L) the second conviction under the laws of another state, federal law, the laws of a foreign country, or the Uniform Code of Military Justice for an offense containing elements that are substantially similar to the elements of the offense of indecent exposure; or

(M) the second adjudication of delinquent conduct under the laws of another state, ~~or~~ federal law, or the laws of a foreign country based on a violation of an offense containing elements that are substantially similar to the elements of the offense of indecent exposure.

(6) "Sexually violent offense" means any of the following offenses committed by a person 17 years of age or older:

(A) an offense under Section 21.11(a)(1) (Indecency with a child), 22.011 (Sexual assault), or 22.021 (Aggravated sexual assault), Penal Code;

(B) an offense under Section 43.25 (Sexual performance by a child), Penal Code;

(C) an offense under Section 20.04(a)(4) (Aggravated kidnapping), Penal Code, if the defendant committed the offense with intent to violate or abuse the victim sexually;

(D) an offense under Section 30.02 (Burglary), Penal Code, if the offense is punishable under Subsection (d) of that section and the defendant committed the offense with intent to commit a felony listed in Paragraph (A) or (C) of Subdivision (5); or

(E) an offense under the laws of another state, federal law, the laws of a foreign country, or the Uniform Code of Military Justice if the offense contains elements that are substantially similar to the elements of an offense listed under Paragraph (A), (B), (C), or (D).

SECTION 9. Article 62.0101(a), Code of Criminal Procedure, is amended to read as follows:

(a) The department is responsible for determining for the purposes of this chapter whether an offense under the laws of another state, federal law, the laws of a foreign country, or the Uniform Code of Military Justice contains elements that are substantially similar to the elements of an offense under the laws of this state.

SECTION 10. Articles 62.021(a) and (c), Code of Criminal Procedure, are amended to read as follows:

(a) This article applies to a person who:

(1) is required to register as a sex offender under:

(A) the laws of another state with which the department has entered into a reciprocal registration agreement; ~~[or]~~

(B) federal law or the Uniform Code of Military Justice; or

(C) the laws of a foreign country; and

(2) is not otherwise required to register under this chapter because:

(A) the person does not have a reportable conviction for an offense under the laws of the other state, federal law, the laws of the foreign country, or the Uniform Code of Military Justice containing elements that are substantially similar to an offense requiring registration under this chapter; or

(B) the person does not have a reportable adjudication of delinquent conduct based on a violation of an offense under the laws of the other state, ~~[or]~~ federal law, or the laws of the foreign country containing elements that are substantially similar to an offense requiring registration under this chapter.

(c) The duty to register for a person described by Subsection (a) expires on the date the person's duty to register would expire under the laws of the other state or foreign country had the person remained in that state or foreign country, under federal law, or under the Uniform Code of Military Justice, as applicable.

SECTION 11. (a) The change in law made by this Act applies only to an offense committed on or after the effective date of this Act. For purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before the effective date.

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

SECTION 12. The change in law made by this Act in amending Articles 62.01, 62.0101, and 62.021, Code of Criminal Procedure, applies to a person subject to registration under Chapter 62, Code of Criminal Procedure, for an offense or conduct committed before, on, or after the effective date of this Act.

SECTION 13. This Act takes effect September 1, 2003.

(Delisi in the chair)

HB 3324 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

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

HB 3324, A bill to be entitled An Act relating to the issuance of certain obligations and the imposition of assessments for the unemployment compensation system.

On motion of Representative J. Keffer, the house concurred in the senate amendments to **HB 3324** by (Record 835): 143 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; Christian; Coleman; Cook, B.; Cook, R.; Corte; Crabb; Crownover; Davis, J.; Davis, Y.; Dawson; Delisi(C); Denny; Deshotel; Driver; Dukes; Dunnam; Dutton; Edwards; Eiland; Eissler; Elkins; Ellis; Escobar; Farabee; Farrar; Flores; Flynn; Gallego; Garza; Gattis; Geren; Giddings; Goolsby; Griggs; Grusendorf; Guillen; Gutierrez; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Heflin; Hegar; Hilderbran; Hill; Hochberg; Hodge; Homer; Hope; 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; 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.; Smithee; Solis; Solomons; Stick; Taylor; Telford; Thompson; Truitt; Turner; Uresti; Van Arsdale; Villarreal; West; Wilson; Wise; Wohlgemuth; Wolens; Wong; Woolley; Zedler.

Present, not voting — Mr. Speaker.

Absent, Excused — Marchant.

Absent — Chisum; Goodman; Laney; Swinford; Talton.

Senate Committee Substitute

HB 3324, A bill to be entitled An Act relating to the issuance of certain obligations and the imposition of assessments for the unemployment compensation system.

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

SECTION 1. The heading to Subchapter C, Chapter 203, Labor Code, is amended to read as follows:

SUBCHAPTER C. ADVANCES FROM FEDERAL TRUST FUND AND OBLIGATION ASSESSMENT

SECTION 2. Section 203.102, Labor Code, is amended to read as follows:

Sec. 203.102. OBLIGATION [~~ADVANCE INTEREST~~] TRUST FUND. (a) The obligation [~~advance interest~~] trust fund is a dedicated trust fund outside of the state treasury in the custody of the comptroller.

(b) The commission and governor may use money in the obligation ~~[advance interest]~~ trust fund without legislative appropriation to pay:

(1) bond obligations and bond administrative expenses; and

(2) principal and ~~[pay]~~ interest incurred on advances from the federal trust fund~~;~~ and

~~[(2) repay temporary transfers of surplus cash that may be made between the advance interest trust fund and other funds].~~

~~[(c) Subject to legislative appropriation, the commission may use money in the advance interest trust fund, including any interest earnings scheduled to be transferred under Section 203.103, for the administration of Chapters 51, 61, and 62.]~~

SECTION 3. Section 203.104, Labor Code, is amended to read as follows:

Sec. 203.104. LIMITATION ON TRANSFER FROM OBLIGATION ~~[ADVANCE INTEREST]~~ TRUST FUND TO COMPENSATION FUND. An amount that is attributable to the portion of the unemployment obligation assessment authorized by Section 203.105(a)(2) may not be transferred ~~[The governor may authorize the commission to transfer money from the advance interest trust fund]~~ to the compensation fund unless all bond obligations, including bond administrative expenses, have been fully paid and satisfied. After the obligations have been fully satisfied, the commission shall transfer the balance of the obligation trust fund to the compensation fund ~~[if the governor:~~

~~[(1) on the advice of the commission, determines that funds in the compensation fund will be depleted at the time payment on an advance from the federal trust fund is due and that depletion of the funds will cause the loss of some portion of the credit received by employers against their federal unemployment tax rate; or~~

~~[(2) determines that payment of interest on a federal loan may be avoided by keeping the balance of the compensation fund positive].~~

SECTION 4. Section 203.105, Labor Code, is amended to read as follows:

Sec. 203.105. UNEMPLOYMENT OBLIGATION ASSESSMENT ~~[ADDITIONAL TAX]~~. (a) An unemployment obligation assessment shall be imposed as provided by this section ~~[In addition to other taxes, a separate tax is imposed on each employer eligible for an experience tax rate]~~ if after January 1 of a year:

(1) an interest payment on an advance from the federal trust fund will be due~~;~~ and

~~[(2)]~~ the estimated amount necessary to make the interest payment is not available in the obligation trust fund or ~~[will not be]~~ available otherwise; or

(2) bond obligations are due and the amount necessary to pay in full those obligations, including bond administrative expenses, is not available in the obligation trust fund or available otherwise.

(b) The unemployment obligation assessment rate is the total of the amounts required to make the payments necessary under Subsections (a)(1) and (2). The commission shall set the unemployment obligation assessment rate ~~[of an additional tax under this section]~~ in an amount sufficient to ensure timely payment of interest under Subsection (a)(1), but not exceeding two-tenths of one

percent. The commission shall set the unemployment obligation assessment rate in an amount sufficient to ensure timely payment of the bond obligations, including administrative expenses, and to provide an amount necessary in the commission's judgment to enhance investor acceptance of the bonds. The rate shall be based on a formula prescribed by commission rule, using the employer's experience rating from the previous year. The unemployment obligation assessment rate applies to the same wage base to which the employer's unemployment tax applies for the [that] year.

(c) The unemployment obligation assessment [An additional tax under this section] is due at the same time, collected in the same manner, and [on the date set by the commission and is] subject to the same penalties and interest as other contributions assessed under this subtitle [penalty for late payment as the unemployment tax].

(d) Revenue from the unemployment obligation assessment [an additional tax] under this section shall be deposited to the credit of the obligation [advance interest] trust fund under Section 203.102.

SECTION 5. Chapter 203, Labor Code, is amended by adding Subchapter F to read as follows:

SUBCHAPTER F. ISSUANCE OF FINANCIAL OBLIGATIONS FOR UNEMPLOYMENT COMPENSATION FUND

Sec. 203.251. FINDINGS AND PURPOSE. (a) The legislature finds that:

(1) it is an essential governmental function to maintain funds in an amount sufficient to pay unemployment benefits when due;

(2) at the time of the enactment of this subchapter, borrowing from the federal government was the only option available to obtain sufficient funds to pay benefits when the balance in the compensation fund is depleted;

(3) alternative methods of replenishing the unemployment compensation fund may reduce the costs of providing unemployment benefits and employers' cost of doing business in the state; and

(4) funds representing revenues received from the unemployment obligation assessment authorized under this subchapter and any income from the investment of those funds are not state property.

(b) The purpose of this subchapter is to provide appropriate methods through which the state may continue the unemployment compensation program at the lowest possible cost to the state and employers in the state.

Sec. 203.252. DEFINITIONS; GENERAL PROVISION. (a) In this subchapter:

(1) "Authority" means the Texas Public Finance Authority.

(2) "Bond" means any type of revenue obligation, including a bond, note, certificate, or other instrument, payable from and secured by a pledge of revenues received from the unemployment obligation assessment and amounts on deposit in the obligation trust fund to the extent provided in the proceedings authorizing the obligation.

(3) "Bond administrative expenses" means expenses incurred to administer bonds issued under this subchapter, including fees for paying agents, trustees, and attorneys, and for other professional services necessary to ensure compliance with applicable state or federal law.

(4) "Bond obligations" means the principal of a bond and any premium and interest on a bond issued under this subchapter, together with any amount owed under a related credit agreement.

(5) "Credit agreement" means a loan agreement, a revolving credit agreement, an agreement establishing a line of credit, a letter of credit, an interest rate swap agreement, an interest rate lock agreement, a currency swap agreement, a forward payment conversion agreement, an agreement to provide payments based on levels of or changes in interest rates or currency exchange rates, an agreement to exchange cash flows or a series of payments, an option, put, or call to hedge payment, currency, interest rate, or other exposure, or another agreement that enhances the marketability, security, or creditworthiness of a bond issued under this subchapter.

(b) An amount owed by the authority under a credit agreement shall be payable from and secured by a pledge of revenues received from the unemployment obligation assessment and amounts on deposit in the obligation trust fund to the extent provided in the proceedings authorizing the credit agreement.

Sec. 203.253. REQUEST FOR BOND ISSUANCE. (a) If the commission determines that the issuance of bonds is necessary to reduce or avoid the need to borrow or obtain a federal advance under Section 1201, Social Security Act (42 U.S.C. Section 1321), as amended, or any similar federal law, or to refinance a previous loan or advance received by the commission and that bond financing is the most cost-effective method of funding the payment of benefits, the commission may request the authority to issue bonds on its behalf. Before making a request of the authority under this subsection, the commission must by resolution determine that the issuance of bonds for the purposes established by this section will result in a savings to the state and to employers in this state as compared to the cost of borrowing or obtaining an advance under Section 1201, Social Security Act (42 U.S.C. Section 1321), as amended, or any similar federal law.

(b) The commission shall specify in the commission's request to the authority the maximum principal amount of the bonds, not to exceed \$2 billion for any separate bond issue, and the maximum term of the bonds, not to exceed 10 years.

(c) The principal amount determined by the commission under Subsection (b) may be increased to include an amount sufficient to:

(1) pay the costs of issuance of the authority;

(2) provide a bond reserve fund; and

(3) capitalize interest for the period determined necessary by the commission, not to exceed two years.

Sec. 203.254. ISSUANCE OF BONDS BY AUTHORITY. (a) The authority shall issue bonds on request by the commission, in accordance with the requirements of Chapter 1232, Government Code, and other provisions of Title 9, Government Code, that apply to bond issuance by a state agency.

(b) The authority shall determine the method of sale, type of bond, bond form, maximum interest rates, and other terms of the bonds that, in the authority's judgment, best achieve the economic goals of the commission and effect the borrowing at the lowest practicable cost.

(c) The authority may enter into a credit agreement in connection with the bonds.

Sec. 203.255. BOND PROCEEDS. (a) The proceeds of bonds issued by the authority under this subchapter may be deposited with a trustee selected by the authority and the commission or held by the comptroller in a dedicated trust fund outside the state treasury in the custody of the comptroller.

(b) Bond proceeds, including investment income, shall be held in trust for the exclusive use and benefit of the commission. The commission may use the proceeds to:

(1) repay the principal and interest of previous advances from the federal trust fund;

(2) pay unemployment benefits by depositing the proceeds in the unemployment compensation fund, as defined in Subchapter B;

(3) pay the costs of issuing the bonds;

(4) provide a bond reserve; and

(5) pay capitalized interest on the bonds for the period determined necessary by the commission, not to exceed two years.

(c) Any excess money remaining after the purposes for which the bonds were issued is satisfied may be used to purchase or redeem outstanding bonds.

(d) If there are no outstanding bonds or bond interest to be paid, the remaining proceeds shall be transferred to the unemployment compensation fund.

Sec. 203.256. REPAYMENT OF COMMISSION'S FINANCIAL OBLIGATIONS. (a) The commission shall assess an unemployment obligation assessment annually on each employer entitled to an experience rating under Chapter 204 if any bonds issued under this subchapter are outstanding.

(b) With regard to outstanding bonds issued by the authority under this subchapter, the authority shall notify the commission of the amount of the bond obligations and the estimated amount of bond administrative expenses each year in sufficient time, as determined by the commission, to permit the commission to assess the annual rate of the unemployment obligation assessment, subject to verification by a financial advisor of the commission or as otherwise specified in the proceedings authorizing the bonds.

(c) The commission shall deposit all revenue collected from the unemployment obligation assessment into the obligation trust fund. Money deposited in the fund may be invested as permitted by general law. Money in the obligation trust fund required to be used to pay bond obligations and bond administrative expenses shall be transferred to the authority or used by the

commission in the manner and at the time specified in the resolution adopted in connection with the bond issue to ensure timely payment of obligations and expenses, or as otherwise provided by the bond documents.

(d) For bonds issued by the authority for the commission, the commission shall provide for the payment of the bond obligations and the bond administrative expenses by irrevocably pledging revenues received from the unemployment obligation assessment and amounts on deposit in the obligation trust fund, together with any bond reserve fund, as provided in the proceedings authorizing the bonds and related credit agreements.

Sec. 203.257. BOND PAYMENTS. (a) Revenues received from the unemployment obligation assessment may be applied only as provided by this subchapter.

(b) The commission may pay bond obligations with other legally available funds.

(c) Bond obligations are payable only from sources provided for payment in this subchapter.

Sec. 203.258. EXCESS REVENUE COLLECTIONS AND INVESTMENT EARNINGS. Revenue collected from the unemployment obligation assessment in any year that exceeds the amount of the bond obligations and bond administrative expenses payable in that year and interest earned on the obligation trust fund may, in the discretion of the commission, be:

(1) used to pay bond obligations payable in the subsequent year, offsetting the amount of the assessment that would otherwise have to be levied for the year under this subchapter;

(2) used to redeem or purchase outstanding bonds;

(3) deposited in the unemployment compensation fund; or

(4) used to pay principal and interest on advances from the federal trust fund.

Sec. 203.259. STATE DEBT NOT CREATED. (a) A bond issued under this subchapter, and any related credit agreement, is not a debt of the state or any state agency or political subdivision of the state and is not a pledge of the faith and credit of any of them. A bond or credit agreement is payable solely from revenue as provided by this subchapter.

(b) A bond, and any related credit agreement, issued under this chapter must contain on its face a statement to the effect that:

(1) neither the state nor a state agency, political corporation, or political subdivision of the state is obligated to pay the principal of or interest on the bond except as provided by this subchapter; and

(2) neither the faith and credit nor the taxing power of the state or any state agency, political corporation, or political subdivision of the state is pledged to the payment of the principal of or interest on the bond.

Sec. 203.260. STATE NOT TO IMPAIR BOND OBLIGATIONS. If bonds under this subchapter are outstanding, the state may not:

(1) take action to limit or restrict the rights of the commission to fulfill its responsibility to pay bond obligations; or

(2) in any way impair the rights and remedies of the bond owners until the bonds are fully discharged.

Sec. 203.261. EXEMPTION FROM TAXATION. A bond issued under this subchapter, any transaction relating to the bond, and profits made from the sale of the bond are exempt from taxation by this state or by a municipality or other political subdivision of this state.

Sec. 203.262. NO PERSONAL LIABILITY. The members of the commission, commission employees, the board of directors of the authority, and the employees of the authority are not personally liable as a result of exercising the rights and responsibilities granted under this subchapter.

SECTION 6. The heading to Section 204.063, Labor Code, is amended to read as follows:

Sec. 204.063. DEFICIT ASSESSMENT ~~[TAX]~~.

SECTION 7. Section 204.064(b), Labor Code, is amended to read as follows:

(b) The numerator is computed by subtracting the balance of the compensation fund, considering any federal advance ~~[or other liability of the fund]~~, from the floor of the compensation fund.

SECTION 8. Section 203.103, Labor Code, is repealed.

SECTION 9. The advance interest trust fund established under Section 203.102, Labor Code, as that section existed before the effective date of this Act, is abolished on the effective date of this Act. All money in that fund on that date is transferred to the obligation trust fund established by Section 203.102, Labor Code, as amended by this Act.

SECTION 10. 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.

HB 1440 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

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

HB 1440, A bill to be entitled An Act relating to the frequency of public school teacher appraisals.

On motion of Representative Griggs, the house concurred in the senate amendments to **HB 1440** by (Record 836): 139 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; Christian; Coleman; Cook, B.; Cook, R.; Corte; Crabb; Crownover; Davis, J.; Davis, Y.; Dawson; 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; Hope; Hopson; Howard; Hughes; Hunter; Hupp; Isett; Jones, D.; Jones, E.; Jones, J.; Keel; Keffer, B.; Keffer, J.; King; Kolkhorst; Krusee; Kuempel; Laubenberg; Luna; Mabry; Madden; 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, W.; Smithee; Solis; Solomons; Stick; Taylor; Telford; Thompson; Truitt; Turner; Uresti; Van Arsdale; Villarreal; West; Wilson; Wise; Wohlgemuth; Wolens; Wong; Woolley; Zedler.

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

Absent, Excused — Marchant.

Absent — Castro; Chavez; Chisum; Laney; Lewis; Smith, T.; Swinford; Talton.

STATEMENT OF VOTE

When Record No. 836 was taken, I was in the house but away from my desk. I would have voted yes.

Castro

Senate Committee Substitute

HB 1440, A bill to be entitled An Act relating to the frequency of public school teacher appraisals.

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

SECTION 1. Section 21.203(a), Education Code, is amended to read as follows:

(a) Except as provided by Section 21.352(c), the [The] employment policies adopted by a board of trustees must require a written evaluation of each teacher at annual or more frequent intervals. The board must consider the most recent evaluations before making a decision not to renew a teacher's contract if the evaluations are relevant to the reason for the board's action.

SECTION 2. Section 21.352(c), Education Code, is amended to read as follows:

(c) Except as otherwise provided by this subsection, appraisal [Appraisal] must be done at least once during each school year. A teacher may be appraised less frequently if the teacher agrees in writing and the teacher's most recent evaluation rated the teacher as at least proficient, or the equivalent, and did not identify any area of deficiency. A teacher who is appraised less frequently than annually must be appraised at least once during each period of five school years. The district shall maintain a written copy of the evaluation of each teacher's performance in the teacher's personnel file. Each teacher is entitled to receive a written copy of the evaluation on its completion. After receiving a written copy of the evaluation, a teacher is entitled to a second appraisal by a different appraiser or to submit a written rebuttal to the evaluation to be attached to the evaluation in

the teacher's personnel file. The evaluation and any rebuttal may be given to another school district at which the teacher has applied for employment at the request of that district.

SECTION 3. This Act applies beginning with the 2003-2004 school year.

SECTION 4. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2003.

HB 1483 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

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

HB 1483, A bill to be entitled An Act relating to the regulation of the practice of nursing and midwifery by the Board of Nurse Examiners and to the abolition of the Board of Vocational Nurse Examiners and the transfer of the functions of that agency to the Board of Nurse Examiners.

On motion of Representative Allen, the house concurred in the senate amendments to **HB 1483**.

Senate Committee Substitute

HB 1483, A bill to be entitled An Act relating to the regulation of the practice of nursing by the Board of Nurse Examiners and to the abolition of the Board of Vocational Nurse Examiners and the transfer of the functions of that agency to the Board of Nurse Examiners.

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

ARTICLE 1. SINGLE NURSING BOARD

SECTION 1.001. The heading to Chapter 301, Occupations Code, is amended to read as follows:

CHAPTER 301. ~~[REGISTERED]~~ NURSES

SECTION 1.002. Section 301.002, Occupations Code, is amended by adding Subdivisions (3), (4), and (5) to read as follows:

(3) "Nurse" means a person required to be licensed under this chapter to engage in professional or vocational nursing.

(4) "Nursing" means professional or vocational nursing.

(5) "Vocational nursing" means nursing, other than professional nursing, that generally requires experience and education in biological, physical, and social sciences sufficient to qualify as a licensed vocational nurse.

SECTION 1.003. Section 301.003, Occupations Code, is amended to read as follows:

Sec. 301.003. APPLICATION OF SUNSET ACT. The Board of Nurse Examiners is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished September 1, 2007 ~~[2005]~~.

SECTION 1.004. Section 301.004(a), Occupations Code, is amended to read as follows:

(a) This chapter does not apply to:

- (1) gratuitous nursing care of the sick that is provided by a friend;
- (2) ~~nursing care by a licensed vocational nurse licensed under Chapter 302;~~

~~[(3)]~~ nursing care provided during a disaster under the state emergency management plan adopted under Section 418.042, Government Code, if the person providing the care does not hold the person out as a ~~[registered or professional]~~ nurse unless the person is licensed in another state;

~~(3) [(4)]~~ nursing care in which treatment is solely by prayer or spiritual means;

~~(4) [(5)]~~ an act performed by a person under the delegated authority ~~[control or supervision or at the instruction]~~ of a person licensed by the Texas State Board of Medical Examiners;

~~(5) [(6)]~~ an act performed by a person licensed by another state agency if the act is authorized by the statute under which the person is licensed;

~~(6) [(7)]~~ the practice of nursing that is incidental to a program of study by a student enrolled in a board-approved ~~[board-accredited]~~ nursing education program leading to an initial license as a ~~[professional]~~ nurse; or

~~(7) [(8)]~~ the practice of nursing by a person ~~[registered nurse]~~ licensed in another state who is in this state on a nonroutine basis for a period not to exceed 72 hours to:

(A) provide care to a patient being transported into, out of, or through this state;

(B) provide ~~[professional]~~ nursing consulting services; or

(C) attend or present a continuing nursing education program.

SECTION 1.005. Subchapter A, Chapter 301, Occupations Code, is amended by adding Section 301.005 to read as follows:

Sec. 301.005. OCCUPATION TAX AND FEE EXEMPTION. A vocational nurse organization that operates a nonprofit registry to enroll members to provide nursing to the public is not liable for the payment of an occupation tax or license fee unless the law imposing the tax or fee specifically imposes the tax or fee on vocational nurse organizations that operate nonprofit registries.

SECTION 1.006. Section 301.051(a), Occupations Code, is amended to read as follows:

(a) The Board of Nurse Examiners consists of 13 ~~[nine]~~ members appointed by the governor with the advice and consent of the senate as follows:

(1) six ~~[registered]~~ nurse members, including:

(A) one advanced practice nurse;

(B) two registered nurses who are not advanced practice nurses or members of a nurse faculty; and

(C) three vocational nurses who are not members of a nurse faculty;

(2) three members who are nurse faculty members of schools of nursing;

(A) one of whom is a nurse faculty member of a school of nursing offering a ~~[the]~~ baccalaureate degree program in preparing registered nurses;

(B) one of whom is a nurse faculty member of a school of nursing offering an [the] associate degree program in preparing registered nurses; and

(C) one of whom is a nurse faculty member of a ~~[graduate]~~ school of nursing at an institution of higher education preparing vocational [advanced practice] nurses; and

(3) four [(2) three] members who represent the public.

SECTION 1.007. Section 301.052(a), Occupations Code, is amended to read as follows:

(a) A person is not eligible for appointment as a registered nurse or vocational nurse member of the board unless the person has practiced [engaged in the] nursing in the role for which the member was appointed [profession] for at least three of the five years preceding the date of appointment.

SECTION 1.008. Section 301.054, Occupations Code, is amended to read as follows:

Sec. 301.054. TERMS. Members of the board serve staggered six-year terms, with the terms of as near to one-third of the members as possible [one member who is a practicing registered nurse, one member who is a registered nurse engaged in nurse education, and one member who is a representative of the public] expiring on January 31 of each odd-numbered year.

SECTION 1.009. Section 301.151, Occupations Code, is amended to read as follows:

Sec. 301.151. GENERAL RULEMAKING AUTHORITY. The board may adopt and enforce rules consistent with this chapter and necessary to:

- (1) perform its duties and conduct proceedings before the board;
- (2) regulate the practice of professional nursing and vocational nursing;
- (3) establish standards of professional conduct for license holders under this chapter; and
- (4) determine whether an act constitutes the practice of professional nursing or vocational nursing.

SECTION 1.010. Section 301.154(a), Occupations Code, is amended to read as follows:

(a) The board may recommend to the Texas State Board of Medical Examiners the adoption of rules relating to the delegation by physicians of medical acts to registered nurses and vocational nurses licensed by the board. In making a recommendation, the board may distinguish between nurses on the basis of special training and education.

SECTION 1.011. The heading to Section 301.157, Occupations Code, is amended to read as follows:

Sec. 301.157. PROGRAMS OF STUDY AND APPROVAL ~~[ACCREDITATION]~~.

SECTION 1.012. Sections 301.157(b), (c), and (d), Occupations Code, are amended to read as follows:

(b) The board shall:

(1) prescribe two programs of study to prepare vocational nurses as follows:

(A) a program conducted by an educational unit in nursing within the structure of a school, including a college, university, or proprietary school; and

(B) a program conducted by a hospital;

(2) prescribe and publish the minimum requirements and standards for a course of study in each program that prepares registered nurses or vocational [professional] nurses;

(3) ~~(2)~~ prescribe other rules as necessary to conduct approved [accredited] schools of nursing and educational programs for the preparation of registered nurses or vocational [professional] nurses;

(4) approve ~~(3) — accredit~~ schools of nursing and educational programs that meet the board's requirements; and

(5) ~~(4)~~ deny or withdraw approval [accreditation] from a school of nursing or educational program that fails to meet the prescribed course of study or other standard.

(c) A program approved to prepare registered nurses [The board] may not be [require a program that is composed of] less than two academic years or more than four calendar years.

(d) A person may not be certified as a graduate of any school of nursing or educational program unless the person has completed the requirements of the prescribed course of study, including clinical practice, of an approved [accredited] school of nursing or educational program.

SECTION 1.013. Section 301.158, Occupations Code, is amended to read as follows:

Sec. 301.158. DISSEMINATION OF INFORMATION. The board shall disseminate, at least twice a year and at other times the board determines necessary, information that is of significant interest to [professional] nurses and employers of [professional] nurses in this state, including summaries of final disciplinary action taken against [registered] nurses by the board since its last dissemination of information.

SECTION 1.014. Section 301.251, Occupations Code, is amended to read as follows:

Sec. 301.251. LICENSE REQUIRED. (a) A person may not practice or offer to practice professional nursing or vocational nursing in this state unless the person is licensed as provided by this chapter.

(b) Unless the person holds a license under this chapter, a person may not use, in connection with the person's name:

(1) the title "Registered Nurse," "Professional Nurse," "Licensed Vocational Nurse," "Vocational Nurse," "Licensed Practical Nurse," "Practical Nurse," or "Graduate Nurse";

(2) the abbreviation "R.N.," "L.V.N.," "V.N.," "L.P.N.," or "P.N."; or

(3) any other designation tending to imply that the person is a licensed registered nurse or vocational nurse.

(c) This section does not apply to a person entitled to practice professional nursing or vocational nursing in this state under Chapter 304, as added by Chapter 1420, Acts of the 77th Legislature, Regular Session, 2001.

SECTION 1.015. Section 301.252, Occupations Code, is amended to read as follows:

Sec. 301.252. LICENSE APPLICATION. (a) Each applicant for a registered nurse license or a vocational nurse license must submit to the board a sworn application that demonstrates the applicant's qualifications under this chapter, accompanied by evidence that the applicant ~~has~~:

(1) has good professional character; and

(2) has successfully completed an approved ~~accredited~~ program of professional or vocational nursing education.

(b) The board may waive the requirement of Subsection (a)(2) for a vocational nurse applicant if the applicant provides satisfactory sworn evidence that the applicant has completed an acceptable level of education in:

(1) a professional nursing school approved by the board; or

(2) a school of professional nurse education located in another state or a foreign country.

(c) The board by rule shall determine acceptable levels of education under Subsection (b).

SECTION 1.016. Section 301.253(c), Occupations Code, is amended to read as follows:

(c) The examination shall be designed to determine the fitness of the applicant to practice professional nursing or vocational nursing.

SECTION 1.017. Section 301.256, Occupations Code, is amended to read as follows:

Sec. 301.256. ISSUANCE OF LICENSE. If the results of an examination taken under Section 301.253 or 301.255 satisfy the criteria established by the board under that section, the board shall issue to the applicant a license to practice professional nursing or vocational nursing in this state. The license must be signed by the board's presiding officer and the executive director and attested by the board's seal.

SECTION 1.018. Sections 301.257(a) and (g), Occupations Code, are amended to read as follows:

(a) A person may petition the board for a declaratory order as to the person's eligibility for a license under this chapter if the person:

(1) is enrolled or planning to enroll in an educational program that prepares a person for an initial license as a registered nurse or vocational nurse; and

(2) has reason to believe that the person is ineligible for the license.

(g) The board may require an individual accepted for enrollment or enrolled in an educational program preparing a student for initial licensure as a registered nurse or vocational nurse to submit information to the board to permit the board to determine whether the person is aware of the conditions that may disqualify the person from licensure as a registered nurse or vocational nurse on graduation and of the person's right to petition the board for a declaratory order under this section. Instead of requiring the person to submit the information, the board may require the educational program to collect and submit the information on each person accepted for enrollment or enrolled in the program.

SECTION 1.019. Sections 301.258(a), (d), and (f), Occupations Code, are amended to read as follows:

(a) Pending the results of a licensing examination, the board may issue to an applicant who is a graduate of an approved educational program a permit to practice professional nursing under the direct supervision of a registered nurse or to practice vocational nursing under the direct supervision of a registered nurse or vocational nurse.

(d) The board may issue a temporary permit to practice professional nursing or vocational nursing for the limited purpose of allowing a nurse to satisfy a requirement imposed by the board necessary for:

- (1) renewal of an expired license;
- (2) reactivation of an inactive license; or
- (3) reissuance of a suspended, revoked, or surrendered license.

(f) A person who holds a temporary permit issued under this section is considered to be a licensed registered nurse or vocational nurse for all purposes except to the extent of any stipulation or limitation on practice imposed by the board as a condition of issuing the permit.

SECTION 1.020. Section 301.259, Occupations Code, is amended to read as follows:

Sec. 301.259. RECIPROCAL LICENSE BY ENDORSEMENT FOR CERTAIN FOREIGN APPLICANTS. On payment of a fee established by the board, the board may issue a license to practice as a registered nurse or vocational nurse in this state by endorsement without examination to an applicant who holds a registration certificate as a registered nurse or vocational nurse, as applicable, issued by a territory or possession of the United States or a foreign country if the board determines that the issuing agency of the territory or possession of the United States or foreign country required in its examination the same general degree of fitness required by this state.

SECTION 1.021. Section 301.260(a), Occupations Code, is amended to read as follows:

(a) An applicant for a license under this chapter who is licensed as a registered nurse or vocational nurse by another state may qualify for a temporary license by endorsement to practice as a registered nurse or vocational nurse, as applicable, by submitting to the board:

- (1) an endorsement fee as determined by the board and a completed sworn application in the form prescribed by the board;
- (2) evidence that the person possessed, at the time of initial licensing as a ~~registered~~ nurse, the other qualifications necessary at that time to have been eligible for licensing in this state; and
- (3) proof of initial licensing by examination and proof that the license and any other license issued to the applicant by another state have not been suspended, revoked, canceled, surrendered, or otherwise restricted.

SECTION 1.022. Sections 301.261(a), (c), and (e), Occupations Code, are amended to read as follows:

(a) The board may place on inactive status the license of a person under this chapter who is not actively engaged in the practice of professional nursing or vocational nursing if the person submits a written request to the board in the form and manner determined by the board. The inactive status begins on the expiration date of the person's license.

(c) A person whose license is on inactive status may not perform any professional nursing or vocational nursing service or work.

(e) The board by rule shall permit a person whose license is on inactive status and who is 65 years or older to use, as applicable, the title "Registered Nurse Retired," ~~or~~ "R.N. Retired," "Licensed Vocational Nurse Retired," "Vocational Nurse Retired," "L.V.N. Retired," or "V.N. Retired."

SECTION 1.023. Section 301.301(f), Occupations Code, is amended to read as follows:

(f) A registered nurse who practices professional nursing or a vocational nurse who practices vocational nursing after the expiration of the nurse's license is an illegal practitioner whose license may be revoked or suspended.

SECTION 1.024. Section 301.302(a), Occupations Code, is amended to read as follows:

(a) The board may renew without examination the expired license of a person who was licensed to practice professional nursing or vocational nursing 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 application.

SECTION 1.025. Section 301.304(a), Occupations Code, is amended to read as follows:

(a) As part of any continuing education requirements under Section 301.303, a registered nurse ~~[license holder]~~ shall participate in not less than two hours of continuing education relating to hepatitis C. This subsection applies only to a registered nurse ~~[license holder]~~ who renews a license on or after June 1, 2002.

SECTION 1.026. Subchapter G, Chapter 301, Occupations Code, is amended by adding Section 301.305 to read as follows:

Sec. 301.305. BIOTERRORISM RESPONSE COMPONENT IN CONTINUING EDUCATION. (a) As part of continuing education requirements under Section 301.303, a license holder shall participate during each two-year licensing period in at least two hours of continuing education relating to preparing for, reporting medical events resulting from, and responding to the consequences of an incident of bioterrorism.

(b) The continuing education required under Subsection (a) must be part of a program approved under Section 301.303(c).

(c) A license holder who does not comply with the continuing education required under Subsection (a) is subject only to one or both of the following sanctions:

(1) completion of the instruction in a period set by the board of 30 days or less; or

(2) an administrative penalty imposed under Subchapter K.

(d) A license holder who fails to comply with a sanction imposed under Subsection (c) is subject to any sanction imposed under Section 301.453 or Subchapter K.

(e) The board, in consultation with the Texas Department of Health, shall adopt rules establishing the content of the continuing education required under Subsection (a). The board may adopt other rules to implement this section, including rules under Section 301.303(c) for the approval of education programs and providers.

(f) The board may divide the content of the continuing education required under Subsection (a) into one-hour segments and may require that those segments be taken in a certain sequence.

(g) This section expires September 1, 2007.

SECTION 1.027. Section 301.351, Occupations Code, is amended to read as follows:

Sec. 301.351. DESIGNATIONS. (a) A person who holds a license as a registered nurse under this chapter:

- (1) is referred to as a registered nurse; and
- (2) may use the abbreviation "R.N."
- (b) A person who holds a license as a vocational nurse under this chapter:
 - (1) is referred to as a licensed vocational nurse or vocational nurse; and
 - (2) may use the abbreviation "L.V.N." or "V.N."

(c) While on duty providing direct care to a patient, each licensed registered nurse shall wear an insignia identifying the nurse as a registered nurse and each licensed vocational nurse shall wear an insignia identifying the nurse as a vocational nurse.

SECTION 1.028. Sections 301.352(a) and (c), Occupations Code, are amended to read as follows:

(a) A person may not suspend, terminate, or otherwise discipline or discriminate against a ~~[registered]~~ nurse who refuses to engage in an act or omission relating to patient care that would constitute grounds for reporting the nurse to the board under Subchapter I if the nurse notifies the person at the time of the refusal that the reason for refusing is that the act or omission:

- (1) constitutes grounds for reporting the nurse to the board; or
- (2) is a violation of this chapter or a rule of the board.

(c) A ~~[registered]~~ nurse's rights under this section may not be nullified by a contract.

SECTION 1.029. Section 301.401, Occupations Code, is amended to read as follows:

Sec. 301.401. GROUNDS FOR REPORTING ~~[REGISTERED]~~ NURSE. The following are grounds for reporting a ~~[registered]~~ nurse under Section 301.402, 301.403, 301.405, or 301.407:

- (1) unnecessary or likely exposure by the ~~[registered]~~ nurse of a patient or other person to a risk of harm;
- (2) unprofessional conduct by the ~~[registered]~~ nurse;
- (3) failure by the ~~[registered]~~ nurse to adequately care for a patient;

(4) failure by the ~~[registered]~~ nurse to conform to the minimum standards of acceptable professional nursing practice; or

(5) impairment or likely impairment of the ~~[registered]~~ nurse's practice by chemical dependency.

SECTION 1.030. Section 301.402, Occupations Code, is amended to read as follows:

Sec. 301.402. DUTY OF ~~[REGISTERED]~~ NURSE TO REPORT. (a) In this section:

(1) "Nursing ~~[Professional nursing]~~ educational program" means a board-approved ~~[board-accredited]~~ educational program leading to initial licensure as a registered nurse or vocational nurse.

(2) "Nursing ~~[Professional nursing]~~ student" means an individual who is enrolled in a professional nursing or vocational nursing educational program.

(b) A ~~[registered]~~ nurse shall report to the board in the manner prescribed under Subsection (d) if the nurse has reasonable cause to suspect that:

(1) another ~~[registered]~~ nurse is subject to a ground for reporting under Section 301.401; or

(2) the ability of a ~~[professional]~~ nursing student to perform the services of the nursing profession would be, or would reasonably be expected to be, impaired by chemical dependency.

(c) In a written, signed report to the appropriate licensing board, a ~~[registered]~~ nurse may report a licensed health care practitioner, agency, or facility that the nurse has reasonable cause to believe has exposed a patient to substantial risk of harm as a result of failing to provide patient care that conforms to the minimum standards of acceptable and prevailing nursing ~~[professional]~~ practice.

(d) A report by a ~~[registered]~~ nurse under Subsection (b) must:

(1) be written and signed; and

(2) include the identity of the ~~[registered]~~ nurse or student and any additional information required by the board.

(e) A ~~[registered]~~ nurse may make a report required under Subsection (b)(2) to the ~~[professional]~~ nursing educational program in which the student is enrolled instead of reporting to the board.

SECTION 1.031. Section 301.403, Occupations Code, is amended to read as follows:

Sec. 301.403. DUTY OF PEER REVIEW COMMITTEE TO REPORT. A ~~[professional]~~ nursing peer review committee operating under Chapter 303 that has a ground for reporting a ~~[registered]~~ nurse under Section 301.401 shall file with the board a written, signed report that includes:

(1) the identity of the nurse;

(2) a description of any corrective action taken against the nurse;

(3) a statement whether the ~~[professional]~~ nursing peer review committee recommends that the board take formal disciplinary action against the nurse; and

(4) any additional information the board requires.

SECTION 1.032. Section 301.404, Occupations Code, is amended to read as follows:

Sec. 301.404. DUTY OF NURSING EDUCATIONAL PROGRAM TO REPORT. (a) In this section, "[professional]" nursing educational program" and "[professional]" nursing student" have the meanings assigned by Section 301.402(a).

(b) A [professional] nursing educational program that has reasonable cause to suspect that the ability of a [professional] nursing student to perform the services of the nursing profession would be, or would reasonably be expected to be, impaired by chemical dependency shall file with the board a written, signed report that includes the identity of the student and any additional information the board requires.

SECTION 1.033. Section 301.405, Occupations Code, is amended to read as follows:

Sec. 301.405. DUTY OF PERSON EMPLOYING [REGISTERED] NURSE TO REPORT. (a) This section applies only to a person who employs, hires, or contracts for the services of a [registered] nurse, including:

- (1) a health care facility, including a hospital, health science center, nursing home, or home health agency;
- (2) a state agency;
- (3) a political subdivision;
- (4) a school of [professional] nursing; and
- (5) a temporary nursing service.

(b) A person that terminates, suspends for more than seven days, or takes other substantive disciplinary action, as defined by the board, against a [registered] nurse because a ground under Section 301.401 exists to report the nurse shall report in writing to the board the identity of the nurse and any additional information the board requires.

(c) Except as provided by Subsection (g), each [Each] person subject to this section that regularly employs, hires, or otherwise contracts for the services of 10 or more [registered] nurses shall develop a written plan for identifying and reporting a [registered] nurse in its service against whom a ground under Section 301.401 exists. The plan must include an appropriate process for the review by a [professional] nursing peer review committee established and operated under Chapter 303 of any incident reportable under this section and for the affected nurse to submit rebuttal information to that committee. Review by the committee is only advisory.

(d) The review by the peer review committee must include a determination as to whether a ground under Section 301.401 exists to report the [registered] nurse undergoing review. The peer review committee's determination must be included in the report made to the board under Subsection (b).

(e) The requirement that a report to the board be reviewed by a [professional] nursing peer review committee:

- (1) applies only to a required report; and

(2) does not subject a person's administrative decision to discipline a ~~[registered]~~ nurse to the peer review process or prevent a person from taking disciplinary action before review by the peer review committee is conducted.

(f) The board shall enter into memoranda of understanding with each state agency that licenses, registers, or certifies a health care facility or agency or surveys that facility or agency with respect to ~~[professional]~~ nursing care as to how that state agency can promote compliance with Subsection (c).

(g) A person is not required to develop a written plan under Subsection (c) for peer review of:

(1) a registered nurse, unless the person regularly employs, hires, or otherwise contracts for the services of at least five registered nurses; or

(2) a vocational nurse, unless the person regularly employs, hires, or otherwise contracts for the services of at least five vocational nurses.

SECTION 1.034. Section 301.406, Occupations Code, is amended to read as follows:

Sec. 301.406. DUTY OF CERTAIN PROFESSIONAL ASSOCIATIONS AND ORGANIZATIONS TO REPORT. A professional association of ~~[registered]~~ nurses or an organization that conducts a certification or accreditation program for ~~[registered]~~ nurses and that expels, decertifies, or takes any other substantive disciplinary action, as defined by the board, against a ~~[registered]~~ nurse as a result of the nurse's failure to conform to the minimum standards of acceptable ~~[professional]~~ nursing practice shall report in writing to the board the identity of the nurse and any additional information the board requires.

SECTION 1.035. Section 301.407, Occupations Code, is amended to read as follows:

Sec. 301.407. DUTY OF STATE AGENCY TO REPORT. (a) This section applies only to a state agency that:

(1) licenses, registers, or certifies:

(A) a hospital;

(B) a nursing home;

(C) a health science center;

(D) a home health agency; or

(E) another health care facility or agency; or

(2) surveys a facility or agency listed in Subdivision (1) regarding the quality of ~~[professional]~~ nursing care provided by the facility or agency.

(b) Unless expressly prohibited by state or federal law, a state agency that has reason to believe a ground for reporting a ~~[registered]~~ nurse exists under Section 301.401 shall report in writing to the board the identity of that ~~[registered]~~ nurse.

SECTION 1.036. Section 301.408, Occupations Code, is amended to read as follows:

Sec. 301.408. DUTY OF ~~[PROFESSIONAL]~~ LIABILITY INSURER TO REPORT. (a) Each insurer that provides to a ~~[registered]~~ nurse ~~[professional]~~ liability insurance that covers claims arising from providing or failing to provide ~~[professional]~~ nursing care shall submit to the board the report or data required by this section at the time prescribed.

(b) The report or data must be provided for:

(1) a complaint filed in court against a ~~[registered]~~ nurse that seeks damages related to the nurse's conduct in providing or failing to provide ~~[professional]~~ nursing care; and

(2) a settlement of a claim or lawsuit made on behalf of a nurse.

(c) Not later than the 30th day after the date the insurer receives a complaint subject to Subsection (b), the insurer shall provide to the board:

(1) the name of the ~~[registered]~~ nurse against whom the claim is filed;

(2) the policy number;

(3) the policy limits;

(4) a copy of the petition;

(5) a copy of the answer; and

(6) other relevant information known by the insurer, as required by the board.

(d) Not later than the 30th day after the date of a judgment, dismissal, or settlement of a suit involving an insured ~~[registered]~~ nurse or settlement of a claim on behalf of the nurse without the filing of a lawsuit, the insurer shall provide to the board information regarding the date of the judgment, dismissal, or settlement and, if appropriate:

(1) whether an appeal has been taken from the judgment and by which party;

(2) the amount of the settlement or judgment against the nurse; and

(3) other relevant information known by the insurer, as required by the board.

(e) A ~~[registered]~~ nurse shall report the information required to be reported under this section if the nurse is named as a defendant in a claim arising from providing or failing to provide ~~[professional]~~ nursing care and the nurse:

(1) does not carry or is not covered by ~~[professional]~~ liability insurance; or

(2) is insured by a nonadmitted carrier.

SECTION 1.037. Section 301.409(a), Occupations Code, is amended to read as follows:

(a) The attorney representing the state shall cause the clerk of the court of record in which the conviction, adjudication, or finding is entered to prepare and forward to the board a certified true and correct abstract of the court record of the case not later than the 30th day after the date:

(1) a person known to be a ~~[registered]~~ nurse who is licensed, otherwise lawfully practicing in this state, or applying to be licensed to practice is convicted of:

(A) a felony;

(B) a misdemeanor involving moral turpitude;

(C) a violation of a state or federal narcotics or controlled substance law; or

(D) an offense involving fraud or abuse under the Medicare or Medicaid program; or

(2) a court finds that a [registered] nurse is mentally ill or mentally incompetent.

SECTION 1.038. Section 301.410, Occupations Code, is amended to read as follows:

Sec. 301.410. REPORT REGARDING IMPAIRMENT BY CHEMICAL DEPENDENCY OR MENTAL ILLNESS. A person who is required to report a [registered] nurse under this subchapter because the nurse is impaired or suspected of being impaired by chemical dependency or mental illness may report to a peer assistance program approved by the board under Chapter 467, Health and Safety Code, instead of reporting to the board or requesting review by a [professional] nursing peer review committee.

SECTION 1.039. Section 301.414, Occupations Code, is amended to read as follows:

Sec. 301.414. NOTICE AND REVIEW OF REPORT. (a) The board shall notify each [registered] nurse who is reported to the board under Section 301.402, 301.403, 301.405, 301.406, 301.407, 301.408, or 301.409 of the filing of the report unless the notification would jeopardize an active investigation.

(b) The [registered] nurse or the nurse's authorized representative is entitled on request to review any report submitted to the board under a section specified under Subsection (a) unless doing so would jeopardize an active investigation. The board may not reveal the identity of the person making or signing the report.

SECTION 1.040. Section 301.415(a), Occupations Code, is amended to read as follows:

(a) A [registered] nurse who is entitled to receive notice under Section 301.414 or the authorized representative of the nurse may file with the board a statement of reasonable length containing the nurse's rebuttal of any information in the report to the board.

SECTION 1.041. Section 301.416(b), Occupations Code, is amended to read as follows:

(b) If the board determines that the reported conduct does not indicate that the continued practice of [professional] nursing by the nurse poses a risk of harm to a client or other person, the board, with the written consent of the nurse and the person making the report, may elect not to proceed with an investigation or to file formal charges. The board shall:

- (1) maintain a record of the report; and
- (2) investigate the report if it receives two or more reports involving separate incidents regarding the nurse in any five-year period.

SECTION 1.042. Sections 301.418(b) and (c), Occupations Code, are amended to read as follows:

(b) A report or information submitted as required or authorized by this subchapter arising out of the provision or failure to provide [professional] nursing services may not be made available in a liability action for:

- (1) discovery;
- (2) court subpoena; or
- (3) introduction into evidence.

(c) A person is not prevented from taking disciplinary action against a ~~[registered]~~ nurse by:

- (1) the filing of a report under this subchapter with the board;
- (2) an investigation by the board; or
- (3) the disposition of a matter by the board.

SECTION 1.043. Sections 301.419(a), (c), and (d), Occupations Code, are amended to read as follows:

(a) In this section, "minor incident" means conduct that does not indicate that the continuing practice of ~~[professional]~~ nursing by an affected nurse poses a risk of harm to a client or other person.

(c) If the board determines that a report submitted under this subchapter is without merit, the board shall expunge the report from the ~~[registered]~~ nurse's file.

(d) The board shall inform, in the manner the board determines appropriate, ~~[registered]~~ nurses, facilities, agencies, and other persons of their duty to report under this subchapter.

SECTION 1.044. Section 301.451, Occupations Code, is amended to read as follows:

Sec. 301.451. CERTAIN PROHIBITED PRACTICES. A person may not:

- (1) sell, fraudulently obtain, or fraudulently furnish a nursing diploma, license, renewal license, or record;
- (2) assist another person in selling, fraudulently obtaining, or fraudulently furnishing a nursing diploma, license, renewal license, or record;
- (3) practice ~~[professional]~~ nursing under a diploma, license, or record that was:

(A) obtained unlawfully or fraudulently; or

(B) signed or issued unlawfully or under false representation; or

- (4) practice ~~[professional]~~ nursing in a period in which the person's license is suspended or revoked.

SECTION 1.045. Sections 301.452(a) and (b), Occupations Code, are amended to read as follows:

(a) In this section, "intemperate use" includes practicing ~~[professional]~~ nursing or being on duty or on call while under the influence of alcohol or drugs.

(b) A person is subject to denial of a license or to disciplinary action under this subchapter for:

(1) a violation of this chapter, a rule or regulation not inconsistent with this chapter, or an order issued under this chapter;

(2) fraud or deceit in procuring or attempting to procure a license to practice professional nursing or vocational nursing;

(3) a conviction for a felony or for a misdemeanor involving moral turpitude;

(4) conduct that results in the revocation of probation imposed because of conviction for a felony or for a misdemeanor involving moral turpitude;

(5) use of a nursing license, diploma, or permit, or the transcript of such a document, that has been fraudulently purchased, issued, counterfeited, or materially altered;

(6) impersonating or acting as a proxy for another person in the licensing examination required under Section 301.253 or 301.255;

(7) directly or indirectly aiding or abetting an unlicensed person in connection with the unauthorized practice of ~~[professional]~~ nursing;

(8) revocation, suspension, or denial of, or any other action relating to, the person's license or privilege to practice nursing in another jurisdiction;

(9) intemperate use of alcohol or drugs that the board determines endangers or could endanger a patient;

(10) unprofessional or dishonorable conduct that, in the board's opinion, is likely to deceive, defraud, or injure a patient or the public;

(11) adjudication of mental incompetency;

(12) lack of fitness to practice because of a mental or physical health condition that could result in injury to a patient or the public; or

(13) failure to care adequately for a patient or to conform to the minimum standards of acceptable ~~[professional]~~ nursing practice in a manner that, in the board's opinion, exposes a patient or other person unnecessarily to risk of harm.

SECTION 1.046. Sections 301.453(a), (b), and (c), Occupations Code, are amended to read as follows:

(a) If the board determines that a person has committed an act listed in Section 301.452(b), the board shall enter an order imposing one or more of the following:

(1) denial of the person's application for a license, license renewal, or temporary permit;

(2) issuance of a written warning;

(3) administration of a public reprimand;

(4) limitation or restriction of the person's license, including:

(A) limiting to or excluding from the person's practice one or more specified activities of ~~[professional]~~ nursing; or

(B) stipulating periodic board review;

(5) suspension of the person's license for a period not to exceed five years;

(6) revocation of the person's license; or

(7) assessment of a fine.

(b) In addition to or instead of an action under Subsection (a), the board, by order, may require the person to:

(1) submit to care, counseling, or treatment by a health provider designated by the board as a condition for the issuance or renewal of a license;

(2) participate in a program of education or counseling prescribed by the board;

(3) practice for a specified period under the direction of a registered nurse or vocational nurse designated by the board; or

(4) perform public service the board considers appropriate.

(c) The board may probate any penalty imposed on a [registered] nurse and may accept the voluntary surrender of a license. The board may not reinstate a surrendered license unless it determines that the person is competent to resume practice.

SECTION 1.047. Section 301.455(a), Occupations Code, is amended to read as follows:

(a) The license of a [registered] nurse shall be temporarily suspended on a determination by a majority of the board or a three-member committee of board members designated by the board that, from the evidence or information presented, the continued practice of the [registered] nurse would constitute a continuing and imminent threat to the public welfare.

SECTION 1.048. Section 301.457, Occupations Code, is amended to read as follows:

Sec. 301.457. COMPLAINT AND INVESTIGATION. (a) The board or any person may initiate a proceeding under this subchapter by filing with the board a complaint against a [registered] nurse. The complaint must be in writing and signed by the complainant.

(b) Except as otherwise provided by this section, the board or a person authorized by the board shall conduct each investigation. Each complaint against a [registered] nurse that requires a determination of [professional] nursing competency shall be reviewed by a board member, consultant, or employee with a [professional] nursing background the board considers sufficient.

(c) On the filing of a complaint, the board:

(1) may conduct a preliminary investigation into the identity of the [registered] nurse named or described in the complaint;

(2) shall make a timely and appropriate preliminary investigation of the complaint; and

(3) may issue a warning or reprimand to the [registered] nurse.

(d) After any preliminary investigation to determine the identity of the subject of the complaint, unless it would jeopardize an investigation, the board shall notify the [registered] nurse that a complaint has been filed and the nature of the complaint. If the investigation reveals probable cause to take further disciplinary action, the board shall either attempt an informal disposition of the complaint or file a formal charge against the [registered] nurse stating the provision of this chapter or board rule that is alleged to have been violated and a brief description of each act or omission that constitutes the violation.

(e) The board shall conduct an investigation of the complaint to determine:

(1) whether the [registered] nurse's continued practice of [professional] nursing poses a risk of harm to clients or other persons; and

(2) whether probable cause exists that a [registered] nurse committed an act listed in Section 301.452(b) or that violates other law.

SECTION 1.049. Sections 301.458(a) and (c), Occupations Code, are amended to read as follows:

(a) Unless there is an agreed disposition of the complaint under Section 301.463, and if probable cause is found under Section 301.457(e)(2), the board or the board's authorized representative shall initiate proceedings by filing formal charges against the ~~[registered]~~ nurse.

(c) A copy of the formal charge shall be served on the ~~[registered]~~ nurse or the nurse's counsel of record.

SECTION 1.050. Section 301.459(b), Occupations Code, is amended to read as follows:

(b) In any hearing under this section, a ~~[registered]~~ nurse is entitled to appear in person or by counsel.

SECTION 1.051. Section 301.462, Occupations Code, is amended to read as follows:

Sec. 301.462. VOLUNTARY SURRENDER OF LICENSE. The board may revoke a ~~[registered]~~ nurse's license without formal charges, notice, or opportunity of hearing if the nurse voluntarily surrenders the nurse's license to the board and executes a sworn statement that the nurse does not desire to be licensed.

SECTION 1.052. Section 301.463(b), Occupations Code, is amended to read as follows:

(b) An agreed disposition of a complaint is considered to be a disciplinary order for purposes of reporting under this chapter and an administrative hearing and proceeding by a state or federal regulatory agency regarding the practice of ~~[professional]~~ nursing.

SECTION 1.053. Section 301.466, Occupations Code, is amended to read as follows:

Sec. 301.466. CONFIDENTIALITY. (a) A complaint and investigation concerning a ~~[registered]~~ nurse under this subchapter and all information and material compiled by the board in connection with the complaint and investigation are:

(1) confidential and not subject to disclosure under Chapter 552, Government Code; and

(2) not subject to disclosure, discovery, subpoena, or other means of legal compulsion for release to anyone other than the board or a board employee or agent involved in license holder discipline.

(b) Notwithstanding Subsection (a), information regarding a complaint and an investigation may be disclosed to:

(1) a person involved with the board in a disciplinary action against the nurse;

(2) a ~~[professional]~~ nursing licensing or disciplinary board in another jurisdiction;

(3) a peer assistance program approved by the board under Chapter 467, Health and Safety Code;

(4) a law enforcement agency; or

(5) a person engaged in bona fide research, if all information identifying a specific individual has been deleted.

(c) The filing of formal charges against a ~~[registered]~~ nurse by the board, the nature of those charges, disciplinary proceedings of the board, and final disciplinary actions, including warnings and reprimands, by the board are not confidential and are subject to disclosure in accordance with Chapter 552, Government Code.

SECTION 1.054. Section 301.467(a), Occupations Code, is amended to read as follows:

(a) On application, the board may reinstate a license to practice professional nursing or vocational nursing to a person whose license has been revoked, suspended, or surrendered.

SECTION 1.055. Section 301.468(a), Occupations Code, is amended to read as follows:

(a) The board may determine that an order denying a license application or suspending a license be probated. A person subject to a probation order shall conform to each condition the board sets as the terms of probation, including a condition:

(1) limiting the practice of the person to, or excluding, one or more specified activities of professional nursing or vocational nursing; or

(2) requiring the person to submit to supervision, care, counseling, or treatment by a practitioner designated by the board.

SECTION 1.056. Section 301.469, Occupations Code, is amended to read as follows:

Sec. 301.469. NOTICE OF FINAL ACTION. If the board takes a final disciplinary action, including a warning or reprimand, against a ~~[registered]~~ nurse under this subchapter, the board shall immediately send a copy of the board's final order to the nurse and to the last known employer of the nurse.

ARTICLE 2. CONFORMING AMENDMENTS

SECTION 2.001. Section 84.003(5), Civil Practice and Remedies Code, is amended to read as follows:

(5) "Volunteer health care provider" means an individual who voluntarily provides health care services without compensation or expectation of compensation and who is:

(A) an individual who is licensed to practice medicine under Subtitle B, Title 3, Occupations Code;

(B) a retired physician who is eligible to provide health care services, including a retired physician who is licensed but exempt from paying the required annual registration fee under Section 156.002, Occupations Code;

(C) a physician assistant licensed under Chapter 204, Occupations Code, or a retired physician assistant who is eligible to provide health care services under the law of this state;

(D) a registered nurse, including an advanced nurse practitioner, or vocational nurse, licensed under Chapter 301, Occupations Code, or a retired vocational nurse or registered nurse, including a retired advanced nurse practitioner, who is eligible to provide health care services under the law of this state;

(E) ~~[a licensed vocational nurse licensed under Chapter 302, Occupations Code, or a retired licensed vocational nurse who is eligible to provide health care services under the law of this state;~~

~~[(F)]~~ a pharmacist licensed under Subtitle J, Title 3, Occupations Code, or a retired pharmacist who is eligible to provide health care services under the law of this state;

(F) ~~[(G)]~~ a podiatrist licensed under Chapter 202, Occupations Code, or a retired podiatrist who is eligible to provide health care services under the law of this state;

(G) ~~[(H)]~~ a dentist licensed under Subtitle D, Title 3, Occupations Code, or a retired dentist who is eligible to provide health care services under the law of this state;

(H) ~~[(I)]~~ a dental hygienist licensed under Subtitle D, Title 3, Occupations Code, or a retired dental hygienist who is eligible to provide health care services under the law of this state; or

(I) ~~[(J)]~~ an optometrist or therapeutic optometrist licensed under Chapter 351, Occupations Code, or a retired optometrist or therapeutic optometrist who is eligible to provide health care services under the law of this state.

SECTION 2.002. Section 61.657(b), Education Code, is amended to read as follows:

(b) The board shall appoint an eight-member advisory committee to advise the board concerning assistance provided under this subchapter to vocational nursing students. The advisory committee consists of:

- (1) a chair named by the board;
- (2) one representative named by the Licensed Vocational Nurses Association of Texas;
- (3) one representative named by the Texas Organization of Nurse Executives;
- (4) one representative named by the Board of ~~[Vocational]~~ Nurse Examiners;
- (5) two representatives of vocational nursing educational programs named by the Texas Association of Vocational Nurse Educators;
- (6) one representative named by the Texas Health Care Association; and
- (7) one representative named by the Texas Association of Homes for the Aging.

SECTION 2.003. Section 232.002, Family Code, is amended to read as follows:

Sec. 232.002. LICENSING AUTHORITIES SUBJECT TO CHAPTER. The following are licensing authorities subject to this chapter:

- (1) Department of Agriculture;
- (2) Texas Commission on Alcohol and Drug Abuse;
- (3) Texas Alcoholic Beverage Commission;
- (4) Texas Appraiser Licensing and Certification Board;
- (5) Texas Board of Architectural Examiners;

- (6) State Board of Barber Examiners;
- (7) Texas Board of Chiropractic Examiners;
- (8) Comptroller of Public Accounts;
- (9) Texas Cosmetology Commission;
- (10) Court Reporters Certification Board;
- (11) State Board of Dental Examiners;
- (12) Texas State Board of Examiners of Dietitians;
- (13) Texas Funeral Service Commission;
- (14) Texas Department of Health;
- (15) Texas Department of Human Services;
- (16) Texas Board of Professional Land Surveying;
- (17) Texas Department of Licensing and Regulation;
- (18) Texas State Board of Examiners of Marriage and Family Therapists;
- (19) Texas State Board of Medical Examiners;
- (20) Midwifery Board;
- (21) Texas Commission on Environmental Quality [~~Natural Resource Conservation Commission~~];
- (22) Board of Nurse Examiners;
- (23) Texas Board of Occupational Therapy Examiners;
- (24) Texas Optometry Board;
- (25) Parks and Wildlife Department;
- (26) Texas State Board of Examiners of Perfusionists;
- (27) Texas State Board of Pharmacy;
- (28) Texas Board of Physical Therapy Examiners;
- (29) Texas State Board of Plumbing Examiners;
- (30) Texas State Board of Podiatric Medical Examiners;
- (31) Polygraph Examiners Board;
- (32) Texas Commission on Private Security;
- (33) Texas State Board of Examiners of Professional Counselors;
- (34) Texas Board of Professional Engineers;
- (35) Department of Protective and Regulatory Services;
- (36) Texas State Board of Examiners of Psychologists;
- (37) Texas State Board of Public Accountancy;
- (38) Department of Public Safety of the State of Texas;
- (39) Public Utility Commission of Texas;
- (40) Railroad Commission of Texas;
- (41) Texas Real Estate Commission;
- (42) State Bar of Texas;
- (43) Texas State Board of Social Worker Examiners;
- (44) State Board of Examiners for Speech-Language Pathology and Audiology;
- (45) Texas Structural Pest Control Board;
- (46) Board of Tax Professional Examiners;
- (47) Secretary of State;
- (48) Supreme Court of Texas;

(49) Texas Transportation Commission;
(50) State Board of Veterinary Medical Examiners;
(51) ~~Board of Vocational Nurse Examiners;~~
~~[(52)]~~ Texas Ethics Commission;
~~(52) [(53)]~~ Advisory Board of Athletic Trainers;
~~(53) [(54)]~~ State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments;
~~(54) [(55)]~~ Texas Board of Licensure for Professional Medical Physicists;
~~(55) [(56)]~~ Texas Department of Insurance;
~~(56) [(57)]~~ Texas Board of Orthotics and Prosthetics;
~~(57) [(58)]~~ savings and loan commissioner;
~~(58) [(59)]~~ Texas Juvenile Probation Commission; and
~~(59) [(60)]~~ Texas Lottery Commission under Chapter 466, Government Code.

SECTION 2.004. Section 487.101(3), Government Code, is amended to read as follows:

(3) "Postsecondary educational institution" means:

(A) an institution of higher education, as defined by Section 61.003, Education Code;

(B) a nonprofit, independent institution approved under Section 61.222, Education Code; or

(C) a nonprofit, health-related school or program accredited by the Southern Association of Colleges and Schools, the Liaison Committee on Medical Education, the American Osteopathic Association, the Board of Nurse Examiners, ~~[the Board of Vocational Nurse Examiners,]~~ or, in the case of allied health, an accrediting body recognized by the United States Department of Education.

SECTION 2.005. Section 487.151(2), Government Code, is amended to read as follows:

(2) "Postsecondary educational institution" means:

(A) an institution of higher education, as defined by Section 61.003, Education Code;

(B) a nonprofit, independent institution approved under Section 61.222, Education Code; or

(C) a nonprofit, health-related school or program accredited by the Southern Association of Colleges and Schools, the Liaison Committee on Medical Education, the American Osteopathic Association, the Board of Nurse Examiners, ~~[the Board of Vocational Nurse Examiners,]~~ or, in the case of allied health, an accrediting body recognized by the United States Department of Education.

SECTION 2.006. Section 531.051(f), Government Code, is amended to read as follows:

(f) Section 301.251(a), Occupations Code, does not apply to delivery of a service for which payment is provided under the voucher payment program developed under this section if:

- (1) the person who delivers the service:
 - (A) has not been denied a license under Chapter 301 [~~or 302~~], Occupations Code;
 - (B) has not been issued a license under Chapter 301, Occupations Code, that is revoked or suspended; and
 - (C) provides a service listed under Subsection (h); and
- (2) the consumer who receives the service:
 - (A) has a functional disability and the service would have been performed by the consumer, or the parent or guardian for the consumer, except for that disability; and
 - (B) if:
 - (i) the consumer is capable of training the person in the proper performance of the service, the consumer directs the person to deliver the service; or
 - (ii) the consumer is not capable of training the person in the proper performance of the service, the consumer's parent or guardian is capable of training the person in the proper performance of the service and directs the person to deliver the service.

SECTION 2.007. Section 2054.252(a), Government Code, as added by Chapter 353, Acts of the 77th Legislature, Regular Session, 2001, is amended to read as follows:

(a) The following licensing authorities shall participate in the system established under Section 2054.253, as added by Chapter 353, Acts of the 77th Legislature, Regular Session, 2001:

- (1) State Board of Barber Examiners;
- (2) Texas Board of Chiropractic Examiners;
- (3) Texas Cosmetology Commission;
- (4) Court Reporters Certification Board;
- (5) State Board of Dental Examiners;
- (6) Texas Funeral Service Commission;
- (7) Texas Board of Professional Land Surveying;
- (8) Texas State Board of Medical Examiners;
- (9) Board of Nurse Examiners;
- (10) ~~Board of Vocational Nurse Examiners;~~
- ~~[(11)]~~ Texas Optometry Board;
- ~~[(12)]~~ Texas Structural Pest Control Board;
- ~~[(13)]~~ Texas State Board of Pharmacy;
- ~~[(14)]~~ Executive Council of Physical Therapy and Occupational Therapy Examiners;
- ~~[(15)]~~ Texas State Board of Plumbing Examiners;
- ~~[(16)]~~ Texas State Board of Podiatric Medical Examiners;
- ~~[(17)]~~ Board of Tax Professional Examiners;
- ~~[(18)]~~ Polygraph Examiners Board;
- ~~[(19)]~~ Texas State Board of Examiners of Psychologists;
- ~~[(20)]~~ State Board of Veterinary Medical Examiners;
- ~~[(21)]~~ Texas Real Estate Commission;

(21) ~~[(22)]~~ Texas Appraiser Licensing and Certification Board; and

(22) ~~[(23)]~~ Texas Department of Licensing and Regulation.

SECTION 2.008. Section 81.010(c), Health and Safety Code, is amended to read as follows:

(c) The council consists of one representative from each of the following agencies appointed by the executive director or commissioner of each agency:

- (1) the department;
- (2) the Texas Department of Mental Health and Mental Retardation;
- (3) the Texas Department of Human Services;
- (4) the Texas Commission on Alcohol and Drug Abuse;
- (5) the Texas Rehabilitation Commission;
- (6) the Texas Youth Commission;
- (7) the Texas Department of Criminal Justice;
- (8) the Texas Juvenile Probation Commission;
- (9) the Texas Commission for the Blind;
- (10) the Texas Commission for the Deaf and Hard of Hearing;
- (11) the Department of Protective and Regulatory Services;
- (12) the Texas Education Agency;
- (13) the Texas State Board of Medical Examiners;
- (14) the Board of Nurse Examiners;
- (15) ~~the Board of Vocational Nurse Examiners;~~
- ~~[(16)]~~ the State Board of Dental Examiners;
- (16) ~~[(17)]~~ the Health and Human Services Commission;
- (17) ~~[(18)]~~ the Texas Department on Aging; and
- (18) ~~[(19)]~~ the Texas Workforce Commission.

SECTION 2.009. Section 142.022, Health and Safety Code, is amended to read as follows:

Sec. 142.022. EXEMPTIONS FOR NURSING STUDENTS AND MEDICATION AIDE TRAINEES. (a) Sections 142.021 and 142.029 do not apply to:

- (1) a graduate nurse holding a temporary permit issued by the Board of Nurse Examiners;
- (2) a student enrolled in an accredited school of nursing or program for the education of registered nurses who is administering medications as part of the student's clinical experience;
- (3) a graduate vocational nurse holding a temporary permit issued by the Board of ~~Vocational~~ Nurse Examiners;
- (4) a student enrolled in an accredited school of vocational nursing or program for the education of vocational nurses who is administering medications as part of the student's clinical experience; or
- (5) a trainee in a medication aide training program approved by the department under Section 142.024 who is administering medications as part of the trainee's clinical experience.

(b) The administration of medications by persons exempted under Subdivisions (1) through (4) of Subsection (a) is governed by the terms of the memorandum of understanding executed by the department and the Board of Nurse Examiners ~~[or the department and the Board of Vocational Nurse Examiners, as appropriate]~~.

SECTION 2.010. Section 164.003(6), Health and Safety Code, is amended to read as follows:

(6) "Mental health professional" means a:

(A) "physician" as defined by Section 571.003;

(B) "licensed professional counselor" as defined by Section 503.002, Occupations Code;

(C) "chemical dependency counselor" as defined by Section 504.001, Occupations Code;

(D) "psychologist" offering "psychological services" as defined by Section 501.003, Occupations Code;

(E) "registered nurse" licensed under Chapter 301, Occupations Code;

(F) ~~"[licensed]~~ vocational nurse" licensed under Chapter 301 ~~[as defined by Section 302.001]~~, Occupations Code;

(G) "licensed marriage and family therapist" as defined by Section 502.002, Occupations Code; and

(H) "social worker" as defined by Section 505.002, Occupations Code.

SECTION 2.011. Section 242.607, Health and Safety Code, is amended to read as follows:

Sec. 242.607. EXEMPTIONS FOR NURSING STUDENTS AND MEDICATION AIDE TRAINEES. (a) Sections 242.606 and 242.614 do not apply to:

(1) a graduate nurse holding a temporary permit issued by the Board of Nurse Examiners;

(2) a student enrolled in an accredited school of nursing or program for the education of registered nurses who is administering medications as part of the student's clinical experience;

(3) a graduate vocational nurse holding a temporary permit issued by the Board of ~~[Vocational]~~ Nurse Examiners;

(4) a student enrolled in an accredited school of vocational nursing or program for the education of vocational nurses who is administering medications as part of the student's clinical experience; or

(5) a trainee in a medication aide training program approved by the department under this subchapter who is administering medications as part of the trainee's clinical experience.

(b) The administration of medications by persons exempted under Subdivisions (1) through (4) of Subsection (a) is governed by the terms of the memorandum of understanding executed by the department and the Board of Nurse Examiners ~~[or the department and the Board of Vocational Nurse Examiners, as appropriate]~~.

SECTION 2.012. Section 36.132(a)(2), Human Resources Code, is amended to read as follows:

(2) "Licensing authority" means:

- (A) the Texas State Board of Medical Examiners;
- (B) the State Board of Dental Examiners;
- (C) the Texas State Board of Examiners of Psychologists;
- (D) the Texas State Board of Social Worker Examiners;
- (E) the Board of Nurse Examiners;
- (F) ~~the Board of Vocational Nurse Examiners;~~

~~[(G)]~~ the Texas Board of Physical Therapy Examiners;

(G) ~~[(H)]~~ the Texas Board of Occupational Therapy Examiners; or

(H) ~~[(H)]~~ another state agency authorized to regulate a provider who receives or is eligible to receive payment for a health care service under the Medicaid program.

SECTION 2.013. Section 101.002, Occupations Code, is amended to read as follows:

Sec. 101.002. COMPOSITION OF COUNCIL. The council consists of 14 ~~[15]~~ members, with one member appointed by each of the following:

- (1) the Texas Board of Chiropractic Examiners;
- (2) the State Board of Dental Examiners;
- (3) the Texas Optometry Board;
- (4) the Texas State Board of Pharmacy;
- (5) the Texas State Board of Podiatric Medical Examiners;
- (6) the State Board of Veterinary Medical Examiners;
- (7) the Texas State Board of Medical Examiners;
- (8) the Board of Nurse Examiners;
- (9) the Texas State Board of Examiners of Psychologists;
- (10) ~~the Board of Vocational Nurse Examiners;~~

[(11)] ~~[(11)]~~ the Texas Funeral Service Commission;

(11) ~~[(12)]~~ the entity that regulates the practice of physical therapy;

(12) ~~[(13)]~~ the entity that regulates the practice of occupational therapy;

(13) ~~[(14)]~~ the health licensing division of the Texas Department of Health; and

(14) ~~[(15)]~~ the governor's office.

SECTION 2.014. Section 201.003(a), Occupations Code, is amended to read as follows:

(a) This chapter does not apply to a registered nurse licensed under Chapter 301, a vocational nurse licensed under Chapter 301 ~~[302]~~, a person who provides spinal screening services as authorized by Chapter 37, Health and Safety Code, a physical therapist licensed under Chapter 453, or a massage therapist or a massage therapy instructor qualified and registered under Chapter 455 if:

(1) the person does not represent to the public that the person is a chiropractor or use the term "chiropractor," "chiropractic," "doctor of chiropractic," "D.C.," or any derivative of those terms or initials in connection with the person's name or practice; and

(2) the person practices strictly within the scope of the license or registration held in compliance with all laws relating to the license and registration.

SECTION 2.015. Section 203.402, Occupations Code, is amended to read as follows:

Sec. 203.402. PROHIBITED REPRESENTATION. A midwife may not:

(1) except as provided by Section 203.403, use in connection with the midwife's name a title, abbreviation, or designation tending to imply that the midwife is a "registered" or "certified" midwife as opposed to one who is documented under this chapter;

(2) advertise or represent that the midwife is a physician or a graduate of a medical school unless the midwife is licensed to practice medicine by the Texas State Board of Medical Examiners;

(3) use advertising or an identification statement that is false, misleading, or deceptive; or

(4) except as authorized by rules adopted by the Board of Nurse Examiners ~~[and the Board of Vocational Nurse Examiners]~~, use in combination with the term "midwife" the term "nurse" or another title, initial, or designation that implies that the midwife is licensed as a registered nurse or ~~[licensed]~~ vocational nurse.

SECTION 2.016. Section 206.253(a), Occupations Code, is amended to read as follows:

(a) This chapter does not authorize a person who holds a license issued under this chapter to engage in the practice of:

(1) medicine, as defined by Subtitle B~~[, Title 3, Occupations Code]~~; or

(2) ~~[professional]~~ nursing, as defined by Chapter 301~~[, Occupations Code; or~~

~~[(3) nursing, as defined by Chapter 302, Occupations Code].~~

SECTION 2.017. Section 22.011(c)(3), Penal Code, is amended to read as follows:

(3) "Health care services provider" means:

(A) a physician licensed under Subtitle B, Title 3, Occupations Code;

(B) a chiropractor licensed under Chapter 201, Occupations Code;

(C) ~~[a licensed vocational nurse licensed under Chapter 302, Occupations Code;~~

~~[(D)]~~ a physical therapist licensed under Chapter 453, Occupations Code;

~~[(D)]~~ ~~[(E)]~~ a physician assistant licensed under Chapter 204, Occupations Code; or

~~[(E)]~~ ~~[(F)]~~ a registered nurse, a vocational nurse, or an advanced practice nurse licensed under Chapter 301, Occupations Code.

SECTION 2.018. Sections 303.001(2) and (3), Occupations Code, are amended to read as follows:

(2) "Nurse" means a registered nurse ~~[licensed under Chapter 301]~~ or a ~~[licensed]~~ vocational nurse licensed under Chapter 301 ~~[302]~~.

(3) "Nursing" has the meaning assigned by Section 301.002 ~~[means professional nursing as defined by Chapter 301 or vocational nursing as defined by Chapter 302]~~.

SECTION 2.019. Section 303.002(b), Occupations Code, is amended to read as follows:

(b) The board shall enter into a memorandum of understanding with each state agency that licenses, registers, or certifies a facility required by law to have a nursing ~~[registered nurse]~~ peer review committee. The memorandum of understanding must:

(1) state the actions the board and agency are to take to encourage compliance with the requirement to have a nursing ~~[registered nurse]~~ peer review committee; and

(2) be adopted as a rule of the board and the agency.

SECTION 2.020. Sections 303.003(b) and (c), Occupations Code, are amended to read as follows:

(b) A nursing peer review committee that conducts a peer review that involves only the practice of vocational nursing must have registered nurses and ~~[licensed]~~ vocational nurses as three-fourths of its members, to the extent feasible must include ~~[licensed]~~ vocational nurses as members, and may have only registered nurses and ~~[licensed]~~ vocational nurses as voting members.

(c) A nursing peer review committee that conducts a peer review that involves the practice of both professional nursing and ~~[licensed]~~ vocational nursing:

(1) must have registered nurses and ~~[licensed]~~ vocational nurses as four-fifths of its members, with registered nurses as three-fifths of its members;

(2) to the extent feasible must include ~~[licensed]~~ vocational nurses as members; and

(3) may have only:

(A) registered nurses and ~~[licensed]~~ vocational nurses as voting members when a ~~[licensed]~~ vocational nurse is being reviewed; and

(B) registered nurses as voting members when a registered nurse is being reviewed.

SECTION 2.021. Section 303.005, Occupations Code, is amended by amending Subsections (a), (b), (c), (d), and (f) and adding Subsection (h) to read as follows:

(a) In this section, "duty to a patient" means conduct required by standards of practice or professional conduct adopted by the board for nurses. The term includes administrative decisions directly affecting a ~~[registered]~~ nurse's ability to comply with that duty.

(b) If a person who regularly employs, hires, or otherwise contracts for the services of at least 10 ~~[registered]~~ nurses requests one of those nurses to engage in conduct that the nurse believes violates a ~~[registered]~~ nurse's duty to a patient, the nurse may request, on a form produced by the board, a determination by a nursing peer review committee under this chapter of whether the conduct violates a ~~[registered]~~ nurse's duty to a patient.

(c) A ~~[registered]~~ nurse who in good faith requests a peer review determination under Subsection (b):

(1) may not be disciplined or discriminated against for making the request;

(2) may engage in the requested conduct pending the peer review;

(3) is not subject to the reporting requirement under Subchapter I, Chapter 301; and

(4) may not be disciplined by the board for engaging in that conduct while the peer review is pending.

(d) The determinations of the peer review committee shall be considered in a decision to discipline the nurse, but the determinations are not binding if a ~~[registered]~~ nurse administrator believes in good faith that the peer review committee has incorrectly determined a ~~[registered]~~ nurse's duty.

(f) A ~~[registered]~~ nurse's rights under this section may not be nullified by a contract.

(h) A person is not required to provide a peer review determination under this section for a request made by:

(1) a registered nurse, unless the person regularly employs, hires, or otherwise contracts for the services of at least five registered nurses; or

(2) a vocational nurse, unless the person regularly employs, hires, or otherwise contracts for the services of at least five vocational nurses.

SECTION 2.022. Section 304.002, Occupations Code, as added by Chapter 1420, Acts of the 77th Legislature, Regular Session, 2001, is amended to read as follows:

Sec. 304.002. ADMINISTRATION OF COMPACT. The executive director ~~[directors]~~ of the Board of Nurse Examiners is ~~[and the Board of Vocational Nurse Examiners are]~~ the Nurse Licensure Compact administrator ~~[administrators]~~ for this state. ~~[The executive director of the Board of Nurse Examiners is responsible for administering matters relating to registered nurses. The executive director of the Board of Vocational Nurse Examiners is responsible for administering matters relating to licensed vocational nurses.]~~

SECTION 2.023. Section 304.003, Occupations Code, as added by Chapter 1420, Acts of the 77th Legislature, Regular Session, 2001, is amended to read as follows:

Sec. 304.003. RULES. The Board of Nurse Examiners ~~[and the Board of Vocational Nurse Examiners]~~ may adopt rules necessary to implement this chapter.

SECTION 2.024. Sections 304.004(b) and (c), Occupations Code, as added by Chapter 1420, Acts of the 77th Legislature, Regular Session, 2001, are amended to read as follows:

(b) Unless the context indicates otherwise or doing so would be inconsistent with the Nurse Licensure Compact, nurses practicing in this state under a license issued by a state that is a party to the Nurse Licensure Compact have the same rights and obligations as imposed by the laws of this state on license holders of the Board of Nurse Examiners ~~[or the Board of Vocational Nurse Examiners]~~.

(c) The Board of Nurse Examiners ~~has [and the Board of Vocational Nurse Examiners have]~~ the authority to determine whether a right or obligation imposed on license holders applies to nurses practicing in this state under a license issued by a state that is a party to the Nurse Licensure Compact unless that determination is inconsistent with the Nurse Licensure Compact.

SECTION 2.025. Section 304.005, Occupations Code, as added by Chapter 1420, Acts of the 77th Legislature, Regular Session, 2001, is amended to read as follows:

Sec. 304.005. ENFORCEMENT. The Board of Nurse Examiners ~~is [and the Board of Vocational Nurse Examiners are]~~ the state ~~agency [agencies]~~ responsible for taking action against registered and vocational nurses practicing in this state under a license issued by a state that is a party to the Nurse Licensure Compact as authorized by the Nurse Licensure Compact. The action shall be taken in accordance with the same procedures for taking action against registered and vocational nurses licensed by this state.

SECTION 2.026. Section 304.006(a), Occupations Code, as added by Chapter 1420, Acts of the 77th Legislature, Regular Session, 2001, is amended to read as follows:

(a) On request and payment of a reasonable fee, the Board of Nurse Examiners ~~[and the Board of Vocational Nurse Examiners]~~ shall provide a registered or vocational nurse licensed by this state with a copy of information regarding the nurse maintained by the coordinated licensure information system under Article 7 of the Nurse Licensure Compact.

SECTION 2.027. Section 304.007, Occupations Code, as added by Chapter 1420, Acts of the 77th Legislature, Regular Session, 2001, is amended to read as follows:

Sec. 304.007. ACCESS TO PRACTICE-RELATED INFORMATION. Practice-related information provided by the Board of Nurse Examiners ~~[or the Board of Vocational Nurse Examiners]~~ to registered or vocational nurses licensed by this state shall be made available by the ~~board [boards]~~ on request and at a reasonable cost to nurses practicing in this state under a license issued by a state that is a party to the Nurse Licensure Compact.

SECTION 2.028. Section 304.008(a), Occupations Code, as added by Chapter 1420, Acts of the 77th Legislature, Regular Session, 2001, is amended to read as follows:

(a) In reporting information to the coordinated licensure information system under Article 7 of the Nurse Licensure Compact, the Board of Nurse Examiners ~~[and the Board of Vocational Nurse Examiners]~~ may disclose personally identifiable information about the nurse, including social security number.

SECTION 2.029. Section 304.009, Occupations Code, as added by Chapter 1420, Acts of the 77th Legislature, Regular Session, 2001, is amended to read as follows:

Sec. 304.009. WITHDRAWAL FROM COMPACT. (a) The governor may withdraw this state from the Nurse Licensure Compact if the Board of Nurse Examiners ~~[or the Board of Vocational Nurse Examiners]~~ notifies the governor

that a state that is party to the compact changed, after January 1, 1999, the state's requirements for licensing a nurse and that the state's requirements, as changed, are substantially lower than the requirements for licensing a nurse in this state.

(b) The governor may completely withdraw this state from the Nurse Licensure Compact or may limit withdrawal to the application of the compact to registered nurses or ~~[licensed]~~ vocational nurses.

SECTION 2.030. Section 304.001(3), Occupations Code, as added by Chapter 1489, Acts of the 77th Legislature, Regular Session, 2001, is amended to read as follows:

(3) "Nurse" means a registered nurse or a ~~[licensed]~~ vocational nurse.

ARTICLE 3. REPEALER; TRANSITION; EFFECTIVE DATE

SECTION 3.001. On February 1, 2004, the following laws are repealed:

- (1) Chapter 302, Occupations Code; and
- (2) Section 303.002(a), Occupations Code.

SECTION 3.002. (a) This section provides for the appointment of members to the Board of Nurse Examiners for terms beginning February 1, 2004, to establish the staggering of members' terms in accordance with Sections 301.051 and 301.054, Occupations Code, as amended by this Act.

(b) The term of one of two registered nurse members of the Board of Nurse Examiners scheduled to expire in 2007 expires January 31, 2004. Those members shall agree or draw lots to determine whose term expires on that date. Effective February 1, 2004, the governor shall appoint one person who is a nurse faculty member of a school of nursing offering vocational nurse training to fill that vacancy and to serve a term expiring January 31, 2007.

(c) Effective February 1, 2004, the governor shall appoint one person who shall serve as a public member of the Board of Nurse Examiners with a term expiring January 31, 2009, as provided under Section 301.051, Occupations Code, as amended by this Act.

(d) Effective February 1, 2004, the governor shall appoint three additional members to the Board of Nurse Examiners to serve in the position of vocational nurse, as provided under Section 301.051, Occupations Code, as amended by this Act. In appointing those members, the governor shall appoint one person to a term expiring January 31, 2005, one to a term expiring January 31, 2007, and one to a term expiring January 31, 2009.

SECTION 3.003. (a) On February 1, 2004:

(1) all functions and activities performed by the Board of Vocational Nurse Examiners immediately before that date are transferred to the Board of Nurse Examiners;

(2) a rule or form adopted by the Board of Vocational Nurse Examiners is a rule or form of the Board of Nurse Examiners and remains in effect until amended or replaced by that board;

(3) a reference in law or an administrative rule to the Board of Vocational Nurse Examiners means the Board of Nurse Examiners;

(4) a complaint, investigation, or other proceeding before the Board of Vocational Nurse Examiners is transferred without change in status to the Board of Nurse Examiners, and the Board of Nurse Examiners assumes, as appropriate

and without a change in status, the position of the Board of Vocational Nurse Examiners in an action or proceeding to which the Board of Vocational Nurse Examiners is a party;

(5) all money, contracts, leases, property, and obligations of the Board of Vocational Nurse Examiners are transferred to the Board of Nurse Examiners;

(6) a license issued by the Board of Vocational Nurse Examiners is a license of the Board of Nurse Examiners;

(7) an employee of the Board of Vocational Nurse Examiners, except for the Board of Vocational Nurse Examiners' executive director, becomes an employee of the Board of Nurse Examiners; and

(8) the unexpended and unobligated balance of any money appropriated by the legislature for the Board of Vocational Nurse Examiners is transferred to the Board of Nurse Examiners.

(b) Before February 1, 2004, the Board of Vocational Nurse Examiners may agree with the Board of Nurse Examiners to transfer any property of the Board of Vocational Nurse Examiners to the Board of Nurse Examiners to implement the transfer required by this section.

(c) In the period beginning on the effective date of this Act and ending on January 31, 2004, the Board of Vocational Nurse Examiners shall continue to perform functions and activities under Chapter 302, Occupations Code, or other law as if that chapter had not been repealed or other law had not been amended by this Act, and the former law is continued in effect for that purpose.

SECTION 3.004. (a) Not later than June 1, 2004, the Board of Nurse Examiners shall adopt the rules required by Section 301.305, Occupations Code, as added by this Act.

(b) A license holder may not be required to complete the continuing education requirements imposed by Section 301.305, Occupations Code, as added by this Act, before June 1, 2006.

(c) As part of the next review conducted under Section 301.003, Occupations Code, as amended by this Act, the Sunset Advisory Commission shall evaluate the necessity and effectiveness of mandating continuing education courses for nurses on specific topics.

SECTION 3.005. 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.

SECTION 3.006. (a) Except as provided by Subsection (b) of this section, this Act takes effect September 1, 2003.

(b) Article 2 of this Act takes effect February 1, 2004.

HB 1634 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

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

HB 1634, A bill to be entitled An Act relating to the ability of a court to maintain jurisdiction over a person placed on community supervision who absconds.

On motion of Representative Hilderbran, the house concurred in the senate amendments to **HB 1634** by (Record 837): 138 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; Christian; Coleman; Cook, B.; Cook, R.; Corte; Crabb; Crownover; Davis, J.; Davis, Y.; Dawson; Denny; Deshotel; Driver; Dukes; Dunnam; Dutton; Edwards; Eissler; Elkins; Ellis; Escobar; Farabee; 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; Hope; 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; Madden; Martinez Fischer; McCall; McClendon; Menendez; Mercer; Merritt; Miller; Moreno, J.; Moreno, P.; Morrison; Mowery; Naishtat; Nixon; Oliveira; Olivo; Paxton; Peña; Phillips; Pickett; Pitts; Puente; Quintanilla; Raymond; Reyna; Riddle; Ritter; Rodriguez; Rose; Seaman; Smith, T.; Smith, W.; Solis; Solomons; Stick; Taylor; Telford; Thompson; Truitt; Turner; Uresti; Van Arsdale; Villarreal; West; Wilson; Wise; Wolens; Wong; Woolley; Zedler.

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

Absent, Excused — Marchant.

Absent — Chisum; Eiland; Farrar; McReynolds; Noriega; Smithee; Swinford; Talton; Wohlgemuth.

Senate Committee Substitute

HB 1634, A bill to be entitled An Act relating to the ability of a court to maintain jurisdiction over a person placed on community supervision who absconds and to defenses to revocation of community supervision.

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

SECTION 1. Section 5, Article 42.12, Code of Criminal Procedure, is amended by adding Subsection (h) to read as follows:

(h) A court retains jurisdiction to hold a hearing under Subsection (b) and to proceed with an adjudication of guilt, regardless of whether the period of community supervision imposed on the defendant has expired, if before the expiration the attorney representing the state files a motion to proceed with the adjudication and a capias is issued for the arrest of the defendant.

SECTION 2. Section 21, Article 42.12, Code of Criminal Procedure, is amended by adding Subsection (e) to read as follows:

(e) A court retains jurisdiction to hold a hearing under Subsection (b) and to revoke, continue, or modify community supervision, regardless of whether the period of community supervision imposed on the defendant has expired, if before

the expiration the attorney representing the state files a motion to revoke, continue, or modify community supervision and a capias is issued for the arrest of the defendant.

SECTION 3. Article 42.12, Code of Criminal Procedure, is amended by adding Section 24 to read as follows:

Sec. 24. DUE DILIGENCE DEFENSE. For the purposes of a hearing under Section 5(b) or 21(b), it is an affirmative defense to revocation for an alleged failure to report to a supervision officer as directed or to remain within a specified place that a supervision officer, peace officer, or other officer with the power of arrest under a warrant issued by a judge for that alleged violation failed to contact or attempt to contact the defendant in person at the defendant's last known residence address or last known employment address, as reflected in the files of the department serving the county in which the order of community supervision was entered.

SECTION 4. The change in law made by this Act applies to a hearing under Article 42.12, Code of Criminal Procedure, as amended by this Act, that commences on or after the effective date of this Act, regardless of whether the defendant was placed on community supervision before, on, or after the effective date of this Act.

SECTION 5. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2003.

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).

HB 1773 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

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

HB 1773, A bill to be entitled An Act relating to municipal requirements for junked vehicles.

On motion of Representative W. Smith, the house concurred in the senate amendments to **HB 1773**.

Senate Committee Substitute

HB 1773, A bill to be entitled An Act relating to regulation of junked vehicles.

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

SECTION 1. Subchapter E, Chapter 683, Transportation Code, is amended by adding Section 683.0711 to read as follows:

Sec. 683.0711. MUNICIPAL REQUIREMENTS. An ordinance adopted by a governing body of a municipality may provide for a more inclusive definition of a junked vehicle subject to regulation under this subchapter.

SECTION 2. Section 683.072, Transportation Code, is amended to read as follows:

Sec. 683.072. JUNKED VEHICLE DECLARED TO BE PUBLIC NUISANCE. A junked vehicle, including a part of a junked vehicle, that is visible at any time of the year from a public place or public right-of-way:

- (1) is detrimental to the safety and welfare of the public;
- (2) tends to reduce the value of private property;
- (3) invites vandalism;
- (4) creates a fire hazard;
- (5) is an attractive nuisance creating a hazard to the health and safety of minors;
- (6) produces urban blight adverse to the maintenance and continuing development of municipalities; and
- (7) is a public nuisance.

SECTION 3. This Act takes effect September 1, 2003.

HB 1833 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

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

HB 1833, A bill to be entitled An Act relating to certain fees that may be assessed and collected by a domestic relations office.

On motion of Representative Goodman, the house concurred in the senate amendments to **HB 1833**.

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

Amend **HB 1833** by striking page 2, lines 5-9 (House engrossed version) and inserting:

"under Sections 153.014 and 203.004 a reasonable fee to be paid to the domestic relations office at the time of the visitation services are provided."

HB 2308 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

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

HB 2308, A bill to be entitled An Act relating to ineligibility for participation in the low income housing tax credit program.

On motion of Representative J. Jones, the house concurred in the senate amendments to **HB 2308**.

Senate Committee Substitute

HB 2308, A bill to be entitled An Act relating to the low income housing tax credit program.

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

SECTION 1. Section 2306.6703, Government Code, is amended to read as follows:

Sec. 2306.6703. INELIGIBILITY FOR CONSIDERATION. (a) An application is ineligible for consideration under the low income housing tax credit program if:

(1) at the time of application or at any time during the two-year period preceding the date the application round begins, the applicant or a related party is or has been:

(A) a member of the board; or

(B) the director, a deputy director, the director of housing programs, the director of compliance, the director of underwriting, or the low income housing tax credit program manager employed by the department; ~~or~~

(2) the applicant proposes to replace in less than 15 years any private activity bond financing of the development described by the application, unless:

(A) the applicant proposes to maintain for a period of 30 years or more 100 percent of the development units supported by ~~low income~~ housing tax credits as rent-restricted and exclusively for occupancy by individuals and families earning not more than 50 percent of the area median income, adjusted for family size; and

(B) at least one-third of all the units in the development are public housing units or Section 8 project-based units; or

(3) the applicant proposes to construct a new development that is located one linear mile or less from a development that:

(A) serves the same type of household as the new development;

(B) has received an allocation of housing tax credits for new construction at any time during the three-year period preceding the date the application round begins; and

(C) has not been withdrawn or terminated from the low income housing tax credit program.

(b) Subsection (a)(3) does not apply to a development:

(1) that is using:

(A) federal HOPE VI funds received through the United States Department of Housing and Urban Development;

(B) locally approved funds received from a public improvement district or a tax increment financing district;

(C) funds provided to the state under the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. Section 12701 et seq.); or

(D) funds provided to the state and participating jurisdictions under the Housing and Community Development Act of 1974 (42 U.S.C. Section 5301 et seq.);

(2) that is located outside of a metropolitan statistical area; or

(3) that a local government where the project is to be located has by vote specifically allowed the construction of a new development located within one linear mile or less from a development under Subsection (a).

SECTION 2. Section 2306.6711, Government Code, is amended by adding Subsection (f) to read as follows:

(f) The board may allocate housing tax credits to more than one development in a single community, as defined by department rule, in the same calendar year only if the developments are or will be located more than one linear mile apart.

SECTION 3. Subsection (b), Section 2306.6725, Government Code, is amended to read as follows:

(b) The department shall provide appropriate incentives as determined through the qualified allocation plan to reward applicants who agree to:

(1) equip the property that is the basis of the application with energy saving devices that meet the standards established by the state energy conservation office or to provide to a qualified nonprofit organization or tenant organization a right of first refusal to purchase the property at the minimum price provided in, and in accordance with the requirements of, Section 42(i)(7), Internal Revenue Code of 1986 (26 U.S.C. Section 42(i)(7)); and

(2) locate the development in a census tract in which there are no other existing developments supported by housing tax credits.

SECTION 4. The change in law made by this Act applies only to a development for which an application for a low income housing tax credit is submitted on or after the effective date of this Act. A development for which an application for a low income housing tax credit was submitted before the effective date of this Act is governed by the law in effect on the date the application was submitted, and the former law is continued in effect for that purpose.

SECTION 5. This Act takes effect September 1, 2003.

HB 2379 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

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

HB 2379, A bill to be entitled An Act relating to the recreational facility fee charged at The University of Texas at Dallas.

On motion of Representative Hill, the house concurred in the senate amendments to **HB 2379** by (Record 838): 141 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; Denny; Deshotel; Driver; Dukes; Dunnam; Dutton; Edwards; Eiland; Eissler; Elkins; Ellis; Farabee; Farrar; Flores; Flynn; Gallego; Garza; Gattis; Giddings; Goodman; Goolsby; Griggs; Grusendorf; Guillen; Gutierrez; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Heflin; Hegar; Hilderbran; Hill; Hochberg; Hodge; Homer; Hope; 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; Martinez Fischer; McCall;

McClendon; McReynolds; Menendez; Mercer; Merritt; Miller; Moreno, J.; 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; Taylor; Telford; Thompson; Truitt; Turner; Uresti; Van Arsdale; Villarreal; West; Wilson; Wise; Wohlgemuth; Wolens; Wong; Woolley; Zedler.

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

Absent, Excused — Marchant.

Absent — Escobar; Geren; Moreno, P.; Puente; Swinford; Talton.

Senate Committee Substitute

HB 2379, A bill to be entitled An Act relating to the recreational facility fee charged at The University of Texas at Dallas.

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

SECTION 1. Section 54.544(b), Education Code, is amended to read as follows:

(b) A recreational facility fee may not exceed:

(1) \$65 ~~[\$40]~~ for each student for a semester of the regular term or a ~~[12-week]~~ summer session of 12 weeks or longer; and

(2) \$43.33 ~~[\$26.67]~~ for each student for a [an eight-week] summer session of less than 12 weeks.

SECTION 2. The change in law made by this Act applies only to fees imposed for a semester or term that begins on or after the effective date of 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.

HB 2453 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

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

HB 2453, A bill to be entitled An Act relating to the definition of a hospital district management contractor.

On motion of Representative Kolkhorst, the house concurred in the senate amendments to **HB 2453**.

Senate Committee Substitute

HB 2453, A bill to be entitled An Act relating to the definition of a hospital district management contractor.

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

SECTION 1. Sections 108.002(a) and (b), Civil Practice and Remedies Code, are amended to read as follows:

(a) Except in an action arising under the constitution or laws of the United States, a public servant [~~other than a provider of health care as that term is defined in Section 108.002(e),~~] is not personally liable for damages in excess of \$100,000 arising from personal injury, death, or deprivation of a right, privilege, or immunity if:

(1) the damages are the result of an act or omission by the public servant in the course and scope of the public servant's office, employment, or contractual performance for or service on behalf of a state agency, institution, department, or local government; and

(2) for the amount not in excess of \$100,000, the public servant is covered:

(A) by the state's obligation to indemnify under Chapter 104;

(B) by a local government's authorization to indemnify under Chapter 102;

(C) by liability or errors and omissions insurance; or

(D) by liability or errors and omissions coverage under an interlocal agreement.

(b) Except in an action arising under the constitution or laws of the United States, a public servant [~~other than a provider of health care as that term is defined in Section 108.002(e),~~] is not liable for damages in excess of \$100,000 for property damage if:

(1) the damages are the result of an act or omission by the public servant in the course and scope of the public servant's office, employment, or contractual performance for or service on behalf of a state agency, institution, department, or local government; and

(2) for the amount not in excess of \$100,000, the public servant is covered:

(A) by the state's obligation to indemnify under Chapter 104;

(B) by a local government's authorization to indemnify under Chapter 102;

(C) by liability or errors and omissions insurance; or

(D) by liability or errors and omissions coverage under an interlocal agreement.

SECTION 2. Chapter 261, Health and Safety Code, is amended by adding Subchapter C to read as follows:

**SUBCHAPTER C. LIABILITY OF NONPROFIT MANAGEMENT
CONTRACTOR**

Sec. 261.051. DEFINITION. In this subchapter, "municipal hospital management contractor" means a nonprofit corporation, partnership, or sole proprietorship that manages or operates a hospital or provides services under contract with a municipality.

Sec. 261.052. LIABILITY OF MUNICIPAL HOSPITAL MANAGEMENT CONTRACTOR. A municipal hospital management contractor in its management or operation of a hospital under a contract with a municipality is considered a governmental unit for purposes of Chapters 101, 102, and 108, Civil Practice and Remedies Code, and any employee of the contractor is, while

performing services under the contract for the benefit of the hospital, an employee of the municipality for the purposes of Chapters 101, 102, and 108, Civil Practice and Remedies Code.

SECTION 3. Section 285.071, Health and Safety Code, is amended to read as follows:

Sec. 285.071. DEFINITION. In this chapter, "hospital district management contractor" means a nonprofit corporation, partnership, or sole proprietorship that manages ~~or operates~~ a hospital or provides services ~~[as a part of a rural health network as defined under 42 U.S.C. Section 1395i-4(e)]~~ under contract with a hospital district that was created by general or special law ~~[and that has a population under 50,000]~~.

SECTION 4. Section 285.072, Health and Safety Code, is amended to read as follows:

Sec. 285.072. LIABILITY OF A HOSPITAL DISTRICT MANAGEMENT CONTRACTOR. A hospital district management contractor in its management or operation of a hospital under a contract with a hospital district is considered a governmental unit for purposes of Chapters 101, 102, and 108, Civil Practice and Remedies Code, and any employee of the contractor is ~~is~~ [are], while performing services under the contract for the benefit of the hospital, an employee ~~[employees]~~ of the hospital district for the purposes of Chapters 101, ~~[and]~~ 102, and 108, Civil Practice and Remedies Code.

SECTION 5. Section 108.002(c), Civil Practice and Remedies Code, is repealed.

SECTION 6. This Act takes effect September 1, 2003, and applies only to a suit filed on or after that date.

HB 3034 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

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

HB 3034, A bill to be entitled An Act relating to the rates of certain retail public utilities.

On motion of Representative Ellis, the house concurred in the senate amendments to **HB 3034** by (Record 839): 142 Yeas, 0 Nays, 2 Present, not voting.

Yeas — Allen; Alonzo; 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.; Davis, Y.; Dawson; Denny; Deshotel; Driver; Dukes; Dunnam; Dutton; Edwards; Eiland; Eissler; Elkins; Ellis; Escobar; Farabee; Farrar; Flores; Flynn; Gallego; Garza; Gattis; Geren; Giddings; Goodman; Griggs; Grusendorf; Guillen; Gutierrez; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Heflin; Hegar; Hilderbran; Hill; Hochberg; Hodge; Homer; Hope; 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; Martinez Fischer; McCall; McClendon; McReynolds; Menendez; 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; Taylor; Telford; Thompson; Truitt; Turner; Uresti; Van Arsdale; Villarreal; West; Wilson; Wise; Wolens; Wong; Woolley; Zedler.

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

Absent, Excused — Marchant.

Absent — Callegari; Goolsby; Miller; Talton; Wohlgemuth.

Senate Committee Substitute

HB 3034, A bill to be entitled An Act relating to the rates of certain retail public utilities.

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

SECTION 1. (a) Section 10.08(a), Chapter 966, Acts of the 77th Legislature, Regular Session, 2001, is amended to read as follows:

(a) The changes in law made by this article to Chapter 13, Water Code, apply to a proceeding in which the Texas ~~Natural Resource Conservation~~ Commission on Environmental Quality has not issued a final order before the effective date of this article; provided, however, that this article does not apply to a ~~[retail]~~ public utility that provided utility service in only 24 counties on January 1, 2003. The provisions of Chapter 13, Water Code, that were in effect before September 1, 2001, apply to those public utilities [for which a final order in any rate proceeding has been issued by the Texas Natural Resource Conservation Commission prior to January 1, 2001, as long as that retail public utility is the same as, controlled by, or an affiliate of the retail public utility for which a final order was issued prior to January 1, 2001. This subsection shall not be construed to permit a public utility to increase rates without obtaining the approval of the Texas Natural Resource Conservation Commission].

(b) The change in law made by this Act is a clarification of existing law and does not imply that existing law may be construed as being inconsistent with the law as amended by this Act.

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.

HB 3109 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

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

HB 3109, A bill to be entitled An Act relating to physician and health care provider panels of independent review organizations.

On motion of Representative B. Keffer, the house concurred in the senate amendments to **HB 3109** by (Record 840): 144 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; Denny; Deshotel; Driver; Dukes; Dunnam; Dutton; 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; Hope; 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; Martinez Fischer; McCall; McClendon; McReynolds; Menendez; Mercer; Merritt; Miller; Moreno, J.; Moreno, P.; Morrison; Mowery; Naishtat; Nixon; Noriega; Oliveira; Olivo; Paxton; Phillips; Pickett; Pitts; Puente; Quintanilla; Raymond; Reyna; Riddle; Ritter; Rodriguez; Rose; Seaman; Smith, T.; Smith, W.; Smithee; Solis; Solomons; Stick; Swinford; Taylor; Telford; Thompson; Truitt; Turner; Uresti; Van Arsdale; Villarreal; West; Wilson; Wise; Wohlgemuth; Wolens; Wong; Woolley; Zedler.

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

Absent, Excused — Marchant.

Absent — Edwards; Peña; Talton.

Senate Committee Substitute

HB 3109, A bill to be entitled An Act relating to physician and health care provider panels of independent review organizations.

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

SECTION 1. Section 2, Article 21.58C, Insurance Code, is amended by adding Subsection (h) to read as follows:

(h) Information that reveals the identity of a physician or individual health care provider who makes a review determination for an independent review organization is confidential.

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.

HB 3503 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

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

HB 3503, A bill to be entitled An Act relating to exculpatory clauses in trusts.

On motion of Representative Hartnett, the house concurred in the senate amendments to **HB 3503**.

Senate Committee Substitute

HB 3503, A bill to be entitled An Act relating to exculpatory clauses in trusts.

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

SECTION 1. The heading to Section 113.059, Property Code, is amended to read as follows:

Sec. 113.059. POWER OF SETTLOR [~~TRUSTOR~~] TO ALTER TRUSTEE'S RESPONSIBILITIES.

SECTION 2. Section 113.059, Property Code, is amended by amending Subsection (a) and adding Subsections (c) and (d) to read as follows:

(a) Except as provided by [~~Subsection (b) of~~] this section, the settlor by provision in an instrument creating, modifying, amending, or revoking the trust may relieve the trustee from a duty, liability, or restriction imposed by this subtitle.

(c) A settlor may not relieve the trustee of liability for:

(1) a breach of trust committed:

(A) in bad faith;

(B) intentionally; or

(C) with reckless indifference to the interest of the beneficiary; or

(2) any profit derived by the trustee from a breach of trust.

(d) A provision in a trust instrument relieving the trustee of liability for a breach of trust is ineffective to the extent that the provision is inserted in the trust instrument as a result of an abuse by the trustee of a fiduciary duty to or confidential relationship with the settlor.

SECTION 3. Section 142.005, Property Code, is amended by adding Subsections (h), (i), and (j) to read as follows:

(h) A trust created under this section is subject to Subtitle B, Title 9.

(i) Notwithstanding Subsection (h), this section prevails over a provision in Subtitle B, Title 9, that is in conflict or inconsistent with this section.

(j) A provision in a trust created under this section that relieves a trustee from a duty, responsibility, or liability imposed by this section or Subtitle B, Title 9, is enforceable only if:

(1) the provision is limited to specific facts and circumstances unique to the property of that trust and is not applicable generally to the trust; and

(2) the court creating or modifying the trust makes a specific finding that there is clear and convincing evidence that the inclusion of the provision is in the best interests of the beneficiary of the trust.

SECTION 4. Section 868, Texas Probate Code, is amended by adding Subsection (c) to read as follows:

(c) A provision in a trust created under Section 867 that relieves a trustee from a duty, responsibility, or liability imposed by this subpart or Subtitle B, Title 9, Property Code, is enforceable only if:

(1) the provision is limited to specific facts and circumstances unique to the property of that trust and is not applicable generally to the trust; and

(2) the court creating or modifying the trust makes a specific finding that there is clear and convincing evidence that the inclusion of the provision is in the best interests of the beneficiary of the trust.

SECTION 5. This Act takes effect September 1, 2003, and applies only to a trust existing on or created after that date.

HB 3526 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

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

HB 3526, A bill to be entitled An Act relating to the establishment of the research development fund to promote research at certain institutions of higher education and to the abolition of the Texas excellence fund and the university research fund.

On motion of Representative Hamric, the house concurred in the senate amendments to **HB 3526** by (Record 841): 140 Yeas, 0 Nays, 2 Present, not voting.

Yeas — Allen; Alonzo; Bailey; Baxter; Berman; Bohac; Bonnen; Branch; Brown, F.; Burnam; Callegari; Campbell; Canales; Capelo; Casteel; Castro; Chavez; Chisum; Christian; Cook, B.; Cook, R.; Corte; Crabb; Crownover; Davis, J.; Davis, Y.; Dawson; Denny; Deshotel; Driver; Dukes; Dunnam; Dutton; Eiland; Eissler; Elkins; Ellis; Escobar; Farabee; Farrar; Flores; Flynn; Gallego; Garza; Gattis; Geren; Giddings; Goodman; Goolsby; Griggs; Grusendorf; Guillen; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Heflin; Hegar; Hilderbran; Hill; Hochberg; Hodge; Homer; Hope; 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; 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.; Smithee; Solis; Solomons; Stick; Swinford; Taylor; Telford; Thompson; Truitt; Uresti; Van Arsdale; Villarreal; West; Wilson; Wise; Wohlgemuth; Wolens; Wong; Woolley; Zedler.

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

Absent, Excused — Marchant.

Absent — Brown, B.; Coleman; Edwards; Gutierrez; Hopson; Talton; Turner.

STATEMENT OF VOTE

When Record No. 841 was taken, I was in the house but away from my desk. I would have voted yes.

Gutierrez

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

Amend **HB 3526** by deleting Sec. 62.096 and substituting the following:

Sec. 62.096. VERIFICATION OF ALLOCATION FACTORS. (a) For purposes of this subchapter, the coordinating board shall prescribe standards and accounting methods for determining the amount of restricted research funds expended by an eligible institution in a state fiscal year.

(b) The coordinating board shall convene a committee comprised of persons designated by the presidents of eligible institutions to approve the allocations standards and accounting methods established by the coordinating board by October 1, 2003.

(c) The coordinating board, as soon as practicable in each state fiscal year no later than November 1, shall provide the comptroller with verified information relating to the amounts of restricted research funds expended by eligible institutions as necessary to determine the apportionment of the research development fund under this subchapter for that fiscal year.

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

(e) An eligible institution may appeal the coordinating board's decision regarding the institution's verified information relating to the amounts of restricted research expended to the advisory committee for final determination of eligibility.

**MESSAGE FROM THE GOVERNOR
OF THE STATE OF TEXAS**

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

TO ALL TO WHOM THESE PRESENTS SHALL COME:

TO THE MEMBERS OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE SEVENTY-EIGHTH LEGISLATURE, IN REGULAR SESSION:

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

The legislature has passed and sent to me **HCR 272** by Betty Brown requesting that I return **HB 2533** by Betty Brown to correct a technical error in the drafting of the bill. In this instance, I have taken no formal action on **HB 2533** and I am agreeing to the request of the legislature.

While under no obligation to comply with this request and pursuant to established case law, I hereby return the enrolled copy of **HB 2533** with this message to the house for further consideration.

IN TESTIMONY WHEREOF, I have signed my name officially and caused the Seal of the State to be affixed hereto at Austin, the 30th of May, 2003.

Rick Perry
Governor of Texas

[SEAL]
Gwyn Shea
Secretary of State

HB 2533 - VOTE RECONSIDERED

Representative B. Brown moved to reconsider the vote by which the house concurred in senate amendments to **HB 2533**.

The motion to reconsider prevailed.

HB 2533 - HOUSE REFUSES TO CONCUR IN SENATE AMENDMENTS CONFERENCE COMMITTEE APPOINTED

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

HB 2533, A bill to be entitled An Act relating to the creation of Lake View Management and Development District in Henderson County; providing authority to impose a tax and issue bonds; granting the power of eminent domain.

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 2533**.

The motion prevailed without objection.

The chair announced the appointment of the following conference committee, on the part of the house, on **HB 2533**: B. Brown, chair; Flynn; Casteel; W. Smith; and Lewis.

HB 897 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

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

HB 897, A bill to be entitled An Act relating to the operation of certain employer coalitions and cooperatives established for the provision of health benefits coverage.

On motion of Representative Woolley, the house concurred in the senate amendments to **HB 897**.

Senate Committee Substitute

HB 897, A bill to be entitled An Act relating to the operation of certain employer coalitions and cooperatives established for the provision of health benefits coverage.

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

SECTION 1. Article 26.02, Insurance Code, is amended by adding Subdivision (32-a) to read as follows:

(32-a) "Small employer health coalition" means a private purchasing cooperative composed solely of small employers that is formed under Subchapter B of this chapter.

SECTION 2. The heading to Subchapter B, Chapter 26, Insurance Code, is amended to read as follows:

SUBCHAPTER B. COALITIONS AND PURCHASING COOPERATIVES

SECTION 3. Article 26.15, Insurance Code, is amended by amending Subsection (b) and adding Subsection (e) to read as follows:

(b) A cooperative may contract only with small or large employer carriers that ~~[who desire to offer coverage through the cooperative and who]~~ demonstrate:

(1) that the carrier is a health carrier or health maintenance organization licensed and in good standing with the department;

(2) the capacity to administer the health benefit plans;

(3) the ability to monitor and evaluate the quality and cost effectiveness of care and applicable procedures;

(4) the ability to conduct utilization management and applicable procedures and policies;

(5) the ability to assure enrollees adequate access to health care providers, including adequate numbers and types of providers;

(6) a satisfactory grievance procedure and the ability to respond to enrollees' calls, questions, and complaints; and

(7) financial capacity, either through financial solvency standards as applied by the commissioner or through appropriate reinsurance or other risk-sharing mechanisms.

(e) A cooperative may not limit, restrict, or condition an employer's or employee's membership in a cooperative or choice among benefit plans based on health status related factors, duration of coverage, or any similar characteristic related to the health status or experience of a group or of any member of a group.

SECTION 4. Article 26.16(b), Insurance Code, is amended to read as follows:

(b) A small employer health coalition that otherwise meets the description of a small employer is considered a single small employer for all purposes under this chapter. Any other cooperative formed under this subchapter is considered an employer solely for the purposes of benefit elections under this [the] code.

SECTION 5. Articles 26.21(b) and (c), Insurance Code, are amended to read as follows:

(b) This article does not impose a statutory mandate of an employer contribution to the premium paid to the small employer carrier. However, the small employer carrier may require an employer contribution in accordance with the carrier's usual and customary practices on all employer group health insurance plans in this state. The premium contribution level shall be applied uniformly to each small employer offered or issued coverage by the small employer carrier in this state. If two or more small employer carriers participate in a purchasing cooperative established under Article 26.14 of this code, the carrier

may use the contribution requirement established by the purchasing cooperative for policies marketed by the cooperative. ~~[Coverage is available under a small employer health benefit plan if at least 75 percent of a small employer's eligible employees elect to be covered.]~~

(c) Coverage is available under a small employer health benefit plan if at least 75 percent of a small employer's eligible employees, or, if applicable, the lower participation level offered by the small employer carrier under Subsection (d) of this article, elect to be covered. If a small employer offers multiple health benefit plans, the collective enrollment of all of those plans must be at least 75 percent of the small employer's eligible employees or, if applicable, the lower participation level offered by the small employer carrier under Subsection (d) of this article. A small employer carrier may elect not to offer health benefit plans to a small employer who offers multiple health benefit plans if such plans are to be provided by more than one carrier and the small employer carrier would have less than 75 percent of the small employer's eligible employees enrolled in the small employer carrier's health benefit plan ~~[unless the coverage is provided through a purchasing cooperative]~~. A small employer who elects to make contributions for payment of the premium is not required to pay any amount with respect to an employee who elects not to be covered. The small employer may elect to pay the premium cost for additional coverage. This chapter does not require a small employer to purchase health insurance coverage for the employer's employees.

SECTION 6. Article 26.72(a), Insurance Code, is amended to read as follows:

(a) A small employer carrier or agent may not, directly or indirectly:

(1) encourage or direct a small employer to refrain from applying for coverage with the small employer carrier because of health status or claim experience of the eligible employees and dependents of the small employer;

(2) encourage or direct a small employer to seek coverage from another health carrier because of health status or claim experience of the eligible employees and dependents of the small employer; ~~[or]~~

(3) encourage or direct a small employer to apply for a particular small employer health benefit plan because of health status or claim experience of the eligible employees and dependents of the small employer; or

(4) encourage or direct a small employer to become a member or not become a member of a particular small employer health coalition because of the health status or claim experience of the eligible employees and dependents of that small employer.

SECTION 7. This Act takes effect September 1, 2003.

HB 1326 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

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

HB 1326, A bill to be entitled An Act relating to the civil and criminal consequences of racing a motor vehicle on a public highway or street and of being a spectator at an illegal motor vehicle racing event; providing penalties.

On motion of Representative Martinez Fischer, the house concurred in the senate amendments to **HB 1326**.

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

Amend **HB 1326** as follows:

- (1) On page 1, delete lines 17-21.
 - (2) On page 3, line 10, delete "100" and insert "10"
- (Hupp in the chair)

**HB 1406 - HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS**

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

HB 1406, A bill to be entitled An Act relating to a recommendation by a school district employee concerning a use of a psychotropic drug by a student or psychiatric evaluation or examination of a student and to refusal by a parent or certain other person to consent to administration of a psychotropic drug to a student or to psychiatric evaluation or examination of a student.

On motion of Representative B. Brown, the house concurred in the senate amendments to **HB 1406** by (Record 842): 139 Yeas, 1 Nay, 2 Present, not voting.

Yeas — Allen; Alonzo; Bailey; Baxter; Berman; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Burnam; Canales; Capelo; Casteel; Castro; Chavez; Chisum; Christian; Coleman; Cook, B.; Cook, R.; Corte; Crabb; Crownover; Davis, J.; Davis, Y.; Dawson; Delisi; Denny; Deshotel; Driver; Dunnam; Dutton; Edwards; Eiland; Eissler; Elkins; Ellis; Escobar; Farabee; Farrar; Flynn; Gallego; Garza; Gattis; Geren; Giddings; Goolsby; Griggs; Grusendorf; Guillen; Gutierrez; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Heflin; Hegar; Hilderbran; Hill; Hochberg; Hodge; Homer; Hope; Hopson; Howard; Hughes; Hunter; Isett; Jones, D.; Jones, E.; Jones, J.; Keel; Keffer, B.; Keffer, J.; King; Kolkhorst; Krusee; Kuempel; Laney; Laubenberg; Lewis; Luna; Mabry; Madden; Martinez Fischer; McCall; McClendon; McReynolds; Menendez; 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; Taylor; Telford; Thompson; Truitt; Turner; Uresti; Villarreal; West; Wilson; Wise; Wohlgemuth; Wolens; Wong; Woolley; Zedler.

Nays — Goodman.

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

Absent, Excused — Marchant.

Absent — Callegari; Campbell; Dukes; Flores; Miller; Talton; Van Arsdale.

Senate Committee Substitute

HB 1406, A bill to be entitled An Act relating to a recommendation by a school district employee concerning a use of a psychotropic drug by a student or suggestion of a particular diagnosis and to refusal by a parent or certain other person to consent to administration of a psychotropic drug to a student or to psychiatric evaluation or examination of a student.

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

SECTION 1. Subchapter A, Chapter 38, Education Code, is amended by adding Section 38.016 to read as follows:

Sec. 38.016. PSYCHOTROPIC DRUGS AND PSYCHIATRIC EVALUATIONS OR EXAMINATIONS. (a) In this section:

(1) "Parent" includes a guardian or other person standing in parental relation.

(2) "Psychotropic drug" means a substance that is:

(A) used in the diagnosis, treatment, or prevention of a disease or as a component of a medication; and

(B) intended to have an altering effect on perception, emotion, or behavior.

(b) A school district employee may not:

(1) recommend that a student use a psychotropic drug; or

(2) suggest any particular diagnosis; or

(3) use the refusal by a parent to consent to administration of a psychotropic drug to a student or to a psychiatric evaluation or examination of a student as grounds, by itself, for prohibiting the child from attending a class or participating in a school-related activity.

(c) Subsection (b) does not:

(1) prevent an appropriate referral under the child find system required under 20 U.S.C. Section 1412, as amended; or

(2) prohibit a school district employee who is a registered nurse, advanced nurse practitioner, physician, or a certified or appropriately credentialed mental health professional from recommending that a child be evaluated by an appropriate medical practitioner; or

(3) prohibit a school employee from discussing any aspect of a child's behavior or academic progress with the child's parent or another school district employee.

(d) The board of trustees of each school district shall adopt a policy to ensure implementation and enforcement of this section.

(e) An act in violation of Subsection (b) does not override the immunity from personal liability granted in Education Code Section 22.051 or other law or the district's sovereign and governmental immunity.

SECTION 2. This Act applies beginning with the 2003-2004 school year.

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.

HB 1420 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

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

HB 1420, A bill to be entitled An Act relating to the use of a portion of medical school tuition for student loan repayment assistance for physicians.

On motion of Representative Hardcastle, the house concurred in the senate amendments to **HB 1420** by (Record 843): 135 Yeas, 0 Nays, 2 Present, not voting.

Yeas — Alonzo; Bailey; Baxter; Berman; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Burnam; Callegari; Campbell; Canales; Casteel; Castro; Chavez; Chisum; Coleman; Cook, B.; Cook, R.; Corte; Crabb; 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; Griggs; Grusendorf; Guillen; Gutierrez; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Heflin; Hegar; Hilderbran; Hill; Hochberg; Hodge; Homer; Hope; Hopson; Howard; Hughes; Hunter; Isett; Jones, D.; Jones, E.; Jones, J.; Keel; Keffer, B.; King; Kolkhorst; Krusee; Kuempel; Laney; Laubenberg; Lewis; Luna; Mabry; Madden; 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; Smith, T.; Smith, W.; Smithee; Solis; Solomons; Stick; Swinford; Taylor; Telford; Thompson; Truitt; Turner; Uresti; Villarreal; West; Wilson; Wise; Wolens; Wong; Woolley.

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

Absent, Excused — Marchant.

Absent — Allen; Capelo; Christian; Crownover; Goolsby; Keffer, J.; Moreno, P.; Seaman; Talton; Van Arsdale; Wohlgemuth; Zedler.

Senate Committee Substitute

HB 1420, A bill to be entitled An Act relating to the use of a portion of medical school tuition for student loan repayment assistance for physicians.

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

SECTION 1. Section 61.539, Education Code, is amended to read as follows:

Sec. 61.539. MEDICAL SCHOOL TUITION SET ASIDE FOR CERTAIN LOAN REPAYMENTS. (a) The governing boards of each medical unit of an institution of higher education shall cause to be set aside two percent of tuition charges for each student [~~resident students~~] registered in a medical branch, school, or college.

(b) The amount set aside shall be transferred to the comptroller of public accounts to be maintained in the state treasury for the sole purpose of repayment of student loans of a physician [~~physicians~~] serving in a designated state agency

[agencies] or in an area of this state that is economically depressed or that is a [rural] medically underserved area or health professional shortage area, [areas of the state] as designated by the United States Department of Health and Human Services, that has a current shortage of physicians [specified by this subchapter]. Section [Sections 403.094(h) and] 403.095, Government Code, does [do] not apply to the amount set aside by this section.

(c) As soon as practicable after each state fiscal year, the comptroller shall prepare a report for that fiscal year of the number of students registered in a medical branch, school, or college, the total amount of tuition charges collected by each institution, the total amount transferred to the treasury under this section, and the total amount available under Subsection (b) for the repayment of student loans of physicians under this subchapter. The comptroller shall deliver a copy of the report to the board and to the governor, lieutenant governor, and speaker of the house of representatives not later than January 1 following the end of the fiscal year covered by the report.

SECTION 2. The change in law made by this Act applies beginning with tuition fees charged to students registered in a medical branch, school, or college for the 2003-2004 academic year.

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.

HB 1649 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

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

HB 1649, A bill to be entitled An Act relating to student fees charged at The University of Texas at San Antonio.

On motion of Representative Mercer, the house concurred in the senate amendments to **HB 1649** by (Record 844): 140 Yeas, 0 Nays, 2 Present, not voting.

Yeas — Allen; Alonzo; Bailey; Baxter; Berman; Bohac; 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; Eiland; Eissler; Elkins; Ellis; Escobar; Farabee; Farrar; Flores; Flynn; Gallego; Garza; Gattis; Geren; Giddings; Goodman; Griggs; Grusendorf; Guillen; Gutierrez; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Heflin; Hegar; Hilderbran; Hill; Hochberg; Hodge; Homer; Hope; Hopson; Howard; Hughes; Hunter; Isett; Jones, D.; Jones, E.; Jones, J.; Keel; Keffer, B.; Keffer, J.; King; Kolkhorst; Krusee; Kuempel; Laney; Laubenberg; Lewis; Luna; Mabry; Madden; 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; Taylor; Telford; Thompson; Truitt; Turner; Uresti; Van Arsdale; Villarreal; West; Wilson; Wise; Wolens; Wong; Woolley; Zedler.

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

Absent, Excused — Marchant.

Absent — Bonnen; Capelo; Goolsby; Haggerty; Moreno, P.; Talton; Wohlgemuth.

Senate Committee Substitute

HB 1649, A bill to be entitled An Act relating to student fees charged at The University of Texas at San Antonio.

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

SECTION 1. Subchapter E, Chapter 54, Education Code, is amended by adding Sections 54.5321 and 54.5322 to read as follows:

Sec. 54.5321. TRANSPORTATION FEE; THE UNIVERSITY OF TEXAS AT SAN ANTONIO. (a) The board of regents of The University of Texas System may impose on each student enrolled at The University of Texas at San Antonio a transportation fee not to exceed \$50 for each regular semester and not to exceed \$25 for each term of the summer session, for the sole purpose of financing transportation services, including capital expenses, for students attending The University of Texas at San Antonio. The fee is in addition to any other use fee or service fee authorized by law. The fee may not be imposed unless the fee is approved by a majority vote of the students participating in a general student election held for that purpose.

(b) The board may not increase the amount of the transportation fee in any academic year unless the amount of the increase is approved by a majority vote of the students participating in a general student election held for that purpose.

(c) Revenue from the fee shall be deposited to an account known as The University of Texas at San Antonio Transportation Fee Account and shall be expended in accordance with a budget submitted to and approved by the board. The board shall make any changes in the budget the board considers necessary before approving the budget and shall impose the fee, within the limits provided by this section, in an amount sufficient to meet the budget as approved.

(d) A fee imposed under this section may not be considered in determining the maximum amount of student services fees that may be charged under Section 54.503.

(e) The university shall hold in reserve any fee revenue that exceeds the amount necessary to meet the current expenses of the transportation services and shall apply that revenue only to future expenses of the transportation services.

Sec. 54.5322. INTERCOLLEGIATE ATHLETICS FEE; THE UNIVERSITY OF TEXAS AT SAN ANTONIO. (a) The board of regents of The University of Texas System may impose a mandatory intercollegiate athletics fee on each student enrolled at The University of Texas at San Antonio. The amount of the fee may not exceed \$7 per semester credit hour for each regular

semester, not to exceed a total of \$84 per semester, unless the amount is increased by the board, subject to the limitation provided by Subsection (b). The fee may not be imposed unless approved by a majority vote of the students participating in a general student election held for that purpose.

(b) The board may not increase the amount of the fee in any academic year unless the amount of the increase is approved by a majority vote of the students participating in a general student election held for that purpose.

(c) The board may prorate the amount of the fee for a summer session.

(d) The fee imposed under this section may not be considered in determining the maximum amount of student services fees that may be imposed under Section 54.503.

SECTION 2. The change in law made by this Act applies only to fees imposed for a semester or term that begins on or after the effective date of this Act.

SECTION 3. This Act take 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.

HB 1979 - HOUSE CONCURS IN SENATE AMENDMENTS

TEXT OF SENATE AMENDMENTS

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

HB 1979, A bill to be entitled An Act relating to preventing the discharge of untreated wastewater into waters of the state.

On motion of Representative Puente, the house concurred in the senate amendments to **HB 1979**.

Senate Committee Substitute

HB 1979, A bill to be entitled An Act relating to preventing the discharge of untreated wastewater into waters of the state.

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

SECTION 1. Section 26.049, Water Code, is amended by adding Subsections (f) through (h) to read as follows:

(f) Notwithstanding any other provision of this section, the commission shall establish criteria for evaluating whether to initiate an enforcement action related to a sanitary sewer overflows that occur as the result of a blockage due to grease. The criteria shall include consideration of whether the discharge:

(1) could reasonably have been prevented;

(2) was minimized; and

(3) was reported and the notice required by Section 26.039(e) was given.

(g) The adoption and enforcement by a separate sanitary sewer system of model standards for grease management recognized by the executive director shall be considered by the commission to be evidence tending to show that reasonable measures have been taken to prevent or minimize sanitary sewer overflows that occur as a result of blockage due to grease.

(h) When a home-rule municipality has a plan to control or minimize sanitary sewer overflows, Section 402.901, Local Government Code, does not limit the power of a home-rule municipality, in exercising its home-rule powers under Section 5, Article XI, Texas Constitution, to maintain, repair, relocate or replace a water or sanitary sewer lateral or service line on private property without making an assessment against the property or a person.

SECTION 2. Subchapter B, Chapter 26, Water Code, is amended by adding Section 26.0491 to read as follows:

Sec. 26.0491. MODEL STANDARDS TO PREVENT DISCHARGE OF UNTREATED WASTEWATER FROM SANITARY SEWERS. (a) In this section, "separate sanitary sewer system" has the meaning assigned by Section 29.049.

(b) The commission shall adopt model standards for use by an operator of a separate sanitary sewer system that are designed to prevent the discharge of untreated wastewater from a separate sanitary sewer system as a result of blockage due to grease.

(c) The model standards shall include the following elements:

(1) a requirement that grease be completely removed from grease traps on a regular basis;

(2) a minimum schedule for cleaning of grease traps by a grease trap operator that is sufficient to prevent blockages in the collection system resulting from grease;

(3) an opportunity to receive an exception from the cleaning schedule;

(4) a requirement that new commercial and industrial facilities properly install and use grease traps

(5) a requirement that, at a commercial or industrial facility where a grease trap has previously been installed, that a grease trap be properly used;

(6) a requirement that alternative treatment methods be supported by scientific data determined by the commission to show that the method will prevent blockages in the collection system caused by grease and will not affect the performance of the system's treatment plant;

(7) a uniform manifest system; and

(8) a schedule of penalties.

SECTION 3. Not later than the 365th day after the effective date of this Act, the Texas Commission on Environmental Quality shall adopt the criteria required by Section 26.049(f), Water Code, as added by this Act, and the model standards required by Section 26.0491, Water Code, as added by this Act.

SECTION 4. This Act takes effect September 1, 2003.

**HB 1997 - HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS**

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

HB 1997, A bill to be entitled An Act relating to the regulation of electric personal assistive mobility devices.

On motion of Representative Gutierrez, the house concurred in the senate amendments to **HB 1997**.

Senate Committee Substitute

HB 1997, A bill to be entitled An Act relating to the regulation of electric personal assistive mobility devices.

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

SECTION 1. Subchapter F, Chapter 502, Transportation Code, is amended by adding Section 502.2862 to read as follows:

Sec. 502.2862. ELECTRIC PERSONAL ASSISTIVE MOBILITY DEVICES. The owner of an electric personal assistive mobility device, as defined by Section 551.201, is not required to register the electric personal assistive mobility device.

SECTION 2. Section 541.201(11), Transportation Code, is amended to read as follows:

(11) "Motor vehicle" means a self-propelled vehicle or a vehicle that is propelled by electric power from overhead trolley wires. The term does not include an electric bicycle or an electric personal assistive mobility device, as defined by Section 551.201.

SECTION 3. Section 547.001(7), Transportation Code, is amended to read as follows:

(7) "Slow-moving vehicle" means:

(A) a motor vehicle designed to operate at a maximum speed of 25 miles per hour or less, not including an electric personal assistive mobility device, as defined by Section 551.201; or

(B) a vehicle, implement of husbandry, or machinery, including road construction machinery, that is towed by:

(i) an animal; or

(ii) a motor vehicle designed to operate at a maximum speed of 25 miles per hour or less.

SECTION 4. Section 551.001, Transportation Code, is amended to read as follows:

Sec. 551.001. PERSONS AFFECTED. Except as provided by Subchapter C, this [This] chapter applies only to a person operating a bicycle on:

(1) a highway; or

(2) a path set aside for the exclusive operation of bicycles.

SECTION 5. Chapter 551, Transportation Code, is amended by adding Subchapter C to read as follows:

SUBCHAPTER C. ELECTRIC PERSONAL ASSISTIVE MOBILITY
DEVICES

Sec. 551.201. DEFINITION. In this subchapter, "electric personal assistive mobility device" means a two non-tandem wheeled device designed for transporting one person that is:

- (1) self-balancing; and
- (2) propelled by an electric propulsion system with an average power of 750 watts or one horsepower.

Sec. 551.202. OPERATION ON ROADWAY. (a) A person may operate an electric personal assistive mobility device on a residential street, roadway, or public highway with a speed limit of 30 miles per hour or less only:

- (1) while making a direct crossing of a highway in a marked or unmarked crosswalk;
- (2) where no sidewalk is available; or
- (3) when so directed by a traffic control device or by a law enforcement officer.

(b) A person may operate an electric personal assistive mobility device on a path set aside for the exclusive operation of bicycles.

(c) Any person operating an electric personal assistive mobility device on a residential street, roadway, or public highway shall ride as close as practicable to the right-hand edge.

(d) Except as otherwise provided by this section, provisions of this title applicable to the operation of bicycles apply to the operation of electric personal assistive mobility devices.

Sec. 551.203. SIDEWALKS. A person may operate an electric personal assistive mobility device on a sidewalk.

SECTION 6. Section 601.002(5), Transportation Code, is amended to read as follows:

(5) "Motor vehicle" means a self-propelled vehicle designed for use on a highway, a trailer or semitrailer designed for use with a self-propelled vehicle, or a vehicle propelled by electric power from overhead wires and not operated on rails. The term does not include:

- (A) a traction engine;
- (B) a road roller or grader;
- (C) a tractor crane;
- (D) a power shovel;
- (E) a well driller; ~~or~~
- (F) an implement of husbandry; or
- (G) an electric personal assistive mobility device, as defined by

Section 551.201.

SECTION 7. This Act takes effect September 1, 2003.

**HB 2053 - HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS**

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

HB 2053, A bill to be entitled An Act relating to group health and related benefits provided by counties.

On motion of Representative W. Smith, the house concurred in the senate amendments to **HB 2053**.

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

Amend **HB 2053** as follows:

(1) In SECTION 1 of the bill, proposed Sec. 157.101(a)(5), Local Government Code (page 2, lines 4-5), strike "Subdivisions (1)-(3)" and substitute "Subdivisions (1)-(4)".

(2) Immediately following SECTION 1 (engrossed version page 4, between lines 20 and 21), insert the following:

Sec. 157.105. APPLICABILITY OF SUBCHAPTER. (a) A county that chooses to provide medical or related benefits may operate under this subchapter or Subchapter A.

(b) A county operating under this subchapter that previously created a fund under Section 157.003 may continue the fund or may terminate the fund and create a fund as provided by Section 157.102.

SECTION 2. Subchapter A, Chapter 157, Local Government Code, is amended by adding Section 157.007 to read as follows:

Sec. 157.007. APPLICABILITY OF SUBCHAPTER. (a) A county that chooses to provide medical or related benefits may operate under this subchapter or Subchapter F.

(b) A county operating under this subchapter that previously created a fund under Section 157.102 may continue the fund or may terminate the fund and create a fund as provided by Section 157.003.

(3) Renumber the SECTIONS of the bill appropriately.

**HB 2189 - HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS**

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

HB 2189, A bill to be entitled An Act relating to temporary guardianship procedures.

On motion of Representative Rodriguez, the house concurred in the senate amendments to **HB 2189**.

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

Amend **HB 2189** as follows:

(1) In SECTION 1 of the bill (engrossed version, page 1, line 5), between "Subsections" and "(c)", insert "(b),".

(2) In SECTION 1 of the bill, in Section 875, Texas Probate Code (engrossed version, page 1, between lines 6 and 7), insert the following:

~~(b) [A person for whom a temporary guardian has been appointed may not be presumed to be incapacitated.]~~ The person retains all rights and powers that are not specifically granted to the person's temporary guardian by court order.

**HB 2212 - HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS**

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

HB 2212, A bill to be entitled An Act relating to the continuation of legal land use in newly incorporated areas.

On motion of Representative Mowery, the house concurred in the senate amendments to **HB 2212** by (Record 845): 136 Yeas, 0 Nays, 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; Edwards; Eiland; Eissler; Elkins; Ellis; Farabee; Flores; Flynn; Gallego; Garza; Gattis; Geren; Giddings; Goodman; Griggs; Grusendorf; Guillen; Gutierrez; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Heflin; Hegar; Hilderbran; Hill; Hochberg; Hodge; Homer; Hope; Hopson; Hughes; Hunter; Isett; Jones, D.; Jones, E.; Jones, J.; Keel; Keffer, B.; Keffer, J.; King; Kolkhorst; Krusee; Kuempel; Laney; Laubenberg; Lewis; Mabry; Madden; Martinez Fischer; McCall; McClendon; McReynolds; Menendez; Mercer; Merritt; Miller; Moreno, J.; 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; Taylor; Telford; Thompson; Truitt; Turner; Uresti; Van Arsdale; Villarreal; West; Wilson; Wise; Wolens; Wong; Woolley; Zedler.

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

Absent, Excused — Marchant.

Absent — Capelo; Dutton; Escobar; Farrar; Goolsby; Howard; Luna; Moreno, P.; Oliveira; Talton; Wohlgemuth.

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

Amend **HB 2212** by striking everything below the relating to clause and substituting the following:

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

SECTION 1. Subchapter A, Chapter 211, Local Government Code, is amended by adding Section 211.016 to read as follows:

Sec. 211.016. CONTINUATION OF LAND USE IN NEWLY INCORPORATED AREAS. (a) A municipality incorporated after September 1, 2003, may not prohibit a person from:

(1) continuing to use land in the area in the manner in which the land was being used on the date of incorporation if the land use was legal at that time;
or

(2) beginning to use land in the area in the manner that was planned for the land before the 90th day before the effective date of the incorporation if:

(A) one or more licenses, certificates, permits, approvals, or other forms of authorization by a governmental entity were required by law for the planned land use; and

(B) a completed application for the initial authorization was filed with the governmental entity before the date of incorporation.

(b) For purposes of this section, a completed application is filed if the application includes all documents and other information designated as required by the governmental entity in a written notice to the applicant.

(c) This section does not prohibit a municipality from imposing:

(1) a regulation relating to the location of sexually oriented businesses, as that term is defined by Section 243.002;

(2) a municipal ordinance, regulation, or other requirement affecting colonias, as that term is defined by Section 2306.581, Government Code;

(3) a regulation relating to preventing imminent destruction of property or injury to persons;

(4) a regulation relating to public nuisances;

(5) a regulation relating to flood control;

(6) a regulation relating to the storage and use of hazardous substances;

(7) a regulation relating to the sale and use of fireworks; or

(8) a regulation relating to the discharge of firearms.

(d) A municipal ordinance or rule in conflict with this section is void.

SECTION 2. This Act takes effect September 1, 2003.

HB 2457 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

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

HB 2457, A bill to be entitled An Act relating to an intercollegiate athletics fee at Texas A&M University-Kingsville.

On motion of Representative Escobar, the house concurred in the senate amendments to **HB 2457** by (Record 846): 139 Yeas, 0 Nays, 2 Present, not voting.

Yeas — Allen; Alonzo; Bailey; Baxter; Berman; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Burnam; Callegari; Campbell; Canales; Castro; Chavez; Chisum; Christian; Coleman; Cook, B.; Cook, R.; Corte; Crabb; 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; Griggs; Grusendorf; Guillen; Gutierrez; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Heflin; Hegar; Hilderbran; Hill; Hochberg; Hodge; Homer; Hope; Hopson; Howard; Hughes; Hunter; Isett; Jones, D.; Jones, E.; Jones, J.; Keel; Keffer, B.; Keffer, J.; King; Kolkhorst; Kuempel; Laney; Laubenberg; Lewis; Mabry; Madden; 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.; Smithee; Solis; Solomons; Stick; Swinford; Taylor; Telford; Thompson; Truitt; Turner; Uresti; Van Arsdale; Villarreal; West; Wilson; Wise; Wolens; Wong; Woolley; Zedler.

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

Absent, Excused — Marchant.

Absent — Capelo; Casteel; Crownover; Goolsby; Krusee; Luna; Talton; Wohlgemuth.

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

Amend **HB 2457** as follows:

On page 1 lines 20-22, strike all language after "purpose" and add "."

HB 2881 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

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

HB 2881, A bill to be entitled An Act relating to prohibiting an attack on an assistance animal; creating an offense.

On motion of Representative Driver, the house concurred in the senate amendments to **HB 2881**.

Senate Committee Substitute

HB 2881, A bill to be entitled An Act relating to prohibiting an attack on an assistance animal; creating an offense.

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

SECTION 1. Section 121.003(j), Human Resources Code, is amended to read as follows:

(j) A person may not assault, harass, interfere with, kill, or injure in any way, or attempt to assault, harass, interfere with, kill, or injure in any way, an assistance animal.

SECTION 2. Chapter 42, Penal Code, is amended by adding Section 42.091 to read as follows:

Sec. 42.091. ATTACK ON ASSISTANCE ANIMAL. (a) A person commits an offense if the person intentionally, knowingly, or recklessly attacks, injures, or kills an assistance animal.

(b) A person commits an offense if the person intentionally, knowingly, or recklessly incites or permits an animal owned by or otherwise in the custody of the actor to attack, injure, or kill an assistance animal and, as a result of the person's conduct, the assistance animal is attacked, injured, or killed.

(c) An offense under this section is a:

(1) Class A misdemeanor if the actor or an animal owned by or otherwise in the custody of the actor attacks an assistance animal;

(2) state jail felony if the actor or an animal owned by or otherwise in the custody of the actor injures an assistance animal; or

(3) felony of the third degree if the actor or an animal owned by or otherwise in the custody of the actor kills an assistance animal.

(d) A court shall order a defendant convicted of an offense under Subsection (a) to make restitution to the owner of the assistance animal for:

(1) related veterinary or medical bills;

(2) the cost of:

(A) replacing the assistance animal; or

(B) retraining an injured assistance animal by an organization generally recognized by agencies involved in the rehabilitation of persons with disabilities as reputable and competent to provide special equipment for or special training to an animal to help a person with a disability; and

(3) any other expense reasonably incurred as a result of the offense.

(e) In this section:

(1) "Assistance animal" has the meaning assigned by Section 121.002, Human Resources Code.

(2) "Custody" has the meaning assigned by Section 42.09.

SECTION 3. This Act takes effect September 1, 2003.

HB 3318 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

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

HB 3318, A bill to be entitled An Act relating to the creation and re-creation of funds and accounts in the state treasury, the allocation of revenue, the dedication and rededication of revenue, and the exemption of unappropriated money from use for general governmental purposes.

On motion of Representative Luna, the house concurred in the senate amendments to **HB 3318** by (Record 847): 141 Yeas, 0 Nays, 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; Eiland; Eissler; Elkins; Ellis; Escobar; Farabee; Farrar; Flynn; Gallego; Garza; Gattis; Geren; Giddings; Goodman; Griggs; Guillen; Gutierrez; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Heflin; Hegar; Hilderbran; Hill; Hochberg; Hodge; Homer; Hope; Hopson; Howard; Hughes; Hunter; Isett; Jones, D.; Jones, E.; Jones, J.; Keel; Keffer, B.; Keffer, J.; King; Kolkhorst; Krusee; Kuempel; Laney; Laubenberg; Lewis; Luna; Mabry; Madden; 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.; Smithee; Solis; Solomons; Stick; Swinford; Taylor; Telford; Thompson; Truitt; Turner; Uresti; Van Arsdale; Villarreal; West; Wilson; Wise; Wolens; Wong; Woolley; Zedler.

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

Absent, Excused — Marchant.

Absent — Capelo; Flores; Goolsby; Grusendorf; Talton; Wohlgemuth.

Senate Committee Substitute

HB 3318, A bill to be entitled An Act relating to the creation and re-creation of funds and accounts in the state treasury, the allocation of revenue, the dedication and rededication of revenue, and the exemption of unappropriated money from use for general governmental purposes.

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

SECTION 1. DEFINITION. In any provision of this Act that does not amend current law, "state agency" means an office, institution, or other agency that is in the executive branch of state government, has authority that is not limited to a geographical portion of the state, and was created by the constitution or a statute of this state. The term does not include an institution of higher education as defined by Section 61.003, Education Code.

SECTION 2. ABOLITION OF FUNDS, ACCOUNTS, AND DEDICATIONS. Except as otherwise specifically provided by this Act, all funds and accounts created or re-created in the state treasury by an Act of the 78th Legislature, Regular Session, 2003, that becomes law and all dedications or rededications of revenue in the state treasury or otherwise collected by a state agency for a particular purpose by an Act of the 78th Legislature, Regular Session, 2003, that becomes law are abolished on the later of September 1, 2003, or the date the Act creating or re-creating the fund or account or dedicating or rededicating revenue takes effect.

SECTION 3. PREVIOUSLY EXEMPT DEDICATIONS, FUNDS, AND ACCOUNTS. Section 2 of this Act does not apply to:

(1) statutory dedications, funds, and accounts that were enacted before the 78th Legislature convened to comply with requirements of state, constitutional, or federal law;

(2) dedications, funds, or accounts that remained exempt from former Section 403.094(h), Government Code, at the time dedications, accounts, and funds were abolished under that provision;

(3) increases in fees or in other revenue dedicated as described by this section; or

(4) increases in fees or in other revenue required to be deposited in a fund or account described by this section.

SECTION 4. SYSTEM BENEFIT FUND. (a) Section 39.903(a), Utilities Code, as amended by Section 3, Chapter 1394, and Section 19(a), Chapter 1466, Acts of the 77th Legislature, Regular Session, 2001, is reenacted and amended to read as follows:

(a) The system benefit fund is an account in the general revenue fund. Money in the account ~~that~~ may be appropriated only for the purposes provided by this section or other law. Interest earned on the system benefit fund shall be credited to the fund. Section 403.095, Government Code, does not apply to the system benefit fund.

(b) On the effective date of this Act, the system benefit fund is re-created as an account in the general revenue fund, and the account and the revenue deposited to the credit of the account are exempt from Section 2 of this Act.

SECTION 5. SUBSEQUENT INJURY FUND. (a) Section 403.006(a), Labor Code, is amended to read as follows:

(a) The subsequent injury fund is an account in the general revenue fund. Money in the account may be appropriated only for the purposes of this section or as provided by other law. Section 403.095, Government Code, does not apply to the subsequent injury fund [a special fund in the state treasury].

(b) On the effective date of this Act, the subsequent injury fund is re-created as an account in the general revenue fund, and the account and the revenue deposited to the credit of the account are exempt from Section 2 of this Act.

SECTION 6. TERTIARY CARE ACCOUNT. The tertiary care account is re-created by this Act. Money in the account and money required by law to be put in the account is rededicated for the purposes provided by Chapter 46, Health and Safety Code. The account and money put in the account are exempt from Section 2 of this Act.

SECTION 7. LICENSE PLATES. The following funds, accounts, and dedications of revenue are exempt from Section 2 of this Act if created by an Act of the 78th Legislature, Regular Session, 2003, that becomes law:

(1) the specialty license plate account created by **SB 1704** and revenue dedicated by that bill; and

(2) the specialty license plate fund created by **HB 3106** and revenue dedicated by that bill.

SECTION 8. FEDERAL FUNDS. Section 2 of this Act does not apply to funds created pursuant to an Act of the 78th Legislature, Regular Session, 2003, for which separate accounting is required by federal law, except that the funds shall be deposited in accounts in the general revenue fund unless otherwise required by federal law.

SECTION 9. TRUST FUNDS. Section 2 of this Act does not apply to trust funds or dedicated revenue deposited to trust funds created under an Act of the 78th Legislature, Regular Session, 2003, except that the trust funds shall be held in the state treasury, with the comptroller in trust, or outside the state treasury with the comptroller's approval.

SECTION 10. BOND FUNDS. Section 2 of this Act does not apply to bond funds and pledged funds created or affected by an Act of the 78th Legislature, Regular Session, 2003, except that the funds shall be held in the state treasury, with the comptroller in trust, or outside the state treasury with the comptroller's approval.

SECTION 11. CONSTITUTIONAL FUNDS. Section 2 of this Act does not apply to funds or accounts that would be created or re-created in the Texas Constitution or revenue that would be dedicated or rededicated by the Texas Constitution under constitutional amendments proposed by the 78th Legislature, Regular Session, 2003, or to dedicated revenue deposited to funds or accounts that would be so created or re-created.

SECTION 12. RAINY DAY FUND ACCOUNTS. Section 2 of this Act does not apply to any accounts created in the economic stabilization fund by **HB 2**, **HB 3323**, **HB 3548**, or **SB 1771**, Acts of the 78th Legislature, Regular Session, 2003, and does not apply to any related dedication of revenue, if one of those bills or similar legislation becomes law.

SECTION 13. STATE PRESERVATION BOARD. Sections 2 and 9 of this Act do not apply to the capitol trust fund, the capitol account, the capital renewal account, and the museum account, as created or re-created by **HB 3441** or **SB 1866**, Acts of the 78th Legislature, Regular Session, 2003, if one of those bills or similar legislation becomes law, and do not apply to revenue dedicated to that fund or any of those accounts.

SECTION 14. TEXAS EMISSIONS REDUCTION. Section 2 of this Act does not apply to the Texas emissions reduction plan fund and does not apply to revenue dedicated to that fund by **HB 1365**, Acts of the 78th Legislature, Regular Session, 2003, if that bill or similar legislation becomes law.

SECTION 15. RURAL WATER ASSISTANCE. Section 2 of this Act does not apply to the rural water assistance fund or the water infrastructure fund created or re-created in the state treasury by **HB 1875** or **SB 967**, Acts of the 78th Legislature, Regular Session, 2003, if one of those bills or similar legislation becomes law, and does not apply to revenue dedicated to either fund.

SECTION 16. ECONOMIC DEVELOPMENT. Sections 2 and 9 of this Act do not apply to any fund or account created or re-created by **SB 275**, **SB 659**, or **HB 1233**, Acts of the 78th Legislature, Regular Session, 2003, if any of those bills become law, and do not apply to any revenue dedicated by any of those Acts.

SECTION 17. TEXAS ENTERPRISE FUND. Section 2 of this Act does not apply to the Texas enterprise fund created by **HB 2**, **HB 3323**, **HB 3548**, or **SB 1771**, Acts of the 78th Legislature, Regular Session, 2003, and does not apply to any related dedication of revenue, if one of those bills or similar legislation becomes law.

SECTION 18. SPORTS EVENTS TRUST FUND. Sections 2 and 9 of this Act do not apply to the Other Events trust fund or to revenue dedicated to any of those funds, created by an Act of the 78th Legislature, Regular Session, 2003, that amends Chapter 1507, Acts of the 76th Legislature, Regular Session, 1999 (Article 5190.14, Vernon's Texas Civil Statutes).

SECTION 19. PROSECUTOR SUPPLEMENT FUND. Section 2 of this Act does not apply to the felony prosecutor supplement fund created by **HB 1940**, Acts of the 78th Legislature, Regular Session, 2003, if that bill or similar legislation becomes law, and does not apply to revenue dedicated to that fund.

SECTION 20. TRAVEL SERVICES CONTRACTS. The municipality airline fares account in the general revenue fund created by **HB 1061** or **SB 304**, Acts of the 78th Legislature, Regular Session, 2003, if either bill or similar legislation creating the account becomes law, is exempt from Section 2 of this Act, and Section 2 of this Act does not apply to the dedication of revenue to that account made by that legislation.

SECTION 21. DRY CLEANING FACILITY RELEASE FUND. Section 2 of this Act does not apply to the dry cleaning facility release fund account created by **HB 1366** or **SB 799** or other similar legislation of the 78th Legislature, Regular Session, 2003, that becomes law, and does not apply to the revenue dedicated to or deposited in that account.

SECTION 22. HIGHWAY TAX AND REVENUE ANTICIPATION NOTE FUND. The highway tax and revenue anticipation note fund created by **HB 471**, Acts of the 78th Legislature, Regular Session, 2003, if that bill or similar legislation creating the fund becomes law, is exempt from Section 2 of this Act, and Section 2 of this Act does not apply to the dedication of revenue to that fund made by that legislation.

SECTION 23. OPERATING PERMIT FEES ACCOUNT. The operating permit fees account created by **HB 1481**, Acts of the 78th Legislature, Regular Session, 2003, if that bill or similar legislation creating the account becomes law, is exempt from Section 2 of this Act, and Section 2 of this Act does not apply to the dedication of revenue to that account made by that legislation. The account is created as an account in the general revenue fund.

SECTION 24. ELECTION IMPROVEMENT FUND. The election improvement fund created as a dedicated account in the general revenue fund by **HB 1549**, Acts of the 78th Legislature, Regular Session, 2003, if that bill or similar legislation creating the account becomes law, is exempt from Section 2 of this Act, and Section 2 of this Act does not apply to the dedication of revenue to that account made by that legislation.

SECTION 25. TAX ADMINISTRATION FUND. The tax administration fund created by **HB 2458**, Acts of the 78th Legislature, Regular Session, 2003, if that bill or similar legislation creating the fund becomes law, is exempt from Section 2 of this Act, and Section 2 of this Act does not apply to the dedication of revenue to that fund made by that legislation.

SECTION 26. MOTOR VEHICLE INSURANCE AND PROOF OF FINANCIAL RESPONSIBILITY. Any fund or account created by **SB 422** or **HB 1809**, Acts of the 78th Legislature, Regular Session, 2003, if either bill or similar legislation becomes law, is exempt from Section 2 of this Act, and Section 2 of this Act does not apply to any dedication of revenue made by that legislation.

SECTION 27. FUND FOR EMERGENCY MEDICAL SERVICES, TRAUMA FACILITIES, AND TRAUMA CARE SYSTEMS. The fund for emergency medical services, trauma facilities, and trauma care systems created as an account in the general revenue fund by **SB 1131**, Acts of the 78th Legislature, Regular Session, 2003, if that bill or similar legislation creating the account becomes law, is exempt from Section 2 of this Act, and Section 2 of this Act does not apply to the dedication of revenue to that account made by that legislation.

SECTION 28. STATE PARKS ACCOUNT. Section 2 of this Act does not apply to the dedication of revenue to the state parks account made by **SB 1158** or **HB 2351** or similar legislation if either of those bills or similar legislation becomes law.

SECTION 29. PERPETUAL CARE ACCOUNT. The perpetual care account created or re-created as an account in the general revenue fund by **HB 1567**, Acts of the 78th Legislature, Regular Session, 2003, if that bill or similar legislation creating or re-creating the account becomes law, is exempt from Section 2 of this Act, and Section 2 of this Act does not apply to any dedication or rededication of revenue to that account made by that legislation.

SECTION 30. TEXAS B-ON-TIME ACCOUNT. The Texas B-On-Time student loan account created as an account in the general revenue fund by **SB 4** or **SB 1952**, if either bill or similar legislation creating the account becomes law, is exempt from Section 2 of this Act, and Section 2 of this Act does not apply to any dedication of revenue to that account made by that legislation.

SECTION 31. AMENDMENT OF SECTION 403.095, GOVERNMENT CODE. Effective September 1, 2003, Sections 403.095(b), (d), and (e), Government Code, are amended to read as follows:

(b) Notwithstanding any law dedicating or setting aside revenue for a particular purpose or entity, dedicated revenues that, on August 31, 2005 [~~2003~~], are estimated to exceed the amount appropriated by the General Appropriations Act or other laws enacted by the 78th [~~77th~~] Legislature are available for general governmental purposes and are considered available for the purpose of certification under Section 403.121.

(d) Following certification of the General Appropriations Act and other appropriations measures enacted by the 78th [~~77th~~] Legislature, the comptroller shall reduce each dedicated account as directed by the legislature by an amount that may not exceed the amount by which estimated revenues and unobligated balances exceed appropriations. The reductions may be made in the amounts and at the times necessary for cash flow considerations to allow all the dedicated accounts to maintain adequate cash balances to transact routine business. The legislature may authorize, in the General Appropriations Act, the temporary delay of the excess balance reduction required under this subsection. This subsection does not apply to revenues or balances in:

- (1) funds outside the treasury;
 - (2) trust funds, which for purposes of this section include funds that may or are required to be used in whole or in part for the acquisition, development, construction, or maintenance of state and local government infrastructures, recreational facilities, or natural resource conservation facilities;
 - (3) funds created by the constitution or a court; or
 - (4) funds for which separate accounting is required by federal law.
- (e) This section expires on September 1, 2005 [~~2003~~].

SECTION 32. TRANSFER OF BALANCES. Any balances in the system benefits fund, subsequent injury fund, or any other existing local, trust, or dedicated fund that is re-created as an account in the general revenue fund by this Act shall be transferred to the appropriate general revenue account on the effective date of this Act.

SECTION 33. EFFECT OF ACT. (a) This Act prevails over any other Act of the 78th Legislature, Regular Session, 2003, regardless of the relative dates of enactment, that purports to create or re-create a special fund or account in the state treasury or to dedicate or rededicate revenue to a particular purpose, including any fund, account, or revenue dedication abolished under former Section 403.094, Government Code.

(b) Revenues that, under the terms of another Act of the 78th Legislature, Regular Session, 2003, would be deposited to the credit of a special account or fund shall be deposited to the credit of the unobligated portion of the general revenue fund unless the fund, account, or dedication is exempted under this Act.

SECTION 34. EFFECTIVE DATE. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2003.

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

Amend **CSHB 3318** (Senate committee printing) as follows:

(1) Add the following appropriately numbered section:

SECTION __. CERTAIN EXEMPT DEDICATIONS, FUNDS, AND ACCOUNTS. Funds and accounts created or re-created in the state treasury by any of the following Acts of the 78th Legislature, Regular Session, 2003, that become law and any dedication or rededication of revenue in the state treasury or otherwise by any of the following Acts of the 78th Legislature, Regular Session, 2003, that become law are exempt from Section 2 of this Act:

- (1) H.B. Nos. 462, 1989, 2019, 2292, 2926, 3126, and 3588; and
- (2) S.B. Nos. 104, 280, 652, 699, and 945.

(2) Strike Section 7 of the bill (page 2, lines 14-21) and substitute the following appropriately numbered Section:

SECTION __. LICENSE PLATE FEES. Any dedication of revenue that consists of fees collected from the sale of motor vehicle license plates that are authorized by an Act of the 78th Legislature, Regular Session, 2003, that becomes law is exempt from Section 2 of this Act and any fund or account created or re-created in connection with that revenue by operation of the Act authorizing the license plates is exempt from Section 2 of this Act.

(3) Strike Section 25 of the bill (page 3, lines 57-62) and renumber the remaining Sections of the bill accordingly.

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

Amend **HB 3318** by adding the following appropriately numbered SECTION and renumbering subsequent SECTIONS of the bill accordingly:

SECTION _____. FAIR DEFENSE. The fair defense account, created in Section 71.058, Government Code, by Section 14, Chapter 906, Acts of the 77th Legislature, Regular Session, 2001, is re-created by this Act. Section 2 of this Act does not apply to the account and does not apply to the dedication of revenue to that account.

**HB 3592 - HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS**

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

HB 3592, A bill to be entitled An Act relating to the creation of the Downtown Midland Management District; providing authority to impose taxes and issue bonds.

On motion of Representative West, the house concurred in the senate amendments to **HB 3592** by (Record 848): 141 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.; Crabb; Crownover; Davis, J.; Davis, Y.; Dawson; Delisi; Denny; Deshotel; Driver; Dukes; Dunnam; Edwards; Eiland; Eissler; Elkins; Ellis; Escobar; Farabee; Farrar; Flores; Flynn; Gallego; Garza; Gattis; Geren; Giddings; Goodman; Griggs; Guillen; Gutierrez; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Heflin; Hegar; Hilderbran; Hill; Hochberg; Hodge; Homer; Hope; Hopson; Howard; Hughes; Hunter; Isett; Jones, D.; Jones, E.; Jones, J.; Keel; Keffer, B.; Keffer, J.; King; Kolkhorst; Krusee; Kuempel; Laney; Laubenberg; Lewis; Luna; Mabry; Madden; 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.; Smithee; Solis; Solomons; Stick; Swinford; Taylor; Telford; Thompson; Truitt; Turner; Uresti; Van Arsdale; Villarreal; West; Wilson; Wise; Wolens; Wong; Woolley; Zedler.

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

Absent, Excused — Marchant.

Absent — Corte; Dutton; Goolsby; Grusendorf; Talton; Wohlgemuth.

Senate Committee Substitute

HB 3592, A bill to be entitled An Act relating to the creation of the Downtown Midland Management District; providing authority to impose taxes and issue bonds.

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

SECTION 1. CREATION OF DISTRICT. (a) The Downtown Midland Management District is a special district created under Section 59, Article XVI, Texas Constitution.

(b) The board by resolution may change the name of the district.

SECTION 2. DEFINITIONS. In this Act:

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

(2) "District" means the Downtown Midland Management District.

SECTION 3. DECLARATION OF INTENT. (a) The creation of the district is essential to accomplish the purposes of Sections 52 and 52-a, Article III, and Section 59, Article XVI, Texas Constitution, and other public purposes stated in this Act.

(b) The creation of the district is necessary to promote, develop, encourage, and maintain employment, commerce, transportation, housing, tourism, recreation, the arts, entertainment, economic development, safety, and the public welfare in the area of the district.

(c) The creation of the district and this legislation may not be interpreted to relieve Midland County or the City of Midland from providing the level of services provided, as of the effective date of this Act, to the area in the district. The district is created to supplement and not to supplant the county or city services provided in the area in the district.

(d) By creating the district and in authorizing the City of Midland, Midland County, and other political subdivisions to contract with the district, the legislature has established a program to accomplish the public purposes set out in Section 52-a, Article III, Texas Constitution.

SECTION 4. BOUNDARIES. The district includes all the territory contained in the following described area in the City of Midland:

BEGINNING at the intersection of the Westerly right-of-way line of Pecos Street and the Northerly right-of-way line of Louisiana Avenue;

THENCE proceeding in an Easterly direction from said POINT OF BEGINNING along the Northerly right-of-way line of Louisiana Avenue to the Westerly right-of-way line of Lorraine Street;

THENCE in a Northerly direction along the Westerly right-of-way line of Lorraine Street to the Northerly right-of-way line of Kansas Avenue;

THENCE in an Easterly direction along the Northerly right-of-way line of Kansas Avenue to the Easterly right-of-way line of Main Street;

THENCE in a Southerly direction along the Easterly right-of-way line of Main Street to the Northerly right-of-way line of Louisiana Avenue;

THENCE in an Easterly direction along the Northerly right-of-way line of Louisiana Avenue to the Easterly right-of-way line of Weatherford Street;

THENCE in a Southerly direction along the Easterly right-of-way line of Weatherford Street to the Southerly right-of-way line of Wall Street;

THENCE in a Westerly direction along the Southerly right-of-way line of Wall Street to the Easterly right-of-way line of Main Street;

THENCE in a Southerly direction along the Easterly right-of-way line of Main Street to the Southerly right-of-way line of Front Avenue;

THENCE in a Southwesterly direction along the Southerly right-of-way line of Front Avenue to the Westerly right-of-way line of Big Spring Street;

THENCE in a Northerly direction along the Westerly right-of-way line of Big Spring Street to the Southerly right-of-way line of Missouri Avenue;

THENCE in a Westerly direction along the Southerly right-of-way line of Missouri Avenue to the Westerly right-of-way line of Carrizo Street;
THENCE in a Northerly direction along the Westerly right-of-way line of Carrizo Street to the Northerly right-of-way line of Michigan Avenue;
THENCE in an Easterly direction along the Northerly right-of-way line of Michigan Avenue to the Westerly right-of-way line of Pecos Street;
THENCE in a Northerly direction along the Westerly right-of-way line of Pecos Street to the Northerly right-of-way line of Louisiana Avenue, the POINT OF BEGINNING.

SECTION 5. FINDINGS RELATING TO BOUNDARIES. The boundaries and field notes of the district form a closure. If a mistake is made in the field notes or in copying the field notes in the legislative process, the mistake does not in any way affect the district's:

- (1) organization, existence, or validity;
- (2) right to issue any type of bond for a purpose for which the district is created or to pay the principal of and interest on a bond;
- (3) right to impose or collect an assessment or tax; or
- (4) legality or operation.

SECTION 6. FINDINGS OF BENEFIT AND PUBLIC PURPOSE. (a) The district is created to serve a public use and benefit. All the land and other property included in the district will benefit from the improvements and services to be provided by the district under powers conferred by Sections 52 and 52-a, Article III, and Section 59, Article XVI, Texas Constitution, and other powers granted under this chapter.

(b) The creation of the district is in the public interest and is essential to:

- (1) further the public purposes of development and diversification of the economy of the state; and
- (2) eliminate unemployment and underemployment and develop or expand transportation and commerce.

(c) The district will:

- (1) promote the health, safety, and general welfare of residents, employers, employees, visitors, and consumers in the district, and the public;
- (2) provide needed funding to preserve, maintain, and enhance the economic health and vitality of the district as a community and business center; and
- (3) further promote the health, safety, welfare, and enjoyment of the public by providing pedestrian ways and by landscaping and developing certain areas in the district, which are necessary for the restoration, preservation, and enhancement of scenic beauty.

(d) Pedestrian ways along or across a street, whether at grade or above or below the surface, and street lighting, street landscaping, and street art objects are parts of and necessary components of a street and are considered to be a street or road improvement.

(e) The district will not act as the agent or instrumentality of any private interest even though the district will benefit many private interests, as well as the public.

SECTION 7. APPLICATION OF OTHER LAW. (a) Except as otherwise provided by this Act, Chapter 375, Local Government Code, applies to the district.

(b) Chapter 311, Government Code (Code Construction Act), applies to this Act.

SECTION 8. CONSTRUCTION OF ACT. This Act shall be liberally construed in conformity with the findings and purposes stated in this Act.

SECTION 9. BOARD OF DIRECTORS IN GENERAL. (a) The district is governed by a board of nine voting directors appointed under Section 10 of this Act and nonvoting directors as provided by Section 11 of this Act.

(b) Voting directors serve staggered terms of four years, with four directors' terms expiring June 1 of an odd-numbered year and five directors' terms expiring June 1 of the following odd-numbered year.

(c) The board may increase or decrease the number of directors on the board by resolution if the board finds that it is in the best interest of the district. The board may not consist of fewer than seven or more than 13 directors.

SECTION 10. APPOINTMENT OF DIRECTORS. The board shall nominate a slate of persons to serve on the succeeding board as voting directors. The members of the governing body of the City of Midland shall appoint as voting directors the slate of persons nominated by the board.

SECTION 11. NONVOTING DIRECTORS. (a) The following persons serve as nonvoting directors:

(1) the directors of the following departments of the City of Midland or their designees:

- (A) parks and recreation;
- (B) planning and zoning; and
- (C) public works; and

(2) the city manager of the City of Midland or the city manager's designee.

(b) If an agency, department, or division described by Subsection (a) of this section is consolidated, renamed, or changed, the board may appoint a director of the consolidated, renamed, or changed agency, department, or division as a nonvoting director. If an agency, department, or division described by Subsection (a) of this section is abolished, the board may appoint a representative of another agency, department, or division that performs duties comparable to those performed by the abolished entity.

(c) Nonvoting directors are not counted for the purposes of establishing a quorum of the board.

SECTION 12. CONFLICTS OF INTEREST; ONE-TIME AFFIDAVIT. (a) Except as provided by this section:

(1) a director may participate in all board votes and decisions; and
(2) Chapter 171, Local Government Code, governs conflicts of interest for directors.

(b) Section 171.004, Local Government Code, does not apply to the district. A director who has a substantial interest in a business or charitable entity that will receive a pecuniary benefit from a board action shall file a one-time affidavit

declaring the interest. An additional affidavit is not required if the director's interest changes. After the affidavit is filed with the board secretary, the director may participate in a discussion or vote on that action if:

(1) a majority of the directors have a similar interest in the same entity;
or

(2) all other similar business or charitable entities in the district will receive a similar pecuniary benefit.

(c) A director who is also an officer or employee of a public entity may not participate in the discussion of or vote on a matter regarding a contract with that same public entity.

(d) For purposes of this section, a director has a substantial interest in a charitable entity in the same manner that a person would have a substantial interest in a business entity under Section 171.002, Local Government Code.

SECTION 13. ADDITIONAL POWERS OF DISTRICT. The district may exercise the powers given to:

(1) a corporation created under Section 4B, Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes), including the power to own, operate, acquire, construct, lease, improve, and maintain projects described by that section; and

(2) a housing finance corporation created under Chapter 394, Local Government Code, to provide housing or residential development projects in the district.

SECTION 14. AGREEMENTS; GRANTS. (a) The district may make an agreement with or accept a gift, grant, or loan from any person.

(b) The implementation of a project is a governmental function or service for the purposes of Chapter 791, Government Code.

SECTION 15. LAW ENFORCEMENT SERVICES. To protect the public interest, the district may contract with Midland County or the City of Midland to provide law enforcement services in the district for a fee.

SECTION 16. NONPROFIT CORPORATION. (a) The board by resolution may authorize the creation of a nonprofit corporation to assist and act on behalf of the district in implementing a project or providing a service authorized by this Act.

(b) The board shall appoint the board of directors of a nonprofit corporation created under this section. The board of directors of the nonprofit corporation shall serve in the same manner as the board of directors of a local government corporation created under Chapter 431, Transportation Code.

(c) A nonprofit corporation created under this section has the powers of and is considered for purposes of this Act to be a local government corporation created under Chapter 431, Transportation Code.

(d) A nonprofit corporation created under this section may implement any project and provide any service authorized by this Act.

SECTION 17. REQUIREMENTS FOR FINANCING SERVICES AND IMPROVEMENTS. The board may not finance a service or improvement project with assessments under this Act unless a written petition requesting that improvement or service has been filed with the board. The petition must be signed by:

(1) the owners of a majority of the assessed value of real property in the district subject to assessment as determined by the most recent certified tax appraisal roll for Midland County; or

(2) at least 25 persons who own real property in the district, if more than 25 persons own real property in the district as determined by the most recent certified tax appraisal roll for Midland County.

SECTION 18. ELECTIONS. (a) The district shall hold an election in the manner provided by Subchapter L, Chapter 375, Local Government Code, to obtain voter approval before the district imposes a maintenance tax or issues a bond payable from ad valorem taxes.

(b) The board may include more than one purpose in a single proposition at an election.

(c) Section 375.243, Local Government Code, does not apply to the district.

SECTION 19. MAINTENANCE TAX. (a) If authorized at an election held in accordance with Section 18 of this Act, the district may impose an annual ad valorem tax on taxable property in the district for the maintenance and operation of the district and the improvements constructed or acquired by the district or for the provision of services.

(b) The board shall determine the tax rate.

SECTION 20. ASSESSMENTS. (a) The board by resolution may impose and collect an assessment for any purpose authorized by this Act.

(b) The board may not impose an assessment on a parcel of real property that at the time of the assessment is appraised at less than \$200,000, according to the most recent certified tax appraisal roll for Midland County, without the written consent of the owner of the parcel.

(c) Assessments, including assessments resulting from an addition to or correction of the assessment roll by the district, reassessments, penalties and interest on an assessment or reassessment, expense of collection, and reasonable attorney's fees incurred by the district:

(1) are a first and prior lien against the property assessed;

(2) are superior to any other lien or claim other than a lien or claim for county, school district, or municipal ad valorem taxes; and

(3) are the personal liability of and charge against the owners of the property even if the owners are not named in the assessment proceedings.

(d) The lien is effective from the date of the resolution of the board imposing the assessment until the date the assessment is paid. The board may enforce the lien in the same manner that the board may enforce an ad valorem tax lien against real property.

(e) The board may make corrections to or deletions from the assessment roll without notice and hearing in the manner required for additional assessments if the corrections or deletions do not increase the amount of assessment of any parcel of land.

SECTION 21. UTILITIES. The district may not impose an impact fee or assessment on the property, equipment, rights-of-way, facilities, or improvements of an electric utility or a power generation company as defined by Section 31.002, Utilities Code, or a gas utility as defined by Section 101.003 or 121.001, Utilities Code, of a telecommunications provider as defined by Section 51.002, Utilities Code, or a cable operator as defined by 47 U.S.C. Section 522, and its subsequent amendments, or of a person that provides to the public advanced telecommunications services.

SECTION 22. BONDS. (a) The district may issue bonds or other obligations payable in whole or in part from ad valorem taxes, assessments, impact fees, revenue, grants, or other money of the district, or any combination of those sources of money, to pay for any authorized purpose of the district.

(b) In exercising the district's borrowing power, the district may issue a bond or other obligation in the form of a bond, note, certificate of participation or other instrument evidencing a proportionate interest in payments to be made by the district, or other type of obligation.

SECTION 23. MUNICIPALITY NOT REQUIRED TO PAY DISTRICT OBLIGATIONS. Except as provided by Section 375.263, Local Government Code, the City of Midland is not required to pay a bond, note, or other obligation of the district.

SECTION 24. DISBURSEMENTS OR TRANSFERS OF MONEY. The board by resolution shall establish the number of directors' signatures and the procedure required for a disbursement or transfer of the district's money.

SECTION 25. COMPETITIVE BIDDING LIMIT. Section 375.221, Local Government Code, applies to the district only for a contract that has a value greater than \$50,000.

SECTION 26. EXCEPTION FOR DISSOLUTION OF DISTRICT WITH OUTSTANDING DEBT. (a) The board may vote to dissolve a district that has debt. If the vote is in favor of dissolution, the district shall remain in existence solely for the limited purpose of discharging its debts. The dissolution is effective when all debts have been discharged.

(b) Section 375.264, Local Government Code, does not apply to the district.

SECTION 27. ANNEXATION. The district may:

(1) annex territory as provided by Subchapter C, Chapter 375, Local Government Code; and

(2) annex territory located inside the boundaries of a reinvestment zone created by the City of Midland under Chapter 311, Tax Code, if the governing body of the City of Midland consents to the annexation.

SECTION 28. TAX AND ASSESSMENT ABATEMENTS. The district may grant in the manner authorized by Chapter 312, Tax Code, an abatement for a tax or assessment owed to the district.

SECTION 29. MEMBERSHIP IN CHARITABLE ORGANIZATIONS. The district may join and pay dues to an organization that:

(1) enjoys tax-exempt status under Section 501(c)(3), 501(c)(4), or 501(c)(6), Internal Revenue Code of 1986 (26 U.S.C. Section 501), as amended; and

(2) performs services or provides activities consistent with the furtherance of the purposes of the district.

SECTION 30. ELIGIBILITY FOR INCLUSION IN SPECIAL ZONES. All or any part of the area of the district is eligible to be included in:

(1) a tax increment reinvestment zone created by the municipality under Chapter 311, Tax Code;

(2) a tax abatement reinvestment zone created by the municipality under Chapter 312, Tax Code; or

(3) an enterprise zone created by the municipality under Chapter 2303, Government Code.

SECTION 31. ECONOMIC DEVELOPMENT PROGRAMS. (a) The district may establish and provide for the administration of one or more programs, including programs for making loans and grants of public money and providing personnel and services of the district, to promote state or local economic development and to stimulate business and commercial activity in the district.

(b) For purposes of this section, the district has all of the powers and authority of a municipality under Chapter 380, Local Government Code.

SECTION 32. INITIAL DIRECTORS. (a) The initial board consists of the following persons:

Pos. No. Name of Director

1 W. L. "Scooter" Brown

2 Wes Perry

3 Ted Jones

4 Jon Morgan

5 Gerald Borron

6 Dub House

7 Lois Trombley

8 Mike Black

9 Christi Newton

(b) Of the initial directors, the terms of directors appointed for positions 1 through 5 expire June 1, 2007, and the terms of directors appointed for positions 6 through 9 expire June 1, 2005.

(c) Section 10 of this Act does not apply to this section.

(d) This section expires September 1, 2007.

SECTION 33. LEGISLATIVE FINDINGS. The legislature finds that:

(1) proper and legal notice of the intention to introduce this Act, setting forth the general substance of this Act, has been published as provided by law, and the notice and a copy of this Act have been furnished to all persons, agencies, officials, or entities to which they are required to be furnished by the constitution and laws of this state, including the governor, who has submitted the notice and Act to the Texas Commission on Environmental Quality;

(2) the Texas Commission on Environmental Quality has filed its recommendations relating to this Act with the governor, lieutenant governor, and speaker of the house of representatives within the required time;

(3) the general law relating to consent by political subdivisions to the creation of districts with conservation, reclamation, and road powers and the inclusion of land in those districts has been complied with; and

(4) all requirements of the constitution and laws of this state and the rules and procedures of the legislature with respect to the notice, introduction, and passage of this Act have been fulfilled and accomplished.

SECTION 34. EFFECTIVE DATE. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2003.

HB 705 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

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

HB 705, A bill to be entitled An Act relating to liability of in-home service companies and residential delivery companies for negligent hiring.

On motion of Representative Solomons, the house concurred in the senate amendments to **HB 705**.

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

Amend **HB 705**, on page 3, by adding paragraph (c) starting on line 17 to read as follows:

(c) A residential delivery company or an in-home service company that sends two or more employees together into a residence shall be deemed to have complied with the requirement in Section 145.002 as long as at least one of those employees has been checked as described in Section 145.002 and, while they are in the residence, that employee accompanies and directly supervises any employee who have not been checked, and the residential delivery company or in-home service company maintains a record of the identity of any such non-checked employees for at least two years.

HB 944 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

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

HB 944, A bill to be entitled An Act relating to the admission to public institutions of higher education of students with nontraditional secondary educations.

On motion of Representative Hughes, the house concurred in the senate amendments to **HB 944**.

Senate Committee Substitute

HB 944, A bill to be entitled An Act relating to the admission to public institutions of higher education of students with nontraditional secondary educations.

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

SECTION 1. Subchapter Z, Chapter 51, Education Code, is amended by adding Section 51.9241 to read as follows:

Sec. 51.9241. ADMISSION OF STUDENT WITH NONTRADITIONAL SECONDARY EDUCATION. (a) In this section:

(1) "Institution of higher education" has the meaning assigned by Section 61.003.

(2) "Nontraditional secondary education" means a course of study at the secondary school level in a nonaccredited private school setting, including a home school.

(b) Because the State of Texas considers successful completion of a nontraditional secondary education to be equivalent to graduation from a public high school, an institution of higher education must treat an applicant for admission to the institution as an undergraduate student who presents evidence that the person has successfully completed a nontraditional secondary education according to the same general standards as other applicants for undergraduate admission who have graduated from a public high school.

(c) An institution of higher education may not require an applicant for admission to the institution as an undergraduate student who presents evidence that the person has successfully completed a nontraditional secondary education to:

(1) obtain or submit evidence that the person has obtained a general education development certificate, certificate of high school equivalency, or other credentials equivalent to a public high school degree; or

(2) take an examination or comply with any other application or admission requirement not generally applicable to other applicants for undergraduate admission to the institution.

SECTION 2. This Act takes effect September 1, 2003, and applies only to undergraduate admissions to an institution of higher education for a term or semester that begins on or after that date. Undergraduate admissions for a term or semester that begins before the effective date are covered by the law in effect immediately before that date, and the former law is continued in effect for that purpose.

**HB 1378 - HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS**

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

HB 1378, A bill to be entitled An Act relating to certain duties and information regarding water development matters in the state.

On motion of Representative Geren, the house concurred in the senate amendments to **HB 1378** by (Record 849): 144 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; Dunnam; 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; Hope; Hopson; Howard; Hughes; Hunter; Isett; Jones, D.; Jones, E.; Jones, J.; Keel; Keffer, B.; Keffer, J.; King; Kolkhorst; Krusee; Kuempel; Laney; Laubenberg; Lewis; Luna; Mabry; Madden; 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.; Smithee; Solis; Solomons; Stick; Swinford; Taylor; Telford; Thompson; Truitt; Turner; Uresti; Van Arsdale; Villarreal; West; Wilson; Wise; Wohlgemuth; Wolens; Wong; Woolley; Zedler.

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

Absent, Excused — Marchant.

Absent — Dukes; Dutton; Talton.

Senate Committee Substitute

HB 1378, A bill to be entitled An Act relating to certain duties and information regarding water planning and development matters in the state.

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

SECTION 1. Sections 9.002 through 9.009, 9.016, and 9.017, Water Code, are amended to read as follows:

Sec. 9.002. CREATION AND MEMBERSHIP. (a) The council is created to provide the governor, lieutenant governor, speaker of the house of representatives, and legislature with the resource of a select council with expertise on state water issues and consists of 15 [43] members as follows:

(1) the chairman, or a board member designated by the chairman, of the Texas Water Development Board;

(2) the chairman, or a commissioner designated by the chairman, of the commission;

(3) the chairman, or a commissioner designated by the chairman, of the Parks and Wildlife Commission;

(4) the commissioner of agriculture;

(5) the commissioner of the General Land Office;

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

(7) three ~~[two]~~ members of the senate appointed by the lieutenant governor; and

(8) four ~~[three]~~ members of the general public appointed by the governor, one representing groundwater management, one representing surface water management, ~~[and]~~ one representing the environmental community, and one representing the coastal region.

(b) Except as provided by Subsection (c), council ~~[Council]~~ members may not delegate participation or council duties to staff.

(c) A council member who is a member of the governing body of a state agency may delegate participation and council duties to the agency's executive administrator, executive director, or deputy commissioner, as appropriate.

Sec. 9.003. TERMS. (a) Public members serve staggered three-year terms ~~[Except for the commissioner of the General Land Office and the commissioner of agriculture, council members who are officials of state agencies serve terms as determined by the chairman of each agency].~~

(b) Public ~~[Council members who are members of the general public serve staggered six year terms with the term of one member expiring August 31 of each odd numbered year.~~

~~[(c) Council]~~ members may be reappointed to serve additional terms.

(c) Legislative members serve at the discretion of the original appointing authority.

(d) A vacancy on the council shall be filled by appointment by the original appointing authority for the unexpired term.

Sec. 9.004. OFFICERS OF THE COUNCIL. (a) The council shall elect a chair from among the legislative members of the council. The ~~[governor shall appoint a council member as the]~~ chair of the council shall serve ~~[for]~~ a two-year term ~~[expiring May 31 of each even numbered year].~~

(b) The council shall alternate the selection of the chair every two years between a house and senate council member ~~[have a secretary of the council who serves at the pleasure of the council and is accountable only to the council].~~

Sec. 9.005. COUNCIL STAFF. On request by the council, the senate and house standing committees with primary responsibility over water resource management, the commission, the Parks and Wildlife Department, the Department of Agriculture, and the Texas Water Development Board shall provide any staff ~~[other than the secretary of the council]~~ necessary to assist the council in the performance of its duties.

Sec. 9.006. MEETINGS. (a) The council shall conduct public meetings at the discretion of the chair at least twice a year ~~[meet at least once in each calendar quarter].~~ Eight ~~[Six]~~ members constitute a quorum.

(b) The council is subject to Chapters 551 and 2001, Government Code.

Sec. 9.007. COMPENSATION OF MEMBERS. (a) Members of the council serve without compensation but public members may be reimbursed by legislative appropriation for actual and necessary expenses related to the performance of council duties.

(b) Reimbursement under Subsection (a) is subject to the approval of the council ~~[chair].~~

Sec. 9.008. POWERS AND DUTIES OF COUNCIL. (a) The governor, lieutenant governor, and speaker of the house of representatives may issue charges to the council on state water issues. The council shall provide recommendations to the governor, lieutenant governor, or speaker of the house of representatives, as appropriate, based on the charges ~~[The council shall:~~

~~[(1) heighten the level of dialogue on significant water policy issues and, in an advisory role only, strive to provide focus and recommendations on state water policy initiatives, including:~~

~~[(A) promoting flexibility and incentives for water desalination, brush control, regionalization, weather modification projects, and public private partnerships relating to water projects;~~

~~[(B) promoting adequate financing for surface water and groundwater projects;~~

~~[(C) development of water conservation and drought management projects;~~

~~[(D) implementation of approved regional and state water plans;~~

~~[(E) encouraging commonality of technical data and information such as joint agency studies, freshwater inflow recommendations, surface water and groundwater availability models, and bay and estuary and instream flow recommendations developed by the Parks and Wildlife Department, the commission, and the Texas Water Development Board; and~~

~~[(F) encouraging the use of supplemental environmental projects for water infrastructure needs and enhancing the aquatic environment and habitat in enforcement proceedings at a state agency or political subdivision;~~

~~[(2) encourage the enhancement and coordination of state, interstate, and international efforts to improve environmental quality and living conditions along the Texas-Mexico border;~~

~~[(3) coordinate a unified state position on federal and international water issues; and~~

~~[(4) advise the Texas Water Development Board on developing criteria for prioritizing the funding of projects in the state water plan].~~

(b) If the governor, lieutenant governor, or speaker of the house of representatives does not issue charges to the council, the council may create a list of state water issues and present the list to the governor, lieutenant governor, and speaker of the house of representatives. The governor, lieutenant governor, and speaker of the house of representatives may select a total of not more than four issues from the list. The council shall provide recommendations based on that list.

(c) The council may draft and review proposed legislation, for purposes of recommendation only, to communicate specific policy changes that may be needed.

(d) The council may request reports from river authorities, surface water authorities, and water districts.

(e) The council shall coordinate its efforts with the senate and house standing committees with primary responsibility over water resource management.

(f) The council may appoint subcommittees of council members to analyze specific issues within charges to the council or issues selected from the council's list by the governor, lieutenant governor, and speaker of the house of representatives.

(g) The council may appoint a technical committee to analyze specific issues within charges to the council or issues selected from the council's list by the governor, lieutenant governor, and speaker of the house of representatives. The technical committee may contain noncouncil members.

(h) The council may not:

- (1) adopt rules;
- (2) regulate water use, water quality, or any other aspect of water resource management;
- (3) plan or construct water resource projects or have such projects planned or constructed;
- (4) grant or lend money for the construction of water resource projects;
- (5) establish water resource management standards or otherwise usurp the authority of or infringe upon the duties, responsibilities, or powers of local, regional, or state water management entities, including groundwater districts, river authorities and compacts, regional water planning groups, or member agencies of the council; or
- (6) consider or discuss a specific permit or project or recommendation for a project until the water permit has been issued by the state and all motions for rehearing have been overruled.

Sec. 9.009. REPORT. (a) The council shall submit a report on its recommendations [Not later than December 1 of each even-numbered year, the council shall submit a report] to the governor, lieutenant governor, and speaker of the house of representatives and to the senate and house standing committees with primary responsibility over water resource management not later than December 31 each year [and financing].

(b) The report must include recommendations [findings of] the council made on charges issued by or issues selected from the council's list by the governor, lieutenant governor, and speaker of the house of representatives during the year [in the periodic reviews of authorities during the preceding two year period and any other findings and recommendations the council considers necessary].

(c) The governor, lieutenant governor, and speaker of the house of representatives may request additional reports on specific charges at any time.

(d) The council may request reports from committees established under Sections 9.008(f) and (g).

Sec. 9.016. PUBLIC PARTICIPATION. The council shall encourage public participation at council meetings and public input regarding the council's purpose, the exercise of its powers and duties under Section 9.008, and its preparation of the report described in Section 9.009[—and its analysis of authorities under Sections 9.010 and 9.011].

Sec. 9.017. DISSOLUTION OF COUNCIL AND ACCOUNT. Unless extended by the 79th [78th] Texas Legislature, this chapter and the interagency water advisory account expire on December 31 [September 1], 2005.

SECTION 2. Sections 15.005(a), (b), and (d), Water Code, are amended to read as follows:

(a) On submission of a project application under this chapter, the executive administrator ~~[development fund manager]~~ shall determine if the application includes a project that will have flood control as one of its purposes and if the political subdivision submitting the application includes all of the watershed in which the project is to be located.

(b) If the executive administrator ~~[development fund manager]~~ finds that the application includes a project that has flood control as one of its purposes and that the watershed in which the project is located is partially located outside the political subdivision making the application, the executive administrator ~~[development fund manager]~~ shall require the applicant to submit a written memorandum of understanding relating to the management of the watershed in which the project is to be located.

(d) The board shall not consider any application for which a memorandum of understanding must be filed under this section until that memorandum of understanding is filed with the executive administrator ~~[development fund manager]~~.

SECTION 3. Section 16.012(m), Water Code, is amended to read as follows:

(m) The executive administrator may conduct surveys of entities using groundwater and surface water for municipal, industrial, power generation, or mining purposes at intervals determined appropriate by the executive administrator to gather data to be used for long-term water supply planning. Recipients of the survey shall complete and return the survey to the executive administrator. A person who fails to timely complete and return the survey is not eligible for funding from the board for board programs and is ineligible to obtain permits, permit amendments, or permit renewals from the commission under Chapter 11. A person who fails to complete and return the survey commits an offense that is punishable as a Class C misdemeanor. ~~[Surveys obtained by the board from nongovernmental entities are excepted from the requirements of Section 552.021, Government Code, unless otherwise directed in writing by the person completing the survey.]~~ This subsection does not apply to survey information regarding windmills used for domestic and livestock use.

SECTION 4. Section 16.012, Water Code, is amended by adding Subsection (n) to read as follows:

(n) Information collected through field investigations on a landowner's property by the executive administrator after September 1, 2003, solely for use in the development of groundwater availability models under Subsection (l) of this section that reveals site-specific information about such landowner is not subject to Chapter 552, Government Code, and may not be disclosed to any person outside the board if the landowner on whose land the information is collected has requested in writing that such information be deemed confidential. If a

landowner requests that his or her information not be disclosed, the executive administrator may release information regarding groundwater information only if the information is summarized in a manner that prevents the identification of an individual or specific parcel of land and the landowner. This subsection does not apply to a parcel of land that is publicly owned.

SECTION 5. Section 16.053, Water Code, is amended by amending Subsections (d) and (e) and adding Subsection (e-1) to read as follows:

(d) The board shall provide guidelines for the consideration of existing regional planning efforts by regional water planning groups. The board shall provide guidelines for the format in which information shall be presented in the regional water plans. ~~[The board by rule shall require a holder of a surface water permit, a certified filing, or a certificate of adjudication for surface water, a holder of a permit for the export of groundwater from a groundwater conservation district, a retail public water supplier, a wholesale water provider, an irrigation district, and any other person who is transporting groundwater or surface water 20 miles or more to report to the board information on certain water pipelines and other facilities that can be used for water conveyance. Nothing in the initial planning effort shall prevent development of a management plan or project where local or regional needs require action prior to completion of the initial regional water plan under this section.]~~

(e) Each regional water planning group shall submit to the board a regional water plan that:

(1) is consistent with the guidance principles for the state water plan adopted by the board under Section 16.051(d);

(2) provides information based on data provided or approved by the board in a format consistent with the guidelines provided by the board under Subsection (d);

(3) identifies:

(A) each source of water supply in the regional water planning area in accordance with the guidelines provided by the board under Subsections (d) and (f);

(B) factors specific to each source of water supply to be considered in determining whether to initiate a drought response; and

(C) actions to be taken as part of the response; ~~[and~~

~~[(D) information on water pipelines and other facilities that can be used for water conveyance, including, but not limited to, currently used and abandoned oil, gas, and water pipelines, as provided by board rules and guidelines;]~~

(4) has specific provisions for water management strategies to be used during a drought of record;

(5) includes but is not limited to consideration of the following:

(A) any existing water or drought planning efforts addressing all or a portion of the region;

(B) certified groundwater conservation district management plans and other plans submitted under Section 16.054;

(C) all potentially feasible water management strategies, including but not limited to improved conservation, reuse, and management of existing water supplies, acquisition of available existing water supplies, and development of new water supplies;

(D) protection of existing water rights in the region;

(E) opportunities for and the benefits of developing regional water supply facilities or providing regional management of water supply facilities;

(F) appropriate provision for environmental water needs and for the effect of upstream development on the bays, estuaries, and arms of the Gulf of Mexico and the effect of plans on navigation;

(G) provisions in Section 11.085(k)(1) if interbasin transfers are contemplated;

(H) voluntary transfer of water within the region using, but not limited to, regional water banks, sales, leases, options, subordination agreements, and financing agreements; and

(I) emergency transfer of water under Section 11.139, including information on the part of each permit, certified filing, or certificate of adjudication for nonmunicipal use in the region that may be transferred without causing unreasonable damage to the property of the nonmunicipal water rights holder;

(6) identifies river and stream segments of unique ecological value and sites of unique value for the construction of reservoirs that the regional water planning group recommends for protection under Section 16.051;

(7) assesses the impact of the plan on unique river and stream segments identified in Subdivision (6) if the regional water planning group or the legislature determines that a site of unique ecological value exists; and

(8) describes the impact of proposed water projects on water quality.

(e-1) On request of the Texas Water Advisory Council, a regional planning group shall provide the council a copy of that planning group's regional water plan.

SECTION 6. Section 17.183, Water Code, is amended to read as follows:

Sec. 17.183. CONSTRUCTION CONTRACT REQUIREMENTS. The governing body of each political subdivision receiving financial assistance from the board shall require in all contracts for the construction of a project:

(1) that each bidder furnish a bid guarantee equivalent to five percent of the bid price;

(2) that each contractor awarded a construction contract furnish performance and payment bonds:

(A) the performance bond shall include without limitation guarantees that work done under the contract will be completed and performed according to approved plans and specifications and in accordance with sound construction principles and practices; and

(B) the performance and payment bonds shall be in a penal sum of not less than 100 percent of the contract price and remain in effect for one year beyond the date of approval by the engineer of the political subdivision; and

(3) that payment be made in partial payments as the work progresses;

(4) that each partial payment shall not exceed 95 percent of the amount due at the time of the payment as shown by the engineer of the project, but, if the project is substantially complete, a partial release of the five percent retainage may be made by the political subdivision with approval of the executive administrator;

(5) that payment of the retainage remaining due upon completion of the contract shall be made only after:

(A) approval by the engineer for the political subdivision as required under the bond proceedings;

(B) approval by the governing body of the political subdivision by a resolution or other formal action; and

(C) certification by the executive administrator [~~development fund manager~~] in accordance with the rules of the board that the work to be done under the contract has been completed and performed in a satisfactory manner and in accordance with sound engineering principles and practices;

(6) that no valid approval may be granted unless the work done under the contract has been completed and performed in a satisfactory manner according to approved plans and specifications; and

(7) that, if a political subdivision receiving financial assistance under Subchapter K of this chapter, labor from inside the political subdivision be used to the extent possible.

SECTION 7. Section 17.276(a), Water Code, is amended to read as follows:

(a) After an application is received for financial assistance, the executive administrator [~~development fund manager~~] shall submit the application to the board together with comments and recommendations concerning the best method of making financial assistance available.

SECTION 8. Section 30.003, Water Code, is amended by adding Subdivision (11) to read as follows:

(11) "Canal" means a man-made navigable channel or waterway of at least two miles in length.

SECTION 9. Sections 9.010, 9.011, 9.012, and 11.155(c), Water Code, are repealed.

SECTION 10. (a) The terms of public members serving on the Texas Water Advisory Council on the effective date of this Act expire on that date.

(b) As soon as practicable after the effective date of this Act, the governor shall appoint four members of the general public to the Texas Water Advisory Council as provided by Section 9.002, Water Code, as amended by this Act. The governor may reappoint a person who was serving on the council on the effective date of this Act. The newly appointed public members shall draw lots to determine which two members serve two-year terms and which two members serve three-year terms.

SECTION 11. 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.

HB 2073 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

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

HB 2073, A bill to be entitled An Act relating to the ad valorem tax rate of a hospital district created under general or special law.

On motion of Representative Hilderbran, the house concurred in the senate amendments to **HB 2073** by (Record 850): 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.; Dawson; Delisi; Denny; Deshotel; Driver; Dukes; Dunnam; 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; Hope; Hopson; Hughes; Hunter; Isett; Jones, D.; Jones, E.; Jones, J.; Keel; Keffer, B.; Keffer, J.; King; Kolkhorst; Krusee; Kuempel; Laney; Laubenberg; Lewis; Luna; Mabry; Madden; 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.; Smithee; Solis; Solomons; Stick; Swinford; Taylor; Telford; Thompson; Truitt; Turner; Uresti; Van Arsdale; Villarreal; West; Wilson; Wise; Wohlgemuth; Wolens; Wong; Woolley; Zedler.

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

Absent, Excused — Marchant.

Absent — Davis, Y.; Dutton; Howard; Smith, W.; Talton.

Senate Committee Substitute

HB 2073, A bill to be entitled An Act relating to the ad valorem tax rate of a hospital district created under general or special law.

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

SECTION 1. Chapter 285, Health and Safety Code, is amended by adding Subchapter M to read as follows:

SUBCHAPTER M. CHANGE IN RATE OF AD VALOREM TAXES

Sec. 285.201. ELECTION TO INCREASE MAXIMUM TAX RATE. (a)
Registered voters of a hospital district that is authorized to impose ad valorem taxes and that has a maximum tax rate of less than 75 cents on the \$100 valuation of all taxable property in the district may file a petition with the secretary of the governing body of the hospital district requesting an election to authorize the increase of that maximum tax rate. The petition must be signed by at least the lesser of:

(1) 100 of the registered voters of the district; or

(2) the number equal to 15 percent of the registered voters of the district.

(b) The petition must state the maximum tax rate to be voted on at the election, which may not exceed 75 cents on the \$100 valuation of all taxable property in the district.

(c) The governing body of the hospital district by order shall set a time and place to hold a hearing on the petition to increase the maximum tax rate of the district. The governing body shall set a date for the hearing that is not earlier than the 10th day after the date the governing body issues the order.

(d) If after the hearing the governing body of the hospital district finds that the petition is in proper form and that an increase of the maximum tax rate would benefit the district, the governing body shall order an election to authorize the increase of the maximum tax rate to the tax rate stated in the petition. The order calling the election must state the:

(1) nature of the election, including the proposition that is to appear on the ballot;

(2) date of the election;

(3) maximum tax rate to be voted on at the election;

(4) hours during which the polls will be open; and

(5) location of the polling places.

(e) The governing body of the hospital district shall give notice of the election by publishing a substantial copy of the election order in a newspaper with general circulation in the district once a week for two consecutive weeks. The first publication must appear before the 35th day before the date set for the election.

(f) The ballot for the election shall be printed to permit voting for or against the proposition: "The increase by the _____ (name of district) Hospital District of the rate of annual taxes imposed for hospital purposes to a rate not to exceed _____ (insert the amount prescribed by the petition, not to exceed 75 cents) on each \$100 valuation of all taxable property in the district."

(g) After ordering an election under this subchapter, the governing body of the hospital district shall hold the election on the first authorized uniform election date prescribed by Section 41.001, Election Code, that allows sufficient time to comply with other requirements of law.

(h) If the majority of the votes cast in the district favor the proposition, the maximum tax rate of the district is increased to the tax rate stated in the petition.

Sec. 285.202. EXPIRATION. This subchapter expires September 1, 2008.

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.

HB 2188 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

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

HB 2188, A bill to be entitled An Act relating to alternate methods of responding to a jury summons.

On motion of Representative Rodriguez, the house concurred in the senate amendments to **HB 2188**.

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

Amend **HB 2188** in SECTION 1 of the bill (House engrossment, page 3) by striking lines 11-18.

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 Nos. 4 and 5).

**HB 2350 - HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS**

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

HB 2350, A bill to be entitled An Act relating to the amount charged by the Texas Department of Health for a youth camp license.

On motion of Representative Dawson, the house concurred in the senate amendments to **HB 2350**.

Senate Committee Substitute

HB 2350, A bill to be entitled An Act relating to the amount charged by the Texas Department of Health for a youth camp license.

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

SECTION 1. Chapter 141, Health and Safety Code, is amended by adding Section 141.0035 to read as follows:

Sec. 141.0035. LICENSE FEES. (a) The board by rule shall establish the amount of the fee for obtaining or renewing a license under this chapter. The board shall set the fee in a reasonable amount designed to recover the direct and indirect costs to the department of administering and enforcing this chapter. The board may set fees in a different amount for resident youth camps and day youth camps to reflect differences in the costs of administering and enforcing this chapter for resident and day camps.

(b) Before adopting or amending a rule under Subsection (a), the board shall solicit comments and information from the operators of affected youth camps and allow affected youth camp operators the opportunity to meet with appropriate department staff who are involved with the rulemaking process.

SECTION 2. Section 141.004(a), Health and Safety Code, is amended to read as follows:

(a) To obtain a license, a person must submit a license application accompanied by a license fee in an amount set by the board [as follows:

- [~~(1) a resident youth camp shall pay a fee of \$40 for a new license; and~~
- [~~(2) a day youth camp shall pay a fee of \$25 for a new license~~].

SECTION 3. Section 141.005(b), Health and Safety Code, is amended to read as follows:

(b) The application must be accompanied by a renewal fee in an amount set by the board ~~of~~

~~[(1) \$40 for a resident camp; or~~

~~[(2) \$25 for a day camp].~~

SECTION 4. The Texas Board of Health shall adopt rules to implement the change in law made by this Act as soon as practicable. Until the board's rules take effect, the Texas Department of Health shall continue to charge the amounts prescribed for a license fee under Section 141.004 or 141.005, Health and Safety Code, as applicable, as those sections existed immediately before the effective date of this Act, and the prior law is continued in effect for this purpose.

SECTION 5. This Act takes effect September 1, 2003.

HB 2964 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

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

HB 2964. A bill to be entitled An Act relating to the operation of municipal school districts and the levy of municipal school district taxes.

On motion of Representative Hill, the house concurred in the senate amendments to **HB 2964**.

Senate Committee Substitute

HB 2964. A bill to be entitled An Act relating to the operation of municipal school districts and the levy of municipal school district taxes.

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

SECTION 1. Subchapter G, Chapter 11, Education Code, is amended by adding Section 11.303 to read as follows:

Sec. 11.303. MUNICIPAL SCHOOL DISTRICTS. (a) Except as otherwise provided by this section, a school district operating under former Chapter 24 may continue to operate under that chapter as it existed on May 1, 1995, and under state law generally applicable to school districts that does not conflict with that chapter.

(b) The governing body of the municipality may participate in annual hearings or work sessions held by the board of trustees of the municipal school district on the budget and ad valorem tax rate for the coming year.

(c) The board of trustees of a municipal school district and the governing body of the municipality shall jointly hold any hearing required by law as a condition for the adoption of an annual budget and imposition of an ad valorem tax.

(d) Neither an annual budget for a municipal school district nor an ad valorem tax to be imposed for the district may be adopted without the affirmative vote of:

(1) a majority of the members of the board of trustees of the municipal school district present and voting; and

(2) at least three-quarters of the total of the voting members of the board of trustees and the governing body of the municipality that are present and voting.

(e) If a quorum of the members of the governing body of the municipality is not present at a meeting required under Subsection (c), the board of trustees may adopt a budget or an ad valorem tax rate without regard to the requirements of Subsection (d).

(f) Notwithstanding former Section 24.06(c), as it existed on May 1, 1995, the governing body of the municipality shall adopt an ordinance providing for the levy and assessment of the tax approved pursuant to Subsections (d) or (e).

(g) After adopting an ordinance levying a tax for the municipal school district, the governing body of the municipality shall provide a certified copy of the ordinance to the district's board of trustees.

(h) This section may not be construed as authorizing the governing body of a municipality to levy a tax for the support of schools of a municipal school district without fully complying with all applicable provisions of the Tax Code.

SECTION 2. Section 11.301, Education Code, is amended to read as follows:

Sec. 11.301. APPLICATION OF FORMER LAW. (a) A school district or county system operating under former Chapter 17, 18, 22, ~~[24,]~~ 25, 26, 27, or 28 on May 1, 1995, may continue to operate under the applicable chapter as that chapter existed on that date and under state law generally applicable to school districts that does not conflict with that chapter.

(b) A school district operating under former Chapter 22 may incorporate and become an independent school district in the manner provided by former Subchapter F, Chapter 19, as that subchapter existed on May 1, 1995. ~~[A school district operating under former Chapter 24 may be separated from municipal control and become an independent school district in the manner provided by former Subchapter E, Chapter 19, as that subchapter existed on May 1, 1995.]~~

SECTION 3. Not later than September 15, 2003, the comptroller shall begin a performance review under Section 403.020, Government Code, of each municipal school district in this state. The comptroller shall complete the review and prepare a report showing the results of the review not later than February 1, 2004.

SECTION 4. This Act takes effect September 1, 2003.

HB 2019 - HOUSE CONCURS IN SENATE AMENDMENTS

TEXT OF SENATE AMENDMENTS

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

HB 2019, A bill to be entitled An Act relating to the creation of a state advisory council with authority to promote research, education, treatment, and support activities related to persons with traumatic brain injuries.

On motion of Representative Griggs, the house concurred in the senate amendments to **HB 2019**.

Senate Committee Substitute

HB 2019, A bill to be entitled An Act relating to the creation of a state advisory council with authority to promote research, education, treatment, and support activities related to persons with traumatic brain injuries.

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

SECTION 1. Sections 92.001-92.011, Health and Safety Code, are designated as Subchapter A of Chapter 92, Health and Safety Code, and a subchapter heading for Subchapter A is added to read as follows:

SUBCHAPTER A. GENERAL PROVISIONS

SECTION 2. Chapter 92, Health and Safety Code, is amended by adding Subchapter B to read as follows:

SUBCHAPTER B. TEXAS TRAUMATIC BRAIN INJURY ADVISORY COUNCIL

Sec. 92.051. DEFINITIONS. In this subchapter:

(1) "Traumatic brain injury support group" means a local, state, or national organization that:

(A) is established to provide support services to aid persons with a traumatic brain injury and their primary family caregivers;

(B) encourages research into the cause, prevention, and treatment of traumatic brain injury and care of persons with a traumatic brain injury; and

(C) is dedicated to the development of essential services for persons with a traumatic brain injury and their primary family caregivers.

(2) "Council" means the Texas Traumatic Brain Injury Advisory Council.

(3) "Primary family caregiver" means an individual who is a relative of a person with a traumatic brain injury who has or has had a major responsibility for the care and supervision of the person with a traumatic brain injury and who is not a professional health care provider paid to care for the person with a traumatic brain injury.

Sec. 92.052. ADVISORY COUNCIL; ASSOCIATED AGENCY. (a) The Texas Traumatic Brain Injury Advisory Council is an advisory council within the department.

(b) Notwithstanding Subsection (a), if, as a result of legislation enacted in the 78th Legislature, Regular Session, 2003, a state agency other than the department is designated to serve as the agency with primary responsibility in relation to persons with physical disabilities, the council is an advisory council within that state agency and a reference in this chapter to the department means that agency.

Sec. 92.053. MEMBERSHIP. (a) The council must be composed in accordance with federal law. Appointments to the council shall be made without regard to:

(1) the race, color, sex, religion, age, or national origin of the appointees; or

(2) the disability of the appointees, except as required by federal law.

(b) The council is composed of 22 members appointed as follows:

(1) eight public consumer members appointed by the commissioner of health and human services, at least three of whom must be individuals related to persons with a traumatic brain injury and at least three of whom must be persons with a brain injury;

(2) six professional members appointed by the commissioner of health and human services, each of whom must have special training and interest in the care, treatment, or rehabilitation of persons with a traumatic brain injury, with one representative each from:

(A) acute hospital trauma units;

(B) the National Institute for Disability Rehabilitation Research Traumatic Brain Injury Model System in this state;

(C) acute or post-acute rehabilitation facilities;

(D) community-based services;

(E) faculties of institutions of higher education; and

(F) providers in the areas of physical therapy, occupational therapy, or cognitive rehabilitation; and

(3) eight state agency members, with one representative from each of the following agencies appointed by the chief executive officer of the agency:

(A) Texas Department of Health;

(B) Texas Department of Human Services;

(C) Texas Department of Mental Health and Mental Retardation;

(D) Texas Rehabilitation Commission;

(E) Health and Human Services Commission;

(F) Texas Education Agency;

(G) Texas Planning Council for Developmental Disabilities; and

(H) Texas Department of Insurance.

(c) One of the six public consumer members appointed under Subsection (b)(1) must be a member of a statewide traumatic brain injury support group.

Sec. 92.054. OFFICERS. (a) The members of the council annually shall elect a presiding officer and an assistant presiding officer from the council members.

(b) A representative of a state agency may not serve as presiding officer or assistant presiding officer.

(c) At least one of the officers must be a public consumer member.

Sec. 92.055. RESTRICTIONS ON MEMBERS. (a) In this section, "Texas trade association" means a cooperative and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest. The term does not include a voluntary health organization.

(b) A person may not be a public consumer member of the council if the person or the person's spouse:

(1) is employed by or participates in the management of a business entity or other organization receiving money from the council;

(2) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization receiving money from the council; or

(3) uses or receives a substantial amount of tangible goods, services, or money from the council, other than compensation or reimbursement authorized by law for council membership, attendance, or expenses.

(c) A person may not be a member of the council if the person is an officer, employee, or paid consultant of a Texas trade association in a health care field.

(d) A person may not be a member of the council 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 council.

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

(1) does not have at the time of taking office the qualifications required by Section 92.053(b);

(2) does not maintain during service on the council the qualifications required by Section 92.053(b);

(3) is ineligible for membership under Subsection (b), (c), or (d);

(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 council meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the council.

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

Sec. 92.056. TERMS; VACANCY. (a) The public consumer and professional members of the council are appointed for staggered six-year terms, with the terms of four or five members expiring February 1 of each odd-numbered year.

(b) In addition to other methods by which a position may become vacant, a position on the council becomes vacant if a member resigns from the council by providing written notice to the presiding officer of the council.

(c) If a position on the council becomes vacant, the presiding officer shall provide written notice to the appropriate appointing official requesting a new appointment to fill the remainder of the member's term.

(d) If a vacancy occurs, the appropriate appointing official shall appoint a person, in the same manner as the original appointment, to serve for the remainder of the unexpired term.

(e) A person who has served one full term on the council is not eligible for reappointment.

Sec. 92.057. COMPENSATION; EXPENSES. (a) Except as provided by Subsections (b) and (c), a member of the council is not entitled to compensation for service on the council and is not entitled to reimbursement for travel expenses.

(b) A member who is a representative of a state agency shall be reimbursed for travel expenses incurred while conducting council business from the funds of the agency the person represents in accordance with the General Appropriations Act.

(c) If money is available for this purpose in the account established under Section 92.062(b), the department shall reimburse a public consumer member for the member's actual and necessary expenses incurred in performing council duties, including travel, meals, lodging, respite care for a dependent with a disability, and telephone long-distance charges.

Sec. 92.058. MEETINGS. The council shall meet at least once each calendar quarter on meeting dates set by the council and at the call of the presiding officer.

Sec. 92.059. DUTIES OF THE COUNCIL. The council shall:

(1) inform state leaders of issues and policies as they relate to meeting the needs of persons with a traumatic brain injury and their primary family caregivers;

(2) recommend to state leaders policies and programs that more effectively serve persons with a traumatic brain injury and their families;

(3) recommend to the department methods to explore and promote innovative approaches to providing services and support to persons with a traumatic brain injury and their families;

(4) recommend to the department methods to promote education, training, and information about traumatic brain injury issues;

(5) advocate for persons with a traumatic brain injury and their families;

(6) recommend to the department methods to support activities aimed at reducing preventable brain injuries; and

(7) recommend to the department methods to conduct outreach to obtain public input.

Sec. 92.060. DUTIES OF THE DEPARTMENT. (a) The department shall:

(1) provide administrative support services to the council;

(2) accept gifts and grants on behalf of the council from any public or private entity;

(3) receive, deposit, and disburse gifts and grants for the council in accordance with this subchapter and provide other administrative services in support of the council as requested by and negotiated with the council; and

(4) enter into a memorandum of understanding with the council that delineates the responsibilities of the department and the council under this subchapter and amend the memorandum as necessary to reflect changes in those responsibilities.

(b) The board may adopt rules as necessary to implement the department's duties under this subchapter and federal developmental disability laws.

Sec. 92.061. ADDITIONAL COUNCIL DUTIES. The council shall:

(1) make recommendations, at the request of the governor or legislative leaders, relating to activities appropriate to the achievement of legislative and executive functions relating to persons with a traumatic brain injury; and

(2) submit to the governor, legislature, and other appropriate state and federal authorities periodic reports on the council's responsibilities and performance.

Sec. 92.062. GIFTS AND GRANTS. (a) The council is encouraged to seek a gift or grant from any public or private entity.

(b) The health and human services commission shall deposit any money received under Subsection (a) to the credit of the Texas Traumatic Brain Injury Advisory Council account. The Texas Traumatic Brain Injury Advisory Council account is an account in the general revenue fund that may be appropriated only for the purpose of carrying out this subchapter.

Sec. 92.063. ADVISORY COMMITTEE STATUTE INAPPLICABLE. Chapter 2110, Government Code, does not apply to the council.

SECTION 3. Section 92.001(2), Health and Safety Code, is amended to read as follows:

(2) "Reportable injury" means an injury or condition required to be reported under this subchapter [~~chapter~~].

SECTION 4. Sections 92.002(b) and (d), Health and Safety Code, are amended to read as follows:

(b) The board may adopt rules that require other injuries to be reported under this subchapter [~~chapter~~].

(d) The board shall adopt rules necessary to administer this subchapter [~~chapter~~].

SECTION 5. Section 92.003(c), Health and Safety Code, is amended to read as follows:

(c) The board shall prescribe the form and method of reporting. The board may require the reports to contain any information, including the person's name, address, age, sex, race, occupation, employer, and attending physician, necessary to achieve the purposes of this subchapter [~~chapter~~].

SECTION 6. Sections 92.004(a), (c), and (d), Health and Safety Code, are amended to read as follows:

(a) The department may enter into contracts or agreements as necessary to carry out this subchapter [~~chapter~~]. The contracts or agreements may provide for payment by the state for materials, equipment, and services.

(c) Subject to the confidentiality provisions of this subchapter [~~chapter~~], the department shall evaluate the reports of injuries to establish the nature and magnitude of the hazards associated with those injuries, to reduce the occurrence of those risks, and to establish any trends involved.

(d) The department may make inspections and investigations as authorized by this subchapter [~~chapter~~] and other law.

SECTION 7. Section 92.005, Health and Safety Code, is amended to read as follows:

Sec. 92.005. ACCESS TO INFORMATION. Subject to the confidentiality provisions of this subchapter [~~chapter~~], the department may collect, or cause to be collected, medical, demographic, or epidemiologic information from any medical or laboratory record or file to help the department in the epidemiologic investigation of injuries and their causes.

SECTION 8. Section 92.006(b), Health and Safety Code, is amended to read as follows:

(b) The board shall adopt rules establishing procedures to ensure that all information and records maintained by the department under this subchapter ~~[chapter]~~ are kept confidential and protected from release to unauthorized persons.

SECTION 9. Sections 92.008(a) and (e), Health and Safety Code, are amended to read as follows:

(a) The board shall appoint a technical advisory committee to advise the board of injuries other than spinal cord injuries, traumatic brain injuries, and submersion injuries that should be required by rule to be reported under this subchapter ~~[chapter]~~.

(e) A member of the technical advisory committee is not entitled to reimbursement for expenses incurred in performing duties under this subchapter ~~[chapter]~~.

SECTION 10. Section 92.011, Health and Safety Code, is amended to read as follows:

Sec. 92.011. COORDINATION WITH TEXAS TRAUMATIC BRAIN INJURY ADVISORY COUNCIL. (a) The department and the Texas Traumatic Brain Injury Advisory Council established within the department under Subchapter B shall ~~[enter into a memorandum of understanding to]~~:

(1) exchange relevant injury data on an ongoing basis to the extent allowed by Section 92.006;

(2) maintain the confidentiality of injury data provided to the council by the department in accordance with Section 92.006;

(3) permit the council to review and comment on the board's rules under Section 92.002(b) before the rules are proposed; and

(4) cooperate in conducting investigations of traumatic brain injuries.

(b) The department and the Texas Traumatic Brain Injury Advisory Council may enter into a memorandum of understanding to facilitate cooperation under Subsection (a).

SECTION 11. The changes in law made by this Act do not affect the entitlement of a member serving on the Texas Traumatic Brain Injury Advisory Council immediately before the effective date of this Act to continue to carry out the member's functions for the remainder of the member's term. As soon as practicable after the effective date of this Act, the commissioner of health and human services shall develop a plan to bring the composition of the council into compliance with Section 92.053, Health and Safety Code, as added by this Act, as the service of existing members of the council terminates.

SECTION 12. It is the intention of the legislature that Subchapter B, Chapter 92, Health and Safety Code, as added by this Act, be interpreted and applied to reflect any changes made by the 78th Legislature relating to the structure of governmental agencies providing health and human services and programs in this state. If the relevant functions or duties of any agency

referenced in Subchapter B, Chapter 92, Health and Safety Code, as added by this Act, are transferred to another agency by the 78th Legislature, the reference means the agency to which the relevant functions or duties were transferred.

SECTION 13. This Act takes effect September 1, 2003.

HB 2153 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

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

HB 2153, A bill to be entitled An Act relating to filing a voting system equipment contract with the secretary of state.

On motion of Representative Denny, the house concurred in the senate amendments to **HB 2153**.

Senate Committee Substitute

HB 2153, A bill to be entitled An Act relating to filing a voting system equipment contract with the secretary of state.

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

SECTION 1. Section 123.035, Election Code, is amended to read as follows:

Sec. 123.035. VOTING SYSTEM EQUIPMENT CONTRACT. (a) A contract for the acquisition of voting system equipment under this subchapter must be in writing and be approved by the secretary of state as to compliance of the voting system and voting system equipment with the applicable requirements. The authority acquiring the equipment shall submit to the secretary of state a request for the letter and order described by this subsection accompanied by a copy of the relevant portions of the contract containing only the identifying information that the secretary needs to determine whether the version of the system and equipment being acquired under the contract complies with the applicable requirements. If the contract is approved, the secretary of state shall provide to the parties to the contract [incorporate before execution]:

(1) a letter [from the secretary of state] stating that the voting system and voting system equipment being acquired under the contract satisfy the applicable requirements for approval; and

(2) a certified copy of the written order issued by the secretary under Section 122.038 or 122.070 approving the voting system and voting system equipment for use in elections and, if applicable, of the written order issued under Section 122.095 granting conditional approval of the system or equipment.

(b) A contract for the acquisition of voting system equipment under this subchapter that is not approved by the secretary of state in accordance [does not comply] with Subsection (a) is void. The contract may not be ratified by either party and a payment may not be made relating to the contract.

(c) A person commits an offense if the person executes a voting system equipment contract that is not approved by the secretary of state in accordance [does not comply] with Subsection (a). An offense under this subsection is a Class B misdemeanor.

(d) If the secretary of state does not approve a contract under this section, the secretary shall provide notice to the parties to the contract that states the reasons the contract was not approved.

SECTION 2. (a) This Act takes effect September 1, 2003.

(b) The change in law made by this Act does not affect the validity of a contract entered into in accordance with law before the effective date of this Act.

(c) The change in law made by this Act applies only to an offense committed on or after the effective date of this Act. For purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before the effective date. An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose.

HB 2249 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

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

HB 2249, A bill to be entitled An Act relating to sale and lease of public school land.

On motion of Representative Hill, the house concurred in the senate amendments to **HB 2249** by (Record 851): 145 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; Eiland; Eissler; Elkins; Ellis; Escobar; Farabee; Farrar; Flores; Flynn; Gallego; Garza; Gattis; Giddings; Goodman; Goolsby; Griggs; Grusendorf; Guillen; Gutierrez; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Heflin; Hegar; Hilderbran; Hill; Hochberg; Hodge; Homer; Hope; Hopson; Howard; Hughes; Hunter; Isett; Jones, D.; Jones, E.; Jones, J.; Keel; Keffer, B.; Keffer, J.; King; Kolkhorst; Krusee; Kuempel; Laney; Laubenberg; Lewis; Luna; Mabry; Madden; 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.; Smithee; Solis; Solomons; Stick; Swinford; Taylor; Telford; Thompson; Truitt; Turner; Uresti; Van Arsdale; Villarreal; West; Wilson; Wise; Wohlgemuth; Wolens; Wong; Woolley; Zedler.

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

Absent, Excused — Marchant.

Absent — Geren; Talton.

Senate Committee Substitute

HB 2249, A bill to be entitled An Act relating to sale and lease of public school land.

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

SECTION 1. Section 51.001, Natural Resources Code, is amended by amending Subdivision (7) and adding Subdivisions (10) and (11) to read as follows:

(7) "Appraiser" means a state certified or state licensed real estate appraiser who is employed by or contracts with the land office and who performs professional valuation services competently and in a manner that is independent, impartial, and objective [~~"Asylum land" means all land of the state that is dedicated to the various asylum funds~~].

(10) "Land" or "real property" means any interest in the physical land and appurtenances attached to the land, including improvements.

(11) "Market value" means the value of real property determined by an appraisal performed by an appraiser.

SECTION 2. Section 51.011, Natural Resources Code, is amended to read as follows:

Sec. 51.011. SALE AND LEASE OF PUBLIC SCHOOL [~~AND ASYLUM~~] LAND. Any land that is set apart to the permanent school fund [~~and the various asylum funds~~] under the constitution and laws of this state together with the mineral estate in riverbeds, channels, and the tidelands, including islands, shall be controlled, sold, and leased by the school land board and the commissioner under the provisions of this chapter.

SECTION 3. Section 51.012, Natural Resources Code, is amended to read as follows:

Sec. 51.012. COMMISSIONER'S AUTHORITY. Subject to the authority of the board and to exceptions and restrictions that may be imposed by the constitution and laws of this state, the commissioner is vested with the authority necessary to carry out the provisions of this chapter relating to the sale and lease of public school [~~and asylum~~] land and to the protection of this land from free use and occupancy and from unlawful enclosure.

SECTION 4. Section 51.0125, Natural Resources Code, is amended to read as follows:

Sec. 51.0125. LAND USED BY STATE AGENCY. Land that belongs to the permanent school fund as a result of having been deeded or given to the state and that has been used in the past by a state agency shall be first offered for sale or lease to state agencies before it can be sold or leased to any other party. No permanent school fund land may be used by a state agency without [~~fair~~] market value compensation to the permanent school fund.

SECTION 5. Section 51.013, Natural Resources Code, is amended to read as follows:

Sec. 51.013. CLASSIFICATION AND VALUATION OF LAND. (a) As the public interest may require, the commissioner shall classify or reclassify [~~and value or revalue~~] all public school [~~and asylum~~] land and shall include a

designation of ~~[designate]~~ the land, including a classification as agricultural, grazing, timber, or a combination of these classifications based on the facts in the particular case.

(b) After the classification and determination of market value ~~[appraisement]~~ is entered on the records of the land office, no further action needs to be taken by the commissioner and no notice is required to be given to the county clerk for the classification and determination of market value ~~[appraisement]~~ to be effective.

SECTION 6. Section 51.018, Natural Resources Code, is amended to read as follows:

Sec. 51.018. RECORDS AND ACCOUNTS. The commissioner shall keep in his custody as records of his office each application, affidavit, obligation, and paper relating to the sale and lease of public school ~~[and asylum]~~ land and shall keep accurate accounts with each purchaser or lessee.

SECTION 7. Section 51.052, Natural Resources Code, is amended by amending Subsections (d), (e), (f), (g), (h), (i), and (j) and adding Subsection (k) to read as follows:

(d) Before the land under this chapter ~~[subchapter]~~ is sold, the appraiser ~~[appraisers for the land office]~~ must appraise the land at its market value and file a copy of the appraisal with the commissioner. No land covered by this chapter ~~[subchapter]~~ may be sold for less than the market value that appears in the appraisal made under this subsection.

(e) The owner of land that surrounds land in a tract ~~[of 700 acres or less]~~ shall have a preference right to purchase the tract before the land is made available for sale to any other person, provided the person having the preference right pays not less than the market value for the land as determined by the board.

(f) If the surrounding land is owned by more than one person, the owners of land with a common boundary with a tract of 1,200 ~~[700]~~ acres or less that is for sale shall have a preference right to purchase the tract before it is made available to any other person, provided the person with the preference right pays not less than the market value of the land as determined by the board and the board finds use of the preference to be in the best interest of the state. The board shall adopt rules to implement this preference right.

(g) If land is located within the boundaries of or adjacent to any state park, refuge, natural area, or historical site subject to the management and control of the Parks and Wildlife Department, the department has a preference right to purchase the land before it is made available for sale to any other person. A sale to the department under this section may not be for less than the ~~[fair]~~ market value of the land, as determined by the board.

(h) The board may sell or exchange any interest in the surface estate of public school land directly to any state agency, board, commission, or political subdivision or other governmental entity of this state without the necessity of a sealed bid sale. All sales or exchanges made pursuant to this subsection shall be for not less than ~~[fair]~~ market value as determined by the board and under such other terms and conditions the board determines to be in the best interest of the state.

(i) If no bid meeting minimum requirements is received for a tract of land offered at a sealed bid sale under Subchapter D of Chapter 32 of this code, the asset management division of the land office may solicit proposals or negotiate a sale, exchange, or lease of the land ~~[property]~~ to any person. The asset management division may also contract for the services of a real estate broker or of a private brokerage or real estate firm to assist in the real estate transaction. The sale price may not be less than the market ~~[appraised]~~ value ~~[of the land as determined by the asset management division]~~. The board must approve any negotiated sale, exchange, or lease of any land under this section.

(j) The board, in its sole discretion and in the best interests of the permanent school fund as determined by the board and without regard to requirements of local governments as to the necessity of any such dedication, may dedicate permanent school fund land to any governmental unit for the benefit and use of the public in exchange for nonmonetary consideration with a value reasonably equivalent to or greater than the market value of the dedicated land, if the board determines that such an exchange would benefit the permanent school fund. The asset management division of the land office shall determine the value of the nonmonetary consideration and shall file a copy of its determination with the commissioner. Examples of public purposes for which permanent school fund land may be dedicated under this subsection include but are not limited to: (1) rights-of-way for public roads, utilities, or other infrastructure; (2) public schools; (3) public parks; (4) government offices or facilities; (5) public recreation facilities; and (6) residential neighborhood public amenities.

(k) If an award of a bid under this section does not result in a final transaction, the asset management division of the land office may contract for the services of a real estate broker or of a private brokerage or real estate firm to assist in the real estate transaction.

SECTION 8. Section 51.054(c), Natural Resources Code, is amended to read as follows:

(c) The provisions of this section do not apply to oil and gas sold from public school ~~[and asylum]~~ land covered by Subchapter F, Chapter 52, of this code.

SECTION 9. Section 51.056(a), Natural Resources Code, is amended to read as follows:

(a) A person who wants to purchase public school ~~[or asylum]~~ land shall submit to the commissioner a separate written application for each tract.

SECTION 10. Section 51.057(a), Natural Resources Code, is amended to read as follows:

(a) An application for the purchase of public school ~~[or asylum]~~ land shall be delivered to the land office in a sealed envelope addressed to the commissioner with the words "application to buy land" and the date the land is to be sold endorsed on the envelope. Applications that do not have the required endorsements are nevertheless valid.

SECTION 11. Section 51.064(a), Natural Resources Code, is amended to read as follows:

(a) Any public school ~~[or asylum]~~ land offered for sale for which no application is made under Section 51.056 of this code may be sold to any person who files a proper application in the land office in the manner provided by law.

SECTION 12. Section 51.065(b), Natural Resources Code, is amended to read as follows:

(b) After being informed of any sale of public school ~~[or asylum]~~ land, the county clerk shall enter in his books opposite the description of the land sold, the name of the purchaser and the date of the sale.

SECTION 13. Section 51.070, Natural Resources Code, is amended to read as follows:

Sec. 51.070. UNPAID PRINCIPAL AND INTEREST ON PUBLIC SCHOOL LAND SALES. (a) Unpaid and delinquent principal and interest on sales of public school land shall bear interest at a rate set by the board, which principal and interest shall be payable at the times and on such terms as are established by the board by rule or by contract.

(b) No patent may be issued for any public school land until all unpaid principal and compounded interest is paid to the time of issuing the patent.

(c) Any unpaid principal and interest is considered delinquent on the 30th day after the date payment of the principal and interest is due for the obligation.

(d) After the payment of principal and interest becomes delinquent under the obligation, notice of delinquency and subsequent potential forfeiture must be provided by certified mail, return receipt requested, to the last known address of the obligee and must be documented in the records of the land office.

SECTION 14. Section 51.071(a), Natural Resources Code, is amended to read as follows:

(a) If principal and ~~[or]~~ interest on a sale of land is not paid when due, the land is subject to forfeiture by the commissioner by entry on the wrapper containing the papers "Land Forfeited" or similar words, the date of the forfeiture, and the official signature of the commissioner.

SECTION 15. Section 51.072, Natural Resources Code, is amended to read as follows:

Sec. 51.072. EFFECT OF FORFEITURE. In cases of forfeiture, the original obligations and reinstatement fees ~~[penalties]~~ are as binding as if no forfeiture occurred.

SECTION 16. Section 51.073(a), Natural Resources Code, is amended to read as follows:

(a) Before it is sold, the commissioner shall classify and determine the market value of land on which leases have been cancelled or have expired and land forfeited to the state.

SECTION 17. Section 51.074, Natural Resources Code, is amended to read as follows:

Sec. 51.074. REINSTATEMENT OF LAND PURCHASES. (a) If no rights of third persons have intervened, the purchasers or their vendees, heirs, or legal representatives, who claim land that has been forfeited for nonpayment of

principal and interest, may have the claim reinstated on written request by paying into the State Treasury the amount of all principal and interest due on the claim up to the date of reinstatement.

(b) The right to reinstate a claim under this section is limited to the last purchaser from the state, or his vendees, heirs, or legal representatives, and must be exercised within six months ~~[five years]~~ from the date of the forfeiture.

~~[(e) If there is a valid outstanding grazing lease that prevents reinstatement within the time provided in Subsection (b) of this section, the claim may be reinstated within 60 days after the grazing lease expires if the application for reinstatement together with the payment for all past due interest has been filed in the land office within five years from the date of forfeiture.]~~

SECTION 18. Section 51.076, Natural Resources Code, is amended to read as follows:

Sec. 51.076. LEGAL PROCEEDINGS. None of the provisions of Sections 51.071 through 51.072 and 51.074 through 51.075 of this code shall prevent the state from instituting legal proceedings necessary:

- (1) to enforce a forfeiture;
- (2) to recover the full amount of principal and interest ~~[and penalties]~~ that may be owed to the state at the time the forfeiture occurred; or
- (3) to protect another right to the land.

SECTION 19. Section 51.077, Natural Resources Code, is amended to read as follows:

Sec. 51.077. LIEN. To secure the payment of principal and interest due on a sale of public school land and ~~[;]~~ university land ~~[, and asylum land,]~~ the state has an express lien for the use and benefit of the fund to which the land belongs. The lien is in addition to any right and remedy that the state has for enforcement of the payment of principal and ~~[or]~~ interest due and unpaid, up to and including the period required to reinstate the land award and obligation.

SECTION 20. Subchapter C, Chapter 51, Natural Resources Code, is amended by adding Section 51.0771 to read as follows:

Sec. 51.0771. REINSTATEMENT FEE. (a) A reinstatement fee is due when a forfeited award is reinstated. The reinstatement fee is calculated at one and one-half percent of all amounts delinquent at the time of the reinstatement.

(b) The comptroller must receive the reinstatement fee before the forfeited award is reinstated.

(c) Amounts received in the form of a reinstatement fee are considered proceeds from the sale of permanent school fund land and shall be deposited in the permanent school fund.

SECTION 21. Section 51.079(a), Natural Resources Code, is amended to read as follows:

(a) An owner of public school land ~~[or asylum land]~~ purchased from the state may sell the land or a definite portion of the land in any size tract.

SECTION 22. Sections 51.121(a), (d), and (e), Natural Resources Code, are amended to read as follows:

(a) Unsold public school ~~[and asylum]~~ land may be leased for any purpose the commissioner determines is in the best interest of the state ~~[agricultural, grazing, or commercial purposes]~~ under terms and conditions set by the commissioner. Commercial improvements on land under this subsection shall not become the property of the state and shall be taxed in the same manner as other private property.

(d) In leases granted under this subchapter that are for terms of 20 years or more, the commissioner may grant the lessee a preference right to purchase the leased premises. In order to grant this preference right, the commissioner must include such a provision in the lease. The provision may provide that the preference right to purchase may be exercised at any time during the term of the lease. If the commissioner does include the preference right to purchase in the lease, the lessee shall have a preference right to purchase the leased premises before the leased premises are made available for sale to any other person. All sales under this subsection must be for not less than ~~[fair]~~ market value as determined by an appraiser ~~[General Land Office appraisers]~~ and under any other terms and conditions that the commissioner deems to be in the best interest of the state. The preference right to purchase granted under this subsection is superior to any other preference right to purchase granted under any other section of this code or under any other law. Nothing in this subsection shall be construed to allow the commissioner to grant a preference right to purchase submerged land.

(e) Subject to the provisions of Title 2, Utilities Code, any district created by Section 59, Article XVI, Texas Constitution, that leases unsold public school ~~[or asylum]~~ land for power generation through the use of renewable energy sources, such as wind, solar, or geothermal energy and other sustainable sources, or a district participating in a power generation project using renewable energy sources which is located on unsold public school ~~[or asylum]~~ lands may distribute and sell electric energy generated on public school ~~[or asylum]~~ lands within or without the boundaries of the district and may issue bonds to accomplish such purposes pursuant to Chapter 1371, Government Code, or other applicable law. For any such power generation project which is located on both public lands and private lands, the district may sell outside its boundaries only the pro rata portion of the total amount as is generated on the public lands. All electric energy generated pursuant to this section shall be sold for resale only to utilities authorized to make retail sales under Title 2, Utilities Code, and shall be subject to the solicitation process and integrated resource planning process authorized by that title.

SECTION 23. Section 51.131(a), Natural Resources Code, is amended to read as follows:

(a) For each lease issued under this subchapter for agricultural or grazing purposes, the commissioner may ~~[shall]~~ require the lessee to implement a soil and water conservation plan approved by the commissioner. The commissioner, in reviewing a plan, and the lessee, in implementing a plan, may be assisted by the United States Department of Natural Resources ~~[Agriculture Soil]~~ Conservation Service.

SECTION 24. Section 51.174(c), Natural Resources Code, is amended to read as follows:

(c) The commissioner shall advise the board relating to the ~~[fair]~~ market value of the surface and mineral estates of vacant land.

SECTION 25. Section 51.175(b), Natural Resources Code, is amended to read as follows:

(b) The board shall adopt rules governing the terms and conditions for the sale and lease of a vacancy. The rules shall be adopted and amended as necessary to be consistent with real property law of this state and other applicable law.

SECTION 26. Section 51.246(b), Natural Resources Code, is amended to read as follows:

(b) Any person who owns an interest in a titled or patented survey or any portion of a titled or patented survey in which excess acreage is located and who desires to pay for the excess acreage shall file with the commissioner a request for a determination of market value by an appraiser ~~[an appraisement of the land]~~ with corrected field notes in the form provided by law, together with a sworn statement of facts relating to his right to purchase and other evidence of his right to purchase which may be required by the commissioner. The corrected field notes shall describe the patented tract, and if purchasing excess in a portion of a tract, shall include a description of the portion in which the applicant is making application to purchase excess.

SECTION 27. Subchapter G, Chapter 51, Natural Resources Code, is amended by adding Section 51.2995 to read as follows:

Sec. 51.2995. WAIVER OR REDUCTION OF EASEMENT FEES IN CERTAIN CIRCUMSTANCES. The commissioner may waive or reduce an easement fee if the easement granted is to improve the infrastructure of the land, including production and transportation of alternative or renewable energy resources.

SECTION 28. Section 51.302(g), Natural Resources Code, is amended to read as follows:

(g) In lieu of seeking administrative penalties or removal of the facility or structure under Section 51.3021 of this code, the commissioner may elect to accept ownership of the facility or structure as a fixture and may exercise the state's rights as owner of the facility or structure by filing notice of such ownership in the real property records of the county in which the facility or structure is located. For facilities or structures located on coastal public land and connected with the ownership of adjacent littoral property, notice of ownership shall be filed in the county in which the adjacent littoral ~~[to the]~~ property ~~[on which the facility or structure]~~ is located. ~~[A notice under this subsection shall contain a legal description of the adjacent property, the owner of property if known, and a description of the facility or structure. A state agency fund or trust fund is not liable for the condition of any facility or structure as a result of acquiring an interest in the facility or structure under this section.]~~

SECTION 29. Section 51.342, Natural Resources Code, is amended to read as follows:

Sec. 51.342. SALE OR LEASE OF TIMBER. Timber located on public land shall be sold or leased in full tracts for cash at its [~~fair~~] market value.

SECTION 30. Section 51.402, Natural Resources Code, is amended to read as follows:

Sec. 51.402. ACQUISITION OF INTEREST IN REAL PROPERTY. (a) The board may use the money designated under Section 51.401 of this subchapter to acquire real property and to pay the expenses of acquisitions and sales for any of the following purposes:

(1) to add to a tract of public school land to form a tract of sufficient size to be manageable;

(2) to add contiguous land to public school land;

(3) to acquire, as public school land, real property of unique biological, commercial, geological, cultural, or recreational value; or

(4) to acquire mineral and royalty interests for the use and benefit of the permanent school fund.

(b) Before acquiring real property under Subsection (a) of this section, the board must determine that the acquisition is in the best interest of the permanent school fund.

SECTION 31. Section 51.403, Natural Resources Code, is amended to read as follows:

Sec. 51.403. MARKET VALUE. (a) The board may not pay more than market value, as determined by an appraiser, for any real property acquired under this chapter [~~subchapter~~].

(b) A sale under this chapter must be for not less than market value and under any other terms and conditions that the commissioner determines are in the best interest of the state.

(c) Market value shall be determined by an appraisal of the real property performed by an appraiser [~~appraisers employed by the land office~~].

SECTION 32. Section 51.404, Natural Resources Code, is amended to read as follows:

Sec. 51.404. TITLE SECURITY. (a) Real property [~~Property~~] acquired under this chapter [~~subchapter~~] shall be conveyed to the state by warranty deed.

(b) The board may purchase or acquire title insurance for any real property purchased under this chapter [~~subchapter~~].

SECTION 33. The changes in law made by this Act to Sections 51.070, 51.071, 51.074, and 51.076, Natural Resources Code, relating to unpaid principal on public school land sales, apply only to unpaid principal that accrues on or after the effective date of this Act. Unpaid principal that accrues before the effective date of this Act is governed by the law in effect immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

SECTION 34. 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.

**HB 2485 - HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS**

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

HB 2485, A bill to be entitled An Act relating to internal auditing of state agencies.

On motion of Representative Hochberg, the house concurred in the senate amendments to **HB 2485** by (Record 852): 146 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; 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; Hope; Hopson; Howard; Hughes; Hunter; Isett; Jones, D.; Jones, E.; Jones, J.; Keel; Keffer, B.; Keffer, J.; King; Kolkhorst; Krusee; Kuempel; Laney; Laubenberg; Lewis; Luna; Mabry; Madden; 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.; Smithee; Solis; Solomons; Stick; Swinford; Taylor; Telford; Thompson; Truitt; Turner; Uresti; Van Arsdale; Villarreal; West; Wilson; Wise; Wohlgemuth; Wolens; Wong; Woolley; Zedler.

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

Absent, Excused — Marchant.

Absent — Talton.

Senate Committee Substitute

HB 2485, A bill to be entitled An Act relating to internal auditing of state agencies.

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

SECTION 1. Section 2102.004, Government Code, is amended to read as follows:

Sec. 2102.004. APPLICABILITY. (a) Sections 2102.005-2102.012 apply only to a ~~[This chapter applies to each]~~ state agency that:

- (1) has an annual operating budget that exceeds \$10 million;
- (2) has more than 100 full-time equivalent employees as authorized by the General Appropriations Act; or
- (3) receives and processes more than \$10 million in cash in a fiscal year.

(b) Sections 2102.013 and 2102.014 apply to each state agency that receives an appropriation and that is not described by Subsection (a).

SECTION 2. Chapter 2102, Government Code, is amended by adding Sections 2102.013 and 2102.014 to read as follows:

Sec. 2102.013. ANNUAL RISK ASSESSMENT; REPORT. (a) A state agency described by Section 2102.004(b) shall conduct each year a formal risk assessment consisting of an executive management review of agency functions, activities, and processes.

(b) The risk assessment must:

(1) evaluate the probability of occurrence and the likely effect of financial, managerial, and compliance risks and of risks related to the use of information technology; and

(2) rank risks according to the probability of occurrence and likely effect of the risks evaluated.

(c) The state agency shall submit the written risk assessment to the state auditor in the form and at the time prescribed by the state auditor.

Sec. 2102.014. EVALUATION OF RISK ASSESSMENT REPORTS; AUDITS. (a) Based on risk assessment and subject to the legislative audit committee's approval of including the work described by this subsection in the audit plan under Section 321.013(c), the state auditor shall:

(1) evaluate each report submitted under Section 2102.013;

(2) identify agencies with significant financial, managerial, or compliance risk or significant risk related to the use of information technology; and

(3) recommend to the governor that the identified agencies obtain an audit to address the significant risks identified by the state auditor.

(b) The governor may order an agency identified under this section to:

(1) obtain an audit under governmental auditing standards;

(2) submit reports and corrective action plans as prescribed by Section 2102.0091; and

(3) report to the state auditor the status of the agency's implementation of audit recommendations in the form and addressing issues as prescribed by the state auditor.

(c) The governor may provide funds to agencies as necessary to pay the costs of audits ordered under this section from any funds appropriated to the governor for this purpose.

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.

HB 2947 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

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

HB 2947, A bill to be entitled An Act relating to cost control and accountability in the decentralization of state programs and services.

On motion of Representative Kuempel, the house concurred in the senate amendments to **HB 2947** by (Record 853): 145 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; 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; Hope; Hopson; Howard; Hughes; Hunter; Isett; Jones, D.; Jones, E.; Jones, J.; Keel; Keffer, B.; Keffer, J.; King; Kolkhorst; Krusee; Kuempel; Laney; Laubenberg; Lewis; Luna; Mabry; Madden; 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.; Smithee; Solis; Solomons; Stick; Swinford; Taylor; Telford; Thompson; Truitt; Turner; Uresti; Van Arsdale; Villarreal; West; Wilson; Wise; Wolens; Wong; Woolley; Zedler.

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

Absent, Excused — Marchant.

Absent — Talton; Wohlgenuth.

Senate Committee Substitute

HB 2947, A bill to be entitled An Act relating to state agency decentralization of services.

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

SECTION 1. Chapter 391, Local Government Code, is amended by adding Section 391.0091 to read as follows:

Sec. 391.0091. STATE AGENCY CONSULTATION WITH REGIONAL PLANNING COMMISSIONS. (a) In this section, "service" includes a program.

(b) If a state agency determines that a service provided by that agency should be decentralized to a multicounty region, the agency shall use a state planning region or combination of regions for the decentralization.

(c) A state agency that decentralizes a service provided to more than one public entity or nonprofit organization in a region shall consult with the commission for that region in planning the decentralization. The commission shall consult with each affected public entity or nonprofit organization.

(d) A state agency, in planning for decentralization of a service in a region, shall consider using a commission for that service to:

(1) achieve efficiencies through shared costs for:

- (A) executive management;
- (B) administration;
- (C) financial accounting and reporting;
- (D) facilities and equipment;
- (E) data services; and
- (F) audit costs;

(2) improve the planning, coordination, and delivery of services by coordinating the location of services;

(3) increase accountability and local control by placing a service under the oversight of the commission; and

(4) improve financial oversight through the auditing and reporting required under this chapter.

(e) This section does not apply to a service:

(1) that continues to be operated by a state agency through a regional administrative office of that agency; or

(2) for which the state agency determines that a law, rule, or program policy makes use of the geographic area of a single county or adjacent counties more appropriate.

SECTION 2. Subchapter B, Chapter 2001, Government Code, is amended by adding Section 2001.041 to read as follows:

Sec. 2001.041. COMPLIANCE WITH LAW ON DECENTRALIZATION.
A state agency rule, order, or guide relating to decentralization of agency services or programs must include a statement of the manner in which the agency complied with Section 391.0091, Local Government Code.

SECTION 3. Section 2001.041, Government Code, as added by this Act, applies only to a state agency rule, order, or guide adopted on or after September 1, 2003.

SECTION 4. This Act takes effect September 1, 2003.

HB 341 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

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

HB 341, A bill to be entitled An Act relating to parenting and postpartum counseling information to be provided to a pregnant woman.

On motion of Representative Uresti, the house concurred in the senate amendments to **HB 341**.

Senate Committee Substitute

HB 341, A bill to be entitled An Act relating to parenting and postpartum counseling information to be provided to a pregnant woman.

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

SECTION 1. Chapter 161, Health and Safety Code, is amended by adding Subchapter R to read as follows:

SUBCHAPTER R. PARENTING AND POSTPARTUM COUNSELING
INFORMATION

Sec. 161.451. RESOURCE LIST. (a) A hospital, birthing center, physician, nurse midwife, or midwife who provides prenatal care to a pregnant woman during gestation or at delivery of an infant shall:

(1) provide the woman with a resource list of the names, addresses, and phone numbers of professional organizations that provide postpartum counseling and assistance to parents; and

(2) document in the patient's record that the patient received the information described in subdivision (1).

(3) retain the documentation for at least three years in the hospital's, birthing center's, physician's, nurse midwife's or midwife's records.

(b) The list must include resources a parent may contact to receive counseling and assistance for postpartum depression and other emotional traumas associated with pregnancy and parenting.

(c) A hospital, birthing center, physician, nurse midwife or midwife who provides prenatal care to a woman during gestation or at delivery is presumed to have complied with this section if the woman received prior prenatal care from another hospital, birthing center, physician, or midwife in this state during the same pregnancy.

Sec. 161.452. DUTIES OF DEPARTMENT. The department shall:

(1) establish guidelines for the provision of the information required by Section 161.451;

(2) make available on the department's website a printable list of professional organizations that provide postpartum counseling and assistance to parents; and

(3) update the list required under Subdivision (2) monthly.

SECTION 2. This Act takes effect September 1, 2003.

HB 820 - HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS

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

HB 820, A bill to be entitled An Act relating to the eligibility of certain appellate judges to retire with full benefits.

On motion of Representative Grusendorf, the house concurred in the senate amendments to **HB 820**.

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

Amend **HB 820** as follows:

(3) is at least 55 years old and has at least 20 years of service credited in the retirement system, regardless of whether the member currently holds a judicial office; or

(4) has served at least two full terms on an appellate court and the sum of the member's age and amount of service credited in the retirement system equals or exceeds the number 70, regardless of whether the member currently holds a judicial office.

**HB 849 - HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS**

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

HB 849, A bill to be entitled An Act relating to the regulation of tow truck lights by political subdivisions.

On motion of Representative Denny, the house concurred in the senate amendments to **HB 849**.

Senate Committee Substitute

HB 849, A bill to be entitled An Act relating to the regulation of tow trucks, to the authority of a political subdivision of this state to regulate tow trucks, and to insurance for commercial motor vehicles; providing penalties.

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

SECTION 1. Section 2303.151(d), Occupations Code, is amended to read as follows:

(d) A notice under this section must:

(1) be correctly addressed;

(2) carry sufficient postage; and

(3) be sent by certified mail, return receipt requested or electronic certified mail.

SECTION 2. Section 2303.155(b), Occupations Code, is amended to read as follows:

(b) The operator of a vehicle storage facility or governmental vehicle storage facility may charge the owner of a vehicle stored or parked at the facility:

(1) a notification fee set in a reasonable amount not to exceed \$25 for providing notice under this subchapter;

(2) an impoundment fee of \$20 [~~\$40~~] for any action that:

(A) is taken by or at the direction of the owner or operator of the facility; and

(B) is necessary to preserve, protect, or service a vehicle stored or parked at the facility; and

(3) a daily storage fee of not less than \$5 and not more than \$15 for each day or part of a day the vehicle is stored at the facility.

SECTION 3. Section 545.306(a), Transportation Code, is amended to read as follows:

(a) The commissioners court of a county with a population of 3.3 million or more shall by ordinance provide for the licensing of or the granting of a permit to a person to remove or store a vehicle authorized by Section 545.305 to be removed in an unincorporated area of the county. The ordinance must include rules to ensure the protection of the public and the safe and efficient operation of

towing and storage services in the county and may not regulate or restrict the use of lighting equipment more than the extent allowed by state and federal law. The sheriff shall determine the rules included in the ordinance with the review and consent of the commissioners court.

SECTION 4. Section 643.053, Transportation Code, is amended to read as follows:

Sec. 643.053. FILING OF APPLICATION. An application under Section 643.052 must be filed with the department and accompanied by:

(1) an application fee of \$100 plus a \$10 fee for each vehicle requiring registration other than a tow truck or a \$25 fee for each tow truck the motor carrier proposes to operate;

(2) evidence of insurance or financial responsibility as required by Section 643.103(a); and

(3) any insurance filing fee required under Section 643.103(c).

SECTION 5. Sections 643.057(a), (b), and (d), Transportation Code, are amended to read as follows:

(a) A motor carrier may not operate an additional vehicle requiring registration unless the carrier pays a registration fee of \$10 for each additional vehicle other than a tow truck or \$25 for each tow truck and shows the department evidence of insurance or financial responsibility for the vehicle in an amount at least equal to the amount set by the department under Section 643.101.

(b) A motor carrier is not required to pay the applicable ~~[\$10]~~ registration fee under Subsection (a) for a vehicle for which the same fee is required and that replaces a vehicle for which the fee has been paid.

(d) The department may not collect more than \$10 in equipment registration fees for a vehicle other than a tow truck registered under both this subchapter and Chapter 645 or more than \$25 if the vehicle is a tow truck.

SECTION 6. Section 643.058(c), Transportation Code, is amended to read as follows:

(c) A motor carrier may renew a registration under this subchapter by:

(1) supplementing the application with any new information required under Section 643.056;

(2) paying a \$10 fee for each vehicle requiring registration other than a tow truck or a fee of \$25 for each tow truck the carrier operates; and

(3) providing the department evidence of continuing insurance or financial responsibility in an amount at least equal to the amount set by the department under Section 643.101.

SECTION 7. Section 643.061(b), Transportation Code, is amended to read as follows:

(b) A motor carrier applying for registration under this section must pay:

(1) a \$20 fee for each vehicle registered other than a tow truck or a fee of \$50 for each tow truck under Subsection (a)(1);

(2) a \$10 fee for each vehicle registered other than a tow truck or a fee of \$25 for each tow truck under Subsection (a)(2); and

(3) application and insurance filing fees the department by rule adopts in an amount not to exceed \$100 each.

SECTION 8. Section 643.101, Transportation Code, is amended by adding Subsections (d) and (e) to read as follows:

(d) The owner of a tow truck that is used to perform nonconsent tows, as defined by Section 643.201, shall maintain on-hook cargo insurance in the amount of at least \$50,000 per truck.

(e) Unless state law permits a commercial motor vehicle to be self-insured, any insurance required for a commercial motor vehicle must be obtained from:

(1) an insurer authorized to do business in this state whose aggregate net risk, after reinsurance, under any one insurance policy is not in excess of 10 percent of the insurer's policyholders' surplus, and credit for such reinsurance is permitted by law; or

(2) an insurer that meets the eligibility requirements of a surplus lines insurer pursuant to Article 1.14-2, Insurance Code. Notwithstanding any other provision in law, an insurer in compliance with this subsection shall be deemed to be in compliance with any rating or financial criteria established for motor carriers by any political subdivision of the state.

SECTION 9. Section 643.201(a), Transportation Code, is amended to read as follows:

(a) In addition to the registration requirements of Subchapter B, a political subdivision of this state may regulate the operation of a tow truck to the extent allowed by federal law, except that a political subdivision may not issue a more restrictive regulation for the use of lighting equipment on a tow truck than is imposed by this title.

SECTION 10. Subchapter E, Chapter 643, Transportation Code, is amended by adding Sections 643.203-643.208 to read as follows:

Sec. 643.203. REGULATION BY POLITICAL SUBDIVISIONS OF FEES FOR NONCONSENT TOWS. The governing body of a political subdivision may regulate the fees that may be charged or collected in connection with a nonconsent tow originating in the territory of the political subdivision.

Sec. 643.204. TOWING FEE STUDIES. (a) The governing body of a political subdivision that regulates nonconsent tow fees shall establish procedures by which a towing company may request that a towing fee study be performed.

(b) The governing body of the political subdivision shall establish or amend the allowable fees for nonconsent tows at amounts that represent the fair value of the services of a towing company and are reasonably related to any financial or accounting information provided to the governing body.

Sec. 643.205. FEES FOR NONCONSENT TOWS IN OTHER AREAS. (a) In an area in which no political subdivision regulates the fees that may be charged or collected for a nonconsent tow from private property, a towing company may charge and collect a fee for the tow of a motor vehicle from private property in an amount not to exceed an amount equal to 150 percent of the fee that the towing company would have been authorized to charge for a nonconsent tow made at the request of a peace officer of the political subdivision in which the private property is located.

(b) A towing company may charge and collect a fee for the tow of a vehicle, with a gross vehicle weight rating in excess of 26,000 pounds, from private property in an amount not to exceed an amount equal to 125 percent of the fee that the towing company would have been authorized to charge for a nonconsent tow made at the request of a peace officer of the political subdivision in which the private property is located.

Sec. 643.206. STORAGE OF TOWED VEHICLES. (a) A towing company that makes a nonconsent tow shall tow the vehicle to a vehicle storage facility that is operated by a person who holds a license to operate the facility under Chapter 2303, Occupations Code.

(b) A storage or notification fee imposed in connection with a motor vehicle towed to a vehicle storage facility is governed by Chapter 2303, Occupations Code.

(c) Except as provided by this chapter or Chapter 2303, Occupations Code, a fee may not be charged or collected without the prior written consent of the vehicle owner or operator.

Sec. 643.207. REQUIRED FILING. (a) Before January 31 of each year, a towing company shall file with the department a schedule showing each towing fee that the towing company charges or collects in connection with a nonconsent tow.

(b) If a political subdivision begins regulating nonconsent tow fees, the fees shall be reported to the department by the towing company before the 30th day after the regulation goes into effect.

(c) Any changes in nonconsent tow fees regulated by a political subdivision shall be reported to the department by the towing company before the 30th day after the effective date of the change.

(d) The department shall make towing fee schedules available on the department's Internet website. The department shall make no determination as to the reasonableness of a towing fee schedule.

Sec. 643.208. REQUIRED POSTING. All towing and storage fees shall be posted at the licensed vehicle storage facility to which the motor vehicle has been delivered and shall be posted in view of the person who claims the vehicle.

SECTION 11. Section 643.252(a), Transportation Code, is amended to read as follows:

(a) The department may suspend or revoke a registration issued under this chapter or place on probation a motor carrier whose registration is suspended if a motor carrier:

(1) fails to maintain insurance or evidence of financial responsibility as required by Section 643.101(a), (b), ~~(c)~~, or (d) or 643.153(b);

(2) fails to keep evidence of insurance in the cab of each vehicle as required by Section 643.103(b);

(3) fails to register a vehicle requiring registration;

(4) knowingly provides false information on any form filed with the department under this chapter; or

(5) violates a rule adopted under Section 643.063.

SECTION 12. The heading to Section 643.253, Transportation Code, is amended to read as follows:

Sec. 643.253. OFFENSES AND PENALTIES [~~CRIMINAL PENALTY~~].

SECTION 13. Section 643.253, Transportation Code, is amended by amending Subsection (c) and adding Subsections (d)-(f) to read as follows:

(c) Except as provided by Subsection (e), an [An] offense under this section is a Class C misdemeanor.

(d) A person commits an offense if the person:

(1) violates an ordinance, resolution, order, rule, or regulation of a political subdivision adopted under Section 643.201 or 643.203, for which the political subdivision does not prescribe the penalty;

(2) charges or collects a fee in a political subdivision that regulates the operation of tow trucks under Section 643.201 or 643.203 that is not authorized or is greater than the authorized amount of the fee;

(3) charges or collects a fee greater than the amount authorized under Section 643.205;

(4) charges or collects a fee in excess of the amount filed with the department under Section 643.207;

(5) violates Section 643.206; or

(6) violates a rule of the department applicable to a tow truck and towing company.

(e) An offense under Subsection (d) is a misdemeanor punishable by a fine of not less than \$200 or more than \$1,000 per violation.

(f) A peace officer may issue a citation for a violation under this section.

SECTION 14. Section 683.001, Transportation Code, is amended by adding Subdivisions (9) and (10) to read as follows:

(9) "Abandoned nuisance vehicle" means a motor vehicle that is at least 10 years old and is of a condition only to be junked, crushed, or dismantled.

(10) "Vehicle storage facility" means a vehicle storage facility, as defined by Section 2303.002, Occupations Code, that is operated by a person who holds a license issued under Chapter 2303 of that code to operate that vehicle storage facility.

SECTION 15. Section 683.012, Transportation Code, is amended by adding Subsection (e) to read as follows:

(e) A law enforcement agency is not required to send a notice, as otherwise required by Subsection (a), if the agency has received notice from a vehicle storage facility that an application has or will be submitted to the department for the disposal of the vehicle.

SECTION 16. Section 683.034(e), Transportation Code, is amended to read as follows:

(e) If the law enforcement agency does not take the vehicle into custody before the 31st day after the date notice is sent under Section 683.012:

(1) the law enforcement agency may not take the vehicle into custody; and

(2) the storage facility may dispose of the vehicle under:

(A) Chapter 70, Property Code, except that notice under Section 683.012 satisfies the notice requirements of that chapter; or

(B) Chapter 2303, Occupations Code, if:

(i) the storage facility is a vehicle storage facility; and

(ii) the vehicle is an abandoned nuisance vehicle.

SECTION 17. Sections 685.009(c) and (e), Transportation Code, are amended to read as follows:

(c) The issues ~~[sole issue]~~ in a hearing under this chapter are:

(1) ~~is~~ whether probable cause existed for the removal and placement of the vehicle;

(2) whether a towing charge imposed or collected in connection with the removal or placement of the vehicle was greater than the amount authorized by the political subdivision under Section 643.201 or 643.203;

(3) whether a towing charge imposed or collected in connection with the removal or placement of the vehicle was greater than the amount authorized under Section 643.204 or 643.205; or

(4) whether a towing charge imposed or collected in connection with the removal or placement of the vehicle was greater than the amount filed with the department under Section 643.207.

(e) The court may award:

(1) court costs to the prevailing party; ~~and~~

(2) the reasonable cost of photographs submitted under Section 685.007(b)(8) to a vehicle owner or operator who is the prevailing party; and

(3) an amount equal to the amount that the towing charge exceeded fees regulated by a political subdivision or authorized by this code or by Chapter 2303, Occupations Code.

SECTION 18. (a) This Act takes effect September 1, 2003.

(b) The change in law made by this Act applies only to an offense committed on or after September 1, 2003.

(c) An offense committed before September 1, 2003, is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before September 1, 2003, if any element of the offense was committed before that date.

HB 1363 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

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

HB 1363, A bill to be entitled An Act relating to funding for the Texas Academy of Mathematics and Science.

On motion of Representative Crossover, the house concurred in the senate amendments to **HB 1363**.

Senate Committee Substitute

HB 1363, A bill to be entitled An Act relating to funding for the Texas Academy of Mathematics and Science.

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

SECTION 1. Section 105.301, Education Code, is amended by amending Subsection (e) and adding Subsection (f) to read as follows:

(e) The academy is not subject to the provisions of this code, or to the rules of the Texas Education Agency, regulating public schools, except that:

(1) professional employees of the academy are entitled to the limited liability of an employee under Section 22.051 or 22.052;

(2) a student's attendance at the academy satisfies compulsory school attendance requirements; and

(3) for each student enrolled, the academy is entitled to allotments from the foundation school program under Chapter 42 as if the academy were a school district without a tier one local share for purposes of Section 42.253[~~except that the academy has a local share applied that is equivalent to the local fund assignment of the Denton Independent School District~~].

(f) If in any academic year the amount of the allotments under Subsection (e)(3) exceeds the amount of state funds paid to the academy under this section in the fiscal year ending August 31, 2003, the commissioner shall set aside from the total amount of funds to which school districts are entitled under Section 42.253(c) an amount equal to the excess amount and shall distribute that amount to the academy. After deducting the amount set aside and paid to the academy by the commissioner under this subsection, the commissioner shall reduce the amount to which each district is entitled under Section 42.253(c) in the manner described by Section 42.253(h). A determination of the commissioner under this section is final and may not be appealed.

SECTION 2. Section 105.301(e), Education Code, as amended by this Act, applies beginning with the 2003-2004 academic year.

SECTION 3. This Act takes effect September 1, 2003.

**HB 1470 - HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS**

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

HB 1470, A bill to be entitled An Act relating to guardianships and the jurisdiction of certain courts; providing a criminal penalty.

On motion of Representative Hartnett, the house concurred in the senate amendments to **HB 1470**.

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

Amend **HB 1470** on page 32, by striking lines 18 to 21 and subsisting the following:

"(d) This section does not apply to a governmental entity where the taking, retention, or concealment of the ward was authorized by Subtitle E, Title 5, Family Code, or Chapter 48, Human Resources Code."

HB 2032 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

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

HB 2032, A bill to be entitled An Act relating to the confidentiality of e-mail addresses under the public information law.

On motion of Representative Hochberg, the house concurred in the senate amendments to **HB 2032**.

HB 2032 - STATEMENT OF LEGISLATIVE INTENT

This bill as amended does not affect or change the ability of members of the legislature to get information from one another. Nor is it the intent that this bill affect the ability of an employee or officer to use confidential information for legislative purposes.

Hochberg

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

Amend **HB 2032** on page 1, line 39 by adding the following appropriately numbered SECTION and renumbering subsequent SECTIONS accordingly:

SECTION 2. Section 552.352, Government Code, is amended by adding Subsections (a-1) and (a-2) to read as follows:

(a-1) An officer or employee of a governmental body who obtains access to confidential information under Section 552.008 commits an offense if the officer or employee knowingly:

(1) uses the confidential information for a purpose other than the purpose for which the information was received or for a purpose unrelated to the law that permitted the officer or employee to obtain access to the information, including solicitation of political contributions or solicitation of clients;

(2) permits inspection of the confidential information by a person who is not authorized to inspect the information; or

(3) discloses the confidential information to a person who is not authorized to receive the information.

(a-2) For purposes of Subsection (a-1), a member of an advisory committee to a governmental body who obtains access to confidential information in that capacity is considered to be an officer or employee of the governmental body.

HB 2072 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

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

HB 2072, A bill to be entitled An Act relating to payment by teachers for missing textbooks in public schools.

On motion of Representative Grusendorf, the house concurred in the senate amendments to **HB 2072** by (Record 854): 142 Yeas, 0 Nays, 2 Present, not voting.

Yeas — Allen; Alonzo; 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.; 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; Hope; Hopson; Howard; Hughes; Hunter; Isett; Jones, D.; Jones, E.; Jones, J.; Keel; Keffer, B.; Keffer, J.; King; Kolkhorst; Krusee; Kuempel; Laney; Laubenberg; Lewis; Luna; Mabry; Madden; Martinez Fischer; McCall; McClendon; McReynolds; Menendez; Mercer; Merritt; Miller; Moreno, J.; Moreno, P.; Morrison; Mowery; Naishtat; Nixon; Noriega; Oliveira; Olivo; Paxton; Phillips; Pickett; Quintanilla; Raymond; Reyna; Riddle; Ritter; Rodriguez; Rose; Seaman; Smith, T.; Smith, W.; Smithee; Solis; Solomons; Stick; Swinford; Taylor; Telford; Thompson; Truitt; Turner; Uresti; Van Arsdale; Villarreal; West; Wilson; Wise; Wohlgemuth; Wolens; Wong; Woolley; Zedler.

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

Absent, Excused — Marchant.

Absent — Callegari; Peña; Pitts; Puente; Talton.

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

Amend **HB 2072** as follows:

In SECTION 1 of the bill, in proposed Section 31.104(e), Education Code between "textbook" and the "that", insert "or instructional technology"

HB 3378 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

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

HB 3378, A bill to be entitled An Act relating to granting statutory authority to certain governmental entities to reduce certain expenditures and to the operation of certain funds.

On motion of Representative Hope, the house concurred in the senate amendments to **HB 3378** by (Record 855): 142 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; Castro; Chavez; Chisum; Christian; Coleman; Cook, B.; Cook, R.; Corte; Crabb; Crownover; Davis, J.; Davis, Y.; Dawson; Delisi; Denny; Deshotel; Driver; Dunnam; Dutton; Edwards; Eissler; Elkins; Ellis; Escobar; Farabee; Farrar; Flores; Flynn; Gallego; Garza; Gattis; Geren; Giddings; Goolsby; Griggs; Grusendorf; Guillen; Gutierrez; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Heflin; Hegar; Hilderbran; Hill; Hochberg; Hodge;

Homer; Hope; Hopson; Howard; Hughes; Hunter; Isett; Jones, D.; Jones, E.; Jones, J.; Keel; Keffer, B.; Keffer, J.; King; Kolkhorst; Krusee; Kuempel; Laubenberg; Lewis; Luna; Mabry; Madden; 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; Puente; Quintanilla; Raymond; Reyna; Riddle; Ritter; Rodriguez; Rose; Seaman; Smith, T.; Smith, W.; Smith; Solis; Solomons; Stick; Swinford; Taylor; Telford; Thompson; Truitt; Turner; Uresti; Van Arsdale; Villarreal; West; Wilson; Wise; Wohlgemuth; Wolens; Wong; Woolley; Zedler.

Present, not voting — Mr. Speaker; Goodman; Hupp(C); Laney.

Absent, Excused — Marchant.

Absent — Dukes; Eiland; Talton.

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

Amend **HB 3378** (House engrossment printing) by inserting the following new SECTION 2.04 in the bill (page 3, between lines 18 and 19) to read as follows:

SECTION 2.04. TEXAS DEPARTMENT OF INSURANCE. Section 802.055, Insurance Code, as effective June 1, 2003, is amended to read as follows:

Sec. 802.055. COSTS PAID BY INSURANCE COMPANY. ~~[(a)]~~ An insurance company shall pay all ~~[the]~~ costs of preparing and furnishing to the National Association of Insurance Commissioners the information required under Section 802.052, including any related filing fees.

~~[(b) Except as provided by Subsection (a), costs relating to providing the information required under Section 802.052 may not be assessed against an insurance company.]~~

HB 942 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

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

HB 942, A bill to be entitled An Act relating to certain bond requirements for persons engaged in certain activities under the jurisdiction of the Railroad Commission of Texas other than the ownership or operation of wells.

On motion of Representative Chisum, the house concurred in the senate amendments to **HB 942**.

Senate Committee Substitute

HB 942, A bill to be entitled An Act relating to certain bond requirements for persons engaged in certain activities under the jurisdiction of the Railroad Commission of Texas other than the ownership or operation of wells.

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

SECTION 1. Section 91.104(b), Natural Resources Code, as effective September 1, 2004, is amended to read as follows:

(b) A person required to file a bond, letter of credit, or cash deposit under Section 91.103 who is an inactive operator or who operates one or more wells ~~[and is not involved in any other activities that require the filing of a bond, letter of credit, or cash deposit]~~ must, at the time of filing or renewing an organization report required by Section 91.142, file:

- (1) an individual bond as provided under Section 91.1041;
- (2) a blanket bond as provided under Section 91.1042; or
- (3) a letter of credit or cash deposit in the same amount as required for an individual bond under Section 91.1041 or a blanket bond under Section 91.1042.

SECTION 2. Section 91.109, Natural Resources Code, as effective until September 1, 2004, is amended to read as follows:

Sec. 91.109. FINANCIAL SECURITY FOR PERSONS INVOLVED IN ACTIVITIES OTHER THAN OPERATION OF WELLS ~~[Disposal Site Bond]~~.

(a) A person applying for or acting under a commission permit to store, handle, treat, reclaim, or dispose of oil and gas waste may be required by the commission to maintain a performance bond or other form of financial security conditioned that the permittee will operate and close the storage, handling, treatment, reclamation, or disposal site in accordance with state law, commission rules, and the permit to operate the site. However, this section does not authorize the commission to require a bond or other form of financial security for saltwater disposal pits, emergency saltwater storage pits (including blow-down pits), collecting pits, or skimming pits provided that such pits are used in conjunction with the operation of an individual oil or gas lease. Subject to the refund provisions of Section 91.1091 of this code, proceeds from any bond or other form of financial security required by this section shall be placed in the oil-field cleanup fund. Each bond or other form of financial security shall be renewed and continued in effect until the conditions have been met or release is authorized by the commission.

(b) In addition to the financial security requirements of Subsection (a), a person required to file a bond or alternate form of financial security under Section 91.103 who is involved in activities other than the ownership or operation of wells must file the bond or alternate form of financial security at the time of filing or renewing an organization report required by Section 91.142 according to the following schedule:

- (1) no bond, letter of credit, or cash deposit if the person is a:
 - (A) local distribution company;
 - (B) gas marketer
 - (C) crude oil nominator;
 - (D) first purchaser;
 - (E) well servicing company;
 - (F) survey company;
 - (G) salt water hauler;
 - (H) gas nominator;

(I) gas purchaser; or

(J) well plugger; or

(2) a bond, letter of credit, or cash deposit in an amount not to exceed \$25,000 if the persons involved in an activity that is not associated with the ownership or operation of wells and is not listed in Subdivision (1).

(c) A person who engages in more than one activity or operation, including well operation, for which a bond or alternate form of financial security is required under this subchapter is not required to file a separate bond or alternate form of financial security for each activity or operation in which the person is engaged. The person is required to file a bond or alternate form of financial security only in the amount required for the activity or operation in which the person engages for which a bond or alternate form of financial security in the greatest amount is required. The bond or alternate form of financial security filed covers all of the activities and operations for which a bond or alternate form of financial security is required under this subchapter.

SECTION 3. Section 91.109, Natural Resources Code, as effective September 1, 2004, is amended by amending Subsection (b) and adding Subsection (c) to read as follows:

(b) In addition to the financial security requirements of Subsection (a) ~~and Section 91.104(b)~~, a person required to file a bond, letter of credit, or cash deposit under Section 91.103 who is involved in activities other than the ownership or operation of wells must file the bond, letter of credit, or cash deposit at the time of filing or renewing an organization report required by Section 91.142 according to the following schedule ~~[in an amount equal to]:~~

(1) no bond, letter of credit, or cash deposit if the person is a:

(A) local distribution company;

(B) gas marketer;

(C) crude oil nominator;

(D) first purchaser;

(E) well servicing company;

(F) survey company;

(G) salt water hauler;

(H) gas nominator;

(I) gas purchaser; or

(J) well plugger [\$250,000]; or

(2) a bond, letter of credit, or cash deposit in an amount not to exceed \$25,000 if the person is involved in an activity that is not associated with the ownership or operation of wells and is not listed in Subdivision (1) [a lesser amount determined by the commission if the person is able to demonstrate that the risk associated with an operation or group of operations warrants a lesser amount].

(c) A person who engages in more than one activity or operation, including well operation, for which a bond, letter of credit, or cash deposit is required under this subchapter is not required to file a separate bond, letter of credit, or cash deposit for each activity or operation in which the person is engaged. The person is required to file a bond, letter of credit, or cash deposit only in the amount

required for the activity or operation in which the person engages for which a bond, letter of credit, or cash deposit in the greatest amount is required. The bond, letter of credit, or cash deposit filed covers all of the activities and operations for which a bond, letter of credit, or cash deposit is required under this subchapter.

SECTION 4. Section 91.142(g), Natural Resources Code, is amended to read as follows:

(g) An organization report filed under this section must be accompanied by the following fee:

(1) for an operator of not more than 25 wells, \$300;
(2) for an operator of more than 25 but not more than 100 wells, \$500;
(3) for an operator of more than 100 wells, \$1,000;
(4) for an operator of one or more natural gas pipelines as classified by the commission, \$225 ~~[\$100]~~;

(5) for an operator of one or more service activities or facilities~~[- including liquids pipelines as classified by the commission,]~~ who does not operate any wells, an amount determined by the commission but not less than \$300 or more than \$500;

(6) for an operator of one or more liquids pipelines as classified by the commission who does not operate any wells, an amount determined by the commission but not less than \$425 or more than \$625;

(7) [(6)] for an operator of one or more service activities or facilities, including liquids pipelines as classified by the commission, who also operates one or more wells, an amount determined by the commission based on the sum of the amounts provided by the applicable subdivisions of this subsection but not less than \$425 ~~[\$300]~~ or more than \$1,125 ~~[\$1,000]~~; and

(8) [(7)] for an entity not currently performing operations under the jurisdiction of the commission, \$300.

SECTION 5. This Act takes effect September 1, 2003.

HB 2931 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

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

HB 2931, A bill to be entitled An Act relating to the administration and finances of counties and certain other entities.

On motion of Representative Lewis, the house concurred in the senate amendments to **HB 2931**.

Senate Committee Substitute

HB 2931, A bill to be entitled An Act relating to the administration and finances of counties and certain other entities.

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

SECTION 1. Section 41.008, Government Code, is amended to read as follows:

Sec. 41.008. RECORD ~~[REGISTER]~~. (a) Each district or county attorney shall keep a record of ~~[register of all his official acts and reports,]~~ all actions or demands prosecuted or defended by the person ~~[him]~~ as district or county attorney, and all proceedings held in relation to the attorney's ~~[his]~~ official acts.

(b) The record required by Subsection (a) may be in a paper format, an electronic format, or both. A computer record of actions, demands, and proceedings satisfies the requirements of Subsection (a). ~~[A district or county attorney shall keep the register in proper books obtained by him for that purpose at his own expense.]~~

(c) The record ~~[register]~~ shall be available at all times for inspection by any person appointed to examine it by the governor or by the commissioners court of a county.

(d) Each district and county attorney shall deliver any portion of the record under the attorney's control to the attorney's ~~[the books that comprise the register to his]~~ successor in office.

SECTION 2. Section 791.003(4), Government Code, is amended to read as follows:

(4) "Local government" means a:

(A) county, municipality, special district, or other political subdivision of this state or another state; ~~[or]~~

(B) local government corporation created under Subchapter D, Chapter 431, Transportation Code;

(C) political subdivision corporation created under Chapter 304, Local Government Code; or

(D) combination of two or more ~~[of these]~~ entities described by Paragraph (A), (B), or (C).

SECTION 3. Section 791.013, Government Code, is amended by amending Subsections (a) and (b) and adding Subsection (d) to read as follows:

(a) To supervise the performance of an interlocal contract, the ~~[The]~~ parties to the ~~[an interlocal]~~ contract may:

(1) create an administrative agency;

(2) ~~[or]~~ designate an existing local government; or

(3) contract with an organization that qualifies for exemption from federal income tax under Section 501(c), Internal Revenue Code of 1986, as amended, that provides services on behalf of political subdivisions or combinations of political subdivisions and derives more than 50 percent of its gross revenues from grants, funding, or other income from political subdivisions or combinations of subdivisions ~~[to supervise the performance of the contract].~~

(b) The agency, ~~[or]~~ designated local government, or organization described by Subsection (a)(3) may employ personnel, perform administrative activities, and provide administrative services necessary to perform the interlocal contract.

(d) An administrative agency created under this section may acquire, apply for, register, secure, hold, protect, and renew under the laws of this state, another state, the United States, or any other nation:

(1) a patent for the invention or discovery of:

(A) any new and useful process, machine, manufacture, composition of matter, art, or method;

(B) any new use of a known process, machine, manufacture, composition of matter, art, or method; or

(C) any new and useful improvement on a known process, machine, manufacture, composition of matter, art, or method;

(2) a copyright of an original work of authorship fixed in any tangible medium of expression, now known or later developed, from which the work may be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device;

(3) a trademark, service mark, collective mark, or certification mark for a word, name, symbol, device, or slogan that the agency uses to identify and distinguish the agency's goods and services from other goods and services; and

(4) other evidence of protection of exclusivity issued for intellectual property.

SECTION 4. Sections 81.003(b) and (c), Local Government Code, are amended to read as follows:

(b) The court shall require the clerk to record ~~[in suitable books]~~ the proceedings of each term of the court. This record may be in a paper or electronic format. After each term ~~[the county judge or the presiding member of the court shall read and sign and]~~ the clerk shall attest to the accuracy of this record.

(c) The clerk shall record the court's authorized proceedings between terms. This record may be in a paper or electronic format. The clerk shall attest to the accuracy of the ~~[On the first day of the first term after these proceedings, the county judge or the presiding member of the court shall read and sign this]~~ record.

SECTION 5. Subchapter A, Chapter 111, Local Government Code, is amended by adding Section 111.014 to read as follows:

Sec. 111.014. RESERVE ITEM. Notwithstanding any other provision of this subchapter, a county may establish in the budget a reserve or contingency item. The item must be included in the itemized budget under Section 111.004(a) in the same manner as a project for which an appropriation is established in the budget.

SECTION 6. Subchapter B, Chapter 111, Local Government Code, is amended by adding Section 111.045 to read as follows:

Sec. 111.045. RESERVE ITEM. Notwithstanding any other provision of this subchapter, a county may establish in the budget a reserve or contingency item. The item must be included in the itemized budget under Section 111.034(a) in the same manner as a project for which an appropriation is established in the budget.

SECTION 7. Subchapter C, Chapter 111, Local Government Code, is amended by adding Section 111.075 to read as follows:

Sec. 111.075. RESERVE ITEM. Notwithstanding any other provision of this subchapter, a county may establish in the budget a reserve or contingency item. The item must be included in the itemized budget under Section 111.063(a) in the same manner as a project for which an appropriation is established in the budget.

SECTION 8. Chapter 180, Local Government Code, is amended by adding Section 180.005 to read as follows:

Sec. 180.005. APPOINTMENTS TO LOCAL GOVERNING BODIES. (a) In this section, "local government" means a county, municipality, or other political subdivision of this state.

(b) An appointment to the governing body of a local government shall be made as required by the law applicable to that local government and may be made with the intent to ensure that the governing body is representative of the constituency served by the governing body.

(c) A local government that chooses to implement Subsection (b) shall adopt procedures for the implementation.

SECTION 9. Subchapter A, Chapter 232, Local Government Code, is amended by adding Section 232.0021 to read as follows:

Sec. 232.0021. PLAT APPLICATION FEE. (a) The commissioners court may impose an application fee to cover the cost of the county's review of a subdivision plat and inspection of street, road, and drainage improvements described by the plat.

(b) The fee may vary based on the number of proposed lots in the subdivision, the acreage described by the plat, the type or extent of proposed street and drainage improvements, or any other reasonable criteria as determined by the commissioners court.

(c) The owner of the tract to be subdivided must pay the fee at the time directed by the county before the county conducts a review of the plat.

(d) The fee is subject to refund under Section 232.0025(i).

SECTION 10. Section 270.007(i), Local Government Code, is amended to read as follows:

(i) A county may not develop a computer application or software system for the sole purpose of selling, licensing, or marketing the software application or software system.

SECTION 11. Chapter 270, Local Government Code, is amended by adding Section 270.009 to read as follows:

Sec. 270.009. INTELLECTUAL PROPERTY OF COUNTY. A county may acquire, apply for, register, secure, hold, protect, and renew under the laws of this state, another state, the United States, or any other nation:

(1) a patent for the invention or discovery of:

(A) any new and useful process, machine, manufacture, composition of matter, art, or method;

(B) any new use of a known process, machine, manufacture, composition of matter, art, or method; or

(C) any new and useful improvement on a known process, machine, manufacture, composition of matter, art, or method;

(2) a copyright of an original work of authorship fixed in any tangible medium of expression, now known or later developed, from which the work may be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device;

(3) a trademark, service mark, collective mark, or certification mark for a word, name, symbol, device, or slogan that the county uses to identify and distinguish the county's goods and services from other goods and services; and

(4) other evidence of protection of exclusivity issued for intellectual property.

SECTION 12. Sections 114.042, 114.045, 151.902, and 270.007(g), Local Government Code, are repealed.

SECTION 13. (a) Section 180.005, Local Government Code, as added by this Act, applies only to an appointment made on or after the effective date of this Act.

(b) Section 232.0021, Local Government Code, as added by this Act, applies only to a plat filed on or after the effective date of this Act.

SECTION 14. This Act takes effect September 1, 2003.

HB 3419 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

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

HB 3419, A bill to be entitled An Act relating to procedural and technical corrections and clarification of the Property Tax Code, procedures for the seizure of property, and distribution of ad valorem tax sale proceeds.

On motion of Representative J. Davis, the house concurred in the senate amendments to **HB 3419** by (Record 856): 144 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; Eiland; Eissler; Elkins; Ellis; Escobar; Farabee; Farrar; Flores; Flynn; Gallego; Garza; Gattis; Geren; Giddings; Goodman; Goolsby; Griggs; Guillen; Gutierrez; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Heflin; Hegar; Hilderbran; Hill; Hochberg; Hodge; Homer; Hope; Hopson; Howard; Hughes; Hunter; Isett; Jones, D.; Jones, E.; Jones, J.; Keel; Keffer, B.; Keffer, J.; King; Kolkhorst; Krusee; Kuempel; Laney; Laubenberg; Lewis; Luna; Mabry; Madden; 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; Puente; Quintanilla; Raymond; Reyna; Riddle; Ritter; Rodriguez; Rose; Seaman; Smith, T.; Smith, W.; Smithee; Solis;

Solomons; Stick; Swinford; Taylor; Telford; Thompson; Truitt; Turner; Uresti; Van Arsdale; Villarreal; West; Wise; Wohlgemuth; Wolens; Wong; Woolley; Zedler.

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

Absent, Excused — Marchant.

Absent — Grusendorf; Talton; Wilson.

Senate Committee Substitute

HB 3419, A bill to be entitled An Act relating to procedural and technical corrections and clarification of the Property Tax Code, procedures for the seizure and sale of property, and distribution of ad valorem tax sale proceeds.

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

SECTION 1. Section 33.25, Tax Code, is amended to read as follows:

Sec. 33.25. ~~[NOTICE OF]~~ TAX SALE: NOTICE; METHOD; DISPOSITION OF PROCEEDS. (a) After ~~[Except as provided by Subsection (c), after]~~ a seizure of personal property, the collector shall make a reasonable inquiry to determine the identity and to ascertain the address of any person having an interest in the property other than the person against whom the tax warrant is issued. The collector shall provide in writing the name and address of each other person the collector identifies as having an interest in the property to the peace officer charged with executing the warrant. The peace officer shall deliver as soon as possible a written notice stating the time and place of the sale and briefly describing the property seized to the person against whom the warrant is issued and to any other person having an interest in the property whose name and address the collector provided to the peace officer. The posting of the notice and the sale of the property shall be conducted:

(1) in a county other than a county to which Subdivision (2) applies, by the peace officer in the manner required for the sale under execution of personal property; or

(2) in a county having a population of three million or more:

(A) by the peace officer or collector, as specified in the warrant, in the manner required for the sale under execution of personal property; or

(B) under an agreement authorized by Subsection (b).

(b) The commissioners court of a county having a population of three million or more by official action may authorize a peace officer or the collector for the county charged with selling property under this subchapter by public auction to enter into an agreement with a person who holds an auctioneer's license to advertise the auction sale of the property and to conduct the auction sale of the property. The agreement may provide for on-line bidding and sale.

(c) The commissioners court of a county that authorizes a peace officer or the collector for the county to enter into an agreement under Subsection (b) may by official action authorize the peace officer or collector to enter into an agreement with a service provider to advertise the auction and to conduct the auction sale of the property or to accept bids during the auction sale of the property under Subsection (b) using the Internet.

(d) The terms of an agreement entered into under Subsection (b) or (c) must be approved in writing by the collector for each taxing unit entitled to receive proceeds from the sale of the property. An agreement entered into under Subsection (b) or (c) is presumed to be commercially reasonable, and the presumption may not be rebutted by any person.

(e) Failure to send or receive a ~~[the]~~ notice required ~~[provided]~~ by this section does not affect the validity of the sale or title to the seized property.

(f) The proceeds of a sale of property under this section shall be applied to:

(1) any compensation owed to or any expense advanced by the licensed auctioneer under an agreement entered into under Subsection (b) or a service provider under an agreement entered into under Subsection (c);

(2) all usual costs, expenses, and fees of the seizure and sale, payable to the peace officer conducting the sale;

(3) all additional expenses incurred in advertising the sale or in removing, storing, preserving, or safeguarding the seized property pending its sale;

(4) all usual court costs payable to the clerk of the court that issued the tax warrant; and

(5) taxes, penalties, and interest included in the application for warrant.

(g) The peace officer or licensed auctioneer conducting the sale shall pay all proceeds from the sale to the collector designated in the tax warrant for distribution as required by Subsection (f).

(h) ~~(e)~~ After a seizure of personal property defined by Sections 33.21(d)(2)-(5), the collector shall apply the seized property toward the payment of the taxes, penalties, and interest included in the application for warrant and all costs of the seizure as required by Subsection (f).

SECTION 2. Section 33.91, Tax Code, is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

(a) After notice has been provided to a person, the person's real property, whether improved or unimproved, is subject to seizure by a municipality for the payment of delinquent ad valorem taxes, penalties, and interest the person owes on the property and the amount secured by a municipal health or safety lien on the property if:

(1) the property:

(A) is in a municipality;

(B) is less than one acre; and

(C) has been abandoned ~~[, unused, and vacant]~~ for at least one year;

(2) the taxes on the property are delinquent for:

(A) each of the preceding five years; or

(B) each of the preceding three years if a lien on the property has been created on the property in favor of the municipality for the cost of remedying a health or safety hazard on the property; and

(3) the tax collector of the municipality determines that seizure of the property under this subchapter for the payment of the delinquent taxes, penalties, and interest, and of a municipal health and safety lien on the property, would be

in the best interest of the municipality and the other taxing units after determining that the sum of all outstanding tax and municipal claims against the property plus the estimated costs under Section 33.48 of a standard judicial foreclosure exceed the anticipated proceeds from a tax sale.

(c) For purposes of this section, a property is presumed to have been abandoned for at least one year if, during that period, the property has remained vacant and a lawful act of ownership of the property has not been exercised. The tax collector of a municipality may rely on the affidavit of any competent person with personal knowledge of the facts in determining whether a property has been abandoned or vacant. For purposes of this subsection:

(1) property is considered vacant if there is an absence of any activity by the owner, a tenant, or a licensee related to residency, work, trade, business, leisure, or recreation; and

(2) "lawful act of ownership" includes mowing or cutting grass or weeds, repairing or demolishing a structure or fence, removing debris, or other form of property upkeep or maintenance performed by or at the request of the owner of the property.

SECTION 3. Section 33.911, Tax Code, is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

(a) After notice has been provided to a person, the person's real property, whether improved or unimproved, is subject to seizure by a county for the payment of delinquent ad valorem taxes, penalties, and interest the person owes on the property if:

(1) the property:

(A) is in the county;

(B) is not in a municipality; and

(C) has been abandoned [~~-, unused, and vacant~~] for at least one year;

(2) the taxes on the property are delinquent for each of the preceding five years; and

(3) the county tax assessor-collector determines that seizure of the property under this subchapter for the payment of the delinquent taxes, penalties, and interest would be in the best interest of the county and the other taxing units after determining that the sum of all outstanding tax and county claims against the property plus the estimated costs under Section 33.48 of a standard judicial foreclosure exceed the anticipated proceeds from a tax sale.

(c) For purposes of this section, a property is presumed to have been abandoned for at least one year if, during that period, the property has remained vacant and a lawful act of ownership of the property has not been exercised. The tax collector of a county may rely on the affidavit of any competent person with personal knowledge of the facts in determining whether a property has been abandoned or vacant. For purposes of this subsection:

(1) property is considered vacant if there is an absence of any activity by the owner, a tenant, or a licensee related to residency, work, trade, business, leisure, or recreation; and

(2) "lawful act of ownership" includes mowing or cutting grass or weeds, repairing or demolishing a structure or fence, removing debris, or other form of property upkeep or maintenance performed by or at the request of the owner of the property.

SECTION 4. Section 33.912, Tax Code, is amended to read as follows:

Sec. 33.912. NOTICE. (a) A person is considered to have been provided the notice required by Sections 33.91 and 33.911 if by affidavit or otherwise the collector shows that the assessor or collector for the municipality or county mailed the person each bill for municipal or county taxes required to be sent the person by Section 31.01:

(1) in each of the five preceding years, if the taxes on the property are delinquent for each of those years; or

(2) in each of the three preceding years, if:

(A) the taxes on the property are delinquent for each of those years;
and

(B) a lien on the property has been created on the property in favor of the municipality for the cost of remedying a health or safety hazard on the property.

(b) If notice under Subsection (a) is not provided, the notice required by Section 33.91 or 33.911 shall be given by the assessor or the collector for the municipality or county, as applicable, by:

(1) serving, in the manner provided by Rule 21a, Texas Rules of Civil Procedure, a true and correct copy of the application for a tax warrant filed under Section 33.92 to each person known, or constructively known through reasonable inquiry, to own or have an interest in the property;

(2) publishing in the English language a notice of the assessor's intent to seize the property in a newspaper published in the county in which the property is located if, after exercising reasonable diligence, the assessor or collector cannot determine ownership or the address of the known owners; or

(3) if required under Subsection (g), posting in the English language a notice of the assessor's intent to seize the property if, after exercising reasonable diligence, the assessor or collector cannot determine ownership or the address of the known owners.

(c) A notice under Subsection (b)(1) shall be provided at the time of filing the application for a tax warrant and must be supported by a certificate of service appearing on the application in the same manner and form as provided by Rule 21a, Texas Rules of Civil Procedure. The notice is sufficient if sent to the person's last known address.

(d) A notice by publication or posting under Subsection (b) must substantially comply with this subsection. The notice must:

(1) be published or posted at least 10 days but not more than 180 days before the date the application for tax warrant under Section 33.92 is filed;

(2) be directed to the owners of the property by name, if known, or, if unknown, to "the unknown owners of the property described below";

(3) state that the assessor or collector intends to seize the property as abandoned property and that the property will be sold at public auction without further notice unless all delinquent taxes, penalties, and interest are paid before the sale of the property; and

(4) describe the property.

(e) A description of the property under Subsection (d)(4) is sufficient if it is the same as the property description appearing on the current tax roll for the county or municipality.

(f) A notice by publication or posting under Subsection (b) may relate to more than one property or to multiple owners of property.

(g) For publishing a notice under Subsection (b)(2), a newspaper may charge a rate that does not exceed the greater of two cents per word or an amount equal to the published word or line rate of that newspaper for the same class of advertising. If notice cannot be provided under Subsection (b)(1) and there is not a newspaper published in the county where the property is located, or a newspaper that will publish the notice for the rate authorized by this subsection, the assessor shall post the notice in writing in three public places in the county. One of the posted notices must be at the door of the county courthouse. Proof of the posting shall be made by affidavit of the person posting the notice or by the attorney for the assessor or collector.

(h) A person is considered to have been provided the notice under Section 33.91 or 33.911 in the manner provided by Subsection (b) if the application for the tax warrant under Section 33.92:

(1) contains the certificate of service as required by Subsection (b)(1);

(2) is accompanied by an affidavit on behalf of the applicable assessor or collector stating the fact of publication under Subsection (b)(2), with a copy of the published notice attached; or

(3) is accompanied by an affidavit of posting on behalf of the applicable assessor or collector under Subsection (g) stating the fact of posting and facts supporting the necessity of posting.

(i) A failure to provide, give, or receive a notice provided under this section does not affect the validity of a sale of the seized property or title to the property.

(j) The costs of publishing notice under this section are chargeable as costs and payable from the proceeds of the sale of the property.

SECTION 5. Section 33.92, Tax Code, is amended by amending Subsection (b) and adding Subsection (d) to read as follows:

(b) The court shall issue the tax warrant if by affidavit the collector shows that the property is subject to seizure under Section 33.91 or 33.911. The collector may show that the property has been abandoned or vacant for at least one year, as required by Section 33.91(a)(1)(C) or 33.911(a)(1)(C) by affidavit of any competent person with personal knowledge of the relevant facts.

(d) The collector is entitled, on request in the application, to recover attorney's fees in an amount equal to the compensation specified in the contract with the attorney for collection of the delinquent taxes, penalties, and interest on the property if:

(1) the taxing unit served by the collector contracts with an attorney under Section 6.30;

(2) the existence of the contract and the amount of attorney's fees that equal the compensation specified in the contract are supported by the affidavit of the collector; and

(3) the delinquent tax sought to be recovered is not subject to an additional penalty under Section 33.07 or 33.08 at the time the application is filed.

SECTION 6. Sections 33.93(a) and (c), Tax Code, are amended to read as follows:

(a) A tax warrant shall direct the sheriff or a constable in the county and the collector for the municipality or the county to seize the property described in the warrant, subject to the right of redemption, for the payment of the ad valorem taxes, penalties, and interest owing on the property included in the application, any attorney's fees included in the application as provided by Section 33.92(d), the amount secured by a municipal health or safety lien on the property included in the application, and the costs of seizure and sale. The warrant shall direct the person whose property is seized to disclose to a person executing the warrant the name and address if known of any other person having an interest in the property.

(c) On issuance of a tax warrant, the collector shall take possession of the property pending its sale by the officer charged with selling the property.

SECTION 7. Section 33.94(a), Tax Code, is amended to read as follows:

(a) After a seizure of property, the collector for the municipality or county shall make a reasonable inquiry to determine the identity and address of any person, other than the person against whom the tax warrant is issued, having an interest in the property. The collector shall deliver as soon as possible a notice stating the time and place of the sale and briefly describing the property seized to:

(1) the person against whom the warrant is issued, including each person to whom notice was provided under Section 33.912(a);

(2) each person to whom notice was provided under Section 33.912(b)(1); and

(3) [to] any other person the collector determines has an interest in the property if the collector can ascertain the address of the other person.

SECTION 8. Sections 34.01(a) and (r), Tax Code, are amended to read as follows:

(a) Real property [~~Property~~] seized under a tax warrant issued under Subchapter E, Chapter 33, or ordered sold pursuant to foreclosure of a tax lien shall be sold by the officer charged with selling the property, unless otherwise directed by the taxing unit that requested the warrant or order of sale or by an authorized agent or attorney for that unit. The sale shall be conducted in the manner similar property is sold under execution except as otherwise provided by this subtitle.

(r) Except as provided by this subsection, a [A] sale of real property under this section must take place at the county courthouse in the county in which the land is located. The commissioners court of the county may designate an [the] area in the county courthouse or another location in the county where sales under

this section must take place and shall record any designated area or other location in the real property records of the county. If the commissioners court designates an area in the courthouse or another location in the county for sales, a sale must occur in that area or at that location. If the commissioners court does not designate an area in the courthouse or another location in the county for sales, a sale must occur in the same area in the courthouse that is designated by the commissioners court for the sale of real property under Section 51.002, Property Code.

SECTION 9. Sections 34.02(b) and (d)-(f), Tax Code, are amended to read as follows:

(b) The proceeds shall be applied to:

(1) the [all] costs of advertising the tax sale [and all original court costs payable to the clerk of the court];

(2) any [all] fees ordered by the judgment to be paid [and commissions payable] to an appointed attorney ad litem [the officer conducting the sale];

(3) the original court costs payable to the clerk of the court [taxes, penalties, and interest that are due under the judgment]; [and]

(4) the fees and commissions payable to the officer conducting the sale;

(5) the expenses incurred by a taxing unit in determining necessary parties and in procuring necessary legal descriptions of the property if those expenses were awarded to the taxing unit by the judgment under Section 33.48(a)(4);

(6) the taxes, penalties, interest, and attorney's fees that are due under the judgment; and

(7) any other amount awarded to a taxing unit under the judgment.

(d) The [If the sale is pursuant to foreclosure of a tax lien, the] officer conducting a [the] sale under Section 33.94 or 34.01 shall pay any excess proceeds after payment of all amounts due all participants in the sale as specified by Subsection (b) to the clerk of the court issuing the warrant or order of sale.

(e) [If the sale is pursuant to seizure of personal property, the officer conducting the sale shall distribute any excess of proceeds as provided by law for excess proceeds in the case of execution.

(~~f~~) In this section, "taxes" includes a charge, fee, or expense that is expressly authorized by Section 32.06 or 32.065.

SECTION 10. Section 34.04(c), Tax Code, is amended to read as follows:

(c) At the hearing the court shall order that the proceeds be paid according to the following priorities to each party that establishes its claim to the proceeds:

(1) to the tax sale purchaser if the tax sale has been adjudged to be void and the purchaser has prevailed in an action against the taxing units under Section 34.07(d) by final judgment;

(2) to a taxing unit for any taxes, penalties, or interest that have become due or delinquent on the subject property subsequent to the date of the judgment or that were omitted from the judgment by accident or mistake;

(3) to any other lienholder, consensual or otherwise, for the amount due under a lien, in accordance with the priorities established by applicable law;

(4) to a taxing unit for any unpaid taxes, penalties, interest, or other amounts adjudged due under the judgment that were not satisfied from the proceeds from the tax sale; and

(5) to each former owner of the property, as the interest of each may appear.

SECTION 11. Section 34.06(d), Tax Code, is amended to read as follows:

(d) After retaining the amount authorized by Subsection (c), the purchasing taxing unit shall then pay all costs of[-

~~(1) the officer conducting the sale of the property; and~~

~~(2) the clerk of the court in connection with]~~ the suit and the sale of the property in the same manner and in the same order of priority as provided by Sections 34.02(b)(1)-(5).

SECTION 12. Section 34.21, Tax Code, is amended by adding Subsection (k) to read as follows:

(k) The inclusion of dues and assessments for maintenance paid to a property owners' association within the definition of "costs" under Subsection (g) may not be construed as:

(1) a waiver of any immunity to which a taxing unit may be entitled from a suit or from liability for those dues or assessments; or

(2) authority for a taxing unit to make an expenditure of public funds in violation of Section 50, 51, or 52(a), Article III, or Section 3, Article XI, Texas Constitution.

SECTION 13. 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.

SECTION 14. The change in law made by Section 1 of this Act applies only to the sale of tax foreclosed property pursuant to an order of sale issued on or after the effective date of this Act.

SECTION 15. The changes in law made by Sections 2, 3, 4, 5, 6, 7, and 8 of this Act apply only to an ad valorem tax proceeding that is commenced on or after the effective date of this Act. An ad valorem tax proceeding that was commenced before the effective date of this Act is governed by the law as it existed on the date the proceeding was commenced, and the former law is continued in effect for that purpose.

SECTION 16. The change in law made by Section 9 of this Act applies to a distribution of proceeds from an ad valorem tax sale that is made on or after the effective date of this Act, regardless of whether the tax sale was conducted before, on, or after that date.

SECTION 17. The change in law made by Section 10 of this Act applies to any cause of action that is pending on the effective date of this Act or brought on or after that date.

SECTION 18. The changes in law made by Section 11 of this Act apply to a distribution of the proceeds of a resale of property made on or after the effective date of this Act, regardless of whether the resale was conducted before, on, or after that date.

HJR 44 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

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

HJR 44, A joint resolution proposing a constitutional amendment to permit a six-person jury in a district court misdemeanor trial.

On motion of Representative Hughes, the house concurred in the senate amendments to **HJR 44** by (Record 857): 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; Eiland; Eissler; Elkins; Ellis; Escobar; Farabee; Farrar; Flores; Flynn; Gallego; Garza; Gattis; Geren; Giddings; Goodman; Goolsby; Griggs; Grusendorf; Guillen; Gutierrez; Haggerty; Hamilton; Hamric; Harper-Brown; Hartnett; Heflin; Hegar; Hilderbran; Hill; Hochberg; Hodge; Homer; Hope; Hopson; Hughes; Hunter; Isett; Jones, D.; Jones, E.; Jones, J.; Keel; Keffer, B.; Keffer, J.; King; Kolkhorst; Krusee; Kuempel; Laney; Laubenberg; Lewis; Luna; Mabry; Madden; 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.; Smithee; Solis; Solomons; Stick; Swinford; Taylor; Telford; Thompson; Truitt; Turner; Uresti; Van Arsdale; Villarreal; Wilson; Wise; Wohlgemuth; Wolens; Wong; Woolley; Zedler.

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

Absent, Excused — Marchant.

Absent — Hardcastle; Howard; Talton; West.

Senate Committee Substitute

HJR 44, A joint resolution proposing a constitutional amendment to permit a six-person jury in a district court misdemeanor trial.

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

SECTION 1. Section 13, Article V, Texas Constitution, is amended to read as follows:

Sec. 13. Grand and petit juries in the District Courts shall be composed of twelve persons, except that petit juries in a criminal case below the grade of felony shall be composed of six persons; but nine members of a grand jury shall be a quorum to transact business and present bills. In trials of civil cases[~~and in trials of criminal cases below the grade of felony~~] in the District Courts, nine members of the jury, concurring, may render a verdict, but when the verdict shall

be rendered by less than the whole number, it shall be signed by every member of the jury concurring in it. When, pending the trial of any case, one or more jurors not exceeding three, may die, or be disabled from sitting, the remainder of the jury shall have the power to render the verdict; provided, that the Legislature may change or modify the rule authorizing less than the whole number of the jury to render a verdict.

SECTION 2. The proposed constitutional amendment shall be submitted to the voters at an election to be held September 13, 2003. The ballot shall be printed to permit voting for or against the proposition: "The constitutional amendment to permit a six-person jury in a district court misdemeanor trial."

HJR 84 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

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

HJR 84, A joint resolution proposing a constitutional amendment providing for the filling of a temporary vacancy in a public office created by the activation for military service of a public officer.

On motion of Representative Uresti, the house concurred in the senate amendments to **HJR 84** by (Record 858): 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; 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; Hope; Hopson; Howard; Hughes; Hunter; Isett; Jones, D.; Jones, E.; Keel; Keffer, J.; King; Kolkhorst; Krusee; Kuempel; Laney; Laubenberg; Lewis; Luna; Mabry; Madden; 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.; Smithee; Solis; Solomons; Stick; Swinford; Taylor; Telford; Thompson; Truitt; Turner; Uresti; Van Arsdale; Villarreal; West; Wilson; Wise; Wohlgemuth; Wolens; Wong; Woolley; Zedler.

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

Absent, Excused — Marchant.

Absent — Edwards; Jones, J.; Keffer, B.; Talton.

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

Amend **HJR 84** as follows:

(1) In Section 1 of the resolution, strike added Section 72(c), Article XVI, Texas Constitution (Senate committee printing, page 1, lines 29-39), and substitute the following:

(c) For an officer who is a member of the legislature, the member of the legislature shall select a person to serve as the temporary acting representative or senator, subject to approval of the selection by a majority vote of the appropriate house of the legislature. The temporary acting representative or senator must be:

(1) a member of the same political party as the member being temporarily replaced; and

(2) qualified for office under Section 6, Article III, of this constitution for a senator, or Section 7, Article III, of this constitution for a representative.

(2) In Section 1 of the resolution, strike added Section 72(e), Article XVI, Texas Constitution (Senate committee printing, page 1, lines 43-50), and substitute the following:

(e) The appropriate authority shall appoint the temporary acting officer to begin service on the date specified in writing by the officer being temporarily replaced as the date the officer will enter active military service.

(3) In Section 2 of the resolution, strike "November 4, 2003" (Senate committee printing, page 2, line 3), and substitute "September 13, 2003".

HB 3441 - HOUSE DISCHARGES CONFEREES HOUSE CONCURS IN SENATE AMENDMENTS

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

HB 3441, A bill to be entitled An Act relating to a reduction in expenditures of certain state governmental entities, including changes affecting the Commission on Human Rights, benefits under the state employees group benefits program, attorney general's office, management of certain accounts and funds, and certain election-related forms.

Representative Pickett moved to discharge the conferees and concur in the senate amendments to **HB 3441**.

The motion prevailed. (The vote was reconsidered later today, and the house concurred in senate amendments to **HB 3441** by Record No. 861. The text of the senate amendments follows the record vote.)

HB 1146 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

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

HB 1146, A bill to be entitled An Act relating to a limitation on audits of an open-enrollment charter school.

On motion of Representative Dutton, the house concurred in the senate amendments to **HB 1146**.

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

Amend **HB 1146** by amending SECTION 1 to read as follows:

SECTION 1. Section 12.1163, Education Code, is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

(a) To the extent consistent with this section [~~Subsection (b)~~], the commissioner may audit the records of:

- (1) an open-enrollment charter school;
- (2) a charter holder; and
- (3) a management company.

(c) Unless the commissioner has specific cause to conduct an additional audit, the commissioner may not conduct more than one on-site financial records audit and one on-site administrative records audit of an open-enrollment charter school during any fiscal year. For purposes of this subsection, an audit of a charter holder or management company associated with an open-enrollment charter school is not considered an audit of the school.

**HB 1202 - HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS**

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

HB 1202, A bill to be entitled An Act relating to recovery of certain funds received by an open-enrollment charter school.

On motion of Representative Dutton, the house concurred in the senate amendments to **HB 1202** by (Record 859): 145 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; 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; Hope; Hopson; Howard; Hughes; Hunter; Isett; Jones, D.; Jones, E.; Jones, J.; Keel; Keffer, B.; Keffer, J.; King; Kolkhorst; Krusee; Kuempel; Laney; Laubenberg; Lewis; Luna; Mabry; Madden; 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.; Smithee; Solis; Solomons; Stick; Swinford; Taylor; Telford; Thompson; Truitt; Turner; Uresti; Van Arsdale; West; Wilson; Wise; Wohlgemuth; Wolens; Wong; Woolley; Zedler.

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

Absent, Excused — Marchant.

Absent — Talton; Villarreal.

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

Amend **HB 1202** as follows:

(2) In SECTION 1 of the bill, between proposed Sections 12.1061(1) and 12.1061(2), Education Code (House engrossment, page 1, between lines 15 and 16), insert the following:

(2) the school:

(A) submits to the commissioner a timely request to revise the maximum student enrollment described by the school's charter and the commissioner does not notify the school in writing of an objection to the proposed revision before the 90th day after the date on which the commissioner received the request, provided that the number of students enrolled at the school does not exceed the enrollment described by the school's request; or

(B) exceeds the maximum student enrollment described by the school's charter only because a court mandated that a specific child enroll in that school; and

(3) In SECTION 1 of the bill, in proposed Section 12.1061, Education Code (House engrossment, page 1, line 16), strike "(2)" and substitute "(3)".

(4) Add the following appropriately numbered SECTION to the bill and renumber the subsequent SECTIONS accordingly:

SECTION _____. Section 12.114, Education Code, is amended to read as follows:

Sec. 12.114. REVISION. (a) A revision of a charter of an open-enrollment charter school may be made only with the approval of the commissioner.

(b) Not more than once each year, an open-enrollment charter school may request approval to revise the maximum student enrollment described by the school's charter.

**HB 59 - HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS**

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

HB 59, A bill to be entitled An Act relating to the offense of aggravated kidnapping, the punishment for the offense of kidnapping, and the definition of and punishment for the offense of trafficking in persons.

On motion of Representative Wise, the house concurred in the senate amendments to **HB 59**.

Senate Committee Substitute

HB 59, A bill to be entitled An Act relating to the offense of aggravated kidnapping, the punishment for the offense of kidnapping, and the definition of and punishment for the offense of trafficking in persons.

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

SECTION 1. Section 20.03(c), Penal Code, is amended to read as follows:

(c) An offense under this section is a felony of the third degree, except that an offense under this section is a felony of the second degree if the actor exposed the person abducted to a risk of serious bodily injury.

SECTION 2. Section 20.04(a), Penal Code, is amended to read as follows:

(a) A person commits an offense if:

(1) the person ~~[he]~~ intentionally or knowingly abducts another person with the intent to:

(A) ~~[(4)]~~ hold the person abducted ~~[him]~~ for ransom or reward or to coerce a third person to perform some act;

(B) ~~[(2)]~~ use the person abducted ~~[him]~~ as a shield or hostage;

(C) ~~[(3)]~~ facilitate the commission of a felony or the flight after the attempt or commission of a felony;

(D) ~~[(4)]~~ inflict bodily injury on the person abducted ~~[him]~~ or violate or abuse the person abducted ~~[him]~~ sexually;

(E) ~~[(5)]~~ terrorize the person abducted ~~[him]~~ or a third person; ~~[or]~~

(F) ~~[(6)]~~ interfere with the performance of any governmental or political function; or

(G) hold the person abducted in a condition of involuntary servitude; or

(2) the person intentionally or knowingly abducts another person who is:

(A) younger than 18 years of age; or

(B) incompetent.

SECTION 3. Chapter 20, Penal Code, is amended by adding Section 20.06 to read as follows:

Sec. 20.06. TRAFFICKING OF PERSONS. (a) In this section:

(1) "Forced labor or services" means labor or services that are performed or provided by another person and obtained through an actor's:

(A) threatening to cause bodily injury to another;

(B) restraining another in a manner described by Section 20.01(1);

or

(C) withholding from another the person's:

(i) government records;

(ii) identifying information; or

(iii) personal property.

(2) "Traffic" means to transport another person or to entice, recruit, harbor, provide, or otherwise obtain another person for transport by deception, coercion, or force.

(b)(1) A person commits an offense if the person knowingly traffics another person with the intent that the trafficked person engage in:

(A) forced labor or services; or

(B) conduct that constitutes an offense under Chapter 43.

(2) Except as otherwise provided by this subsection, an offense under this section is a felony of the second degree. An offense under this section is a felony of the first degree if:

(A) the offense is committed under Subsection (b)(1) and the person who is trafficked is younger than 14 years of age at the time of the offense; or

(B) the commission of the offense results in the death of the person who is trafficked.

(3) If conduct constituting an offense under this section also constitutes an offense under another section of this code, the actor may be prosecuted under either section or under both sections.

SECTION 4. Section 71.02(a), Penal Code, is amended to read as follows:

(a) A person commits an offense if, with the intent to establish, maintain, or participate in a combination or in the profits of a combination or as a member of a criminal street gang, he commits or conspires to commit one or more of the following:

(1) murder, capital murder, arson, aggravated robbery, robbery, burglary, theft, aggravated kidnapping, kidnapping, aggravated assault, aggravated sexual assault, sexual assault, forgery, deadly conduct, assault punishable as a Class A misdemeanor, burglary of a motor vehicle, or unauthorized use of a motor vehicle;

(2) any gambling offense punishable as a Class A misdemeanor;

(3) promotion of prostitution, aggravated promotion of prostitution, or compelling prostitution;

(4) unlawful manufacture, transportation, repair, or sale of firearms or prohibited weapons;

(5) unlawful manufacture, delivery, dispensation, or distribution of a controlled substance or dangerous drug, or unlawful possession of a controlled substance or dangerous drug through forgery, fraud, misrepresentation, or deception;

(6) any unlawful wholesale promotion or possession of any obscene material or obscene device with the intent to wholesale promote the same;

(7) any offense under Subchapter B, Chapter 43, depicting or involving conduct by or directed toward a child younger than 18 years of age;

(8) any felony offense under Chapter 32~~[-Penal Code]~~;

(9) any offense under Chapter 36~~[-Penal Code]~~;

(10) any offense under Chapter 34~~[-Penal Code]~~; ~~or~~

(11) any offense under Section 37.11(a); or

(12) any offense under Section 20.06~~[-Penal Code]~~.

SECTION 5. (a) The change in law made by this Act applies only to an offense committed on or after the effective date of this Act. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense was committed before that date.

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

SECTION 6. This Act takes effect September 1, 2003.

**HB 3011 - HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS**

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

HB 3011, A bill to be entitled An Act relating to certain reports, information, or records related to certain health care facilities.

On motion of Representative Capelo, the house concurred in the senate amendments to **HB 3011**.

Senate Committee Substitute

HB 3011, A bill to be entitled An Act relating to certain reports, information, or records related to certain health care facilities.

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

SECTION 1. Section 161.0315, Health and Safety Code, is amended by adding Subsection (f) to read as follows:

(f) A medical peer review committee or medical committee formed by the governing body of a hospital district may compile a report, information, or record of the medical and health care services provided by a health care facility described by Subsection (b) and submit the compilation to the facility's medical peer review committee or medical committee. A report, information, or record compiled under this subsection is:

(1) confidential;

(2) not subject to disclosure under Chapter 552, Government Code; and

(3) subject to the same confidentiality and disclosure requirements to which a report, information, or record of a medical peer review committee under Section 160.007, Occupations Code, is subject.

SECTION 2. This Act takes effect September 1, 2003.

**HB 1097 - HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS**

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

HB 1097, A bill to be entitled An Act relating to the birth defects monitoring program.

On motion of Representative Capelo, the house concurred in the senate amendments to **HB 1097** by (Record 860): 140 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; Dutton; Edwards; Eiland; Eissler; Ellis; Escobar; Farabee; Farrar; Flores; Flynn; Gallego; Garza; Gattis; Geren; Giddings; Goodman; Goolsby; Griggs; Guillen; Gutierrez; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Heflin; Hegar; Hilderbran; Hill; Hochberg; Hodge; Homer; Hope; Hopson;

Howard; Hughes; Hunter; Isett; Jones, D.; Jones, E.; Jones, J.; Keel; Keffer, B.; Keffer, J.; King; Kolkhorst; Krusee; Kuempel; Laney; Laubenberg; Lewis; Luna; Mabry; Madden; Martinez Fischer; McCall; McClendon; McReynolds; Menendez; Mercer; Merritt; Miller; Moreno, J.; 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; Taylor; Telford; Thompson; Truitt; Turner; Uresti; Van Arsdale; Villarreal; West; Wilson; Wise; Wohlgemuth; Wolens; Wong; Woolley; Zedler.

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

Absent, Excused — Marchant.

Absent — Dukes; Dunnam; Elkins; Grusendorf; Moreno, P.; Puente; Talton.

Senate Committee Substitute

HB 1097, A bill to be entitled An Act relating to the birth defects monitoring program.

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

SECTION 1. Section 87.021, Health and Safety Code, is amended by amending Subsections (a) and (c) and adding Subsection (f) to read as follows:

(a) The board shall ~~may~~ establish in the department a program to:

- (1) identify and investigate certain birth defects in children; and
- (2) maintain a central registry of cases of birth defects.

(c) The board and the department shall design the program so that the program will:

(1) provide information to identify risk factors and causes of birth defects;

(2) provide information on other possible causes of birth defects;

(3) provide for the development of strategies to prevent birth defects;

(4) provide for interview studies about the causes of birth defects;

(5) together with other departmental programs, contribute birth defects data to a central registry;

(6) provide for the appointment of authorized agents to collect birth defects information; and

(7) provide for the active ~~[not passive]~~ collection of birth defects information.

(f) In addition to providing for the active collection of birth defects information under Subsection (c)(7), the board and the department may design the program to also provide for the passive collection of that information.

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.

**HB 1869 - HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS**

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

HB 1869, A bill to be entitled An Act relating to the admission of certain video testimony into evidence in a proceeding regarding the abuse or neglect of a child.

On motion of Representative Baxter, the house concurred in the senate amendments to **HB 1869**.

Senate Committee Substitute

HB 1869, A bill to be entitled An Act relating to the admission of certain video testimony into evidence in a proceeding regarding the abuse or neglect of a child.

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

SECTION 1. Chapter 104, Family Code, is amended by adding Section 104.007 to read as follows:

Sec. 104.007. VIDEO TESTIMONY OF CERTAIN PROFESSIONALS.

(a) In this section, "professional" has the meaning assigned by Section 261.101(b).

(b) In a proceeding brought by the Department of Protective and Regulatory Services concerning a child who is alleged in a suit to have been abused or neglected, the court may order, with the agreement of the state's counsel and the defendant's counsel, that the testimony of a professional be taken outside the courtroom by videoconference.

(c) In ordering testimony to be taken as provided by Subsection (b), the court shall ensure that the videoconference testimony allows:

(1) the parties and attorneys involved in the proceeding to be able to see and hear the professional as the professional testifies; and

(2) the professional to be able to see and hear the parties and attorneys examining the professional while the professional is testifying.

(d) If the court permits the testimony of a professional by videoconference as provided by this section to be admitted during the proceeding, the professional may not be compelled to be physically present in court during the same proceeding to provide the same testimony unless ordered by the court.

SECTION 2. (a) This Act takes effect September 1, 2003.

(b) The change in law made by this Act applies to testimony taken on or after the effective date of this Act in a proceeding in a suit affecting the parent-child relationship involving an allegation of the abuse or neglect of a child regardless of whether:

(1) the allegation was made before, on, or after the effective date of this Act; or

(2) the suit commenced before, on, or after the effective date of this Act.

HB 3441 - VOTE RECONSIDERED

Representative Pickett moved to reconsider the vote by which the house concurred in the senate amendments to **HB 3441**.

The motion to reconsider prevailed.

**HB 3441 - HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS**

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

HB 3441, A bill to be entitled An Act relating to a reduction in expenditures of certain state governmental entities, including changes affecting the Commission on Human Rights, benefits under the state employees group benefits program, attorney general's office, management of certain accounts and funds, and certain election-related forms.

On motion of Representative Pickett, the house concurred in the senate amendments to **HB 3441** by (Record 861): 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; Eiland; Eissler; Elkins; Ellis; Escobar; Farabee; Farrar; Flores; Flynn; Gallego; Garza; Gattis; Geren; Giddings; Goodman; Griggs; Guillen; Gutierrez; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Heflin; Hegar; Hilderbran; Hill; Hochberg; Hodge; Homer; Hope; Hopson; Howard; Hughes; Hunter; Isett; Jones, D.; Jones, E.; Jones, J.; Keel; Keffer, B.; Keffer, J.; King; Kolkhorst; Krusee; Kuempel; Laney; Laubenberg; Lewis; Luna; Mabry; Madden; 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.; Smithee; Solis; Solomons; Stick; Swinford; Taylor; Telford; Thompson; Truitt; Turner; Uresti; Van Arsdale; Villarreal; West; Wilson; Wise; Wolens; Wong; Woolley; Zedler.

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

Absent, Excused — Marchant.

Absent — Goolsby; Grusendorf; Talton; Wohlgemuth.

Senate Committee Substitute

HB 3441, A bill to be entitled An Act relating to a reduction in expenditures of certain state governmental entities, including changes affecting the Commission on Human Rights, attorney general's office, management of certain accounts and funds, and certain election-related forms.

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

SECTION 1. Subchapter A, Chapter 21, Labor Code, is amended by adding Section 21.0015 to read as follows:

Sec. 21.0015. ATTORNEY GENERAL'S CIVIL RIGHTS DIVISION. The powers and duties exercised by the Commission on Human Rights under this chapter are transferred to the attorney general's civil rights division. A reference in this chapter to the "commission" means the attorney general's civil rights division.

SECTION 2. Subchapter A, Chapter 301, Property Code, is amended by adding Section 301.0015 to read as follows:

Sec. 301.0015. ATTORNEY GENERAL'S CIVIL RIGHTS DIVISION. The powers and duties exercised by the Commission on Human Rights under this chapter are transferred to the attorney general's civil rights division. A reference in this chapter to the "commission" means the attorney general's civil rights division.

SECTION 3. Chapter 402, Government Code, is amended by adding Subchapter D to read as follows:

SUBCHAPTER D. CIVIL RIGHTS DIVISION

Sec. 402.101. DEFINITIONS. In this subchapter:

- (1) "Commission" means the Commission on Human Rights.
- (2) "Director" means the director of the division.
- (3) "Division" means the civil rights division of the attorney general's office.

Sec. 402.102. GENERAL PROVISIONS. (a) The division is an independent division in the attorney general's office. The division shall be responsible for administering Chapter 21, Labor Code, and Chapter 301, Property Code, including exercising the powers and duties formerly exercised by the former Commission on Human Rights under those laws.

(b) A reference in Chapter 21, Labor Code, Chapter 301, Property Code, or any other law to the former Commission on Human Rights means the division.

Sec. 402.103. COMMISSION. (a) The division is governed by a commission consisting of seven members as follows:

- (1) one member who represents industry;
 - (2) one member who represents labor; and
 - (3) five members who represent the public.
- (b) The members of the commission established under this section shall be appointed by the governor. In making appointments to the commission, the governor shall strive to achieve representation on the commission that is diverse with respect to disability, religion, age, economic status, sex, race, and ethnicity.
- (c) The governor shall appoint the public members of the commission from a list of names of individuals suggested by civil rights organizations and groups.
- (d) The term of office of each commissioner is six years. The governor shall designate one commissioner to serve as presiding officer.
- (e) A commissioner is entitled to reimbursement of actual and necessary expenses incurred in the performance of official duties.
- (f) The commission shall establish policies for the division and supervise the director in administering the activities of the division.

(g) The commission is the state authority established as a fair employment practice agency and is authorized, with respect to an unlawful employment practice, to:

- (1) grant relief from the practice;
- (2) seek relief from the practice; or
- (3) institute criminal proceedings.

Sec. 402.104. DIRECTOR. (a) The director shall be appointed by the commission to administer the powers and duties of the division.

(b) To be eligible for appointment, the director must have relevant experience in the area of civil rights, specifically in working to prevent the types of discrimination the division is charged with preventing. The director must demonstrate a commitment to equal opportunity for minorities, women, and the disabled. The director should also have relevant experience with housing and employment discrimination claims.

Sec. 402.105. INVESTIGATOR TRAINING PROGRAM; PROCEDURES MANUAL. (a) A person who is employed under this chapter by the division as an investigator may not conduct an investigation until the person completes a comprehensive training and education program for investigators that complies with this section.

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

(1) the requirements relating to employment adopted under the Americans with Disabilities Act (42 U.S.C. Section 12101 et seq.) and its subsequent amendments, with a special emphasis on requirements regarding reasonable accommodations;

(2) various types of disabilities and accommodations appropriate in an employment setting for each type of disability; and

(3) fair employment and housing practices.

(c) Each investigator shall annually complete a continuing education program designed to provide investigators with the most recent information available regarding the issues described by Subsection (b), including legislative and judicial changes in the law.

(d) The director shall develop and biennially update an investigation procedures manual. The manual must include investigation procedures and information and may include information regarding the Equal Employment Opportunity Commission and the United States Department of Housing and Urban Development.

Sec. 402.106. ANALYSIS OF DISCRIMINATION COMPLAINTS; REPORT. (a) The division shall collect and report statewide information relating to employment and housing discrimination complaints as required by this section.

(b) Each state fiscal year, the division shall collect and analyze information regarding employment and housing discrimination complaints filed with the division, the Equal Employment Opportunity Commission, the United States Department of Housing and Urban Development, and local commissions in this state. The information must include:

(1) an analysis of employment complaints filed by the basis of the complaint, including:

(A) sex, race, color, age, disability, national origin, religion, and genetic information; and

(B) retaliatory actions against the complainant;

(2) an analysis of housing complaints filed by the basis of the complaint, including sex, race, color, disability, national origin, religion, and familial status;

(3) an analysis of employment complaints filed by issue, including discharge, terms and conditions, sexual harassment, promotion, hiring, demotion, and layoff;

(4) an analysis of housing complaints filed by issue, including terms and conditions, refusal to rent or sell, discriminatory financing or advertising, and false representation;

(5) an analysis of employment and housing cases closed by the reason the case was closed, including findings or determinations of cause or no cause, successful conciliation, right to sue issued, complaint withdrawn after resolution, no-fault settlement, failure to cooperate by the complainant, and lack of jurisdiction; and

(6) the average processing time for complaints resolved by the division in each state fiscal year, regardless of whether the complaint was filed in the same fiscal year in which the complaint was resolved.

(c) The results of an analysis required under this section shall be included in the attorney general's annual report to the governor and legislature.

SECTION 4. Section 412.016(b), Government Code, is amended to read as follows:

(b) The legislature may appropriate money to the institute to finance the performance of the duties of the institute. If the legislature does not appropriate money to the institute, the attorney general may determine whether the institute shall perform the duties prescribed by this chapter.

SECTION 5. The heading for Section 443.0101, Government Code, is amended to read as follows:

Sec. 443.0101. CAPITOL TRUST FUND; CAPITOL ACCOUNT.

SECTION 6. Section 443.0101(a), Government Code, is amended to read as follows:

(a) Money and securities donated to the board and income from the Capitol gift shops, cafeteria, and Visitors Parking Garage as authorized by this chapter shall be held in the Capitol trust fund outside the treasury to be held by the comptroller as trustee on behalf of the people of the state. Funds other than donated funds and income from the Capitol gift shops, cafeteria, and Visitors Parking Garage as authorized by this chapter shall be deposited in the general revenue fund in an account [a special fund] to be known as the Capitol account [fund]. The comptroller shall manage and invest the account [fund] on behalf of the board as directed or agreed to by the board, and all interest, dividends, and other income of the account shall be credited to the account.

SECTION 7. Section 443.0103, Government Code, is amended to read as follows:

Sec. 443.0103. CAPITAL RENEWAL ACCOUNT ~~[TRUST FUND]~~. (a) The capital renewal account ~~[trust fund]~~ is created as a dedicated account in the general revenue fund. Money in the account may be used only ~~[trust fund outside the treasury with the comptroller and shall be administered by the board, as a trustee on behalf of the people of this state,]~~ to maintain and preserve the Capitol, the General Land Office Building, their contents, and their grounds. The account ~~[fund]~~ consists of money transferred to the account ~~[fund]~~:

- (1) at the direction of the legislature; or
- (2) in accordance with this section.

~~[(b) Money in the fund may be used only for the purpose of maintaining and preserving the Capitol, the General Land Office Building, their contents, and their grounds.]~~

(c) The interest received from investment of money in the account ~~[fund]~~ shall be credited to the account ~~[fund]~~.

(d) The board may transfer money from ~~[any account of]~~ the Capitol account ~~[fund]~~ to the capital renewal account ~~[trust fund]~~, other than money that was donated to the board, derived from a security or other thing of value donated to the board, or earned as interest or other income on a donation to the board, if the board determines that after the transfer there will be a sufficient amount of money in the ~~[applicable account of the]~~ Capitol account ~~[fund]~~ to accomplish the purposes for which the account was created.

SECTION 8. Section 2108.037(b), Government Code, is amended to read as follows:

(b) Except as otherwise provided by this subsection, the ~~[The]~~ affected agency shall retain the amount of the actual or projected savings or increased revenues attributable to an implemented suggestion, to the extent that the savings comes from funds appropriated to the affected agency. A portion of the savings or revenues shall be used by the affected agency to pay bonuses awarded by the commission under this subchapter. A portion of the savings or revenues may be transferred to the commission as specified in the General Appropriations Act for use by the commission for operational expenses.

SECTION 9. Section 2165.056(a), Government Code, is amended to read as follows:

(a) The commission may, at the ~~[a state agency's]~~ request of the Texas Department of Transportation or Texas Department of Criminal Justice, and shall for all other agencies exercise the powers and duties given to the commission by this subchapter and Subchapters A, D, E, and F, on or with respect to any property owned or leased by the state.

SECTION 10. Subchapter B, Chapter 2165, Government Code, is amended by adding Section 2165.057 to read as follows:

Sec. 2165.057. ANNUAL REPORT. Not later than September 1 of each year, the commission shall:

(1) issue a report on the amount of cost savings achieved by the commission through:

(A) the reduction of square footage of office and warehouse space leased;

(B) the efficient use of state-owned space;

(C) the renegotiation of leased space; and

(D) waivers granted in accordance with Section 2165.104(c-1); and

(2) provide a copy of a report under this section to:

(A) the governor;

(B) the lieutenant governor;

(C) the speaker of the house of representatives;

(D) the chairs of the Senate Finance Committee and the House

Appropriations Committee; and

(E) the chairs of the Senate Administration Committee and the House Administration Committee.

SECTION 11. Section 2165.104, Government Code, is amended by amending Subsection (c) and adding Subsection (c-1) to read as follows:

(c) The ~~[To the extent possible without sacrificing critical public or client services, the]~~ commission may not allocate usable office space, as defined by the commission, to a state agency under Article I, II, V, VI, VII, or VIII of the General Appropriations Act or to the Texas Higher Education Coordinating Board, the Texas Education Agency, the State Board for Educator Certification, the Telecommunications Infrastructure Fund Board, or the Office of Court Administration of the Texas Judicial System in an amount that exceeds an average of 153 square feet per agency employee for each agency site. ~~[To the extent that any of those agencies allocates its own usable office space, as defined by the commission, the agency shall allocate the space to achieve the required ratio.]~~ This subsection does not apply to[

~~(1) an agency site at which fewer than 16 employees are located;~~

~~(2) warehouse space;~~

~~(3) laboratory space;~~

~~(4) storage space exceeding 1,000 gross square feet;~~

~~(5) library space;~~

~~(6) space for hearing rooms used to conduct hearings required under the administrative procedure law, Chapter 2001; or~~

~~(7) another type of space specified by commission rule, if the commission determines that it is not practical to apply this subsection because of the type of [to that] space or use of space at that site.~~

(c-1) For good cause and when critical to the public interest or client services, the commission may grant to an agency a waiver of the requirements under Subsection (c).

SECTION 12. Sections 2.014(c) and (d), Family Code, are amended to read as follows:

(c) The premarital education handbook under Subsection (b)(1) may ~~shall~~ be distributed to each applicant for a marriage license as provided by Section 2.009(c)(5) and shall contain information on:

(1) conflict management;

(2) communication skills;

- (3) children and parenting responsibilities; and
- (4) financial responsibilities.

(d) The attorney general may ~~shall~~ appoint an advisory committee to assist in the development of the premarital education handbook. If appointed, the ~~[The]~~ advisory committee shall consist of nine members, including at least three members who are eligible under Section 2.013(d) to provide a premarital education course. A member of the advisory committee is not entitled to reimbursement of the member's expenses.

SECTION 13. On September 1, 2003:

(1) the Commission on Human Rights as it exists immediately before that date is abolished and the offices of the members of the commission serving on that date are abolished;

(2) all powers, duties, functions, and activities performed by the Commission on Human Rights immediately before that date are transferred to the attorney general's civil rights division;

(3) a rule, form, order, or procedure adopted by the Commission on Human Rights is a rule, form, order, or procedure of the attorney general's civil rights division and remains in effect until changed by the attorney general;

(4) a reference in law to the Commission on Human Rights means the attorney general's civil rights division;

(5) a complaint, investigation, or other proceeding pending before the Commission on Human Rights under Chapter 21, Labor Code, Chapter 301, Property Code, or any other law is transferred without change in status to the attorney general's civil rights division;

(6) all obligations, rights, and contracts of the Commission on Human Rights are transferred to the attorney general's civil rights division; and

(7) all property, including records and money, in the custody of the Commission on Human Rights and all funds appropriated by the legislature for the Commission on Human Rights, including federal funds, shall be transferred to the attorney general's civil rights division.

SECTION 14. Not later than November 1, 2003, the governor shall appoint new members to the Commission on Human Rights established under Subchapter D, Chapter 402, Government Code, as added by this Act. In appointing members under this section, the governor shall appoint:

- (1) two members for terms expiring February 1, 2005;
- (2) two members for terms expiring February 1, 2007; and
- (3) three members for terms expiring February 1, 2009.

SECTION 15. (a) The first report required under Section 2165.057, Government Code, as added by this Act, must be provided to the appropriate recipients specified under that section not later than September 1, 2004.

(b) The change in law made by this Act to Chapter 2165, Government Code, applies only to a lease for usable office space entered into or renewed on or after September 1, 2003. A lease entered into or renewed before September 1, 2003, shall be reviewed by the Texas Building and Procurement Commission as

the lease comes up for renewal to determine whether it would be cost-effective to bring the lease into compliance with Section 2165.104(c), Government Code, as amended by this Act.

(c) Notwithstanding any other law, including Subchapter A, Chapter 2254, and Chapters 2165, 2166, and 2167, Government Code, and Sections 202.052, 202.053, 203.051, 203.052, and 223.001, Transportation Code, the Texas Department of Transportation may enter into one or more agreements with a private entity offering the best value to the state that includes:

(1) both design and construction of the department's several district office headquarters facilities;

(2) a lease of department-owned real property to the private entity;

(3) provisions authorizing the private entity to construct and retain ownership of buildings on property leased to the private entity under Subdivision (2) of this section;

(4) provisions under which the department agrees to enter into an agreement to lease with an option or options to purchase for the buildings constructed on the leased property; and

(5) any other provisions the department considers advantageous to the state.

(d) To the extent of any conflict between Chapter 2165, Government Code, as amended by this Act, and a change in law to that chapter by any other Act of the 78th Legislature, Regular Session, 2003, this Act prevails.

SECTION 16. (a) Notwithstanding any statute of this state, each state agency that receives an appropriation under Article I of the General Appropriations Act is authorized to reduce or recover expenditures by adopting and collecting fees or charges to cover any cost the agency incurs in performing its lawful functions.

(b) An agency described by Subsection (a) of this section may not increase the amount of a fee or charge solely for a purpose described by this section unless the agency provides written notice of the increase to the Legislative Budget Board before the 60th day preceding the date the increase is to take effect.

SECTION 17. The following laws are repealed:

(1) Sections 251.032, 254.036(j), and 258.005, Election Code;

(2) Chapter 461, Government Code;

(3) Sections 572.030(b) and (c), Government Code;

(4) Sections 21.002(2) and (3), Labor Code; and

(5) Sections 301.003(3), 301.061, and 301.064, Property Code.

SECTION 18. (a) Except as provided by Subsection (b) of 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) Sections 6 and 7 of this Act take effect September 1, 2003.

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

Amend **CSHB 3441** (Committee Printing) by striking SECTIONS 9, 10, 11, and 15 and renumbering subsequent sections accordingly:

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

Amend **CSHB 3441**, Section 17 by adding the following appropriately numbered section:

Section 506.002, Labor Code;

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

Amend **HB 3441** as follows:

(1) Strike the last sentence of SECTION 4 of the bill.

(2) Add the appropriately numbered SECTIONS of the bill and renumber subsequent SECTIONS of the bill appropriately:

SECTION _____. Chapter 412, Government Code, is transferred to Subchapter D, Chapter 96, Education Code, redesignated as Sections 96.65, 96.651, 96.652, and amended to read as follows:

~~[CHAPTER 412. CRIME VICTIMS' INSTITUTE AND CRIME VICTIMS' INSTITUTE ADVISORY COUNCIL~~

~~[SUBCHAPTER A. GENERAL PROVISIONS]~~

Sec. 96.65 ~~[412.001]~~. CRIME VICTIMS' INSTITUTE ~~[DEFINITIONS]~~.

(a) In this section ~~[chapter]~~:

~~(1) ["Advisory council" means the Crime Victims' Institute Advisory Council.~~

~~(2)~~ (2) "Close relative of a deceased victim" has the meaning assigned by Article 56.01, Code of Criminal Procedure.

~~(3)~~ (3) "Guardian of a victim" has the meaning assigned by Article 56.01, Code of Criminal Procedure.

~~(4)~~ (4) "Institute" means the Crime Victims' Institute.

~~(5)~~ (5) "Service provider" means an individual or organization that provides assistance to victims, close relatives of deceased victims, or guardians of victims.

~~(6)~~ "Victim" has the meaning assigned by Article 56.01, Code of Criminal Procedure.

(b) ~~[Sec. 412.002. LEGISLATIVE INTENT.]~~ It is the intent of the legislature to create an institute to:

(1) compile and study information concerning the impact of crime on:

(A) victims;

(B) close relatives of deceased victims;

(C) guardians of victims; and

(D) society;

(2) use information compiled by the institute to evaluate the effectiveness of criminal justice policy and juvenile justice policy in preventing the victimization of society by crime;

(3) develop policies to assist the criminal justice system and the juvenile justice system in preventing the victimization of society by crime; and

(4) provide information related to the studies of the institute.

(c) ~~[SUBCHAPTER B. CRIME VICTIMS' INSTITUTE~~

~~[Sec. 412.011. GENERAL PROVISION.] The headquarters of the institute are at Sam Houston State University in Huntsville, Texas. The institute is under the supervision and direction of the president of Sam Houston State University [Crime Victims' Institute is created in the office of the attorney general].~~

(d) [Sec. 412.012. DUTIES OF INSTITUTE.] The institute shall:

- (1) conduct an in-depth analysis of the impact of crime on:
 - (A) victims;
 - (B) close relatives of deceased victims;
 - (C) guardians of victims; and
 - (D) society;
- (2) evaluate the effectiveness of and deficiencies in the criminal justice system and the juvenile justice system in addressing the needs of victims, close relatives of deceased victims, and guardians of victims and recommend strategies to address the deficiencies of each system;
- (3) determine the long-range needs of victims, close relatives of deceased victims, and guardians of victims as the needs relate to the criminal justice system and the juvenile justice system and recommend changes for each system;
- (4) assess the cost-effectiveness of existing policies and programs in the criminal justice system and the juvenile justice system relating to victims, close relatives of deceased victims, and guardians of victims;
- (5) make general recommendations for improving the service delivery systems for victims in the State of Texas;
- (6) advise and assist the legislature in developing plans, programs, and legislation for improving the effectiveness of the criminal justice system and juvenile justice system in addressing the needs of victims, close relatives of deceased victims, and guardians of victims;
- (7) make computations of daily costs and compare interagency costs on victims' services provided by agencies that are a part of the criminal justice system and the juvenile justice system;
- (8) determine the costs to attorneys representing the state of performing statutory and constitutional duties relating to victims, close relatives of deceased victims, or guardians of victims;
- (9) make statistical computations for use in planning for long-range needs of the criminal justice system and the juvenile justice system as those needs relate to victims, close relatives of deceased victims, and guardians of victims;
- (10) determine the long-range information needs of the criminal justice system and the juvenile justice system as those needs relate to victims, close relatives of deceased victims, and guardians of victims;
- (11) enter into a memorandum of understanding with the Texas Crime Victim Clearinghouse to provide training and education related to the outcome of research and duties as conducted under Subdivisions (1)-(10);
- (12) issue periodic reports to the attorney general and the legislature on the progress toward accomplishing the duties of the institute; and
- (13) engage in other research activities consistent with the duties of the institute.

~~(c) [Sec. 412.013. INTERAGENCY COOPERATION. (a)]~~ The institute shall cooperate with the Criminal Justice Policy Council in performing the duties of the institute.

~~(f) [(b)]~~ The institute may enter into memoranda of understanding with state agencies in performing the duties of the institute.

~~(g) [(e)]~~ Local law enforcement agencies shall cooperate with the institute by providing to the institute access to information that is necessary for the performance of the duties of the institute.

~~(h) [Sec. 412.014. PERSONNEL.]~~ The president of Sam Houston State University ~~[attorney general]~~ may employ personnel as necessary to perform the duties of the institute.

~~(i) [Sec. 412.015. CONTRACTUAL AUTHORITY. (a) The attorney general may contract with public or private entities in the performance of the duties of the institute.]~~

~~[(b)]~~ The institute may contract with public or private entities in the performance of the duties of the institute.

~~(j) [Sec. 412.016. GIFTS, GRANTS, DONATIONS, APPROPRIATIONS. (a)]~~ The ~~[attorney general or the]~~ institute may accept gifts, grants, donations, or matching funds from a public or private source for the performance of the duties of the institute.

~~[(b)]~~ The legislature may appropriate money to the institute to finance the performance of the duties of the institute.

~~[(e)]~~ Money and appropriations received by ~~[the attorney general or]~~ the institute under this subsection ~~[section]~~ shall be deposited as provided by Section 96.652 ~~[412.084]~~.

~~[SUBCHAPTER C. CRIME VICTIMS' INSTITUTE ADVISORY COUNCIL]~~

Sec. 96.651 ~~[412.054]. CRIME VICTIMS' INSTITUTE~~ ~~[CREATION AND COMPOSITION OF]~~ ADVISORY COUNCIL. (a) In this section:

(1) "Advisory council" means the Crime Victims' Institute Advisory Council.

(2) "Victim" has the meaning assigned by Article 56.01, Code of Criminal Procedure.

(b) The Crime Victims' Institute Advisory Council is created as an advisory council to the Crime Victims' Institute ~~[institute].~~

~~(c) [(b)]~~ The advisory council is composed of the attorney general and the following individuals, each of whom is appointed by the governor ~~[attorney general]~~:

- (1) a victim;
- (2) a member of the house of representatives;
- (3) a member of the senate;
- (4) a county judge or district judge whose primary responsibility is to preside over criminal cases;
- (5) a district attorney, criminal district attorney, county attorney who prosecutes felony offenses, or county attorney who prosecutes mostly criminal cases;
- (6) a law enforcement officer;

- (7) a crime victims' assistance coordinator;
- (8) a crime victims's liaison;
- (9) a mental health professional with substantial experience in the care and treatment of victims;
- (10) a person with broad knowledge of sexual assault issues;
- (11) a person with broad knowledge of domestic violence issues;
- (12) a person with broad knowledge of child abuse issues;
- (13) a person with broad knowledge of issues relating to the intoxication offenses described by Chapter 49, Penal Code;
- (14) a person with broad knowledge of homicide issues;
- (15) a person with broad knowledge of research methods; and
- (16) a designee of the governor.

(d) ~~(e)~~ The advisory council shall select a presiding officer from among the council members and other officers that the council considers necessary.

(e) ~~[See. 412.052. MEETINGS.]~~ The advisory council shall meet at the call of the presiding officer.

(f) Appointed ~~[See. 412.053. TENURE OF MEMBERS. The]~~ members of the advisory council serve for staggered two-year terms, with the terms of eight of the members expiring on January 31 of each even-numbered year and the terms of eight ~~[seven]~~ members expiring on January 31 of each odd-numbered year.

(g) ~~[See. 412.054. SERVICE ADDITIONAL DUTY OF OFFICE.]~~ Service on the advisory council by a public officer or employee is an additional duty of the office or employment.

(h) ~~[See. 412.055. COMPENSATION AND REIMBURSEMENT.]~~ A member of the advisory council serves without compensation for service on the council but may be reimbursed for actual and necessary expenses incurred while performing council duties.

(i) ~~[See. 412.056. APPOINTMENT OF OTHER ADVISORY BODIES.]~~ The advisory council may establish advisory task forces or committees that the council considers necessary to accomplish the purposes of this section and Sections 96.65 and 96.652 ~~[chapter]~~.

(j) ~~[See. 412.057. DUTIES OF ADVISORY COUNCIL.]~~ The advisory council shall advise the Crime Victims' Institute ~~[institute]~~ on issues relating directly to the duties of the institute as set forth under Section 96.65(d) ~~[412.012]~~

~~[SUBCHAPTER D. CRIME VICTIMS' INSTITUTE ACCOUNT]~~

Sec. 96.652 ~~[412.084]~~. CRIME VICTIMS' INSTITUTE ACCOUNT; AUDIT; REPORT. (a) The Crime Victims' Institute account is an account in the general revenue fund.

(b) The Crime Victims' Institute ~~[attorney general]~~ may use funds from the Crime Victims' Institute account to carry out the purposes of this section and Sections 96.65 and 96.651 ~~[chapter]~~.

(c) The comptroller shall deposit the funds received under Section 96.65 ~~[this chapter]~~ to the credit of the Crime Victims' Institute account.

(d) Funds spent are subject to audit by the state auditor.

(e) ~~[Section 403.094 does not apply to funds collected under this chapter.]~~

~~[Sec. 412.082. ANNUAL REPORT. (a)]~~ The Crime Victims' Institute ~~[institute]~~ 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 institute during the preceding year.

~~[(b)]~~ The form of the annual report and the reporting time shall be as provided by the General Appropriations Act.

~~[(c)]~~ The Crime Victims' Institute ~~[institute]~~ shall determine the format and contents of the report and may have copies of the report printed for distribution as the institute considers appropriate.

SECTION _____. Subsection (b), Article 56.54, Code of Criminal Procedure, is amended to read as follows:

(b) Except as provided by Subsections (h), (i), (j), and (k) and Article 56.541, the compensation to victims of crime fund may be used only by the attorney general for the payment of compensation to claimants or victims under this subchapter. For purposes of this subsection, compensation to claimants or victims includes money allocated from the fund to[-] the [operation of the] Crime Victims' Institute created by Section 96.65 [Chapter 412], Education [Government] Code, for the operation of the institute and for other expenses in administering this subchapter. The institute shall use money allocated from the fund only for the purposes of Sections 96.65, 96.651, and 96.652, Education Code.

SECTION _____. Section 411.130, Government Code, is amended to read as follows:

Sec. 411.130. ACCESS TO CRIMINAL HISTORY RECORD INFORMATION; CRIME VICTIMS' INSTITUTE. The Crime Victims' Institute is entitled to obtain from the department criminal history record information maintained by the department that the institute believes is necessary for the performance of the duties of the institute under Section 96.65, Education Code [Chapter 412].

SECTION _____. (a) The terms of the current members of the Crime Victims' Institute Advisory Council expire on the effective date of this Act.

(b) As soon as practicable after the effective date of this Act, the governor shall appoint new members to the Crime Victims' Institute Advisory Council, as provided by Section 96.651, Education Code, as added by this Act. The terms of eight members, determined by lot, expire January 31, 2005. The terms of eight members, determined by lot, expire January 31, 2006.

Section _____. On the effective date of this Act:

(1) all powers, duties, and obligations relating to the Crime Victims' Institute are transferred from the attorney general to Sam Houston State University;

(2) all property in the custody of the attorney general and the original or a copy of any record that relates to the Crime Victims' Institute are transferred to the university;

(3) all unexpended appropriations to the attorney general for the operation of the Crime Victims' Institute are transferred to the university; and

(4) all rules, standards, and specifications of the attorney general relating to the operation of the Crime Victims' Institute remain in effect as rules, standards, and specifications of Sam Houston State University unless superseded by the president of the university.

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

Senate Amendment No. 4 (Senate Floor Amendment No. 4)

Amend SECTIONS 1-3 of **CSHB 3441** to read as follows and renumber subsequent sections accordingly:

SECTION 1. Subchapter A, Chapter 21, Labor Code, is amended by adding Section 21.0015 to read as follows:

Sec. 21.0015. TEXAS WORKFORCE COMMISSION CIVIL RIGHTS DIVISION. The powers and duties exercised by the Commission on Human Rights under this chapter are transferred to the Texas Workforce Commission civil rights division. A reference in this chapter to the "commission" means the Texas Workforce Commission civil rights division.

SECTION 2. Chapter 301, Labor Code, is amended by adding Subchapter I to read as follows:

SUBCHAPTER I. CIVIL RIGHTS DIVISION

Sec. 301.151. DEFINITIONS. In this subchapter:

- (1) "Director" means the director of the division.
- (2) "Division" means the civil rights division of the commission.
- (3) "Human rights commission" means the Commission on Human Rights established by this subchapter.

Sec. 301.152. GENERAL PROVISIONS. (a) The division is an independent division in the commission. The division shall be responsible for administering Chapter 21 of this code and Chapter 301, Property Code, including exercising the powers and duties formerly exercised by the former Commission on Human Rights under those laws.

(b) A reference in Chapter 21 of this code, Chapter 301, Property Code, or any other law to the former Commission on Human Rights means the division.

Sec. 301.153. HUMAN RIGHTS COMMISSION (a) The division is governed by the human rights commission, which consists of seven members as follows:

- (1) one member who represents industry;
- (2) one member who represents labor; and
- (3) five members who represent the public.
- (b) The members of the human rights commission established under this section shall be appointed by the governor. In making appointments to the human rights commission, the governor shall strive to achieve representation on the human rights commission that is diverse with respect to disability, religion, age, economic status, sex, race, and ethnicity.
- (c) The term of office of each commissioner is six years. The governor shall designate one commissioner to serve as presiding officer.
- (d) A commissioner is entitled to reimbursement of actual and necessary expenses incurred in the performance of official duties.

(e) The human rights commission shall establish policies for the division and supervise the director in administering the activities of the division.

(f) The human rights commission is the state authority established as a fair employment practice agency and is authorized, with respect to an unlawful employment practice, to:

- (1) grant relief from the practice;
- (2) seek relief from the practice; or
- (3) institute criminal proceedings.

Sec. 301.154. DIRECTOR. (a) The director shall be appointed by the human rights commission to administer the powers and duties of the division.

(b) To be eligible for appointment, the director must have relevant experience in the area of civil rights, specifically in working to prevent the types of discrimination the division is charged with preventing. The director must demonstrate a commitment to equal opportunity for minorities, women, and the disabled. The director should also have relevant experience with housing and employment discrimination claims.

Sec. 301.155. INVESTIGATOR TRAINING PROGRAM; PROCEDURES MANUAL. (a) A person who is employed under this chapter by the division as an investigator may not conduct an investigation until the person completes a comprehensive training and education program for investigators that complies with this section.

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

(1) the requirements relating to employment adopted under the Americans with Disabilities Act (42 U.S.C. Section 12101 et seq.) and its subsequent amendments, with a special emphasis on requirements regarding reasonable accommodations;

(2) various types of disabilities and accommodations appropriate in an employment setting for each type of disability; and

(3) fair employment and housing practices.

(c) Each investigator shall annually complete a continuing education program designed to provide investigators with the most recent information available regarding the issues described by Subsection (b), including legislative and judicial changes in the law.

(d) The director shall develop and biennially update an investigation procedures manual. The manual must include investigation procedures and information and may include information regarding the Equal Employment Opportunity Commission and the United States Department of Housing and Urban Development.

Sec. 301.156. ANALYSIS OF DISCRIMINATION COMPLAINTS; REPORT. (a) The division shall collect and report statewide information relating to employment and housing discrimination complaints as required by this section.

(b) Each state fiscal year, the division shall collect and analyze information regarding employment and housing discrimination complaints filed with the division, the Equal Employment Opportunity Commission, the United States Department of Housing and Urban Development, and local commissions in this state. The information must include:

(1) an analysis of employment complaints filed by the basis of the complaint, including:

(A) sex, race, color, age, disability, national origin, religion, and genetic information; and

(B) retaliatory actions against the complainant;

(2) an analysis of housing complaints filed by the basis of the complaint, including sex, race, color, disability, national origin, religion, and familial status;

(3) an analysis of employment complaints filed by issue, including discharge, terms and conditions, sexual harassment, promotion, hiring, demotion, and layoff;

(4) an analysis of housing complaints filed by issue, including terms and conditions, refusal to rent or sell, discriminatory financing or advertising, and false representation;

(5) an analysis of employment and housing cases closed by the reason the case was closed, including findings or determinations of cause or no cause, successful conciliation, right to sue issued, complaint withdrawn after resolution, no-fault settlement, failure to cooperate by the complainant, and lack of jurisdiction; and

(6) the average processing time for complaints resolved by the division in each state fiscal year, regardless of whether the complaint was filed in the same fiscal year in which the complaint was resolved.

(c) The results of an analysis required under this section shall be included in the commission's annual report to the governor and legislature.

SECTION 3. Subchapter A, Chapter 301, Property Code, is amended by adding Section 301.0015 to read as follows:

Sec. 301.0015. TEXAS WORKFORCE COMMISSION CIVIL RIGHTS DIVISION. The powers and duties exercised by the Commission on Human Rights under this chapter are transferred to the Texas Workforce Commission civil rights division. A reference in this chapter to the "commission" means the Texas Workforce Commission civil rights division.

SECTION 4. The following laws are repealed:

(1) Chapter 461, Government Code;

(2) Sections 21.002(2) and (3), Labor Code; and

(3) Sections 301.003(3), 301.061, and 301.064, Property Code.

SECTION 5. On the effective date of this Act:

(1) the Commission on Human Rights as it exists immediately before the effective date of this Act is abolished and the offices of the members of the commission serving on that date are abolished;

(2) all powers, duties, functions, and activities performed by the Commission on Human Rights immediately before the effective date of this Act are transferred to the Texas Workforce Commission civil rights division;

(3) a rule, form, order, or procedure adopted by the Commission on Human Rights is a rule, form, order, or procedure of the Texas Workforce Commission civil rights division and remains in effect until changed by the Texas Workforce Commission;

(4) a reference in law to the Commission on Human Rights means the Texas Workforce Commission civil rights division;

(5) a complaint, investigation, or other proceeding pending the Commission on Human Rights under Chapter 21, Labor Code, Chapter 301, Property Code, or any other law is transferred without change in status to the Texas Workforce Commission civil rights division;

(6) all obligations, rights, and contracts of the Commission on Human Rights are transferred to the Texas Workforce Commission civil rights division; and

(7) all property, including records and money, in the custody of the Commission on Human Rights and all funds appropriated by the legislature for the Commission on Human Rights, including federal funds, shall be transferred to the Texas Workforce Commission civil rights division.

SECTION 6. Not later than November 1, 2003, the governor shall appoint new members to the Commission on Human Rights established under Subchapter I, Chapter 301, Labor Code, as added by this Act. In appointing members under this section, the governor shall appoint:

(1) two members for terms expiring February 1, 2005;

(2) two members for terms expiring February 1, 2007; and

(3) three members for terms expiring February 1, 2009.

SECTION 7. This act shall take effect upon certification of the Texas Workforce Commission Civil Rights Division by the appropriate federal agency, and the transfer of related federal funds. Upon certification of Texas Workforce Commission Civil Rights Division by the appropriate federal agency, the Workforce Commission shall file with the Secretary of State for publication in the Texas Register

HB 2866 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

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

HB 2866, A bill to be entitled An Act relating to coordination of inspections of certain licensed child-care facilities.

On motion of Representative Swinford, the house concurred in the senate amendments to **HB 2866** by (Record 862): 145 Yeas, 0 Nays, 3 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; Eiland; Eissler; Elkins; Ellis; Escobar; Farabee; Farrar; Flores; Flynn; Gallego; Garza; Gattis; Geren; Giddings; Goolsby; Griggs; Grusendorf; Guillen; Gutierrez; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Heflin; Hegar; Hilderbran; Hill; Hochberg; Hodge; Homer; Hope; Hopson; Howard; Hughes; Hunter; Isett; Jones, D.; Jones, E.; Jones, J.; Keel; Keffer, B.; Keffer, J.; King; Kolkhorst; Krusee; Kuempel; Laney; Laubenberg; Lewis; Luna; Mabry; Madden; 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.; Smithee; Solis; Solomons; Stick; Swinford; Taylor; Telford; Thompson; Truitt; Turner; Uresti; Van Arsdale; Villarreal; West; Wilson; Wise; Wohlgemuth; Wolens; Wong; Woolley; Zedler.

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

Absent, Excused — Marchant.

Absent — Talton.

Senate Committee Substitute

HB 2866, A bill to be entitled An Act relating to coordinated inspection of certain child-care facilities for compliance with fire safety and sanitation standards.

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

SECTION 1. Subchapter C, Chapter 42, Human Resources Code, is amended by adding Section 42.0443 to read as follows:

Sec. 42.0443. COORDINATION OF FIRE SAFETY AND SANITATION INSPECTIONS. (a) The department may not inspect a licensed day-care center, licensed group day-care home, or registered family home for compliance with the department's fire safety or sanitation standards if the facility, at the time of the department's inspection, provides the department with documentation relating to a current fire safety or sanitation inspection, as applicable, performed by a political subdivision of this state that indicates that the facility is in compliance with the applicable standards of the political subdivision.

(b) If the documentation provided under Subsection (a) indicates that the facility was required to take corrective action or that the political subdivision imposed a restriction or condition on the facility, the department shall determine whether the facility took the required corrective action or complied with the restriction or condition.

(c) The department may inspect a facility subject to this section for compliance with the department's fire safety or sanitation standards if:

(1) the facility does not provide the documentation described by Subsection (a); or

(2) the department determines that the facility did not take a corrective action or comply with a restriction or condition described by Subsection (b).

(d) Notwithstanding any other provision of this section, the department shall report to the appropriate political subdivision any violation of fire safety or sanitation standards observed by the department at a facility subject to this section.

(e) The department shall adopt rules necessary to implement this section.

SECTION 2. This Act takes effect September 1, 2003.

HB 2036 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

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

HB 2036, A bill to be entitled An Act relating to allowing certain political subdivisions to enter agreements with other political subdivisions for the collection of past due amounts for certain utility or waste disposal services.

On motion of Representative Swinford, the house concurred in the senate amendments to **HB 2036** by (Record 863): 145 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; 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; Hope; Hopson; Howard; Hughes; Hunter; Isett; Jones, D.; Jones, E.; Jones, J.; Keel; Keffer, B.; Keffer, J.; King; Kolkhorst; Krusee; Kuempel; Laney; Laubenberg; Lewis; Luna; Mabry; Madden; 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.; Smithee; Solis; Solomons; Stick; Swinford; Taylor; Telford; Thompson; Truitt; Turner; Uresti; Van Arsdale; Villarreal; Wilson; Wise; Wohlgemuth; Wolens; Wong; Woolley; Zedler.

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

Absent, Excused — Marchant.

Absent — Talton; West.

Senate Committee Substitute

HB 2036, A bill to be entitled An Act relating to allowing certain political subdivisions to enter agreements with other political subdivisions for the collection of past due amounts for certain utility or waste disposal services.

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

SECTION 1. Subchapter Z, Chapter 402, Local Government Code, is amended by adding Section 402.910 to read as follows:

Sec. 402.910. AGREEMENTS WITH OTHER POLITICAL SUBDIVISIONS FOR COLLECTION OF PAST DUE UTILITY OR SOLID WASTE DISPOSAL SERVICE FEES. (a) A municipality that operates a utility system, as defined by Section 402.001, or provides solid waste disposal services may enter an agreement for the collection of unpaid utility charges or solid waste disposal services fees with:

(1) another municipality that operates a utility system;
(2) a county or public agency that provides solid waste disposal services; or

(3) another political subdivision acting on behalf of a municipality, county, or public agency to assist in the collection of unpaid utility charges or solid waste disposal fees.

(b) The agreement may provide that a municipality:

(1) may refuse to provide utility service to a person if the person is past due on utility charges or solid waste disposal services fees owed to another party to the agreement; or

(2) may collect an amount equal to the past due utility charges or solid waste disposal services fees owed to another party to the agreement plus a service charge and provide the utility service the person requests.

(c) The agreement shall provide for:

(1) the confidentiality of a person's utility or solid waste disposal account information and the prevention of disclosure to a person or other entity that is not a party to the agreement; and

(2) the apportionment of any past due charges, fees, and service charges authorized by Subsection (b)(2) between the collecting entity and the entity to which the fees are owed.

SECTION 2. Section 364.034(e), Health and Safety Code, is amended to read as follows:

(e) This section does not apply to a person who provides the public or private entity, public agency, or county with written documentation that the person is receiving solid waste disposal services from another entity. Nothing in this section shall limit the authority of a municipality to enforce its grant of a franchise for solid waste collection and transportation services within its territory.

SECTION 3. Subchapter C, Chapter 364, Health and Safety Code, is amended by adding Section 364.037 to read as follows:

Sec. 364.037. AGREEMENTS WITH OTHER POLITICAL SUBDIVISIONS FOR COLLECTION OF PAST DUE UTILITY OR SOLID WASTE DISPOSAL SERVICES FEES. (a) A county or public agency that offers solid waste disposal services under this subchapter may enter an agreement for the collection of unpaid utility or solid waste disposal services fees with:

(1) another county or public agency that provides solid waste disposal services under this subchapter;

(2) a municipality that operates a utility system, as defined by Section 402.001, Local Government Code; or

(3) another political subdivision acting on behalf of a municipality, county, or public agency to assist in the collection of unpaid utility charges or solid waste disposal fees.

(b) The agreement may provide that a county or public agency:

(1) may refuse to provide solid waste disposal services to a person if the person is past due on utility charges or solid waste disposal services fees owed to another party to the agreement; or

(2) may collect an amount equal to the past due utility charges or solid waste disposal services fees owed to another party to the agreement plus a service charge and provide the solid waste disposal services the person requests.

(c) The agreement shall provide for:

(1) the confidentiality of a person's utility or solid waste disposal account information and the prevention of disclosure to a person or other entity that is not a party to the agreement; and

(2) the apportionment of any past due charges, fees, and service charges authorized by Subsection (b)(2) between the collecting entity and the entity to which the fees are owed.

SECTION 4. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2003.

HB 1883 - HOUSE DISCHARGES CONFEREES HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

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

HB 1883, A bill to be entitled An Act relating to the appointment of a voting proxy by members of certain policy boards of metropolitan planning organizations.

Representative Baxter moved to discharge the conferees and concur in the senate amendments to **HB 1883**.

A record vote was requested.

The motion prevailed by (Record 864): 144 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; 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; Hartnett; Heflin; Hegar; Hilderbran; Hill; Hochberg; Hodge; Homer; Hope; Hopson; Howard; Hughes; Hunter; Isett; Jones, D.; Jones, E.; Jones, J.; Keel; Keffer, B.; Keffer, J.; King; Kolkhorst; Krusee; Kuempel; Laney; Laubenberger; Lewis; Luna; Mabry; Madden; 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.; Smithee; Solis; Solomons; Stick; Swinford; Taylor; Telford; Thompson; Truitt; Turner; Uresti; Van Arsdale; Villarreal; West; Wilson; Wise; Wohlgemuth; Wolens; Wong; Woolley; Zedler.

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

Absent, Excused — Marchant.

Absent — Dunnam; Harper-Brown; Talton.

Senate Committee Substitute

HB 1883, A bill to be entitled An Act relating to the appointment of a voting proxy by a policy board member of a metropolitan planning organization.

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

SECTION 1. Chapter 472, Transportation Code, is amended by adding Subchapter D to read as follows:

SUBCHAPTER D. METROPOLITAN PLANNING ORGANIZATIONS

Sec. 472.031. POLICY BOARD. (a) A policy board of a metropolitan planning organization designated or redesignated under 23 U.S.C. Section 134 may provide in its bylaws for appointment of voting proxies by its members.

(b) A proxy appointed under Subsection (a):

(1) acts on behalf of and under the supervision of the policy board member who appointed the proxy;

(2) must be appointed in writing; and

(3) is authorized to vote for the policy board member who appointed the proxy to the extent the member has given the proxy the member's voting power.

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.

(Gattis in the chair)

**HB 1282 - HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS**

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

HB 1282, A bill to be entitled An Act relating to commercial electronic mail; providing penalties.

On motion of Representative McCall, the house concurred in the senate amendments to **HB 1282**.

Senate Committee Substitute

HB 1282, A bill to be entitled An Act relating to commercial electronic mail; providing penalties.

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

SECTION 1. Title 4, Business & Commerce Code, is amended by adding Chapter 46 to read as follows:

CHAPTER 46. ELECTRONIC MAIL SOLICITATION

Sec. 46.001. DEFINITIONS. In this chapter:

(1) "Commercial electronic mail message" means an electronic mail message that advertises, offers for sale or lease, or promotes any goods, services, business opportunity, property, or any other article, commodity, or thing of value.

(2) "Electronic mail" means a message, file, or other information that is transmitted through a local, regional, or global computer network, regardless of whether the message, file, or other information is viewed, stored for retrieval at a later time, printed, or filtered by a computer program that is designed or intended to filter or screen those items.

(3) "Electronic mail service provider" means a person that:

(A) is qualified to do business in this state;

(B) is an intermediary in sending or receiving electronic mail; and

(C) provides an end user of an electronic mail service the ability to send or receive electronic mail.

(4) "Established business relationship" means a prior or existing relationship of a person formed by a voluntary two-way communication between a person and another person, regardless of whether consideration is exchanged, regarding products or services offered by one of the persons, that has not been terminated by either party.

(5) "Internet domain name" refers to a globally unique, hierarchical reference to an Internet host or service, assigned through a centralized Internet naming authority and composed of a series of character strings separated by periods with the right-most string specifying the top of the hierarchy.

(6) "Obscene" has the meaning assigned by Section 43.21, Penal Code.

(7) "Sender" means a person who initiates an electronic mail message.

(8) "Sexual conduct" has the meaning assigned by Section 43.25, Penal Code.

(9) "Unsolicited commercial electronic mail message" means a commercial electronic mail message sent without the consent of the recipient by a person with whom the recipient does not have an established business relationship. The term does not include electronic mail sent by an organization using electronic mail for the purpose of communicating exclusively with members, employees, or contractors of the organization.

Sec. 46.002. CERTAIN ELECTRONIC MAIL MESSAGES PROHIBITED. (a) A person may not intentionally transmit a commercial electronic mail message that:

(1) falsifies electronic mail transmission information or other routing information for an unsolicited commercial electronic mail message; or

(2) contains false, deceptive, or misleading information in the subject line.

(b) A person may not intentionally send a commercial electronic mail message that uses another person's Internet domain name without the other person's consent.

Sec. 46.003. UNSOLICITED ELECTRONIC MAIL MESSAGES. (a) A person may not intentionally take any action to send an unsolicited commercial electronic mail message unless:

(1) "ADV:" is used as the first four characters in the subject line of the message or, if the message contains any obscene material or material depicting sexual conduct, "ADV: ADULT ADVERTISEMENT" is used as the first word in the subject line of the message; and

(2) the sender of the message or a person acting on behalf of the sender provides a functioning return electronic mail address to which a recipient may, at no cost to the recipient, send a reply requesting the removal of the recipient's electronic mail address from the sender's electronic mail list.

(b) A sender shall remove a person's electronic mail address from the sender's electronic mail list not later than the 3rd day after the date on which the sender receives a request for removal of that address under Subsection (a)(2).

Sec. 46.004. SALE OR PROVISION OF ADDRESS ON ELECTRONIC MAIL LIST PROHIBITED. A sender or a person acting on behalf of the sender may not sell or otherwise provide the electronic mail address of a person who requests the removal of that address from the sender's electronic mail list under Section 46.003(a)(2), except as required by other law.

Sec. 46.005. CRIMINAL PENALTY. A person commits an offense if the person intentionally takes any action to send a message containing obscene material or material depicting sexual conduct in violation of Section 46.003(a)(1). An offense under this section is a Class B misdemeanor.

Sec. 46.006. CIVIL PENALTY. (a) A person who violates this chapter other than Section 46.009 is liable to the state for a civil penalty in an amount not to exceed the lesser of:

(1) \$10 for each unlawful message or action; or

(2) \$25,000 for each day an unlawful message is received or an action is taken.

(b) The attorney general or the prosecuting attorney in the county in which the violation occurs may:

(1) bring suit to recover the civil penalty imposed under Subsection (a);
and

(2) seek an injunction to prevent or restrain a violation of this chapter.

(c) The attorney general or the prosecuting attorney may recover reasonable expenses incurred in obtaining a civil penalty under this section, including court costs, reasonable attorney's fees, investigative costs, witness fees, and deposition expenses.

Sec. 46.007. DECEPTIVE TRADE PRACTICES. A violation of this chapter is a false, misleading, or deceptive act or practice under Subchapter E, Chapter 17, and any public or private right or remedy prescribed by that subchapter may be used to enforce this chapter, except as provided by Section 46.008(d).

Sec. 46.008. CIVIL LIABILITY. (a) A person injured by a violation of this chapter may bring an action to recover actual damages, including lost profits. A person who prevails in the action is entitled to reasonable attorney's fees and court costs.

(b) In lieu of actual damages, a person injured by a violation of this chapter arising from the transmission of an unsolicited or commercial electronic mail message, other than an electronic mail service provider, may recover the lesser of:

(1) \$10 for each unlawful message; or

(2) \$25,000 for each day the unlawful message is received.

(c) In lieu of actual damages, an electronic mail service provider injured by a violation of this chapter arising from the transmission of an unsolicited or commercial electronic mail message may recover the greater of:

(1) \$10 for each unlawful message; or

(2) \$25,000 for each day the unlawful message is received.

(d) A court may not certify an action brought under this chapter as a class action.

(e) At the request of a party to any action brought under this chapter, the court, in its discretion, may conduct a legal proceeding in such a manner as to protect the secrecy and security of the computer, computer network, computer data, computer program, and computer software involved to prevent a possible recurrence of the same or a similar act by another person and to protect any trade secrets of a party to the action.

Sec. 46.009. NOTICE TO ATTORNEY GENERAL. (a) A person who brings an action under Section 46.008 shall give notice of the action to the attorney general by sending a copy of the petition by registered or certified mail not later than the 30th day after the date the petition was filed and at least 10 days before the date set for a hearing on the action.

(b) The attorney general may intervene in the action by:

(1) filing a notice of intervention with the court in which the action is pending; and

(2) serving each party to the action with a copy of the notice of intervention.

(c) A person who violates Subsection (a) is liable to the state for a civil penalty in an amount not to exceed \$200 for each violation. The attorney general may bring suit to recover the civil penalty imposed under this subsection in the court in which the action is instituted.

Sec. 46.010. BLOCKING OF COMMERCIAL ELECTRONIC MAIL MESSAGE. An electronic mail service provider may on its own initiative block the receipt or transmission through its service of any commercial electronic mail message that the provider reasonably believes is or will be sent in violation of this chapter if the provider:

(1) provides a process for the prompt, good faith resolution of disputes related to the blocking with senders of commercial electronic mail messages; and

(2) makes contact information publicly accessible on its Internet website for the purpose of dispute resolution.

Sec. 46.011. QUALIFIED IMMUNITY. (a) In this section, "telecommunications utility" has the meaning assigned by Section 51.002, Utilities Code.

(b) A telecommunications utility or an electronic mail service provider may not be held liable under Section 46.002 or 46.003 and is not subject to the penalties provided under this chapter.

(c) A person injured by a violation of this chapter does not have a cause of action against a telecommunications utility or an electronic mail service provider under this chapter solely because the utility or provider:

(1) is an intermediary between the sender, or any person acting on behalf of the sender, and the recipient in the transmission of electronic mail that violates this chapter;

(2) provides transmission, routing, relaying, handling, or storing, through an automatic technical process, of an unsolicited commercial electronic mail message through the utility's or provider's computer network or facilities; or

(3) provides telecommunications services, information services, or other services used in the transmission of an electronic mail message that violates this chapter.

(d) An electronic mail service provider that provides for a dispute resolution process as described by Section 46.010 may not be held liable for blocking the receipt or transmission through its service of any commercial electronic mail message that the provider reasonably believes is or will be sent in violation of this chapter.

(e) A person may not be held liable under this chapter for a commercial electronic mail message that is sent as a result of an error or accidental transmission.

(f) A sender may not be held liable for the transmission of an electronic mail message that violates this chapter if the sender:

(1) contracts in good faith with an electronic mail service provider to transmit electronic mail messages for the sender; and

(2) has no reason to believe the electronic mail service provider will transmit any of the sender's messages in a manner that violates this chapter.

SECTION 2. This Act takes effect September 1, 2003, and applies only to an electronic mail message that is sent on or after that date.

**HB 1297 - HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS**

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

HB 1297, A bill to be entitled An Act relating to limits on indemnification of state employees and officials.

On motion of Representative Allen, the house concurred in the senate amendments to **HB 1297** by (Record 865): 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; Dunnam; Dutton; Edwards; Eiland; Elkins; Ellis; Escobar; Farabee; Farrar; Flores; Flynn; Gallego; Garza; Geren; Giddings; Goodman; Goolsby; Grusendorf; Guillen; Gutierrez; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Heflin; Hegar; Hilderbran; Hill; Hochberg; Hodge; Homer; Hope; 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; 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.; Smithee; Solis; Solomons; Stick; Swinford; Taylor; Telford; Thompson; Truitt; Turner; Uresti; Van Arsdale; Villarreal; West; Wilson; Wise; Wohlgemuth; Wolens; Wong; Woolley; Zedler.

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

Absent, Excused — Marchant.

Absent — Dukes; Eissler; Griggs; Talton.

Senate Committee Substitute

HB 1297, A bill to be entitled An Act relating to limits on indemnification of state employees and officials.

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

SECTION 1. Section 104.003, Civil Practice and Remedies Code, is amended by amending Subsections (a) and (c) and adding Subsection (d) to read as follows:

(a) Except as provided by Subsection (c) or a specific appropriation, state liability for indemnification under this chapter may not exceed:

(1) \$100,000 to a single person indemnified and, if more than one person is indemnified, \$300,000 for a single occurrence in the case of personal injury, death, or deprivation of a right, privilege, or immunity; and

(2) \$10,000 for each [a] single occurrence of damage to property.

(c) The limits on state liability provided by Subsection (a) do not apply if[=

[~~(1)~~] the state liability is based on Section 104.002(b)[~~;- or~~

[~~(2) the person for whose acts the state is liable under this chapter is a member of the Texas Board of Criminal Justice~~].

(d) For the purposes of this section, a claim arises out of a single occurrence, if the claim arises from a common nucleus of operative facts, regardless of the number of claimants or the number of separate acts or omissions.

SECTION 2. The change in law made by this Act applies only to indemnification in connection with a cause of action that accrues on or after the effective date of this Act. Indemnification in connection with 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.

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.

HB 2240 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

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

HB 2240, A bill to be entitled An Act relating to the management of certain trusts and the adoption of the Uniform Prudent Investor Act.

On motion of Representative Paxton, the house concurred in the senate amendments to **HB 2240**.

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

Amend **HB 2240** as follows:

(1) On page 9, strike SECTION 8 and renumber the subsequent sections accordingly.

(2) On page 11, line 21, strike "Sections 117.004(a) - (c)" and substitute "Section 117.004(b)".

(3) On page 12, line 13, strike "Sections 117.004(a) - (c)" and substitute "Section 117.004(b)".

(4) On page 12, line 21, strike "Sections 117.004(a) - (c)" and substitute "Section 117.004(b)".

HB 2519 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

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

HB 2519, A bill to be entitled An Act relating to the regulation of bingo; imposing a tax.

On motion of Representative Flores, the house concurred in the senate amendments to **HB 2519**.

Senate Committee Substitute

HB 2519, A bill to be entitled An Act relating to the regulation of bingo.

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

SECTION 1. Section 2001.002, Occupations Code, is amended by amending Subdivision (5) to read as follows:

(5) "Bingo equipment" means equipment used, made, or sold for the purpose of use in bingo. The term:

(A) includes:

(i) a machine or other device from which balls or other items are withdrawn to determine the letters and numbers or other symbols to be called;

(ii) an electronic or mechanical cardminding device;

(iii) a pull-tab dispenser;

(iv) a bingo card; ~~and~~

(v) a bingo ball; and

(vi) any other device commonly used in the direct operation of a bingo game; and

(B) does not include:

(i) a bingo game set commonly manufactured and sold as a child's game for a retail price of \$20 or less unless the set or a part of the set is used in bingo subject to regulation under this chapter; or

(ii) a commonly available component part of bingo equipment such as a light bulb or ~~or~~ fuse ~~or bingo ball~~.

SECTION 2. Subchapter B, Chapter 2001, Occupations Code, is amended by adding Section 2001.059 to read as follows:

Sec. 2001.059. ADVISORY OPINIONS. (a) A person may request from the commission an advisory opinion regarding compliance with this chapter and the rules of the commission.

(b) The commission shall respond to a request under Subsection (a) not later than the 60th day after the date a request is received, unless the commission determines that the request does not contain sufficient facts to provide an answer on which the requestor may rely. In that event, the commission shall request additional information from the requestor not later than the 10th day after the date the request is received. If the commission requests additional information, the commission shall respond to the request not later than the 60th day after the date additional information is received pursuant to the request for additional information.

(c) A person who request an advisory opinion under Subsection (a) may act in reliance on the opinion in the conduct of any activity under any license issued under this chapter if the conduct is substantially consistent with the opinion and the facts stated in the request.

(d) An advisory opinion issued under this section is not a rule under Subchapter B of Texas Government Code Chapter 2001, and the rulemaking requirements of that subchapter do not apply to a request for an advisory opinion or any advisory opinion issued by the commission.

(e) Nothing in this section precludes the commission from requesting an attorney general opinion under Section 402.042, Government Code. In the event the commission requests an attorney general opinion on a matter that is the subject of an advisory opinion request under this section, the deadlines established under Subsection (b) are tolled until thirty days following the issuance of the attorney general opinion.

(f) The commission may delegate all or part of the authority and procedures for issuing advisory opinions under this section to an employee of the commission.

SECTION 3. Section 2001.103, Occupations Code, is amended by adding Subsection (e)-(h) to read as follows:

(e) Notwithstanding Subsection (c), an authorized organization that holds a regular license to conduct bingo may receive not more than 12 temporary licenses during the 12-month period following the issuance or renewal of the license.

(f) An authorized organization that holds a regular license to conduct bingo may apply for all or any portion of the total number of temporary licenses to which the organization is entitled under Subsection (e) in one application without stating the days or times for which the organization will use the temporary licenses.

(g) An organization that has been issued a temporary license under Subsection (f) shall notify the commission of the specific date and time of the bingo occasion for which the temporary license will be used before using the license. If the commission receives the notification by noon of the day before the day the temporary license will be used, the commission shall verify receipt of the notice before the end of the business day on which the notice is received. If the commission does not receive the notification by noon of the day before the day the temporary license will be used, the commission shall verify receipt of the notice before noon of the business day that follows the day the commission received the notice.

(h) A verification under Subsection (g) may be delivered by facsimile, e-mail, or any other means reasonably contemplated to arrive before the time the temporary license will be used.

SECTION 4. Section 2001.104, Occupations Code, is amended by adding Subsection (d) to read as follows:

(d) An applicant shall pay the fees established under Subsection (a) annually. An applicant for a license or renewal of a license may obtain a license that is effective for two years by paying an amount equal to two times the amount of the annual license fee plus \$25.

SECTION 5. Section 2001.105, Occupations Code, is amended by adding Subsection (c) to read as follows:

(c) Except as provided by Section 2001.104(d), a license issued under this subchapter is effective for one year.

SECTION 6. Subchapter C, Chapter 2001, Occupations Code, is amended by adding Section 2001.108 to read as follows:

Sec. 2001.108. LICENSE AMENDMENT FOR CHANGE OF BINGO PREMISES OR OCCASIONS. (a) A licensed authorized organization and the licensed commercial lessor at which the organization conducts or will conduct bingo may file a joint application with the commission to change the premises at which the organization may conduct bingo or the times of the organization's bingo occasions to allow the organization to conduct bingo at the same time and premises that another licensed authorized organization is licensed to conduct bingo, if the other organization has ceased, or will cease, conducting bingo at that time and premises. The application must state whether the other organization has ceased or will cease conducting bingo at that time and premises because:

(1) the organization has abandoned or will abandon its licensed time or premises; or

(2) the organization's lease has been or will be terminated.

(b) If the other organization ceased or will cease conducting bingo for the reason stated in Subsection (a)(1), the commission must act on the joint application filed under Subsection (a) not later than the 10th day after the date the application is filed with the commission.

(c) If the other organization ceased or will cease conducting bingo for the reason stated in Subsection (a)(2), the commission must act on the joint application filed under Subsection (a) not later than the 10th day after the date the application is filed with the commission or the date on which the termination takes effect, whichever is later.

(d) If the commission fails to act within the time provided by Subsection (b) or (c), the licensed authorized organization may act as if the change in premises or bingo occasions has been approved by the commission and may conduct bingo at the new premises or during the new bingo occasion until the commission acts on the application.

(e) Notwithstanding Subsection (d), the commission may issue temporary licenses to one or more licensed authorized organizations that conduct bingo at the same location as an organization that has ceased or will cease to conduct bingo, which are in addition to the number of temporary licenses each organization is entitled to under another provision of this chapter. The commission is not required to act on a joint application under Subsection (a) within the time provided by this section if the number of additional temporary licenses is sufficient to allow the other organizations at the location to conduct bingo during the licensed times of the organization that has ceased or will cease to conduct bingo.

SECTION 7. Section 2001.152, Occupations Code, is amended by adding Subsection (c) to read as follows:

(c) Notwithstanding Subsection (a), the commission may issue a commercial lessor license under Subsection (a)(2) or (3) only if there is not a licensed commercial lessor whose premises is located in the county in which an

applicant for a license under Subsection (a)(2) or (3) proposes to locate a bingo premises. This subsection does not prohibit the renewal of an existing license. This subsection expires September 1, 2005.

SECTION 8. Section 2001.158, Occupations Code, is amended by adding Subsection (d) to read as follows:

(d) An applicant for a commercial lessor license shall pay the fees established under Subsection (a) annually. An applicant for a license or renewal of a license may obtain a license that is effective for two years by paying an amount equal to two times the amount of the annual license fee plus \$25.

SECTION 9. Section 2001.159(c), Occupations Code, is amended to read as follows:

(c) Except as provided by Section 2001.158(d), the [The] period may not exceed one year.

SECTION 10. Section 2001.214, Occupations Code, is amended to read as follows:

Sec. 2001.214. LICENSE TERM. (a) Except as provided by Subsection (b), a [A] manufacturer's or distributor's license is effective for one year unless revoked or suspended by the commission.

(b) A manufacturer or distributor may obtain a license that is effective for two years by paying an amount equal to two times the amount of the annual license fee plus \$1,000.

SECTION 11. Section 2001.218(a), Occupations Code, is amended to read as follows:

(a) Each sale or lease of bingo supplies or equipment to a license holder under this chapter must be on terms of immediate payment or on terms requiring payment not later than the 30th day after the date of actual delivery.

SECTION 12. Section 2001.307, Occupations Code, is amended to read as follows:

Sec. 2001.307. MAXIMUM LICENSE TERM. Except as otherwise provide by this chapter, a [A] license issued under this chapter may not be effective for more than one year.

SECTION 13. Subchapter G, Chapter 2001, Occupations Code, is amended by adding Sections 2001.313 and 2001.314 to read as follows:

Sec. 2001.313. REGISTRY OF APPROVED BINGO WORKERS. (a) To minimize duplicate criminal history background checks by the commission and the costs incurred by organizations and individuals, the commission shall maintain a registry of persons on whom the commission has conducted a criminal history background check and who are approved to be involved in the conduct of bingo or to act as a bingo operator.

(b) A person listed in the registry may be involved in the conduct of bingo or act as an operator at any location at which bingo is lawfully conducted.

(c) The commission shall make the registry information available to the public by publishing it on the commission's website and by responding to telephone, e-mail, and facsimile requests. This subsection does not require the commission to disclose information that is confidential by law.

(d) A person who is not listed on the registry established by this section may not act as an operator, manager, cashier, usher, caller or sales person for a licensed authorized organization.

(e) The commission may refuse to add a person's name to, or remove a person's name from, the registry established by this section if, after notice and a hearing, the person is finally determined to have:

(1) been convicted of an offense listed under Section 2001.105(b);

(2) converted bingo equipment in a premises to an improper use;

(3) converted funds that are in, or that should have been in, the bingo account of any licensed authorized organization;

(4) taken any action, individually or in concert with another person, that affects the integrity of any bingo game to which this chapter applies; or

(5) acted as an operator, manager, cashier, usher, caller, or sales person for a licensed authorized organization without being listed on the registry established under this section.

(f) A licensed authorized organization shall report to the commission or its designee the discovery of any conduct on the part of a person registered or required to be registered under this section where there is substantial basis for believing that the conduct would constitute grounds for removal of the person's name from, or refusal to add the person's name to, the registry established by this section. A statement made in good faith to the commission or to an adjudicative body in connection with any such report may not be the basis for an action for defamation of character.

(g) A person who has been finally determined to have take action prohibited by Subsection (e)(2), (3), (4), or (5) cannot be listed on the registry of approved bingo workers and cannot work as a bingo worker for one year from the date of such determination. Upon expiration of the one year period, the person is eligible for listing on the registry provided a licensee subject to this chapter makes application to list the person. In such event, the commission shall take into consideration the facts and circumstances that occurred that lead to the applicable action under Subparagraph (e)(2)-(5) in deciding whether to list the person on the registry.

Sec. 2001.314. IDENTIFICATION CARD FOR APPROVED BINGO WORKER. (a) The commission may require a person listed in the registry maintained under Section 2001.313 to wear an identification card to identify the person to license holders, bingo players, and commission staff while the person is on duty during the conduct of bingo. The commission by rule shall prescribe the form and content of the card.

(b) The commission shall provide the identification card and shall provide a form to be completed by a person that allows the person to prepare the identification card. The commission shall collect a reasonable charge to cover the cost of providing the card or form.

(c) An identification card required by the commission under this section to be worn by a person while on duty during the conduct of bingo must be in substantial compliance with the form and content requirements prescribed by the commission under this section.

(d) The commission may not require any other person licensed under this chapter, or a person acting on the license holder's behalf, to wear an identification card, whether or not the person is present or performing the person's duties during the conduct of bingo.

SECTION 14. Section 2001.411, Occupations Code, is amended by adding Subsection (e) to read as follows:

(e) The commission may not prohibit an operator responsible for conducting, promoting, or administering bingo from acting as a bingo caller for a licensed authorized organization during a bingo occasion. This subsection does not relieve the operator of the duty to be available to a commission employee or bingo player if required by this chapter.

SECTION 15. Subchapter I, Chapter 2001, Occupations Code, is amended by adding Section 2001.4115 to read as follows:

Sec. 2001.4115. JOINT EMPLOYMENT OF BINGO EMPLOYEES. Two or more licensed authorized organizations conducting bingo at the same premises may jointly hire bingo employees. One organization may act as the employee's employer and the other organization may reimburse the employing organization for the other organization's share of the employee's compensation and other employment-related costs. A reimbursement under this section is an authorized expense and must be made from the bingo account of the reimbursing organization.

SECTION 16. Section 2001.413, Occupations Code, is amended to read as follows:

Sec. 2001.413. ADMISSION CHARGE REQUIRED. Except as provided by Section 2001.4155, a [A] licensed authorized organization may not offer or provide to a person the opportunity to play bingo without charge.

SECTION 17. Section 2001.415, Occupations Code, is amended to read as follows:

Sec. 2001.415. ADVERTISEMENTS. (a) A person other than a licensed authorized organization, licensed commercial lessor, or the commission may not advertise bingo.

(b) A licensed authorized organization, licensed commercial lessor, or the commission may include in an advertisement or promotion the amount of a prize or series of prizes offered at a bingo occasion.

SECTION 18. Subchapter I, Chapter 2001, Occupations Code, is amended by adding Section 2001.4155 to read as follows:

Sec. 2001.4155. GIFT CERTIFICATES. (a) Nothing in this chapter prohibits a licensed authorized organization from selling or redeeming a gift certificate that entitles the bearer of the certificate to play a bingo game, including instant bingo.

(b) A licensed authorized organization that sells or redeems a gift certificate must keep adequate records relating to the gift certificate as provided by commission rule.

SECTION 19. Chapter 2001, Occupations Code, is amended by adding Subchapter I-1 to read as follows:

SUBCHAPTER I-1. UNIT ACCOUNTING

Sec. 2001.431. DEFINITIONS. In this subchapter:

(1) "Unit" means two or more licensed authorized organizations that conduct bingo at the same location joining together to share revenues, authorized expenses, and inventory related to bingo operations.

(2) "Unit accounting" means a method by which licensed authorized organizations that are members of a unit account for the sharing of revenues, authorized expenses, and inventory related to bingo operations.

(3) "Unit account agreement" means a written agreement by all the licensed authorized organizations that are members of a unit that contain, at a minimum:

(A) the taxpayer name and number of each licensed authorized organization that is a member of the unit;

(B) the method by which the net proceeds of the bingo operations of the unit will be apportioned among the members of the unit;

(C) the name of the unit manager or designated agent of the unit; and

(D) the methods by which the unit may be dissolved and by which one or more members of the unit may withdraw from participation in the unit, including the distribution of funds, records, and inventory and the allocation of authorized expenses and liabilities on dissolution or withdrawal of one or more members of the unit.

(4) "Unit manager" means an individual licensed under this subchapter to be responsible for the revenues, authorized expenses, and inventory of a unit.

Sec. 2001.432. FORMING ACCOUNTING UNIT. (a) Two or more licensed authorized organizations may form and operate a unit as provided by this subchapter by:

(1) executing a unit accounting agreement; and

(2) stating in the unit accounting agreement whether the unit will use:

(A) a unit manager; or

(B) a designated agent.

(b) More than one unit may be formed at a single location. A licensed authorized organization may not be a member of more than one unit.

(c) This subchapter does not require a licensed authorized organization to join a unit. Except as provided by Subsection (d), whether to join or withdraw from a unit is at the discretion of each licensed authorized organization.

(d) The members of a unit may determine whether to allow another licensed authorized organization to join the unit. The terms of the withdrawal of a member from the unit are governed by the unit accounting agreement.

Sec. 2001.433. APPLICABILITY OF CHAPTER. A licensed authorized organization that uses unit accounting is subject to the other provisions of this chapter to the extent the provisions are applicable and are not inconsistent with this subchapter.

Sec. 2001.434. CONDUCT OF BINGO. (a) Each licensed authorized organization that is a member of a unit shall conduct its bingo games separately from the bingo games of the other members of the unit.

(b) A unit may purchase or lease bingo supplies and equipment in the same manner as a licensed authorized organization.

(c) A licensed distributor may sell or lease bingo supplies or equipment to a unit in the same manner as the distributor sells or leases bingo supplies and equipment to a licensed authorized organization.

Sec. 2001.435. UNIT ACCOUNTING. (a) A unit;

(1) shall establish and maintain one checking account designated as the unit's bingo account;

(2) shall maintain one inventory of bingo supplies and equipment for use in the bingo operation of members of the unit; and

(3) may maintain an interest-bearing savings account designated as the unit's bingo savings account.

(b) Each member of a unit shall deposit into the unit's bingo account all funds derived from the conduct of bingo, less the amount awarded as cash prizes under Sections 2001.420(a) and (b). The deposit shall be made not later than the next business day after the day of the bingo occasion on which the receipts were obtained.

(c) All authorized expenses and distributions of the unit and its members shall be paid from the unit's bingo checking account.

Sec. 2001.436. DISBURSEMENT OF FUNDS BY DISSOLVED UNIT.

(a) Sections 2001.457(a) and (b) apply to a unit formed under this subchapter. For purposes of this subchapter, the requirements of Sections 2001.457(a) and (b) that are applicable to a licensed authorized organization shall be applied to a unit.

(b) A unit that has dissolved for any reason and has unexpended bingo funds shall disburse those funds to the bingo account of each member of the unit before the end of the next calendar quarter after the calendar quarter in which the unit dissolves.

(c) For purposes of the application of Sections 2001.457(a) and (b) to a unit under this section:

(1) "adjusted gross receipts" means gross receipts less the amount of cost of goods purchased by a unit and prizes paid in the preceding quarter; and

(2) "cost of goods purchased by a unit" means the cost of bingo paper and pull-tab bingo tickets purchased by the unit and payments to distributors for electronic card-minding devices.

Sec. 2001.437. UNIT MANAGER; LICENSE. (a) If the unit accounting agreement of a unit states that a unit manager is responsible for compliance with commission rules and this chapter, the unit manager is responsible for:

(1) the filing of one quarterly report for the unit on a form prescribed by the commission; and

(2) the payment of taxes and fees and the maintenance the bingo inventory and financial records of the unit.

(b) A unit with a unit manager shall notify the commission of the name of the unit manager and immediately notify the commission of any change of unit manager.

(c) A person may not provide services as a unit manager to licensed authorized organizations that form a unit unless the person holds a unit manager license under this subchapter. A person designated as an agent under Section 2001.438(b) is not a unit manager on account of that designation for purposes of this section.

(d) An applicant for a unit manager license must file with the commission a written application on a form prescribed by the commission that includes:

(1) the name and address of the applicant;

(2) information regarding whether the applicant, or any officer, director, or employee of the applicant, has been convicted of a felony, criminal fraud, gambling or gambling-related offense, or crime of moral turpitude; and

(3) any other information required by commission rule.

(e) The commission by rule shall establish an annual license fee for a unit manager license in an amount reasonable to defray administrative costs plus any costs incurred to conduct a criminal background check.

(f) A person who holds a unit manager license shall post a bond or other security pursuant to Section 2001.514.

(g) A person is not eligible for a unit manager license under this subchapter if the person, or any officer, director, or employee of the person:

(1) has been convicted of a felony, criminal fraud, a gambling or gambling-related offense, or crime of moral turpitude, if less than 10 years has elapsed since the termination of a sentence, parole, or community supervision served for the offense;

(2) is an owner, officer, or director of a licensed commercial lessor, is employed by a licensed commercial lessor, or is related to a licensed commercial lessor within the second degree by consanguinity or affinity, unless the holder of the license is a licensed authorized organization or an association of licensed authorized organizations; or

(3) holds or is listed on another license under this chapter, unless the holder of the license is a licensed authorized organization or an association of licensed authorized organizations.

(h) A unit manager must complete the training required by Section 2001.107.

Sec. 2001.438. AGREEMENT WITHOUT UNIT MANAGER. (a) This section applies to a unit if the unit accounting agreement for the unit:

(1) does not state that a unit manager will be responsible for compliance with the rules of the commission and this chapter; or

(2) states that the unit will use a designated agent.

(b) The unit shall designate with the commission an agent who will be responsible for providing the commission access to all inventory and financial records of the unit on request of the commission.

(c) The agent designated under Subsection (b) may not:

(1) hold or be listed on another license issued under this chapter, unless the holder of the license is a licensed authorized organization or an association of licensed authorized organizations; or

(2) be an owner, officer, or director of a licensed commercial lessor, be employed by a licensed commercial lessor, or be related to a licensed commercial lessor within the second degree by consanguinity or affinity, unless the holder of the license is a licensed authorized organization or an association of licensed authorized organizations.

(d) The unit shall immediately notify the commission of any change in the agent designated under Subsection (b).

(e) The designated agent must complete the training required by Section 2001.107.

(f) Each licensed authorized organization that is a member of the unit shall be jointly and severally liable for:

(1) compliance with the requirements of this subchapter and the rules of the commission relating to the filing of required reports;

(2) the maintenance of bingo inventory and financial records; and

(3) the payment of taxes, fees, and any penalties imposed for a violation of this subchapter or commission rules related to the operations of the unit.

(g) Each licensed authorized organization that is a member of the unit may be made a party to any administrative or judicial action relating to the enforcement of this subchapter or the rules of the commission pertaining to the operation of the unit.

Sec. 2001.439. TRUST AGREEMENT. (a) Notwithstanding any other provision of this subchapter, a unit may be formed pursuant to a trust agreement between two or more licensed authorized organizations that conduct bingo at the same location. The agreement must:

(1) designate one of the organizations as the trustee;

(2) designate a person who will carry out the duties described by Section 2001.438(b);

(3) specify the method by which the unit will comply with the requirements of Section 2001.436(a); and

(4) state that the trustee is responsible for compliance with the rules of the commission and this chapter.

(b) The commission by rule may prohibit a person from serving as a unit manager or as a designated agent for a unit that does not use a unit manager if the person has failed to comply with the duties required of the person as a unit manager or designated agent.

(c) The commission may prohibit a person who serves as a designated agent that is listed on a license under this chapter, including having been approved by the commission to work in the bingo operations of a licensed authorized organization or as an operator, from holding or being listed on any license or from being approved to work in the bingo operations of any licensed authorized organization or to serve as an operator if the person has failed to comply with the duties required of the person as a unit manager or designated agent.

SECTION 20. Section 2001.451, Occupations Code, is amended by amending Subsection (b) and adding Subsection (b-1) to read as follows:

(b) A licensed authorized organization shall deposit in the bingo account all funds derived from the conduct of bingo, less the amount awarded as cash prizes under Sections 2001.420(a) and (b). Except as provided by Subsection (b-1), a [A] deposit must be made not later than the next business day after the day of the bingo occasion on which the receipts were obtained.

(b-1) A licensed authorized organization may deposit funds derived from the conduct of bingo that are paid through a debit card transaction in the bingo fund not later than 72 hours after the transaction.

SECTION 21. Section 2001.454, Occupations Code, is amended to read as follows:

Sec. 2001.454. USE OF NET PROCEEDS FOR CHARITABLE PURPOSES. (a) A licensed authorized organization shall devote to the [a] charitable purposes of the organization [purpose] its net proceeds of bingo and any rental of premises.

(b) Except as otherwise provided by law, the [The] net proceeds derived from bingo and any rental of premises are dedicated to the [a] charitable purposes of the organization [purpose] only if directed to a cause, deed, or activity that is consistent with the federal tax exemption the organization obtained under 26 U.S.C. Section 501 and under which the organization qualifies as a nonprofit organization as defined by Section 2001.002[+]

~~[(1) benefits an indefinite number of needy or deserving persons in this state by:~~

~~[(A) enhancing their opportunity for religious or educational advancement;~~

~~[(B) relieving them from disease, suffering, or distress;~~

~~[(C) contributing to their physical well being;~~

~~[(D) assisting them in establishing themselves in life as worthy and useful citizens; or~~

~~[(E) increasing their comprehension of and devotion to the principles on which this nation was founded and enhancing their loyalty to their government; or~~

~~[(2) initiates, performs, or fosters worthy public works in this state or enables or furthers the erection or maintenance of public structures in this state].~~ If the organization is not required to obtain a federal tax exemption under 26 U.S.C. Section 501, the organization's net proceeds are dedicated to the charitable purposes of the organization only if directed to a cause, deed, or activity that is consistent with the purposes and objectives for which the organization qualifies as an authorized organization under Section 2001.002.

SECTION 22. Section 2001.458(a), Occupations Code, is amended to read as follows:

(a) An item of expense may not be incurred or paid in connection with the conduct of bingo except an expense that is [those expenses that are] reasonable or necessary to conduct bingo, including an expense [and necessarily expended] for:

(1) advertising, including the cost of printing bingo gift certificates;

(2) security;

(3) repairs to premises and equipment;

(4) bingo supplies and equipment;

- (5) prizes;
- (6) stated rental or mortgage and insurance expenses;
- (7) bookkeeping, legal, or accounting services related to bingo;
- (8) fees [~~in amounts authorized by the commission~~] for callers, cashiers, ushers, janitorial services, and utility supplies and services; [~~and~~]
- (9) license fees;
- (10) attending a bingo seminar or convention required under Section 2001.107; and
- (11) debit card transaction fees.

SECTION 23. Section 2001.459(a), Occupations Code, is amended to read as follows:

(a) The following items of expense incurred or paid in connection with the conduct of bingo must be paid from an organization's bingo account:

- (1) advertising, including the cost of printing bingo gift certificates;
- (2) security during a bingo occasion;
- (3) the purchase or repair of bingo supplies and equipment;
- (4) prizes, other than authorized cash prizes;
- (5) stated rental expenses;
- (6) bookkeeping, legal, or accounting services;
- (7) fees for callers, cashiers, and ushers;
- (8) janitorial services;
- (9) license fees; and
- (10) payment for services provided by a system service provider.

SECTION 24. Section 2001.504(a), Occupations Code, is amended to read as follows:

(a) A tax or fee authorized or imposed under this subchapter is due and is payable by the license holder or a person conducting bingo without a license to the commission quarterly on or before the 25th [~~15th~~] day of the month succeeding each calendar quarter.

SECTION 25. Section 2001.602(b), Occupations Code, is amended to read as follows:

(b) In determining the amount of the penalty, the [~~executive~~] director 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 future violations;
- (4) efforts to correct the violation; and
- (5) any other matter that justice may require.

SECTION 26. Sections 2001.603(a) and (b), Occupations Code, are amended to read as follows:

(a) If, after investigating a possible violation and the facts surrounding that possible violation, the [~~executive~~] director determines that a violation has occurred, the [~~executive~~] director may issue a violation report stating the facts on which the conclusion that a violation occurred is based, recommending that an administrative penalty be imposed on the person alleged to have committed the

violation, and recommending the amount of the proposed penalty. The [executive] director shall base the recommended amount of the proposed penalty on the seriousness of the violation determined by consideration of the factors set out in Section 2001.602(b).

(b) Not later than the 14th day after the date on which the report is issued, the [executive] director shall give written notice of the report to the person alleged to have committed the violation.

SECTION 27. Section 2001.604, Occupations Code, is amended to read as follows:

Sec. 2001.604. PENALTY TO BE PAID OR HEARING REQUESTED.

(a) Not later than the 20th day after the date the person receives the notice, the person may:

(1) accept the recommendation of the [executive] director, including the recommended administrative penalty; or

(2) make a written request for a hearing on the determination.

(b) If the person accepts the [executive] director's determination, the [executive] director by order shall approve the determination and impose the proposed penalty.

SECTION 28. Section 2001.605(a), Occupations Code, is amended to read as follows:

(a) If the person timely requests a hearing or does not respond to the notice in the time provided by Section 2001.604(a), the [executive] director shall set a hearing and give notice of the hearing to the person.

SECTION 29. Section 2001.606, Occupations Code, is amended to read as follows:

Sec. 2001.606. DECISION BY [EXECUTIVE] DIRECTOR. (a) Based on the findings of fact and conclusions of law and the recommendations of the hearings examiner, the [executive] director by order:

(1) may find that a violation has occurred and may impose an administrative penalty; or

(2) may find that a violation has not occurred.

(b) The [executive] director shall give notice of the order to the person. The notice must include:

(1) separate statements of the findings of fact and conclusions of law;

(2) the amount of any penalty imposed;

(3) a statement of the right of the person to judicial review of the order; and

(4) other information required by law.

SECTION 30. Sections 2001.607(b) and (c), Occupations Code, are amended to read as follows:

(b) Within the 30-day period, a person who acts under Subsection (a)(3) may:

(1) stay enforcement of the penalty by:

(A) paying the penalty to the court for placement in an escrow account; or

(B) giving to the court a supersedeas bond approved by the court for the amount of the penalty that is effective until all judicial review of the order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the [~~executive~~] director by certified mail.

(c) On receipt of a copy of the affidavit as provided by Subsection (b)(2), the [~~executive~~] director may file with the court, not later than the fifth day after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty and to give a supersedeas bond.

SECTION 31. Section 2001.608, Occupations Code, is amended to read as follows:

Sec. 2001.608. COLLECTION OF PENALTY. If the person does not pay the administrative penalty and the enforcement of the penalty is not stayed, the [~~executive~~] director may refer the matter to the attorney general for collection of the penalty.

SECTION 32. Subchapter H, Chapter 151, Tax Code, is amended by adding Section 151.3105 to read as follows:

Sec. 151.3105. BINGO EQUIPMENT PURCHASED BY CERTAIN ORGANIZATIONS. Bingo equipment, as defined by Section 2001.002, Occupations Code, is exempted from the taxes imposed by this chapter if the bingo equipment is:

(1) purchased by an organization licensed to conduct bingo under Chapter 2001, Occupations Code, that is exempt from the payment of federal income taxes under Section 501(a), Internal Revenue Code of 1986, as amended, by being listed as an exempt organization under Section 501(c)(3), (4), (8), (10), or (19), Internal Revenue Code of 1986, as amended; and

(2) used exclusively to conduct bingo authorized under Chapter 2001, Occupations Code.

SECTION 33. Section 2001.409(b), Occupations Code, is repealed.

SECTION 34. (a) The changes in law made by this Act governing eligibility of a person for a license apply only to the issuance or renewal of a license by the commission under Chapter 2001, Occupations Code, as amended by this Act, on or after the effective date of this Act. A license issued by the commission under those laws before the effective date of this Act is governed by the applicable licensing requirements in effect when the license was last issued or renewed until the license expires or is renewed as provided by Chapter 2001, Occupations Code, as amended by this Act.

(b) The change in law made by this Act to Section 2001.457, Occupations Code, applies to the charitable disbursements made by a licensed authorized organization beginning with disbursements for the second quarter of 2004. A charitable disbursement made by a licensed authorized organization for a quarter

before the second quarter of 2004 is governed by the law in effect immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

(c) An authorized organization licensed to conduct bingo before the effective date of this Act may renew its license, notwithstanding that the organization has not been in existence for the time required under a rule of the commission adopted under section 2001.101, Occupations Code, if the organization meets all other requirements for the renewal of the license.

SECTION 35. (a) Except as provided by Subsection (b) of this section, this Act takes effect September 1, 2003.

(b) Section 151.3105, Tax Code, as added by this Act, takes effect January 1, 2004.

HB 2522 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

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

HB 2522, A bill to be entitled An Act relating to authorizing the issuance of revenue bonds for the Southwest Texas State University Multi-Institution Teaching Center to finance facilities to address the Central Texas high growth corridor and exempting facilities financed by the bonds from prior approval by the Texas Higher Education Coordinating Board.

On motion of Representative Krusee, the house concurred in the senate amendments to **HB 2522** by (Record 866): 137 Yeas, 0 Nays, 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, R.; Corte; Crabb; Davis, J.; Davis, Y.; Dawson; Delisi; Denny; Deshotel; Driver; Dukes; Dunnam; Dutton; Edwards; Eiland; Eissler; Elkins; Ellis; Escobar; Farabee; Farrar; Flores; Flynn; Gallego; Garza; Geren; Giddings; Goodman; Griggs; Guillen; Gutierrez; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Heflin; Hegar; Hilderbran; Hill; Hochberg; Hodge; Homer; Hope; 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; Madden; Martinez Fischer; McCall; McClendon; McReynolds; Menendez; Mercer; Merritt; Miller; Moreno, P.; Morrison; Mowery; Naishtat; Nixon; Noriega; Oliveira; Olivo; Paxton; Phillips; Pickett; Pitts; Puente; Quintanilla; Raymond; Reyna; Riddle; Ritter; Rodriguez; Rose; Seaman; Smith, T.; Smith, W.; Smithee; Solis; Solomons; Stick; Swinford; Taylor; Telford; Thompson; Truitt; Turner; Uresti; Van Arsdale; Villarreal; West; Wilson; Wise; Wolens; Wong; Woolley; Zedler.

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

Absent, Excused — Marchant.

Absent — Capelo; Cook, B.; Crownover; Goolsby; Grusendorf; Mabry; Moreno, J.; Peña; Talton; Wohlgemuth.

Senate Committee Substitute

HB 2522, A bill to be entitled An Act relating to financing authority for certain institutions of higher education for facilities.

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

SECTION 1. Subsection (a), Section 55.1735, 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 University of North Texas 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) the University of North Texas, \$52,933,750 to construct a science building and to develop the campus and facilities of the University of North Texas System Center at Dallas at the location to become the University of North Texas at Dallas; and

(2) the University of North Texas Health Science Center at Fort Worth, \$27.5 million to construct a biotechnology center and school of public health building.

SECTION 2. Subchapter B, Chapter 55, Education Code, is amended by adding Section 55.1744 to read as follows:

Sec. 55.1744. SOUTHWEST TEXAS STATE UNIVERSITY; ADDITIONAL BONDS. (a) In addition to the other authority granted by this subchapter, the board of regents of the Texas State University System may issue bonds in accordance with this subchapter in the aggregate principal amount not to exceed \$27 million to finance the acquisition, purchase, construction, improvement, renovation, enlargement, or equipping of property, buildings, structures, facilities, or related infrastructure for a multi-institutional education center in Williamson County for Southwest Texas State University to offer educational programs and supporting activities and provide facilities for other educational entities to further institutional efficiency and coordinate educational programs.

(b) The board may pledge irrevocably to the payment of those bonds all or any part of the revenue funds of Southwest Texas State University, including student tuition charges. The amount of a pledge made under this subsection may not be reduced or abrogated while the bonds for which the pledge is made, or bonds issued to refund those bonds, are outstanding.

SECTION 3. Subsection (e), Section 61.0572, Education Code, is amended to read as follows:

(e) Approval of the board is not required to acquire real property that is financed by bonds issued under Section 55.17(e)(3) or (4), 55.1713-55.1718, 55.1721-55.1728, 55.1735(a)(1), [✗] 55.174, or 55.1744, except that the board

shall review all real property to be financed by bonds issued under those sections to determine whether the property meets the standards adopted by the board for cost, efficiency, and space use. If the property does not meet those standards, the board shall notify the governor, the lieutenant governor, the speaker of the house of representatives, and the Legislative Budget Board.

SECTION 4. Subsection (b), Section 61.058, Education Code, is amended to read as follows:

(b) This section does not apply to construction, repair, or rehabilitation financed by bonds issued under Section 55.17(e)(3) or (4), 55.1713-55.1718, 55.1721-55.1728, 55.1735(a)(1), ~~or~~ 55.174, or 55.1744, except that the board shall review all construction, repair, or rehabilitation to be financed by bonds issued under those sections to determine whether the construction, rehabilitation, or repair meets the standards adopted by board rule for cost, efficiency, and space use. If the construction, rehabilitation, or repair does not meet those standards, the board shall notify the governor, the lieutenant governor, the speaker of the house of representatives, and the Legislative Budget Board.

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.

HB 3384 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

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

HB 3384, A bill to be entitled An Act relating to associate judges appointed by certain district courts in Dallas County.

On motion of Representative Hartnett, the house concurred in the senate amendments to **HB 3384**.

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

Amend **HB 3384** as follows:

(1) Strike SECTION 6 of the bill, amending Section 54.506, Government Code, and substitute the following:

SECTION 6. Section 54.506, Government Code, is amended to read as follows:

Sec. 54.506. MATTERS THAT MAY BE REFERRED. A judge may refer any civil case or portion of a civil case to an associate judge for resolution ~~any matter to the master for a finding~~.

(2) Strike SECTION 9 of the bill, amending Section 54.508, Government Code, and substitute the following:

SECTION 9. Section 54.508, Government Code, is amended to read as follows:

Sec. 54.508. POWERS. Except as limited by an order of referral, the associate judge ~~master~~ may:

(1) conduct hearings;

- (2) hear evidence;
- (3) compel production of relevant evidence, including books, papers, vouchers, documents, and other writings;
- (4) rule on admissibility of evidence;
- (5) issue summons for the appearance of witnesses;
- (6) examine witnesses;
- (7) swear witnesses for hearings;
- (8) regulate proceedings in a hearing; and
- (9) do any act and take any measure necessary and proper for the efficient performance of the duties required by the order of referral.

(3) Strike SECTION 10 of the bill, amending Section 54.509, Government Code, and substitute the following:

SECTION 10. Section 54.509, Government Code, is amended to read as follows:

Sec. 54.509. RECORD OF EVIDENCE. (a) A court reporter may be provided during a hearing held by an associate judge appointed under this subchapter. A court reporter is required to be provided when the associate judge presides over a jury trial.

(b) A party, the associate judge, or the referring court may provide for a reporter during the hearing if one is not otherwise provided.

(c) The record may be preserved in the absence of a court reporter by any other means approved by the associate judge.

(d) The referring court or associate judge may assess the expense of preserving the record under Subsection (c) as costs.

(e) On appeal of the associate judge's report or proposed order, the referring court may consider testimony or other evidence in the record if the record is taken by a court reporter. ~~[At the request of a party, the master shall make a record of the evidence offered and excluded. The record must be in the same form as a record of evidence for a trial court.]~~

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

Amend **HB 3384** as follows:

(1) Strike SECTION 12 of the bill, amending Section 54.511, Government Code, and renumber subsequent SECTIONS accordingly.

(2) In SECTION 13 of the bill (page 2, line 21), strike "54.512" and substitute "54.511".

HB 3534 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

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

HB 3534, A bill to be entitled An Act relating to the place of business of a retailer for purposes of the collection of the municipal sales and use tax.

On motion of Representative Laubenberg, the house concurred in the senate amendments to **HB 3534**.

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

Amend **HB 3534** (Senate Committee Printing) as follows:

(1) In SECTION 3 of the bill (page 1, line 42), between "SECTION 3" and "This", insert "(a)".

(2) At the end of SECTION 3 of the bill (page 1, after line 46), insert the following:

(b) Notwithstanding Subsection (a) of this section, the change in law made to Section 321.002(a)(3), Tax Code, by this Act, may not, before September 1, 2005, be applied to an outlet, office, facility, or location that was in existence on May 27, 2003.

**HB 3562 - HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS**

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

HB 3562, A bill to be entitled An Act relating to the creation of the Southwest Montgomery County Improvement District; providing authority to impose taxes and issue bonds.

On motion of Representative Eissler, the house concurred in the senate amendments to **HB 3562** by (Record 867): 143 Yeas, 0 Nays, 2 Present, not voting.

Yeas — 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; Geren; Giddings; Goodman; Goolsby; Griggs; Guillen; Gutierrez; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Heflin; Hegar; Hilderbran; Hill; Hochberg; Hodge; Homer; Hope; 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; Martinez Fischer; McCall; McClendon; McReynolds; Menendez; Mercer; Merritt; Miller; Moreno, J.; Moreno, P.; Morrison; Mowery; Naishtat; Nixon; 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; Taylor; Telford; Thompson; Truitt; Turner; Uresti; Van Arsdale; Villarreal; West; Wilson; Wise; Wohlgemuth; Wolens; Wong; Woolley; Zedler.

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

Absent, Excused — Marchant.

Absent — Allen; Grusendorf; Noriega; Talton.

Senate Committee Substitute

HB 3562, A bill to be entitled An Act relating to the creation of the Southwest Montgomery County Improvement District; providing authority to impose taxes and issue bonds.

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

SECTION 1. CREATION OF DISTRICT. (a) The Southwest Montgomery County Improvement District is created as a special district in Montgomery County under Section 59, Article XVI, Texas Constitution.

(b) The board by resolution may change the name of the district.

SECTION 2. DEFINITIONS. In this Act:

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

(2) "Commission" means the Texas Commission on Environmental Quality.

(3) "District" means the Southwest Montgomery County Improvement District.

(4) "Planned community" means a planned community of 15,000 or more acres of land originally established under the federal Urban Growth and New Community Development Act of 1970 (42 U.S.C. Section 4501 et seq.) that is subject to restrictive covenants containing ad valorem based assessments.

SECTION 3. DECLARATION OF INTENT. (a) The creation of the district is essential to accomplish the purposes of Section 52, Article III, and Section 59, Article XVI, Texas Constitution, and other public purposes stated in this Act.

(b) The creation of the district is necessary to promote, develop, encourage, and maintain employment, commerce, economic development, and the public welfare in the southwest portion of Montgomery County.

(c) The creation of the district and this legislation may not be interpreted to relieve Montgomery County or any other political subdivision from providing the level of services provided, as of the effective date of this Act, to the area in the district. The district is created to supplement and not to supplant services provided in the area in the district.

SECTION 4. BOUNDARIES. The district includes all of the territory contained in Montgomery County Election Precincts Numbers 13, 18, 28, 29, 30, 34, 65, 66, 74, and 76, as those precincts existed on January 1, 2003, except for:

(1) territory within the corporate limits of the following municipalities as of January 1, 2003: Conroe, Houston, Magnolia, Stagecoach, and Shenandoah;

(2) territory that is a part of the Town Center Improvement District as of January 1, 2003; and

(3) the following described territory:

Tract 1

Being a 56.4012 acre tract of land situated in Montgomery County, Texas in the James Brown Survey, A-78, being Block 14, of the M.H. Gossett Subdivision and being the same tract of land conveyed to Alvin A. Klein by C.L. McQueen, et ux, as recorded in Volume 414, Page 479, of the Montgomery County Deed Records (M.C.D.R.), called 58.9 acres; save and except that portion of said Block 14 conveyed to the State of Texas by Deed recorded in Volume 885, Page 766, of

the M.C.D.R., and being more particularly described by metes and bounds as follows with all control referred to the 1927 Texas State Plane Coordinate System, Lambert Projection, South Central Zone:

BEGINNING at a 3/8" iron rod found for the southeast corner of this tract, also being a point on the west line of F.M. 2978, also being the northeast corner of the Beatrice D. Krus 16.5 acres as recorded in FN. 8743121, of the M.C.R.P.R., having Texas State Plane Coordinates of X = 3,076,521.94 (E), Y = 872,171.00 (N) and bears South 68 degrees 17 minutes 02 seconds West, 2500.07 feet from the southeast corner of the Ezra Read Survey, A-458, also being the southwest corner of the Dickinson Garrett Survey, A-226, also being a point on the north line of the James Brown Survey, A-78;

THENCE South 88 degrees 05 minutes 02 seconds West, a distance of 2742.15 feet along the common line between this tract and said Krus tract, and the James D. Lowe 7.1 acre tract as recorded in Volume 485, Page 244, and the J.C. Lowe 13.0 acre tract as recorded in Volume 49, page 74, of the M.C.D.R. to a 5/8" iron rod set for the southwest corner of this tract, also being the northwest corner of said J.C. Lowe tract, also being a point on the east line of the P.A. Hodge 4.96 acre tract, as recorded in F.N. 9019932 of the M.C.R.P.R.;

THENCE North 02 degrees 02 minutes 29 seconds West, a distance of 825.90 feet along the common line between this tract and said Hodge tract, the D.J. Grigg 4.96 acre tract as recorded in Volume 451, Page 479, and the E.K. Grigg 4.96 acre tract, as recorded in Volume 451, Page 479, of the M.C.D.R. to a 5/8" iron rod set for the northwest corner of this tract, also being the northeast corner of said E.K. Grigg tract, also being a point on the south line of Block 25, of the M.H. Gossett Subdivision, also being a point on the common line between the James Brown Survey, A-78, and the Ezra Read Survey, A-458;

THENCE North 87 degrees 51 minutes 26 seconds East, a distance of 2645.34 feet along the common line between this tract and said Block 25, and also being the common line between the James Brown Survey, A-78, and the Ezra Read Survey, A-458, to a 3/4" pipe found for corner, also being the southeast corner of the Roy G. Cook, Jr. 53.9 acre tract, as recorded in File Number 8728559, of the Montgomery County Real Property Records (M.C.R.P.R.), also being the southwest corner of the 9.4511 acre tract, called a 9.46 acre tract in F.N. 8230682, of the M.C.R.P.R.;

THENCE North 87 degrees 46 minutes 09 seconds East, a distance of 436.07 feet along the common line between this tract and said 9.4511 acre tract to a 4" pipe found for the southeast corner of said 9.4511 acre tract, also being the southwest corner of the Mitchell and Mitchell Corp., 31.76 acre tract, as recorded in Volume 565, Page 217, of the M.C.D.R.;

THENCE North 86 degrees 43 minutes 19 seconds East, a distance of 84.95 feet along the common line between this tract and said Mitchell and Mitchell Corp. tract to a 3/8 iron rod found for the northeast corner of this tract, also being a point on the west right-of-way line of F.M. 2978;

THENCE South 24 degrees 45 minutes 22 seconds West, a distance of 940.89 feet along the common line between this tract and said right-of-way line of F.M. 2978 to the PLACE OF BEGINNING containing 2,456,837 square feet or 56.4012 acres.

TRACT 2

All that certain 46.5808 acre tract in the A.U. Springer Survey, Patent No. 222, Volume 2, Abstract No. 490, Montgomery County, Texas, said 46.5808 acre tract being out of the W. E. Bond 320 acre tract described in Deed dated January 10, 1928, and recorded in Volume 117, Page 395, of Deed Records of Montgomery County, Texas, said 46.5808 acre tract being more particularly described by metes and bounds as follows:

BEGINNING at an axle set in concrete found in the East fenced line of the champion Paper and Fibre Co. tract and the South line, Lakewood estates Subdivision, Section Three, said point also being the Northwest Corner of the tract herein conveyed:

THENCE North 89 degrees 37 minutes 08 seconds East, 2781.32 feet along the South fenced line of said Lakewood Estates Subdivision, Section Three, to a 3/4-inch galvanized iron pipe set in concrete found in the West line of Lakewood Estates Subdivision, Section One, said point also being the Northeast corner of the tract herein conveyed;

THENCE South 00 degrees 06 minutes 28 seconds East, 495.46 feet along the West line of said Lakewood estates Subdivision, Section One, to a 5/8 inch iron rod set in concrete in the North line of F.M. Road 1488 (based on a width of 100.0 feet);

THENCE South 80 degrees 22 minutes 00 seconds West, 1164.17 feet along the North line of said F.M. Road 1488 to a four inch by four inch concrete monument found at a point of curve;

THENCE in a southwesterly direction along a curve to the left having a radius of 17,238.73 feet and a central angle of 02 degrees 50 minutes and continuing along the said North line of said F.M. Road 1488 a distance of 852.47 feet to a 4 inch by 4 inch concrete monument found at the point of tangency;

THENCE South 77 degrees 32 minutes West, 32.9 feet along the North line of said F. M. Road 1488 to a 4-inch by 4-inch concrete monument found for corner;

THENCE North 88 degrees 25 minutes 48 seconds West, 103.8 feet along the North line of said F. M. Road 1488 to a 4 inch by 4 inch concrete monument found for corner (at this point the right-of-way is 150.0 feet wide);

THENCE South 77 degrees 32 minutes West, 675.77 feet along the North line of said F.M. Road 1488 to a 5/8 inch iron rod set in concrete in the East line of said Champion Paper and Fibre Co. tract, said point being the Southwest corner of the tract herein conveyed;

THENCE North 00 degrees 09 minutes 58 seconds West, 985.30 feet along the East fenced line of said Champion Paper and Fibre Co. tract to the PLACE OF BEGINNING and containing 46.5808 acres.

TRACT 3

Being a 9.451 acre tract of land, situated In the Ezra Read Survey, Abstract Number 458, Montgomery County, Texas, and being that same tract called 9.46 acres as described in Deed recorded under Clerk's File Number 8230682 of the Montgomery County Real Property Records (M.C.R.P.R.) and being more particularly described by metes and bounds as follows with all control referred to the 1927 Texas State Plane Coordinate System, Lambert Projection, South Central Zone;

BEGINNING at a concrete monument found for the most easterly corner of this tract, also being a point on the northwest right-of-way line of F.M. 2978, also being an exterior corner of the Roy G. Cook, Jr. 53.9 acre tract, as recorded in Clerk's File Number 8728559, of the M.C.R.P.R., having Texas State Plane Coordinates of X = 3,077,293.03 (E), Y = 873, 840.73 (N) and bears North 62 degrees 55 minutes 54 seconds West, 1647.17 feet from the southeast corner of the Ezra Read Survey, A-458, also being the southwest corner of the Dickinson Garrett Survey, A-226, also being a point on the north line of the James Brown Survey, A-78;

THENCE South 24 degrees 45 minutes 45 seconds West, a distance of 96.69 feet along the common line between this tract and said right-of-way line of F.M. 2978 to a 5/8" iron rod w/aluminum cap set for corner, also being the northeast corner of the Mitchell and Mitchell Corp. 31.76 acre tract, as recorded in Volume 565, Page 217, of the Montgomery County Deed Records (M.C.D.R.);

THENCE South 88 degrees 07 minutes 17 seconds West, a distance of 445.12 feet along the common line between this tract and said Mitchell tract to a 5/8" iron rod with aluminum cap set for corner at a fence corner, also being the northwest corner of said Mitchell tract;

THENCE South 01 degree 52 minutes 27 seconds East, a distance of 718.16 feet along the common line between this tract and said Mitchell tract to a 4" pipe found for the most southerly southeast corner of this tract, also being the southwest corner of said Mitchell tract, also being a point on the north line of a 56.4012 acre, called 58.9 acres, as recorded in Volume 414, Page 479, of the M.C.D.R.;

THENCE South 87 degrees 46 minutes 09 seconds West, a distance of 436.07 feet along the common line between this tract and said 56.4012 acre tract to a 3/4" pipe found for the southwest corner of this tract, also being an exterior corner of said Cook tract;

THENCE along the common line between this tract and said Cook tract for the following calls:

North 01 degree 50 minutes 42 seconds West, a distance of 719.29 feet to a 3/4" pipe found for corner;

North 87 degrees 22 minutes 05 seconds East, a distance of 114.93 feet to a 3/4" pipe found for corner;

North 01 degree 50 minutes 37 seconds West, a distance of 124.85 feet to a 3/4" pipe found for corner;

North 87 degrees 59 minutes 49 seconds East, a distance of 725.79 feet to a 3/4" pipe found for corner;

South 66 degrees 16 minutes 26 seconds East, a distance of 92.47 feet to the PLACE OF BEGINNING containing 411689 square feet or 9.4511 acres.

TRACT 4

All that tract or parcel of land lying and being situated in Montgomery County, Texas, out of the Ezra Read Survey, A-458, being part of a 53.9 acre tract as recorded in F.N. 8728559 of the Montgomery County Real Property Records (M.C.R.P.R.), and also being all of a 2.91 acre tract recorded in Volume 795, Page 720 of the Montgomery County Deed Records (M.C.D.R.), Save and Except therefrom that certain 0.047 acre tract recorded in Volume 880, Page 52 and 0.033 acre tract recorded in Volume 880, page 49, of the M.C.D.R., and being more particularly described by metes and bounds as follows with all control referred to the 1927 Texas State Plane Coordinate System, Lambert Projections, South Central Zone:

BEGINNING at a concrete monument for the southeast corner of this tract, also being a point on the west right-of-way line of F.M. 2978, also being the northeast corner of a 9.4511 acre tract, having a Texas State Plane Coordinate Value of X=3,077,293.03 (E), Y=873,840.73 (N) and bears North 64 degrees 21 minutes 39 seconds West, 1,721.01 feet from the southeast corner of the Ezra Read Survey, A-458, also being the southwest corner of the Dickinson Garrett Survey, A-226, also being a point on the north line of the James Brown Survey, A-78;

THENCE along the common line between this tract and said 9.4511 acre tract for the following calls:

North 66 degrees 16 minutes 26 seconds West, a distance of 92.47 feet to a 3/4" pipe found for corner;

South 87 degrees 59 minutes 49 seconds West, a distance of 725.79 feet to a 3/4" pipe found for corner;

South 01 degrees 50 minutes 37 seconds East, a distance of 124.85 feet to a 3/4" pipe found for corner;

South 87 degrees 22 minutes 05 seconds West, a distance of 114.93 feet to a 3/4" pipe found for the southwest corner of this tract, also being a point on the east line of the remainder of said 53.9 acre tract;

THENCE North 01 degrees 50 minutes 42 seconds West, a distance of 736.35 feet along the common line between this tract and said remainder to a 5/8" iron rod with aluminum cap set for the northwest corner of this tract, also being a point in the south line of the formerly R. A. West tract;

THENCE North 87 degrees 57 minutes 55 seconds East, a distance of 779.68 feet along the common line between this tract and said West tract to a 1/2" iron rod found for corner;

THENCE North 87 degrees 58 minutes 23 seconds East, a distance of 538.54 feet along the common line between this tract and said West tract to a fence post for the northeast corner of this tract, also being a point on the west right-of-way line of said F.M. 2978;

THENCE along the common line between this tract and said F.M. 2978 for the following calls:

South 37 degrees 40 minutes 01 seconds West, a distance of 223.51 feet to a fence corner;

South 25 degrees 51 minutes 33 seconds West, a distance of 541.80 feet to the PLACE OF BEGINNING containing 696,122 square feet or 15.9808 acres.

SAVE AND EXCEPT:

All that tract or parcel of land lying and being situated in Montgomery County, Texas, out of the Ezra Read Survey, A-458, through a 53.9 acre tract as recorded in F.N. 8728559 of the Montgomery County Real Property Records (M.C.R.P.R.), and being more particularly described by metes and bounds as follows with all control referred to the 1927 Texas State Plane Coordinate System, Lambert Projection, South Central Zone:

BEGINNING at a fence corner for the northeast corner of this tract, also being a point on the west right-of-way line F.M. 2978, having a Texas State Plane Coordinate Value of X=3,077,665.95 (E), Y=874,505.20 (N) and bears North 39 degrees 54 minutes 37 seconds West, 1,837.11 feet from the southeast corner of the Ezra Read Survey, A-458, also being the north line of the James Brown Survey, A-78;

THENCE South 37 degrees 40 minutes 01 seconds West, a distance of 38.99 feet along the common line between this tract and said right-of-way line of F.M. 2978 to a point for corner,

THENCE leaving said right-of-way line for the following calls:

South 87 degrees 58 minutes 23 seconds West, a distance of 513.64 feet to a point for corner;

South 87 degrees 57 minutes 55 seconds West, a distance of 779.78 feet to a point for the southwest corner of this tract;

North 01 degree 50 minutes 42 seconds West, a distance of 30.00 feet to a point for the northwest corner of this tract, also being a point in the north line of said 53.9 tract;

THENCE North 87 degrees 57 minutes 55 seconds East, a distance of 779.69 feet along the common line between this tract and said north line of said 53.9 acre tract to a point for corner;

THENCE North 87 degrees 58 minutes 23 seconds East, a distance of 538.54 feet to the PLACE OF BEGINNING containing 39,175 square feet or 0.8993 acres.

SECTION 5. FINDINGS RELATING TO BOUNDARIES. The boundaries and field notes of the district form a closure. A mistake in the field notes or in copying the field notes in the legislative process does not in any way affect the district's:

- (1) organization, existence, or validity;
- (2) right to enter any type of contract for a purpose for which the district is created;
- (3) right to impose or collect an assessment or tax; or
- (4) legality or operation.

SECTION 6. FINDINGS OF BENEFIT AND PUBLIC PURPOSE. (a) The district is created to serve a public use and benefit.

(b) All land and other property in the district will benefit from the improvements and services to be provided by the district under powers conferred by Section 52, Article III, and Section 59, Article XVI, Texas Constitution, and other powers granted under this Act.

(c) The creation of the district is in the public interest and is essential to:

(1) further the public purposes of development and diversification of the economy of the state;

(2) eliminate unemployment and underemployment; and

(3) develop or expand transportation and commerce.

(d) The present and prospective traffic congestion in the district and the safety of pedestrians and the limited availability of funds require the promotion and development of public transportation and pedestrian facilities and systems, and the district will serve the public purpose of securing expanded and improved transportation and pedestrian facilities and systems.

(e) The district will:

(1) promote the health, safety, and general welfare of residents and employers in the district;

(2) secure expanded and improved transportation and pedestrian facilities and systems;

(3) provide needed funding to preserve, maintain, and enhance the economic health and vitality of the district as a community and commerce center; and

(4) promote the health, safety, welfare, education, convenience, and enjoyment of the public by improving, landscaping, and developing certain areas and by providing public services and facilities in and adjacent to the district, which are necessary for the restoration, preservation, enjoyment, and enhancement of scenic beauty.

(f) The district will not act as the agent or instrumentality of any private interest even though the district will benefit many private interests as well as the public.

SECTION 7. APPLICATION OF OTHER LAW. (a) Except as otherwise provided by this Act, Chapter 375, Local Government Code, applies to the district.

(b) Chapter 311, Government Code (Code Construction Act), applies to this Act.

SECTION 8. CONSTRUCTION OF ACT. This Act shall be liberally construed in conformity with the findings and purposes stated in this Act.

SECTION 9. BOARD OF DIRECTORS. (a) Except as provided by Section 14 of this Act, the district is governed by a board of 11 directors who serve staggered terms of four years.

(b) Except as provided by Section 14 of this Act, six directors are elected by the voters of the district at large. Five directors are appointed as follows:

(1) one director appointed by the governing body of the City of Magnolia;

(2) one director appointed by the governing body of the City of Stagecoach;

(3) one director appointed by the governing body of the City of Conroe;

(4) one director appointed by the governing body of the Magnolia Independent School District; and

(5) one director appointed by the Montgomery County Commissioners Court.

(c) To be eligible to serve as a director, a person must be at least 18 years old, a resident of the district, and:

(1) an owner of real property in the district;

(2) an owner, whether beneficial or otherwise, of at least 10 percent of the outstanding stock of a corporate owner of real property in the district or of a corporate lessee of real property in the district with a lease term of five years or more measured from the date of appointment or election, excluding options;

(3) an owner of at least 10 percent of the beneficial interest in a trust that:

(A) owns real property in the district; or

(B) leases real property in the district under an original lease term of five years or more measured from the date of appointment or election, excluding options;

(4) a lessee of real property in the district under an original lease term of five years or more, excluding options;

(5) an owner of at least 10 percent of the outstanding interest in a general or limited partnership that:

(A) owns real property in the district; or

(B) leases real property in the district under an original lease term of five years or more measured from the date of appointment or election, excluding options; or

(6) an agent, employee, officer, or director of any individual, corporation, trust, or partnership that owns or leases real property described by Subdivision (1), (2), (3), (4), or (5) of this subsection who is designated by the owner or lessee to serve as a director.

(d) A person may not be appointed as a director under Subsection (b) of this section if the appointment would cause more than three members of the board to be an agent, employee, officer, or director of the same individual, corporation, trust, or partnership that owns or leases property in the district.

SECTION 10. VACANCY. (a) A vacancy in an appointed position is filled for the remainder of the unexpired term by the entity that made the original appointment. A vacancy in an elected position is filled by the remaining members of the board for the unexpired term.

(b) If six or more vacancies occur at the same time, on petition of a property owner of the district, the Montgomery County Commissioners Court shall make appointments to fill the vacancies.

(c) Section 375.066, Local Government Code, does not apply to the district.

SECTION 11. ELECTION DATE FOR DIRECTORS. The election of a director is held on the uniform election date in September of the year in which an elected director's term expires.

SECTION 12. BOND NOT REQUIRED. A director is not required to execute a bond as required by Section 375.067, Local Government Code.

SECTION 13. REMOVAL OF DIRECTOR. The board may remove a director for misconduct or failure to carry out the director's duties by vote of not less than 75 percent of the remaining directors.

SECTION 14. INITIAL DIRECTORS. (a) Not later than the 30th day after the effective date of this Act, the entities described in Section 9(b) of this Act shall make the initial appointments to the positions described in that section. The Montgomery County Commissioners Court shall make the initial appointment of the six elected directors and designate whether the director serves for a term expiring October 1, 2005, or October 1, 2007.

(b) The initial directors serve terms as follows:

(1) the director appointed under Section 9(b)(5) of this Act and three of the elected directors appointed by the Montgomery County Commissioners Court under Subsection (a) of this section serve for terms expiring on October 1, 2007;

(2) the directors appointed under Sections 9(b)(1), (2), and (4) of this Act serve for terms expiring on October 1, 2006; and

(3) the director appointed under Section 9(b)(3) of this Act and three of the elected directors appointed by the commissioners court under Subsection (a) of this section serve for terms expiring on October 1, 2005.

(c) This section expires January 1, 2008.

SECTION 15. CONFIRMATION ELECTION. (a) After holding any hearings on whether to exclude territory from the district, the board shall order an election on the confirmation of the district. The election shall be held on the first uniform election date that occurs 45 or more days after the date the election is ordered.

(b) The election shall be called and held in the same manner as provided by general law for a municipal utility district.

(c) If less than a majority of the votes cast at the election favor confirmation of the district, another confirmation election may not be held sooner than 180 days after the date of a previous confirmation election.

(d) Until confirmed at an election, the district may not impose taxes, fees, or assessments, but may carry out other district business as determined by the board.

SECTION 16. BORROWING MONEY BEFORE CONFIRMATION ELECTION. (a) Before the election confirming the district and the election imposing a limited sales and use tax, the board may borrow money to hire employees, obtain office space, pay fees and costs of holding elections, and pay other costs and expenses reasonably necessary to prepare for commencement of operation.

(b) Funds borrowed for a purpose described by Subsection (a) of this section are repayable by the district only if the elections result in the confirmation of the district and imposition of a limited sales and use tax. The district shall repay those funds not later than the fifth anniversary of the date the funds were borrowed.

(c) The maximum amount the district may borrow under this section is \$75,000.

SECTION 17. IMPACT AREAS. (a) In this section, "impact area" means an area defined by board resolution that is in the district or within two miles of the district and located in Montgomery County.

(b) The board may, after allowing for the general and administrative costs of operating the district, apply proceeds from the limited sales and use tax to mitigate the net negative effects of development in the district on an impact area, including effects on public utilities and services, public transportation and traffic movement, and scenic beauty.

(c) The district may allocate direct expenditures for the district or the impact area to each area for which the expenditure was made. The district may allocate expenditures for the general welfare, promotion, or benefit of the district and impact area between the district and the impact area in the amount, as determined by the board, that is proportionate to the benefit conferred on each area.

SECTION 18. IMPROVEMENT PROJECTS. (a) The board may authorize any program or project necessary for the accomplishment of the public purposes of the district, whether located or conducted inside or outside of the district or provided by or on behalf of the district, for the:

(1) planning, design, construction, acquisition, lease, rental, installment purchase, improvement, provision of furnishings or other equipment, rehabilitation, repair, reconstruction, relocation, use, management, operation, or maintenance of any works, improvements, or facilities; or

(2) provision, support, enhancement, improvement, extension, or expansion of services.

(b) A project authorized under this section may include:

(1) landscaping, lighting, banners, signs, streets or sidewalks, hike and bike paths and trails, pedestrian walkways, skywalks, crosswalks or tunnels, and highway right-of-way or transit corridor beautification and improvements;

(2) drainage or storm water detention improvements and solid waste, water, sewer, telecommunications infrastructure, or power facilities and services, including electrical, gas, steam, and chilled water facilities;

(3) parks, lakes, gardens, recreational facilities, open space, scenic areas, and related exhibits and preserves, fountains, plazas, and pedestrian malls, public art and sculpture and related exhibits and facilities, and educational and cultural exhibits and facilities;

(4) conferences, conventions, or exhibitions, manufacturer, consumer, or trade shows, civic, community, or institutional events, exhibits, displays, attractions and facilities for special events, holidays, and seasonal or cultural celebrations;

(5) off-street parking facilities, bus terminals, heliports, mass-transit, and roadway-borne or water-borne transportation and people-mover systems; and

(6) any other public improvements, facilities, or services similar to the projects described in this subsection.

(c) In connection with any improvement project the board may:

(1) remove, raze, demolish, or clear land or improvements;

(2) acquire any interest in real or personal property except that the district may not acquire the property through eminent domain; and

(3) provide any special or supplemental services for the improvement and promotion of the district or adjacent areas or for the protection of public health and safety in or adjacent to the district, including advertising, promotion, tourism, health and sanitation, public safety, security, fire protection and emergency medical services, business recruitment, development, elimination of traffic congestion, and recreational, educational, and cultural improvements, enhancements, and services.

(d) The board may undertake separately or jointly with other persons and pay all or part of the cost of improvement projects, including projects:

(1) for improving, enhancing, and supporting public safety and security, fire protection and emergency medical services, and law enforcement within and adjacent to the district; and

(2) that confer a general benefit on the entire district and adjacent areas or a special benefit on a definable part of the district.

(e) For a program or project located in the territory of a planned community, the district may not acquire property by any means, including through eminent domain, or otherwise use the property without the written consent of:

(1) the owner of the property; or

(2) the entity that dedicated the property to public use, if the property is dedicated for public use.

SECTION 19. PAYMENT OF EXPENSES. The board may provide or secure the payment or repayment of the costs and expenses of the establishment, administration, and operation of the district, including the costs of an improvement project or a contractual obligation or indebtedness, through:

(1) a lease, installment purchase contract, or other agreement with any person; or

(2) the imposition of taxes, user fees, concessions, rentals, or other revenues or resources of the district.

SECTION 20. USE OF OPEN SPACES. (a) The board by rule may regulate the private use of public roadways, open spaces, parks, sidewalks, and similar public areas. The rules may provide for the safe and orderly use of public roadways, open spaces, parks, sidewalks, and similar public areas or facilities.

(b) To the extent a rule adopted under Subsection (a) of this section conflicts with a rule, order, ordinance, or regulation of a county or municipality with jurisdiction in the district's territory, the rule, order, ordinance, or regulation of the county or municipality controls.

SECTION 21. PERMIT FOR PUBLIC GATHERINGS; FEE. (a) The board may require a permit for a parade, demonstration, celebration, entertainment event, or similar nongovernmental activity in or on the public roadways, open spaces, parks, sidewalks, and similar public areas or facilities in the district.

(b) The board may charge a fee for the permit application and for public safety or security services in an amount the board considers necessary.

SECTION 22. PUBLIC SECURITY. The district may not employ peace officers, but may contract for off-duty peace officers to provide public safety and security services in connection with security needs in commercial office, retail, or industrial areas and in connection with a special event, holiday, or other period with high traffic congestion, or similar circumstance.

SECTION 23. ECONOMIC DEVELOPMENT POWERS. (a) The district has the same economic development powers that Chapter 380, Local Government Code, and Subchapter A, Chapter 1509, Government Code, provide a municipality with a population of more than 100,000.

(b) The district has the powers and duties of a conservation and reclamation district created under Section 59, Article XVI, Texas Constitution, under the Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes).

SECTION 24. REQUIREMENTS FOR USE OF FACILITIES. The board may require a permit or franchise agreement with a vendor, concessionaire, exhibitor, or similar private or commercial entity for the limited use of the area or facilities of the district on terms the board may impose.

SECTION 25. CHANGE IN DISTRICT TERRITORY. (a) The board may add or exclude territory in the manner provided by Subchapter J, Chapter 49, and Section 54.016, Water Code, except that:

(1) a reference in those laws to a tax means an ad valorem tax only;

(2) Section 42.042, Local Government Code, and Section 54.016, Water Code, apply only with respect to the consent of a municipality with a population of 25,000 or less and do not apply to the annexation of land restricted primarily to commercial or business use; and

(3) territory located in a planned community may not be added to the district.

(b) Territory of the district that is annexed by a municipality is no longer a part of the district effective on the date the municipality may impose a sales and use tax in the territory.

(c) Territory of the district that becomes a part of a planned community is no longer a part of the district effective on the date the planned community imposes an ad valorem assessment in the territory.

(d) Not later than the 10th day after the date of the change in the territory of the district, the board shall send to the comptroller, by certified or registered mail, certified copies of all resolutions, orders, or ordinances pertaining to the change.

SECTION 26. LIMITED SALES AND USE TAX. (a) Words and phrases used in this section that are defined by Chapters 151 and 321, Tax Code, have the meanings assigned by Chapters 151 and 321, Tax Code.

(b) Except as otherwise provided in this section, Subtitles A and B, Title 2, Tax Code, and Chapter 151, Tax Code, apply to the taxes and to the administration and enforcement of the taxes imposed by the district in the same manner that those laws apply to state taxes.

(c) The district may adopt, reduce, or repeal the limited sales and use tax authorized by this section at an election in which a majority of the voters of the district voting in the election approve the adoption or the abolition of the tax, as

applicable. The board may set the tax at any rate of up to two percent in increments of one-eighth of one percent except that the tax may not be imposed at a rate that would cause the combined tax rate of all local sales and use taxes in any location in the district to exceed two percent.

(d) The provisions of Subchapters C, D, E, and F, Chapter 323, Tax Code, relating to county sales and use taxes shall apply to the application, collection, and administration of a sales and use tax imposed under this section to the extent consistent with this Act, as if references in Chapter 323, Tax Code, to a county referred to the district and references to a commissioners court referred to the board. Sections 323.401-323.404 and 323.505, Tax Code, do not apply to a tax imposed under this section.

(e) A tax imposed under this section or the repeal or reduction of a tax under this section takes effect on the first day of the calendar quarter occurring after the date on which the comptroller receives the copy of the resolution as required by Section 323.405(b), Tax Code.

(f) On adoption of the tax authorized by this section, there is imposed a tax at the rate approved on the receipts from the sale at retail of taxable items within the district, and an excise tax on the use, storage, or other consumption within the district of taxable items purchased, leased, or rented from a retailer within the district during the period that the tax is in effect. The rate of the excise tax is the same as the rate of the sales tax portion of the tax and is applied to the sales price of the taxable item. With respect to a taxable service, "use" means the derivation in the district of a direct or indirect benefit from the service.

(g) An election to authorize, reduce, or repeal a limited sales and use tax may be called by order of the board and must be held on the next available uniform election date that occurs 45 or more days after the date on which the order calling the election was passed. The district shall provide notice of the election and shall hold and conduct the election in the manner prescribed by Chapter 54, Water Code, for bond elections for municipal utility districts. The ballots shall be printed to provide for voting for or against the appropriate one of the following propositions:

(1) "Adoption of a ___ percent district sales and use tax within the district";

(2) "Reduction of the district sales and use tax within the district from ___ percent to ___ percent"; or

(3) "Abolition of the district sales and use tax within the district."

(h) The district may examine and receive information related to the imposition, assessment, and collection of sales and use taxes to the same extent as if the district were a municipality.

SECTION 27. UTILITIES. The district may not impose an impact fee or assessment on the property, including equipment, rights-of-way, facilities, or improvements, of an electric utility or a power generation company as defined by Section 31.002, Utilities Code, a gas utility as defined by Section 101.003 or 121.001, Utilities Code, a cable operator as defined by 47 U.S.C. Section 522, as amended, or a telecommunications provider as defined by Section 51.002, Utilities Code.

SECTION 28. BONDS. (a) The board may issue bonds of the district in the manner provided by Subchapter J, Chapter 375, Local Government Code, except that Sections 375.207 and 375.208, Local Government Code, do not apply.

(b) If the district issues bonds for the primary purpose of providing water, sewage, or drainage facilities, the district must obtain the commission's approval in the manner provided by Chapter 49, Water Code.

(c) In addition to the sources of money described by Subchapter J, Chapter 375, Local Government Code, the bonds of the district may be secured and made payable, wholly or partly, by a pledge of any part of the net proceeds the district receives from a specified portion of the sales and use tax authorized by this Act.

SECTION 29. INTERLOCAL AGREEMENTS. (a) The district and a municipality, any part of which is located in the boundaries of the district or impact area defined as provided by Section 17 of this Act, may enter into an interlocal agreement to:

(1) accomplish an improvement project; or

(2) provide for a facility, service, or equipment from the district for the benefit of the municipality.

(b) Payment for the improvement project, facility, service, or equipment may be made or pledged by the municipality to the district out of any money the municipality collects under Chapter 351, Tax Code, or out of any other available money.

SECTION 30. DISSOLUTION. (a) Subchapter M, Chapter 375, Local Government Code, governs the dissolution of the district, except that Section 375.263 of that subchapter does not apply to the district.

(b) On dissolution of the district, the board shall transfer ownership of all property and assets of the district to:

(1) Montgomery County; or

(2) if on the date of dissolution of the district more than 50 percent of the territory in the district is located in the corporate limits of a municipality, that municipality.

SECTION 31. ADDITIONAL LEGISLATIVE FINDINGS. The legislature finds that:

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

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

(3) all requirements of the constitution and laws of this state and the rules and procedures of the legislature with respect to the notice, introduction, and passage of this Act have been fulfilled and accomplished.

SECTION 32. EFFECTIVE DATE. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2003.

HB 151 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

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

HB 151, A bill to be entitled An Act relating to offenses involving dogs that are a danger to livestock and other animals.

On motion of Representative Farabee, the house concurred in the senate amendments to **HB 151**.

Senate Committee Substitute

HB 151, A bill to be entitled An Act relating to offenses involving dogs or coyotes that are a danger to livestock and other animals.

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

SECTION 1. Subchapter B, Chapter 822, Health and Safety Code, is amended by amending the subchapter and by transferring Section 822.033 to the subchapter, renumbering that section as Section 822.013, and amending that section to read as follows:

SUBCHAPTER B. DOGS AND COYOTES THAT ARE A DANGER TO ANIMALS

Sec. 822.011. DEFINITIONS. In this subchapter:

(1) "Dog or coyote" includes a crossbreed between a dog and a coyote.

(2) "Livestock" includes exotic livestock as defined by Section 161.001, Agriculture Code.

Sec. 822.012. CERTAIN DOGS AND COYOTES PROHIBITED FROM RUNNING AT LARGE; CRIMINAL PENALTY. (a) The owner, keeper, or person in control of a dog or coyote that the owner, keeper, or person knows is accustomed to run, worry, or kill livestock, domestic animals, or fowls [~~goats, sheep, or poultry~~] may not permit the dog or coyote to run at large.

(b) A person who violates this section commits an offense. An offense under this subsection is punishable by a fine of not more than \$100.

(c) Each time a dog or coyote runs at large in violation of this section constitutes a separate offense.

Sec. 822.013 [~~822.033~~]. DOGS OR COYOTES THAT ATTACK [~~DOMESTIC~~] ANIMALS. (a) A dog or coyote that is attacking, is about to attack, or has recently attacked livestock, [~~sheep, goats, calves, or other~~] domestic animals, or fowls may be killed by:

(1) any person witnessing the attack; or

(2) the attacked animal's owner or a person acting on behalf of the owner if the owner or person has [~~having~~] knowledge of the attack.

(b) A person who kills a dog or coyote as provided by this section is not liable for damages to the owner, keeper, or person in control of the dog or coyote.

(c) A person who discovers on the person's property a dog or coyote known or suspected of having killed livestock, [~~sheep, goats, calves, or other~~] domestic animals, or fowls [~~is a public nuisance. Any person~~] may detain or impound the dog or coyote and return it to its [~~until the dog's~~] owner or deliver the dog or coyote to the local animal control authority. The owner of the dog or coyote is liable for all costs incurred in the capture and care of the dog or coyote [~~is notified~~] and all damage done by the dog or coyote [~~has been determined and paid to the proper persons~~].

(d) The owner, keeper, or person in control of a dog or coyote that is known to have attacked livestock, [~~sheep, goats, calves, or other~~] domestic animals, or fowls shall control the dog or coyote in a manner approved by the local animal control authority [~~kill the dog. A sheriff, deputy sheriff, constable, police officer, magistrate, or county commissioner may enter the premises of the owner of the dog and kill the dog if the owner fails to do so~~].

(e) A person is not required to acquire a hunting license under Section 42.002, Parks and Wildlife Code, to kill a dog or coyote under this section.

SECTION 2. Sections 822.032 and 822.034, Health and Safety Code, are repealed.

SECTION 3. The change in law made by this Act to Section 822.011, Health and Safety Code, 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.

SECTION 4. This Act takes effect September 1, 2003.

HB 325 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

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

HB 325, A bill to be entitled An Act relating to the punishment for the offense of failure to identify.

On motion of Representative McCall, the house concurred in the senate amendments to **HB 325**.

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

Amend **HB 325** (Senate Committee Printing) by adding new SECTION 2 and renumbering subsequent sections accordingly:

SECTION 2. Chapter 38, Penal Code, is amended by adding Section 38.171 to read as follows:

Sec. 38.171. FAILURE TO REPORT FELONY. (a) A person commits an offense if the person:

(1) observes the commission of a felony under circumstances in which a reasonable person would believe that an offense had been committed in which serious bodily injury or death may have resulted; and

(2) fails to immediately report the commission of the offense to a peace officer or law enforcement agency under circumstances in which:

(A) a reasonable person would believe that the commission of the offense had not been reported; and

(B) the person could immediately report the commission of the offense without placing himself or herself in danger of suffering serious bodily injury or death.

(b) An offense under this section is a Class A misdemeanor.

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

Amend **HB 325** (Senate Committee Printing) as follows:

(1) In SECTION 1 of the bill, strike the recital to SECTION 1 (page 1, lines 10-11) and substitute the following:

Section 38.02, Penal Code, is amended by amending Subsections (c) and (d) and adding Subsection (e) to read as follows:

(2) In SECTION 1 of the bill, in amended Subsection (c), Section 38.02, Penal Code (page 1, line 12), strike "Subsection (d)" and insert "Subsections [Subsection] (d) and (e)".

(3) In SECTION 1 of the bill, following amended Subsection (d), Section 38.02, Penal Code (page 1, between lines 24 and 25), insert:

(e) If conduct that constitutes an offense under this section also constitutes an offense under Section 106.07, Alcoholic Beverage Code, the actor may be prosecuted only under Section 106.07.

HB 1844 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

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

HB 1844, A bill to be entitled An Act relating to a program under which classroom teachers are reimbursed for personal funds expended on classroom supplies.

On motion of Representative Grusendorf, the house concurred in the senate amendments to **HB 1844** by (Record 868): 141 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; Dutton; Edwards; Eiland; Eissler; Elkins; Ellis; Escobar; Farabee; Farrar; Flores; Flynn; Gallego; Garza; 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.; Jones, J.; Keel;

Keffer, B.; Keffer, J.; King; Kolkhorst; Krusee; Kuempel; Laney; Laubenberg; Lewis; Luna; Mabry; Madden; Martinez Fischer; McCall; McClendon; McReynolds; Menendez; Mercer; Merritt; Miller; Moreno, J.; Moreno, P.; Morrison; Mowery; Naishtat; Nixon; 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; Taylor; Telford; Thompson; Truitt; Turner; Uresti; Van Arsdale; Villarreal; West; Wilson; Wise; Wolens; Wong; Woolley; Zedler.

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

Absent, Excused — Marchant.

Absent — Dunnam; Hope; Jones, D.; Noriega; Talton; Wohlgemuth.

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

Amend **HB 1844** in SECTION 1 of the bill, in proposed Section 21.413, Education Code (engrossed version, page 2, between lines 11 and 12), by inserting the following:

(e) The legislature may not appropriate funds from the general revenue fund for the reimbursement program during the state fiscal biennium ending August 31, 2007. This subsection expires September 1, 2007.

HB 2500 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

Representative Harper-Brown called up with senate amendments for consideration at this time,

HB 2500, A bill to be entitled An Act relating to the enforcement of fares imposed for the use of certain public transportation systems; providing penalties.

On motion of Representative Harper-Brown, the house concurred in the senate amendments to **HB 2500** by (Record 869): 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; Eiland; Eissler; Elkins; Ellis; Escobar; Farabee; Farrar; Flynn; Gallego; Garza; Goodman; Griggs; Grusendorf; Guillen; Gutierrez; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Heflin; Hegar; Hilderbran; Hill; Hochberg; Hodge; Homer; Hope; Hopson; Howard; Hunter; Hupp; Isett; Jones, D.; Jones, E.; Jones, J.; Keel; Keffer, B.; Keffer, J.; King; Kolkhorst; Krusee; Kuempel; Laney; Laubenberg; Lewis; Luna; Mabry; Madden; 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.; Smithee; Solis; Solomons; Stick; Swinford; Taylor; Telford; Thompson; Truitt; Turner; Uresti; Van Arsdale; Villarreal; West; Wilson; Wise; Wolens; Wong; Woolley; Zedler.

Nays — Hughes.

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

Absent, Excused — Marchant.

Absent — Capelo; Flores; Geren; Giddings; Goolsby; Talton; Wohlgemuth.

STATEMENT OF VOTE

I was shown voting no on Record No. 869. I intended to vote yes.

Hughes

Senate Committee Substitute

HB 2500, A bill to be entitled An Act relating to the enforcement of fares imposed for the use of certain public transportation systems; providing penalties.

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

SECTION 1. Subchapter B, Chapter 452, Transportation Code, is amended by adding Sections 452.0611 and 452.0612 to read as follows:

Sec. 452.0611. ENFORCEMENT OF FARES AND OTHER CHARGES; PENALTIES. (a) An executive committee by resolution may prohibit the use of the public transportation system by a person who fails to possess evidence showing that the appropriate fare for the use of the system has been paid and may establish reasonable and appropriate methods, using transit police officers or fare enforcement officers under Section 452.0612, to ensure that persons using the public transportation system pay the appropriate fare for that use.

(b) An executive committee by resolution may provide that a fare for or charge for the use of the public transportation system that is not paid incurs a penalty, not to exceed \$100.

(c) The authority shall post signs designating each area in which a person is prohibited from using the transportation system without possession of evidence showing that the appropriate fare has been paid.

(d) A person commits an offense if:

(1) the person or another for whom the person is criminally responsible under Section 7.02, Penal Code, uses the public transportation system and does not possess evidence showing that the appropriate fare has been paid; and

(2) the person fails to pay the appropriate fare or other charge for the use of the public transportation system and any penalty on the fare on or before the 30th day after the date the authority notifies the person that the person is required to pay the amount of the fare or charge and the penalty.

(e) The notice required by Subsection (d)(2) may be included in a citation issued to the person by a peace officer under Article 14.06, Code of Criminal Procedure, or by a fare enforcement officer under Section 452.0612, in connection with an offense relating to the nonpayment of the appropriate fare or charge for the use of the public transportation system.

(f) An offense under Subsection (d) is a Class C misdemeanor.

(g) An offense under Subsection (d) is not a crime of moral turpitude.

Sec. 452.0612. FARE ENFORCEMENT OFFICERS. (a) The authority may employ persons to serve as fare enforcement officers to enforce the payment of fares for use of the public transportation system by:

(1) requesting and inspecting evidence showing payment of the appropriate fare from a person using the public transportation system; and

(2) issuing a citation to a person described by Section 452.0611(d)(1).

(b) Before commencing duties as a fare enforcement officer a person must complete a 40-hour training course approved by the authority that is appropriate to the duties required of a fare enforcement officer.

(c) While performing duties, a fare enforcement officer shall:

(1) wear a distinctive uniform that identifies the officer as a fare enforcement officer; and

(2) work under the direction of the chief of police of the authority.

(d) A fare enforcement officer may:

(1) request evidence showing payment of the appropriate fare from passengers of the public transportation system;

(2) request personal identification from a passenger who does not produce evidence showing payment of the appropriate fare on request by the officer;

(3) request that a passenger leave the public transportation system if the passenger does not possess evidence of payment of the appropriate fare; and

(4) file a complaint in the appropriate court that charges the person with an offense under Section 452.0611(d).

(e) A fare enforcement officer may not carry a weapon while performing duties under this section.

(f) A fare enforcement officer is not a peace officer and has no authority to enforce a criminal law, other than the authority possessed by any other person who is not a peace officer.

SECTION 2. Subchapter B, Chapter 451, Transportation Code, is amended by adding Section 451.0611 to read as follows:

Sec. 451.0611. ENFORCEMENT OF FARES AND OTHER CHARGES; PENALTIES. (a) A board by resolution may prohibit the use of the public transportation system by a person who fails to possess evidence showing that the appropriate fare for the use of the system has been paid and may establish reasonable and appropriate methods to ensure that persons using the public transportation system pay the appropriate fare for that use.

(b) A board by resolution may provide that a fare for or charge for the use of the public transportation system that is not paid incurs a penalty, not to exceed \$100.

(c) The authority shall post signs designating each area in which a person is prohibited from using the transportation system without possession of evidence showing that the appropriate fare has been paid.

(d) A person commits an offense if:

(1) the person or another for whom the person is criminally responsible under Section 7.02, Penal Code, uses the public transportation system and does not possess evidence showing that the appropriate fare has been paid; and

(2) the person fails to pay the appropriate fare or other charge for the use of the public transportation system and any penalty on the fare on or before the 30th day after the date the authority notifies the person that the person is required to pay the amount of the fare or charge and the penalty.

(e) The notice required by Subsection (d)(2) may be included in a citation issued to the person under Article 14.06, Code of Criminal Procedure, in connection with an offense relating to the nonpayment of the appropriate fare or charge for the use of the public transportation system.

(f) An offense under Subsection (d) is a Class C misdemeanor.

SECTION 3. This Act takes effect September 1, 2003.

HB 2895 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

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

HB 2895, A bill to be entitled An Act relating to the operations of the Texas Youth Commission.

On motion of Representative Allen, the house concurred in the senate amendments to **HB 2895**.

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

Amend **HB 2895** by striking SECTION 4 and renumbering the subsequent sections accordingly.

SCR 60 - ADOPTED (Baxter - House Sponsor)

Representative Isett moved to suspend all necessary rules to take up and consider at this time **SCR 60**.

The motion prevailed without objection.

The following resolution was laid before the house:

SCR 60, Requesting that the chief clerk of the house be authorized to return **HB 2180** to the senate for further consideration.

SCR 60 was adopted without objection.

HB 599 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

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

HB 599, A bill to be entitled An Act relating to the continuation and functions of the State Bar of Texas and to the practice of law in the state.

On motion of Representative Chisum, the house concurred in the senate amendments to **HB 599**. (Howard recorded voting no)

Senate Committee Substitute

HB 599, A bill to be entitled An Act relating to the continuation and functions of the State Bar of Texas and to conflicts of interest with respect to certain persons engaged in the practice of law.

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

SECTION 1. Section 81.003, Government Code, is amended to read as follows:

Sec. 81.003. SUNSET PROVISION. The state bar is subject to Chapter 325 (Texas Sunset Act). Unless continued in existence as provided by that chapter, this chapter expires September 1, 2015 ~~2003~~.

SECTION 2. Section 81.019(c), Government Code, is amended to read as follows:

(c) The election rules must permit any member's name to be printed on the ballot as a candidate for president-elect if a written petition requesting that action and signed by at least five percent of the membership of the state bar is filed with the executive director at least 30 days before the election ballots are to be distributed ~~mailed~~ to the membership.

SECTION 3. Sections 81.020(c) and (f), Government Code, are amended to read as follows:

(c) Elected members serve three-year terms. Nonattorney members serve staggered terms of the same length as terms of elected board members. The supreme court shall annually appoint two nonattorney members, with at least one of the two from a list of at least five names submitted by the governor. ~~Appointments to the board [In making the appointments the supreme court and the governor must attempt to ensure full and fair representation of the general public, including women, minorities, and retired persons who are at least 55 years of age. Each appointment]~~ shall be made without regard to the race, color, disability ~~creed~~, sex, religion, age, or national origin of the appointees. A person who has served more than half of a full term is not eligible for reappointment to the board.

(f) The board of directors shall develop and implement policies that clearly separate ~~define~~ the ~~respective~~ responsibilities of the board and the management responsibilities of the executive director and the staff of the state bar.

SECTION 4. Subchapter B, Chapter 81, Government Code, is amended by adding Sections 81.0201 and 81.0215 to read as follows:

Sec. 81.0201. TRAINING PROGRAM FOR BOARD MEMBERS. (a) A person who is elected or appointed to and qualifies for office as a member of the board of directors may not vote, deliberate, or be counted as a member in attendance at a meeting of the board until the person completes a training program that complies with this section.

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

(1) the legislation that created the state bar and the board;

- (2) the programs operated by the state bar;
- (3) the role and functions of the state bar;
- (4) the rules of the state bar, with an emphasis on the rules that relate to disciplinary and investigatory authority;
- (5) the current budget for the state bar;
- (6) the results of the most recent formal audit of the state bar;
- (7) the requirements of:
 - (A) the open meetings law, Chapter 551;
 - (B) the public information law, Chapter 552; and
 - (C) other laws relating to public officials, including conflict-of-interest laws; and
- (8) any applicable ethics policies adopted by the state bar or the Texas Ethics Commission.

Sec. 81.0215. STRATEGIC PLAN. (a) The state bar shall develop a comprehensive, long-range strategic plan for its operations. Each even-numbered year, the state bar shall issue a plan covering five fiscal years beginning with the next odd-numbered fiscal year.

(b) The strategic plan must include measurable goals and a system of performance measures that:

- (1) relates directly to the identified goals; and
- (2) focuses on the results and outcomes of state bar operations and services.

(c) Each year, the state bar shall report the performance measures included in the strategic plan under this section to the supreme court and the editor of the Texas Bar Journal for publication.

SECTION 5. Section 81.022, Government Code, is amended by adding Subsections (a-1) and (e) to read as follows:

(a-1) In developing and approving the annual budget, the state bar and supreme court shall:

(1) consider the goals and performance measures identified in the strategic plan developed under Section 81.0215; and

(2) identify additional goals and performance measures as necessary.

(e) After implementing a budget approved by the supreme court, the state bar shall report to the court regarding the state bar's performance on the goals and performance measures identified in the strategic plan developed under Section 81.0215. The state bar shall:

(1) revise the goals and performance measures as necessary; and

(2) notify the supreme court of the revisions.

SECTION 6. Sections 81.024(c) and (d), Government Code, are amended to read as follows:

(c) When the supreme court has prepared and proposed rules or amendments to rules under this section, the court shall distribute ~~mail~~ a copy of each proposed rule or amendment in ballot form to each registered member of the state bar for a vote.

(d) At the end of the 30-day period following the date the ballots are distributed ~~[mailed]~~, the court shall count the returned ballots. ~~[An election is valid only if at least 51 percent of the registered members of the state bar vote in the election.]~~

SECTION 7. Subchapter B, Chapter 81, Government Code, is amended by adding Sections 81.0241 and 81.0242 to read as follows:

Sec. 81.0241. ELECTRONIC TRANSMISSION OF ELECTION MATERIALS. (a) The state bar may, with the approval of the supreme court, distribute by electronic transmission ballots and related materials and receive by electronic transmission completed ballots in an election under this chapter.

(b) Before approving the distribution or receipt of ballots and related materials by electronic transmission under this section, the supreme court must be satisfied that the state bar has implemented procedures that ensure each member of the state bar will have secure access to election ballots and information.

Sec. 81.0242. PARTICIPATION IN ELECTIONS. The state bar, in the manner provided by the supreme court, shall:

(1) promote and monitor participation of members of the state bar in elections under this chapter; and

(2) report statistics regarding that participation to the supreme court and the editor of the Texas Bar Journal for publication.

SECTION 8. Section 81.026(a), Government Code, is amended to read as follows:

(a) The board may create committees, subject to the executive committee's approval under Subchapter I, and sections as it considers advisable and necessary to carry out the purposes of this chapter.

SECTION 9. Section 81.027(a), Government Code, is amended to read as follows:

(a) The board of directors may remove a director from the board at any regular meeting by resolution declaring the director's position vacant. It is a ground for removal from the board that a director [is]:

(1) does not have at the time of taking office the applicable qualifications for office, if any;

(2) does not maintain during service on the board the applicable qualifications for office, if any;

(3) is ineligible for membership under Section 81.028 or 81.031;

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

(5) is absent from more than half of the regularly scheduled board meetings that the director is eligible to attend during a calendar year without an excuse approved by a majority vote of the board [the director, in the board's determination, has become incapacitated and cannot perform his duties as a director;

[(2) the director has been absent, without cause considered adequate by the board, from any two consecutive regular meetings of the board or from a total of four meetings;

[(3) the director violates a prohibition established by Section 81.028; or

~~[(4) the director has violated the terms or provisions of Section 81.031].~~

SECTION 10. Section 81.028, Government Code, is amended to read as follows:

Sec. 81.028. RELATIONSHIP WITH TRADE ASSOCIATION [EMPLOYEE OR CONSULTANT]. (a) In this section, "Texas trade association" means a 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 of directors and may not be a state bar employee employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.), and its subsequent amendments, if:

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

(2) the person's spouse is an officer, manager, [A member of the board of directors or an employee of the board may not be an employee] or paid consultant of a Texas trade association in the field of board interest.

SECTION 11. Sections 81.029(j) and (k), Government Code, are amended to read as follows:

(j) The executive director or the executive director's designee shall prepare and maintain a written policy statement that implements [to assure implementation of] a program of equal employment opportunity to ensure that [under which] all personnel decisions [transactions] are made without regard to race, color, disability [handicap], sex, religion, age, or national origin. The policy statement must include:

(1) personnel policies, including policies relating to recruitment, evaluation, selection, [appointment,] training, and promotion of personnel, that show the intent of the state bar 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 state bar's personnel is in accordance with state and federal law and a description of reasonable methods to achieve compliance with state and federal law [state bar work force that meets federal and state guidelines;

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

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

(k) The [A] policy statement [prepared under Subsection (j)] must:

(1) [cover an annual period,] be updated [at least] annually;

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

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

SECTION 12. Subchapter B, Chapter 81, Government Code, is amended by adding Sections 81.035, 81.036, 81.037, and 81.038 to read as follows:

Sec. 81.035. INFORMATION REGARDING REQUIREMENTS FOR OFFICE OR EMPLOYMENT. The executive director or the executive director's designee shall provide to members of the board of directors and to agency employees, as often as necessary, information regarding the requirements for office or employment under this chapter, including information regarding a person's responsibilities under applicable laws relating to standards of conduct for state officers or employees.

Sec. 81.036. INFORMATION ON CERTAIN COMPLAINTS. (a) The state bar shall maintain a file on each written complaint, other than a grievance against an attorney, filed with the state bar. The file must include:

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

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

(c) The state bar, at least quarterly until final disposition of the complaint, shall notify the person filing the complaint and each person who is a subject of the complaint of the status of the investigation unless the notice would jeopardize an undercover investigation.

Sec. 81.037. STATE EMPLOYEE INCENTIVE PROGRAM. The executive director or the executive director's designee shall provide to state bar employees information and training on the benefits and methods of participation in the state employee incentive program under Subchapter B, Chapter 2108.

Sec. 81.038. USE OF TECHNOLOGY. The board of directors shall develop and implement a policy requiring the executive director and state bar employees to research and propose appropriate technological solutions to improve the state bar's ability to perform its functions. The technological solutions must:

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

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

(A) interact with the state bar 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 state bar's planning processes.

SECTION 13. The heading to Section 81.054, Government Code, is amended to read as follows:

Sec. 81.054. MEMBERSHIP FEES AND ADDITIONAL FEES.

SECTION 14. Section 81.054, Government Code, is amended by amending Subsections (a), (c), and (d) and adding Subsections (f)-(l) to read as follows:

(a) The supreme court shall set membership fees and other fees for members of the state bar. The fees, except as provided by Subsection (j) and [other than] those set for associate members, must be set in accordance with this section and Section 81.024.

(c) Fees shall be paid to the clerk of the supreme court. The clerk shall retain the fees, other than fees collected under Subsection (j), until distributed to the state bar for expenditure under the direction of the supreme court to administer this chapter. The clerk shall retain the fees collected under Subsection (j) until distribution is approved by an order of the supreme court. In ordering that distribution, the supreme court shall order that the fees collected under Subsection (j) be remitted to the comptroller at least as frequently as quarterly. The comptroller shall credit 50 percent of the remitted fees to the credit of the judicial fund for programs approved by the supreme court that provide basic civil legal services to the indigent and shall credit the remaining 50 percent of the remitted fees to the fair defense account in the general revenue fund which is established under Section 71.058, to be used, subject to all requirements of Section 71.062, for demonstration or pilot projects that develop and promote best practices for the efficient delivery of quality representation to indigent defendants in criminal cases at trial, on appeal, and in postconviction proceedings.

(d) Fees collected under Subsection (j) may be used only to provide basic civil legal services to the indigent and legal representation and other defense services to indigent defendants in criminal cases as provided by Subsection (c). Other fees collected under this chapter may be used only for administering the public purposes provided by this chapter.

(f) A person who is otherwise eligible to renew the person's membership may renew the membership by paying the required membership fees to the state bar on or before the due date.

(g) A person whose membership has been expired for 90 days or less may renew the membership by paying to the state bar membership fees equal to 1-1/2 times the normally required membership fees.

(h) A person whose membership has been expired for more than 90 days but less than one year may renew the membership by paying to the state bar membership fees equal to two times the normally required membership fees.

(i) Not later than the 30th day before the date a person's membership is scheduled to expire, the state bar shall send written notice of the impending expiration to the person at the person's last known address according to the records of the state bar.

(j) The supreme court shall set an additional legal services fee in an amount that is not less than \$65 to be paid annually by each active member of the state bar except as provided by Subsection (k). The supreme court shall review the amount of the fee at least biennially and may, subject to the requirements of this

subsection, modify the amount. The supreme court may not increase the amount of the fee to an amount that exceeds 120 percent of the lowest fee imposed under this subsection during the preceding year. Section 81.024 does not apply to a fee set under this subsection.

(k) The legal services fee shall not be assessed on any Texas attorney who:

(1) is 70 years of age or older;

(2) has assumed inactive status under the rules governing the State Bar of Texas;

(3) is a sitting judge;

(4) is an employee of the state or federal government;

(5) is employed by a city, county, or district attorney's office and who does not have a private practice that accounts for more than 50 percent of the attorney's time;

(6) is employed by a 501(c)(3) nonprofit corporation and is prohibited from the outside practice of law;

(7) is exempt from MCLE requirements because of nonpracticing status; or

(8) resides out of state and does not practice law in Texas.

(l) In this section, "indigent" has the meaning assigned by Section 51.941.

SECTION 15. The heading to Section 81.072, Government Code, is amended to read as follows:

Sec. 81.072. GENERAL DISCIPLINARY AND DISABILITY PROCEDURES.

SECTION 16. Section 81.072, Government Code, is amended by amending Subsections (a), (b), (e), (f), (h), and (o) and adding Subsection (e-1) to read as follows:

(a) In furtherance of the supreme court's powers to supervise the conduct of attorneys, the court shall establish disciplinary and disability procedures in addition to the procedures provided by this subchapter.

(b) The supreme court shall establish minimum standards and procedures for the attorney disciplinary and disability system. The standards and procedures for processing grievances ~~[complaints]~~ against attorneys must provide for:

(1) classification of all grievances and investigation of all ~~[inquiries and]~~ complaints;

(2) a full explanation to each complainant on dismissal of an inquiry or a complaint;

(3) periodic preparation of abstracts of inquiries and complaints filed that, even if true, do or do not constitute misconduct;

(4) an information file for each grievance ~~[complaint]~~ filed;

(5) a grievance ~~[complaint]~~ tracking system to monitor processing of grievances ~~[complaints]~~ by category, method of resolution, and length of time required for resolution;

(6) notice by the state bar to the parties of a written grievance ~~[complaint]~~ filed with the state bar that the state bar has the authority to resolve of the status of the grievance ~~[complaint]~~, at least quarterly and until final disposition, unless the notice would jeopardize an undercover investigation;

(7) an administrative system for attorney disciplinary and disability findings in lieu of [decisions as an option to] trials in district court, including an appeal procedure to the Board of Disciplinary Appeals and the supreme court under the substantial evidence rule;

(8) an administrative system for reciprocal and compulsory discipline;

(9) interim suspension of an attorney posing a threat of immediate irreparable harm to a client;

(10) authorizing all parties to an attorney disciplinary hearing, including the complainant, to be present at all hearings at which testimony is taken and requiring notice of those hearings to be given to the complainant not later than the seventh day before the date of the hearing;

(11) the commission adopting rules that govern the use of private reprimands by grievance committees and that prohibit a committee:

(A) giving an attorney more than one private reprimand within a five-year period for a violation of the same disciplinary rule; or

(B) giving a private reprimand for a violation that involves a failure to return an unearned fee, a theft, or a misapplication of fiduciary property; and

(12) distribution of a voluntary survey to all complainants urging views on grievance system experiences.

(e) The state bar shall establish a voluntary mediation and dispute resolution procedure to:

(1) attempt to resolve each allegation [that may be used as a model for resolving allegations] of attorney misconduct that is:

(A) classified as an inquiry under Section 81.073(a)(2)(A) because it does [do] not constitute an offense cognizable under the Texas Disciplinary Rules of Professional Conduct; or

(B) classified as a complaint and subsequently dismissed; and

(2) facilitate coordination with other programs administered by the state bar to address and attempt to resolve inquiries and complaints referred to the voluntary mediation and dispute resolution procedure.

(e-1) All types of information, proceedings, hearing transcripts, and statements presented during the voluntary mediation and dispute resolution procedure established under Subsection (e) are confidential to the same extent the information, proceedings, transcripts, or statements would be confidential if presented to a panel of a district grievance committee.

(f) Responses to the survey provided for in Subsection (b)(12) may not identify either the complainant or attorney and shall be open to the public. The topics must include:

(1) treatment by the grievance system staff and volunteers;

(2) the fairness of grievance procedures;

(3) the length of time for grievance [complaint] processing;

(4) disposition of the grievance [complaint]; and

(5) suggestions for improvement of the grievance system.

(h) The state bar or a court may not require an attorney against whom a disciplinary action has been brought to disclose information protected by the attorney-client privilege if the client did not initiate the grievance ~~[complaint]~~ that is the subject of the action.

(o) Whenever a grievance is either dismissed as an inquiry or dismissed as a complaint ~~[after an investigatory hearing]~~ in accordance with the Texas Rules of Disciplinary Procedure and that dismissal has become final, the respondent attorney may thereafter deny that a grievance was pursued and ~~[—In any disciplinary action which is tried to verdict before an evidentiary panel or a district court and there is a take nothing judgment entered which becomes final, the respondent attorney]~~ may file a motion with the tribunal seeking expunction of all records ~~[the tribunal's file]~~ on the matter, ~~[—In the event an expunction is granted, the evidentiary panel or district court shall order that all records be destroyed]~~ other than statistical or identifying information maintained by the chief disciplinary counsel pertaining to the ~~[any]~~ grievance ~~[which formed the basis of the disciplinary action and the respondent attorney may thereafter deny any grievance which formed the basis of the disciplinary action was filed]~~.

SECTION 17. Subchapter E, Chapter 81, Government Code, is amended by adding Sections 81.073, 81.074, 81.075, 81.0751, 81.0752, and 81.0753 to read as follows:

Sec. 81.073. CLASSIFICATION OF GRIEVANCES. (a) The chief disciplinary counsel's office shall classify each grievance on receipt as:

(1) a complaint, if the grievance alleges conduct that, if true, constitutes professional misconduct or disability cognizable under the Texas Disciplinary Rules of Professional Conduct; or

(2) an inquiry, if:

(A) the grievance alleges conduct that, even if true, does not constitute professional misconduct or disability cognizable under the Texas Disciplinary Rules of Professional Conduct; or

(B) the respondent attorney is deceased, has relinquished the attorney's license to practice law in this state to avoid disciplinary action, or is not licensed to practice law in this state.

(b) A complainant may appeal the classification of a grievance as an inquiry to the Board of Disciplinary Appeals, or the complainant may amend and resubmit the grievance. An attorney against whom a grievance is filed may not appeal the classification of the grievance.

Sec. 81.074. DISPOSITION OF INQUIRIES. The chief disciplinary counsel shall:

(1) dismiss a grievance classified as an inquiry; and

(2) refer each inquiry classified under Section 81.073(a)(2)(A) and dismissed under this section to the voluntary mediation and dispute resolution procedure established under Section 81.072(e).

Sec. 81.075. DISPOSITION OF COMPLAINTS. (a) The chief disciplinary counsel shall review and investigate each grievance classified as a complaint to determine whether there is just cause, as defined by the Texas Rules of Disciplinary Procedure.

(b) After reviewing and investigating a complaint, the chief disciplinary counsel shall place the complaint on:

- (1) a hearing docket, if the counsel finds just cause; or
- (2) a dismissal docket, if the counsel finds there is no just cause.

(c) A panel of a district grievance committee shall consider each complaint placed on the dismissal docket at a closed hearing without the complainant or the respondent attorney present. The panel may:

(1) approve the dismissal of the complaint and refer the complaint to the voluntary mediation and dispute resolution procedure established under Section 81.072(e); or

(2) deny the dismissal of the complaint and place the complaint on a hearing docket.

(d) A panel of a district grievance committee shall conduct a hearing on each complaint placed on the hearing docket. The commission and the respondent attorney are parties to the hearing, and the chief disciplinary counsel presents the complainant's case at the hearing. Each party may seek and the panel may issue a subpoena to compel attendance and production of records before the panel. Each party may conduct limited discovery in general accordance with the Texas Rules of Civil Procedure as prescribed by rules of the supreme court.

(e) After conducting a hearing under Subsection (d), the panel of the district grievance committee may:

(1) dismiss the complaint and refer it to the voluntary mediation and dispute resolution procedure established under Section 81.072(e);

(2) find that the respondent attorney suffers from a disability and forward that finding to the Board of Disciplinary Appeals for referral to a district disability committee; or

(3) find that professional misconduct occurred and impose sanctions.

Sec. 81.0751. APPEALS. (a) The commission or a respondent attorney may appeal:

(1) a finding of a panel of a district grievance committee under Section 81.075(e) only to the Board of Disciplinary Appeals; and

(2) a finding of the Board of Disciplinary Appeals to the supreme court.

(b) In an appeal of a finding of a panel of a district grievance committee made to the Board of Disciplinary Appeals, the board may:

(1) affirm in whole or part the panel's finding;

(2) modify the panel's finding and affirm the finding as modified;

(3) reverse in whole or part the panel's finding and enter a finding the board determines the panel should have entered; or

(4) reverse the panel's finding and remand the complaint for a rehearing to be conducted by:

(A) the panel that entered the finding; or

(B) a statewide grievance committee panel composed of members selected from the state bar districts other than the district from which the appeal was taken.

Sec. 81.0752. CONFIDENTIALITY. (a) All types of information, proceedings, hearing transcripts, and statements presented to a panel of a district grievance committee are confidential and may not be disclosed to any person other than the chief disciplinary counsel unless:

- (1) disclosure is ordered by a court; or
 - (2) the panel finds that professional misconduct occurred and a sanction other than a private reprimand is imposed against the respondent attorney.
- (b) If the requirements of Subsection (a)(2) are met, the panel of the district grievance committee shall, on request, make the information, proceedings, hearing transcripts, or statements available to the public.

Sec. 81.0753. RULES REGARDING GRIEVANCES. The supreme court shall promulgate rules regarding the classification and disposition of grievances, including rules specifying time limits for each stage of the grievance resolution process.

SECTION 18. Section 81.079, Government Code, is amended to read as follows:

Sec. 81.079. PUBLIC NOTIFICATION AND INFORMATION. (a) To provide information to the public relating to the attorney grievance process, the state bar shall:

- (1) develop a brochure written in Spanish and English describing the bar's grievance process;
- (2) establish a toll-free "800" telephone number for public access to the chief disciplinary counsel's office in Austin and list the number in telephone directories statewide;
- (3) describe the bar's grievance process in the bar's telephone directory listings statewide; and
- (4) make grievance ~~[complaint]~~ forms written in Spanish and English available in each county courthouse.

(b) Each attorney practicing law in this state shall provide notice to each of the attorney's clients of the existence of a grievance process by:

- (1) making grievance ~~[complaint]~~ brochures prepared by the state bar available at the attorney's place of business;
- (2) posting a sign prominently displayed in the attorney's place of business describing the process;
- (3) including the information on a written contract for services with the client; or
- (4) providing the information in a bill for services to the client.

SECTION 19. Section 81.113, Government Code, is amended by adding Subsection (c) to read as follows:

(c) The state bar shall recognize, prepare, or administer continuing education programs for members of the state bar. A member of the state bar must participate in the programs to the extent required by the supreme court to maintain the person's state bar membership.

SECTION 20. Chapter 81, Government Code, is amended by adding Subchapter I to read as follows:

SUBCHAPTER I. EXECUTIVE COMMITTEE

Sec. 81.121. EXECUTIVE COMMITTEE. (a) The executive committee consists of:

(1) the president, the president-elect, and the immediate past president of the state bar;

(2) the chair of the board of directors;

(3) the president of the Texas Young Lawyers Association; and

(4) additional members appointed by the president of the state bar.

(b) The general counsel and executive director serve as ex officio members of the committee.

(c) The president of the state bar serves as chair of the committee. The chair of the board of directors serves as vice chair of the committee and presides over committee meetings in the committee chair's absence.

Sec. 81.122. DUTIES OF EXECUTIVE COMMITTEE. The executive committee shall:

(1) on the recommendation of the president of the state bar, approve the creation of additional standing and special committees of the state bar in accordance with Section 81.123;

(2) conduct a comprehensive review of standing and special committees of the state bar at least biennially and more frequently as the executive committee determines necessary to assess whether there is:

(A) a continued need for each committee; and

(B) unnecessary overlap of the committees' activities; and

(3) perform other duties as delegated by the board of directors.

Sec. 81.123. APPROVAL OF COMMITTEES. Before the executive committee may approve the creation of an additional standing or special committee of the state bar, the committee must:

(1) study and determine the fiscal impact creating the committee would have on the state bar budget; and

(2) poll the chair of each existing committee and conduct a review to determine whether the matter to be addressed by the proposed committee could be addressed by an existing committee.

SECTION 21. Chapter 171, Local Government Code, is amended by adding Section 171.010 to read as follows:

Sec. 171.010. PRACTICE OF LAW. (a) For purposes of this chapter, a county judge or county commissioner engaged in the private practice of law has a substantial interest in a business entity if the official has entered a court appearance or signed court pleadings in a matter relating to that business entity.

(b) A county judge or county commissioner who has a substantial interest in a business entity as described by Subsection (a) must comply with this chapter.

(c) A judge of a constitutional county court may not enter a court appearance or sign court pleadings as an attorney in any matter before:

(1) the court over which the judge presides; or

(2) any court in this state over which the judge's court exercises appellate jurisdiction.

(d) Upon compliance with this chapter, a county judge or commissioner may practice law in the courts located in the county where the county judge or commissioner serves.

SECTION 22. Sections 81.020(e) and 81.029(l), Government Code, are repealed.

SECTION 23. Not later than January 1, 2004, the executive director of the State Bar of Texas or the executive director's designee shall prepare the written policy statement required by Section 81.029, Government Code, as amended by this Act.

SECTION 24. Not later than January 1, 2004, the supreme court shall adopt the rules and procedures required by Section 81.072, Government Code, as amended by this Act, and Section 81.0753, Government Code, as added by this Act.

SECTION 25. (a) The changes in law made by this Act in the prohibitions or qualifications applying to members of the board of directors of the State Bar of Texas 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 elected or appointed on or after September 1, 2003.

(b) Section 81.036, Government Code, as added by this Act, applies only to a complaint filed with the State Bar of Texas on or after the effective date of this Act, regardless of whether the conduct or act that is the subject of the complaint occurred or was committed before, on, or after the effective date of this Act.

(c) Section 81.054, Government Code, as amended by this Act, applies to membership fees for renewal of a membership in the State Bar of Texas that become due on or after the effective date of this Act. Membership fees for renewal of a membership that became due before the effective date of this Act are governed by the law in effect on the date the membership fees became due, and the former law is continued in effect for that purpose.

(d) Section 81.072, Government Code, as amended by this Act, and Sections 81.073, 81.074, 81.075, 81.0751, 81.0752, and 81.0753, Government Code, as added by this Act, apply to a grievance filed on or after January 1, 2004, regardless of whether the conduct or act that is the subject of the grievance occurred before, on, or after that date. A grievance filed before January 1, 2004, is governed by the law in effect immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

SECTION 26. This Act takes effect September 1, 2003.

Senate Amendment No. 1 (Senate Floor Amendment No. 3)

Amend **CSHB 599** as follows:

(1) In SECTION 16 of the bill (senate committee report, page 6, line 47), between "an" and "administrative", insert "option for a trial in a district court on a complaint and an".

(2) In SECTION 17 of the bill (senate committee report, page 8, lines 22 through 27), strike added Section 81.075(b), Government Code, and substitute the following:

(b) After the chief disciplinary counsel reviews and investigates a complaint:

(1) if the counsel finds there is no just cause, the counsel shall place the complaint on a dismissal docket; or

(2) if the counsel finds just cause:

(A) the respondent attorney may request a trial in a district court on the complaint in accordance with the procedures adopted by the supreme court; or

(B) the counsel shall place the complaint on a hearing docket if the respondent attorney does not request a trial in a district court.

(3) In SECTION 17 of the bill (senate committee report, page 8, line 60), strike "and".

(4) In SECTION 17 of the bill (senate committee report, page 8, line 62), between "court" and the period, insert the following: "; and"

(3) a judgment of a district court as in civil cases generally".

Senate Amendment No. 2 (Senate Floor Amendment No. 5)

Amend CSHB 599 as follows:

Strike subsection (j) and replace as follows:

(j) The supreme court shall set an additional legal services fee in an amount of \$65 to be paid annually by each active member of the state bar except as provided by Subsection (k). Section 81.024 does not apply to a fee set under this subsection. This subsection expires on September 1, 2007.

HB 1108 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

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

HB 1108, A bill to be entitled An Act relating to the term of office of certain members of an emergency services district.

On motion of Representative Lewis, the house concurred in the senate amendments to **HB 1108** by (Record 870): 143 Yeas, 0 Nays, 2 Present, not voting.

Yeas — Allen; Alonzo; Bailey; Baxter; Berman; Bohac; Bonnen; Branch; Brown, B.; 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; Edwards; Eiland; Eissler; Elkins; Ellis; Escobar; Farabee; Farrar; Flores; Flynn; Gallego; Garza; Geren; Giddings; Goodman; Goolsby; Griggs; Grusendorf; Guillen; Gutierrez; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Heflin; Hegar; Hilderbran; Hill; Hochberg; Hodge; Homer; Hope; 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; Martinez Fischer; McCall; McClendon; McReynolds; Menendez; Mercer; Merriitt; 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; Taylor; Telford; Thompson; Truitt; Turner; Uresti; Van Arsdale; Villarreal; West; Wilson; Wise; Wohlgemuth; Wolens; Wong; Woolley; Zedler.

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

Absent, Excused — Marchant.

Absent — Brown, F.; Dutton; Madden; Talton.

Senate Committee Substitute

HB 1108, A bill to be entitled An Act relating to emergency services districts.

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

SECTION 1. Section 775.013(a), Health and Safety Code, as amended by Chapters 886 and 1333, Acts of the 77th Legislature, Regular Session, 2001, is reenacted and amended to read as follows:

(a) The petition prescribed by Section 775.011 or 775.012 must show:

(1) that the district is to be created and is to operate under Article III, Section 48-e, Texas Constitution, and Chapter 775;

(2) the name of the proposed district;

(3) the proposed district's boundaries as designated by metes and bounds or other sufficient legal description;

(4) the services that the proposed district will provide;

(5) that the creation of the proposed district complies with Sections 775.020 and 775.0205; ~~and~~

(6) the mailing address of each petitioner; and

(7) ~~(6)~~ the name of each municipality whose consent must be obtained under Section 775.014.

SECTION 2. Section 775.022, Health and Safety Code, is amended by amending Subsections (a), (b), and (c) and adding Subsections (e) and (f) to read as follows:

(a) If a municipality completes all other procedures necessary to annex ~~[annexes]~~ territory in a district and if the municipality intends to provide emergency services to the territory by the use of municipal personnel or by some method other than by use of the district, the municipality shall send written notice of that fact to the board. The municipality must send the notice to the secretary of the board by certified mail, return receipt requested. The territory remains part of the district and does not become part of the municipality until the secretary of the board receives the notice. On ~~[the board shall, on]~~ receipt of the notice, the board shall ~~[a written request of the municipality,]~~ immediately change its records to show that ~~[disannex]~~ the territory has been disannexed from the district and shall cease to provide further services to the residents of that territory.

(b) The disannexation of territory under this section does not diminish or impair the rights of the holders of any outstanding and unpaid bonds, warrants, or other obligations of the district including loans and lease-purchase agreements.

(c) If a municipality annexes territory in [a portion of] a district, the municipality shall compensate the district immediately after disannexation of the territory under Subsection (a) in an amount equal to the annexed territory's pro rata share of the district's bonded and other indebtedness as computed according to the formula in Subsection (e) [based on the unpaid principal balances and the actual property values at the time the territory is annexed]. The district shall apply compensation received from a municipality under this subsection exclusively to the payment of the annexed territory's pro rata share of the district's bonded and other indebtedness.

(e) The amount of compensation under Subsection (c) shall be determined by multiplying the district's total indebtedness at the time of the annexation by a fraction the numerator of which is the assessed value of the property to be annexed based on the most recent certified county property tax rolls at the time of annexation and the denominator of which is the total assessed value of the property of the district based on the most recent certified county property tax rolls at the time of annexation.

(f) For purposes of this section, total indebtedness includes loans and lease-purchase agreements but does not include:

(1) a loan or lease-purchase agreement the district enters into after the district receives notice of the municipality's intent to annex district territory; or

(2) any indebtedness attributed to any real or personal property that the district requires a municipality to purchase under Subsection (d).

SECTION 3. Subchapter B, Chapter 775, Health and Safety Code, is amended by adding Section 775.0221 to read as follows:

Sec. 775.0221. ARBITRATION REGARDING REMOVED TERRITORY.

(a) The municipality and the district shall negotiate an agreement on the amount of compensation required under Section 775.022. If the municipality and the district cannot reach an agreement, the municipality and the district shall resolve the dispute using binding arbitration.

(b) A request for binding arbitration must be in writing and may not be made before the 60th day after the date the municipality receives notice from the district regarding the amount of compensation required under Section 775.022.

(c) The municipality and the district must agree on the arbitrator. If the parties cannot agree on the appointment of an arbitrator before the 11th business day after the date arbitration is requested, the mayor of the municipality shall immediately request a list of seven neutral arbitrators from the American Arbitration Association or the Federal Mediation and Conciliation Service or their successors in function. An arbitrator included in the list must be a resident of this state and may not be a resident of a county in which any part of the municipality or any part of the district is located. The municipality and the district must agree on the appointment of an arbitrator included in the list. If the municipality and the district cannot agree on the arbitrator before the 11th business day after the date the list is provided to the parties, each party or the party's designee may alternately strike a name from the list. The remaining person on the list shall be appointed as the arbitrator. In this subsection, "business day" means a day other than a Saturday, Sunday, or state or national holiday.

(d) The arbitrator shall:

(1) set a hearing to be held not later than the 10th day after the date the arbitrator is appointed; and

(2) notify the parties to the arbitration in writing of the time and place of the hearing not later than the eighth day before the date of the hearing.

(e) The arbitrator may:

(1) receive in evidence any documentary evidence or other information the arbitrator considers relevant;

(2) administer oaths; and

(3) issue subpoenas to require:

(A) the attendance and testimony of witnesses; and

(B) the production of books, records, and other evidence relevant to an issue presented to the arbitrator for determination.

(f) Unless the parties to the dispute agree otherwise, the arbitrator shall complete the hearing within two consecutive days. The arbitrator shall permit each party one day to present evidence and other information. The arbitrator, for good cause shown, may schedule an additional hearing to be held not later than the seventh day after the date of the first hearing. Unless otherwise agreed to by the parties, the arbitrator must issue a decision in writing and deliver a copy of the decision to the parties not later than the 14th day after the date of the final hearing.

(g) The municipality and the district shall share the cost of arbitration.

SECTION 4. Subsection (c), Section 775.031, Health and Safety Code, is amended to read as follows:

(c) A district may contract with the state or a political subdivision for law enforcement services or for enforcement of the district's fire code. ~~A [Except as provided by Subchapter F, a]~~ district may ~~[not]~~ commission a peace officer or employ a person who holds a permanent peace officer license issued under Section 1701.307, Occupations Code, as a peace officer.

SECTION 5. Section 775.034, Health and Safety Code, is amended by adding Subsections (f) and (g) to read as follows:

(f) A member of the board who, because of municipal annexation, is no longer a qualified voter of an area served by the district or no longer owns land subject to taxation by the district may continue to serve until the expiration of the member's term.

(g) The commissioners court shall consider relevant factors in determining the individuals to appoint as emergency services commissioners, including whether the individuals have knowledge that relates to fire prevention or emergency medical services and that is relevant to the common policies and practices of the board.

SECTION 6. Section 775.036, Health and Safety Code, is amended by amending Subsection (b) and adding Subsections (b-1) and (g) to read as follows:

(b) The board may adopt and enforce a fire code, including fines for any violations, that does not conflict with a fire code adopted by any county that also contains within its boundaries any portion of the land contained in the district and may require inspections in the district relating to the causes and prevention of

fires and medical emergencies, except as provided by Section 775.031(b). The fire code must be similar to standards adopted by a nationally recognized standards-making association. The board may not enforce the district's fire code within the boundaries of a municipality that has adopted a fire code, except for an area that has been annexed only for limited purposes in which the municipality does not enforce a fire code. The board of a district located wholly within a county with a population of three million or more may not adopt a fire code or a fine for a violation of the district's fire code unless the commissioners court of the county consents to the adoption of the code or fine.

(b-1) If a county that contains within its boundaries any portion of the land contained in the district adopts a fire code after the district adopts a code under Subsection (b), the board may continue to enforce its fire code in the area subject to the county fire code. To the extent of any conflict between the county's code and the district's code, the more stringent provision prevails.

(g) The board may commission a peace officer or employ a person who holds a permanent peace officer license issued under Section 1701.307, Occupations Code, to inspect for fire hazards any structure, appurtenance, fixture, or other real property located in the district. The board may adopt procedures to order the owner or occupant of the property that fails an inspection to correct the hazardous situation.

SECTION 7. Subsection (a), Section 775.0751, Health and Safety Code, is amended to read as follows:

(a) A district may adopt a sales and use tax, change the rate of its sales and use tax, or abolish its sales and use tax at an election held as provided by Section 775.0752. The district may impose the tax at a rate from one-eighth of one percent to ~~[of one half percent, one percent, one and one half percent, or]~~ two percent in increments of one-eighth of one percent. Revenue from the tax may be used for any purpose for which ad valorem tax revenue of the district may be used.

SECTION 8. Subsection (a), Section 775.076, Health and Safety Code, is amended to read as follows:

(a) The board may issue bonds and notes as prescribed by this chapter to perform any of its powers. Before the board may issue bonds or notes authorized by this section, the commissioners court of each county in which the district is located must approve the issuance of the bonds or notes by a majority vote.

SECTION 9. Section 775.083, Health and Safety Code, is amended to read as follows:

Sec. 775.083. ANNUAL REPORT. (a) On or before January 1 of each year, a district shall file with the Office of Rural Community Affairs ~~[secretary of state]~~ an annual report that includes the following:

- (1) the district's name;
- (2) the name of each county in which the district is located;
- (3) the district's business address;
- (4) the name, mailing address, and term of office of each commissioner;

(5) the name, mailing address, and term of office of the district's general manager, executive director, and fire chief;

(6) the name of each legal counsel or other consultant for the district; and

(7) the district's annual budget and tax rate for the preceding fiscal year.

(b) The Office of Rural Community Affairs [~~secretary of state~~] may not charge a fee for filing the report.

(c) The Office of Rural Community Affairs shall develop and maintain an Internet-based system that enables:

(1) a district to securely file the report and update the district's information; and

(2) the public to view, in a searchable format, the reports filed by districts under this section.

(d) If the information included in a district's annual report changes, the district shall update the district's information using the Internet-based system before the end of the calendar quarter in which the district's information changes.

SECTION 10. Subsection (k), Section 775.084, Health and Safety Code, is amended to read as follows:

(k) A contract for a public works project must be administered in the manner provided by [~~accordance with~~] Subchapter B or H, Chapter 271, Local Government Code, except as provided by this section.

SECTION 11. Subsections (a) and (b), Section 775.085, Health and Safety Code, are amended to read as follows:

(a) The board, on the behalf of the district, may borrow money and make other financial arrangements to purchase real property or emergency services equipment or construct emergency services facilities in the amount and subject to a rate of interest or other conditions the board considers advisable.

(b) To secure a loan under this section, the board may pledge:

(1) tax revenues or funds on hand that are not otherwise pledged to pay a debt of the district; or

(2) the real property acquired or improved or equipment acquired with the borrowed money.

SECTION 12. Section 776.033, Health and Safety Code, is amended by adding Subsection (e) to read as follows:

(e) The commissioners court shall consider relevant factors in determining the individuals to appoint as emergency services commissioners, including whether the individuals have knowledge that relates to fire prevention or emergency medical services and that is relevant to the common policies and practices of the board.

SECTION 13. Section 776.052, Health and Safety Code, is amended by amending Subsection (c) and adding Subsections (d) through (g) to read as follows:

(c) If a municipality that is not in the district completes all other procedures necessary to annex [~~annexes~~] territory that is included in a district and if the municipality intends to provide emergency services to the territory by the use of municipal personnel or by some method other than by use of the district, the

governing body of the municipality shall send written notice of that fact to the board. The municipality must send the notice to ~~notify~~ the secretary of the board by certified mail, return receipt requested. The territory remains part of the district and does not become part of the municipality until the secretary of the board receives the notice. On receipt of the notice, the board shall immediately change its records to show that the territory has been disannexed from the district and shall cease to provide further services to the residents of that ~~[in writing that the annexed territory is excluded from the district's]~~ territory.

(d) If a municipality removes territory from a district under Subsection (a) or (c), the municipality shall compensate the district in an amount equal to the removed territory's pro rata share of the district's bonded and other indebtedness as computed according to the formula in Subsection (e). The district shall apply compensation received from a municipality under this subsection exclusively to the payment of the removed territory's pro rata share of the district's bonded and other indebtedness.

(e) The amount of compensation under Subsection (d) shall be determined by multiplying the district's total indebtedness at the time the territory is removed by a fraction the numerator of which is the assessed value of the property to be removed based on the most recent certified county property tax rolls at the time of removal and the denominator of which is the total assessed value of the property of the district based on the most recent certified county property tax rolls at the time of removal.

(f) On the district's request, a municipality shall purchase from the district at fair market value any real or personal property used to provide emergency services in territory disannexed under this section. If any part of the indebtedness for which the district receives compensation under Subsection (d) was for the purchase of the real or personal property that the municipality purchases under this subsection, the fair market value of that property for the purpose of this subsection is reduced by a percentage equal to the disannexed territory's pro rata share under Subsection (d).

(g) For purposes of this section, total indebtedness includes loans and lease-purchase agreements but does not include:

(1) a loan or lease-purchase agreement the district enters into after the district receives notice about the municipality's intent to remove district territory; or

(2) any indebtedness attributed to any real or personal property that the district requires a municipality to purchase under Subsection (f).

SECTION 14. Subchapter D, Chapter 776, Health and Safety Code, is amended by adding Section 776.0521 to read as follows:

Sec. 776.0521. ARBITRATION REGARDING REMOVED TERRITORY.
(a) The municipality and the district shall negotiate an agreement on the amount of compensation required under Section 776.052. If the municipality and the district cannot reach an agreement, the municipality and the district shall resolve the dispute using binding arbitration.

(b) A request for binding arbitration must be in writing and may not be made before the 60th day after the date the municipality receives notice from the district regarding the amount of compensation required under Section 776.052.

(c) The municipality and the district must agree on the arbitrator. If the parties cannot agree on the appointment of an arbitrator before the 11th business day after the date arbitration is requested, the mayor of the municipality shall immediately request a list of seven neutral arbitrators from the American Arbitration Association or the Federal Mediation and Conciliation Service or their successors in function. An arbitrator included in the list must be a resident of this state and may not be a resident of a county in which any part of the municipality or any part of the district is located. The municipality and the district must agree on the appointment of an arbitrator included in the list. If the municipality and the district cannot agree on the arbitrator before the 11th business day after the date the list is provided to the parties, each party or the party's designee may alternately strike a name from the list. The remaining person on the list shall be appointed as the arbitrator. In this subsection, "business day" means a day other than a Saturday, Sunday, or state or national holiday.

(d) The arbitrator shall:

(1) set a hearing to be held not later than the 10th day after the date the arbitrator is appointed; and

(2) notify the parties to the arbitration in writing of the time and place of the hearing not later than the eighth day before the date of the hearing.

(e) The arbitrator may:

(1) receive in evidence any documentary evidence or other information the arbitrator considers relevant;

(2) administer oaths; and

(3) issue subpoenas to require:

(A) the attendance and testimony of witnesses; and

(B) the production of books, records, and other evidence relevant to an issue presented to the arbitrator for determination.

(f) Unless the parties to the dispute agree otherwise, the arbitrator shall complete the hearing within two consecutive days. The arbitrator shall permit each party one day to present evidence and other information. The arbitrator, for good cause shown, may schedule an additional hearing to be held not later than the seventh day after the date of the first hearing. Unless otherwise agreed to by the parties, the arbitrator must issue a decision in writing and deliver a copy of the decision to the parties not later than the 14th day after the date of the final hearing.

(g) The municipality and the district shall share the cost of arbitration.

SECTION 15. Subchapter E, Chapter 776, Health and Safety Code, is amended by adding Section 776.083 to read as follows:

Sec. 776.083. ANNUAL REPORT. (a) On or before January 1 of each year, a district shall file with the Office of Rural Community Affairs an annual report that includes the following:

(1) the district's name;

(2) the name of each county in which the district is located;

- (3) the district's business address;
 - (4) the name, mailing address, and term of office of each commissioner;
 - (5) the name, mailing address, and term of office of the district's general manager, executive director, and fire chief;
 - (6) the name of each legal counsel or other consultant for the district;
 - and
 - (7) the district's annual budget and tax rate for the preceding fiscal year.
- (b) The Office of Rural Community Affairs may not charge a fee for filing the report.

(c) The Office of Rural Community Affairs shall develop and maintain an Internet-based system that enables:

- (1) a district to securely file the report and update the district's information; and
- (2) the public to view, in a searchable format, the reports filed by districts under this section.

(d) If the information included in a district's annual report changes, the district shall update the district's information using the Internet-based system before the end of the calendar quarter in which the district's information changes.

SECTION 16. Article 2.12, Code of Criminal Procedure, is amended to read as follows:

Art. 2.12. WHO ARE PEACE OFFICERS. The following are peace officers:

- (1) sheriffs, their deputies, and those reserve deputies who hold a permanent peace officer license issued under Chapter 1701, Occupations Code;
- (2) constables, deputy constables, and those reserve deputy constables who hold a permanent peace officer license issued under Chapter 1701, Occupations Code;
- (3) marshals or police officers of an incorporated city, town, or village, and those reserve municipal police officers who hold a permanent peace officer license issued under Chapter 1701, Occupations Code;
- (4) rangers and officers commissioned by the Public Safety Commission and the Director of the Department of Public Safety;
- (5) investigators of the district attorneys', criminal district attorneys', and county attorneys' offices;
- (6) law enforcement agents of the Texas Alcoholic Beverage Commission;
- (7) each member of an arson investigating unit commissioned by a city, a county, or the state;
- (8) officers commissioned under Section 37.081, Education Code, or Subchapter E, Chapter 51, Education Code;
- (9) officers commissioned by the General Services Commission;
- (10) law enforcement officers commissioned by the Parks and Wildlife Commission;
- (11) airport police officers commissioned by a city with a population of more than 1.18 million that operates an airport that serves commercial air carriers;

(12) airport security personnel commissioned as peace officers by the governing body of any political subdivision of this state, other than a city described by Subdivision (11), that operates an airport that serves commercial air carriers;

(13) municipal park and recreational patrolmen and security officers;

(14) security officers and investigators commissioned as peace officers by the comptroller;

(15) officers commissioned by a water control and improvement district under Section 49.216, Water Code;

(16) officers commissioned by a board of trustees under Chapter 54, Transportation Code;

(17) investigators commissioned by the Texas State Board of Medical Examiners;

(18) officers commissioned by the board of managers of the Dallas County Hospital District, the Tarrant County Hospital District, or the Bexar County Hospital District under Section 281.057, Health and Safety Code;

(19) county park rangers commissioned under Subchapter E, Chapter 351, Local Government Code;

(20) investigators employed by the Texas Racing Commission;

(21) officers commissioned under Chapter 554, Occupations Code;

(22) officers commissioned by the governing body of a metropolitan rapid transit authority under Section 451.108, Transportation Code, or by a regional transportation authority under Section 452.110, Transportation Code;

(23) investigators commissioned by the attorney general under Section 402.009, Government Code;

(24) security officers and investigators commissioned as peace officers under Chapter 466, Government Code;

(25) an officer employed by the Texas Department of Health under Section 431.2471, Health and Safety Code;

(26) officers appointed by an appellate court under Subchapter F, Chapter 53, Government Code;

(27) officers commissioned by the state fire marshal under Chapter 417, Government Code;

(28) an investigator commissioned by the commissioner of insurance under Article 1.10D, Insurance Code;

(29) apprehension specialists commissioned by the Texas Youth Commission as officers under Section 61.0931, Human Resources Code;

(30) officers appointed by the executive director of the Texas Department of Criminal Justice under Section 493.019, Government Code;

(31) investigators commissioned by the Commission on Law Enforcement Officer Standards and Education under Section 1701.160, Occupations Code;

(32) commission investigators commissioned by the Texas Commission on Private Security under Section 1702.061(f), Occupations Code; and

(33) the fire marshal and any officers, inspectors, or ~~[, and any]~~ investigators commissioned by an emergency services district ~~[to assist that fire marshal]~~ under ~~[Subchapter F,]~~ Chapter 775, Health and Safety Code.

SECTION 17. (a) This Act takes effect September 1, 2003.

(b) The Office of Rural Community Affairs shall develop an Internet-based system as required by Subsection (c), Section 775.083, and Subsection (c), Section 776.083, Health and Safety Code, as added by this Act, before January 1, 2004.

(c) Sections 2, 3, 13, and 14 of this Act apply only to removal of territory of an emergency services district on or after the effective date of this Act.

HB 1941 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

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

HB 1941, A bill to be entitled An Act relating to authorizing the issuance of revenue bonds for The University of Texas Health Science Center at Houston for recovery from Tropical Storm Allison and exempting the property and projects financed by the bonds from prior approval by the Texas Higher Education Coordinating Board.

On motion of Representative Woolley, the house concurred in the senate amendments to **HB 1941** by (Record 871): 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; Edwards; Eiland; Eissler; Ellis; Escobar; Farabee; Farrar; Flores; Flynn; Gallego; Garza; Geren; Giddings; Goodman; Goolsby; Griggs; Grusendorf; Guillen; Gutierrez; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Heflin; Hegar; Hilderbran; Hill; Hochberg; Hodge; Homer; Hope; 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; 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.; Smithee; Solis; Solomons; Stick; Taylor; Telford; Thompson; Truitt; Turner; Uresti; Van Arsdale; Villarreal; West; Wilson; Wise; Wohlgemuth; Wolens; Wong; Woolley; Zedler.

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

Absent, Excused — Marchant.

Absent — Dutton; Elkins; Swinford; Talton.

Senate Committee Substitute

HB 1941, A bill to be entitled An Act relating to authorizing the issuance of revenue bonds to finance certain facilities and projects at certain public institutions of higher education and exempting the facilities and projects financed by the bonds from prior approval by the Texas Higher Education Coordinating Board.

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

SECTION 1. Section 55.1732(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 University of Texas 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) The University of Texas at Arlington, \$16,635,945 to construct a science building;

(2) The University of Texas at Brownsville, \$26,010,000 to construct a life and health science and education facility (Phase II) and to procure and install permanent equipment and other fixtures in the facility;

(3) The University of Texas at Dallas, \$21,993,750 to renovate and develop space at the Founders Hall, Founders Annex, and Berkner Hall;

(4) The University of Texas at El Paso, \$12,750,000 to construct a biomedical and health sciences research center;

(5) The University of Texas–Pan American, \$29,950,000 for education complex, library, and multipurpose center renovation and construction;

(6) The University of Texas of the Permian Basin, \$5,610,000 for integrated Mesa Building renovations and gymnasium renovations;

(7) The University of Texas at San Antonio, \$22,950,000 to construct a science building on the main campus;

(8) The University of Texas at Tyler, \$20,910,000 to construct an engineering, sciences, and technology building and make other physical plant improvements;

(9) The University of Texas Southwestern Medical Center at Dallas, \$40 million for North Campus phase IV construction;

(10) The University of Texas Medical Branch at Galveston, \$20 million to renovate and expand research facilities;

(11) The University of Texas Health Science Center at Houston, \$19,550,000 to construct or purchase a classroom building that includes facilities for clinical teaching and clinical research;

(12) The University of Texas Health Science Center at San Antonio, \$28.9 million to construct a facility for student services and academic administration and to construct and develop a facility at the Laredo Extension Campus for educational and administrative purposes;

(13) the Regional Academic Health Center established under Section 74.611, \$25.5 million to construct a teaching and learning laboratory in or near the city of Harlingen;

(14) The University of Texas Health Center at Tyler, \$11,513,250 to construct a biomedical research center addition; and

(15) The University of Texas M. D. Anderson Cancer Center, \$20 million to construct a basic sciences research building.

SECTION 2. Subchapter B, Chapter 55, Education Code, is amended by adding Section 55.1741 to read as follows:

Sec. 55.1741. THE TEXAS A&M UNIVERSITY SYSTEM; ADDITIONAL REVENUE BONDS. (a) In addition to the other authority granted by this subchapter, the board of regents of The Texas A&M University System may acquire, purchase, construct, improve, renovate, enlarge, or equip facilities to support kinesiology and related programs, campus utility infrastructure facilities, and campus support services facilities (phase V), including roads and related infrastructure, for Texas A&M International University, to be financed by the issuance of bonds in accordance with this subchapter, including bonds issued in accordance with a systemwide revenue financing program and secured as provided by that program, in an aggregate principal amount not to exceed \$12.5 million.

(b) The board may pledge irrevocably to the payment of the bonds authorized by this section all or any part of the revenue funds of an institution, branch, or entity of The Texas A&M University System, including student tuition charges. The amount of a pledge made under this subsection may not be reduced or abrogated while the bonds for which the pledge is made, or bonds issued to refund those bonds, are outstanding.

(c) If sufficient funds are not available to the board to meet its obligations under this section, the board may transfer funds among institutions, branches, and entities of The Texas A&M University System to ensure the most equitable and efficient allocation of available resources for each institution, branch, or entity to carry out its duties and purposes.

SECTION 3. Subchapter B, Chapter 55, Education Code, is amended by adding Section 55.1742 to read as follows:

Sec. 55.1742. THE UNIVERSITY OF TEXAS SYSTEM; ADDITIONAL REVENUE BONDS. (a) In addition to the other authority granted by this subchapter, the board of regents of The University of Texas System may acquire, purchase, construct, improve, renovate, enlarge, or equip property, buildings, structures, facilities, roads, or related infrastructure for The University of Texas Health Science Center at Houston for recovery from the damage caused by Tropical Storm Allison, to be financed by the issuance of bonds in accordance with this subchapter, including bonds issued in accordance with a systemwide revenue financing program and secured as provided by that program, in an aggregate principal amount not to exceed \$34.9 million.

(b) In addition to the other authority granted by this subchapter, the board of regents of The University of Texas System may acquire, purchase, construct, improve, renovate, enlarge, or equip property, buildings, structures, facilities, roads, or related infrastructure for The University of Texas M. D. Anderson Cancer Center for biotechnology research and development facilities, to be financed by the issuance of bonds in accordance with this subchapter, including

bonds issued in accordance with its systemwide revenue financing program and secured as provided by that program, in an aggregate principal amount not to exceed \$20 million.

(c) In addition to the other authority granted by this subchapter, the board of regents of The University of Texas System may acquire, purchase, construct, improve, renovate, enlarge, or equip property, buildings, structures, or other facilities, including roads and related infrastructure, for The University of Texas Southwestern Medical Center at Dallas, to be used primarily to conduct biomedical research and to be financed by the issuance of bonds in accordance with this subchapter, including bonds issued in accordance with a systemwide revenue financing program and secured as provided by that program, in an aggregate principal amount not to exceed \$56 million.

(d) The board may pledge irrevocably to the payment of the bonds authorized by this section all or any part of the revenue funds of an institution, branch, or entity of The University of Texas System, including student tuition charges. The amount of a pledge made under this subsection may not be reduced or abrogated while the bonds for which the pledge is made, or bonds issued to refund those bonds, are outstanding.

(e) If sufficient funds are not available to the board to meet its obligations under this section, the board may transfer funds among institutions, branches, and entities of The University of Texas System to ensure the most equitable and efficient allocation of available resources for each institution, branch, or entity to carry out its duties and purposes.

(f) The board may not issue bonds authorized by Subsection (c) at a time that would require the payment of any debt service on the bonds before September 1, 2004.

SECTION 4. Subchapter B, Chapter 55, Education Code, is amended by adding Section 55.1743 to read as follows:

Sec. 55.1743. THE UNIVERSITY OF HOUSTON SYSTEM. (a) In addition to the other authority granted by this subchapter, the board of regents of the University of Houston System may acquire, purchase, construct, improve, renovate, enlarge, or equip property, buildings, structures, facilities, roads, or related infrastructure for the University of Houston System, including the individual campuses of the system, to be financed by the issuance of bonds in accordance with this subchapter and in accordance with a systemwide revenue financing program adopted by the board in an aggregate principal amount not to exceed \$25 million.

(b) The board may pledge irrevocably to the payment of those bonds all or any part of the revenue funds of an institution, branch, or entity of the University of Houston System, including student tuition charges. The amount of a pledge made under this subsection may not be reduced or abrogated while the bonds for which the pledge is made, or bonds issued to refund those bonds, are outstanding.

(c) If sufficient funds are not available to the board to meet its obligations under this section, the board may transfer funds among institutions, branches, and entities of the University of Houston System to ensure the most equitable and efficient allocation of available resources for each institution, branch, or entity to carry out its duties and purposes.

SECTION 5. Section 61.0572(e), Education Code, is amended to read as follows:

(e) Approval of the board is not required to acquire real property that is financed by bonds issued under Section 55.17(e)(3) or (4), 55.1713-55.1718, 55.1721-55.1728, ~~[or]~~ 55.174, 55.1742, or 55.1743, except that the board shall review all real property to be financed by bonds issued under those sections to determine whether the property meets the standards adopted by the board for cost, efficiency, and space use. If the property does not meet those standards, the board shall notify the governor, the lieutenant governor, the speaker of the house of representatives, and the Legislative Budget Board.

SECTION 6. Section 61.058(b), Education Code, is amended to read as follows:

(b) This section does not apply to construction, repair, or rehabilitation financed by bonds issued under Section 55.17(e)(3) or (4), 55.1713-55.1718, 55.1721-55.1728, ~~[or]~~ 55.174, 55.1742, or 55.1743, except that the board shall review all construction, repair, or rehabilitation to be financed by bonds issued under those sections to determine whether the construction, rehabilitation, or repair meets the standards adopted by board rule for cost, efficiency, and space use. If the construction, rehabilitation, or repair does not meet those standards, the board shall notify the governor, the lieutenant governor, the speaker of the house of representatives, and the Legislative Budget Board.

SECTION 7. 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 1941** (senate committee printing) in SECTION 3, in added Section 55.1742, Education Code, by inserting the following new Subsection (d) (page 2, between lines 68 and 69), and renumbering the subsequent subsections of Section 55.1742 accordingly:

(d) In addition to the other authority granted by this subchapter, the board of regents of The University of Texas System may acquire, purchase, construct, improve, renovate, enlarge, or equip property, buildings, structures, or other facilities, including roads and related infrastructure, for The University of Texas Health Science Center at Houston for the replacement of research and academic facilities lost in Tropical Storm Allison, to be financed by the issuance of bonds in accordance with this subchapter, including bonds issued in accordance with a systemwide revenue financing program and secured as provided by that program, in an aggregate principal amount not to exceed \$30 million.

HB 2006 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

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

HB 2006, A bill to be entitled An Act relating to the construction and maintenance of utility, common carrier, and energy transporter facilities along, over, under, or across a railroad right-of-way.

On motion of Representative McReynolds, the house concurred in the senate amendments to **HB 2006**.

Senate Committee Substitute

HB 2006, A bill to be entitled An Act relating to the construction and maintenance of utility, common carrier, cable operator, and energy transporter facilities along, over, under, or across a railroad right-of-way.

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

SECTION 1. The purpose of this Act is to:

(1) create uniform laws relating to the maintenance, operation, and upgrade of preexisting utility, common carrier, cable operator, and energy transporter facilities along, over, under, or across a railroad right-of-way consistent with preexisting licenses or agreements;

(2) grant utilities, common carriers, cable operators, and energy transporters certain rights, privileges, and responsibilities and provide a uniform process for those entities to obtain easements or other rights to maintain, operate, and upgrade their preexisting facilities in railroad rights-of-way in this state consistent with preexisting licenses or agreements; and

(3) facilitate the transition from contractual rights under agreements by granting energy transporters limited eminent domain authority to obtain easements for preexisting facilities along, over, under, or across a railroad right-of-way because transporters provide essential energy supplies to the public.

SECTION 2. Chapter 186, Utilities Code, is amended by adding Subchapter E to read as follows:

SUBCHAPTER E. CONSTRUCTION AND MAINTENANCE OF FACILITIES ALONG, OVER, UNDER, OR ACROSS RAILROAD RIGHT-OF-WAY

Sec. 186.051. DEFINITIONS. In this subchapter:

(1) "Cable operator" means an entity that owns or operates a cable system, as that term is defined by 47 U.S.C. Section 522, as amended.

(2) "Common carrier" means a common carrier as described by Section 111.002, Natural Resources Code, or a person who submits to regulation by the state as a common carrier under Article 2.01, Texas Business Corporation Act.

(3) "Energy transporter" means a person who gathers or transports oil, gas, or oil and gas products by pipeline.

(4) "Railroad" means an entity that owns, operates, or controls a railroad or property or assets owned or previously owned by a railroad in this state, including agents, assignees, or parties that by contract own, control, or manage railroad rights-of-way, easements, or other real property rights belonging

to a railroad. The term includes interurban and street railroads owned by a private entity but excludes a terminal railroad and a railroad or interurban and street railroad owned by a governmental entity, including a navigation district or port authority, or a wharf.

(5) "Railroad right-of-way" means the real property rights owned or controlled by a railroad, including fee and easement interests used or previously used as a railroad operating corridor.

(6) "Utility" means:

(A) a gas, water, electric, or telecommunications entity that is defined as a utility under the laws of this state;

(B) an electric cooperative; or

(C) a municipally owned utility.

Sec. 186.052. EXEMPTIONS. (a) The inclusion of an energy transporter or cable operator in this subchapter does not subject the transporter or operator to regulation as a utility or common carrier.

(b) The inclusion of a common carrier in this subchapter does not subject the carrier to regulation as a utility.

Sec. 186.053. APPLICABILITY. (a) Except as provided by Section 186.058, this subchapter applies only to facilities along, over, under, or across a railroad or railroad right-of-way in place under a license, agreement, or nonperpetual easement.

(b) In relation to cable operators, this subchapter applies only to those lines over which the cable operator is offering or transporting high-speed Internet or broadband information services.

Sec. 186.054. CONSTRUCTION AND MAINTENANCE OF UTILITY, COMMON CARRIER, CABLE OPERATOR, AND ENERGY TRANSPORTER FACILITIES. (a) A utility, common carrier, cable operator, or energy transporter may acquire an easement by eminent domain along, over, under, or across a railroad or railroad right-of-way as provided by this subchapter to maintain, operate, or upgrade its facilities consistent with preexisting licenses or agreements.

(b) A utility, common carrier, cable operator, or energy transporter:

(1) shall provide notice to the railroad within a reasonable period of any proposed activity relating to the construction, maintenance, or operation of the facilities; and

(2) may not unreasonably interfere with railroad operations.

(c) Absent terms to the contrary in an easement acquired by condemnation under this subchapter, existing license, or agreement, a railroad may require a utility, common carrier, cable operator, or energy transporter to relocate any portion of a facility that is located in the railroad right-of-way that is not in the public right-of-way if:

(1) a reasonable alternate route is available;

(2) a reasonable amount of time is provided;

(3) substantial interference with the railroad operations is established;

and

(4) the railroad reimburses the utility, common carrier, cable operator, or energy transporter for the reasonable cost of relocation.

Sec. 186.055. DOCUMENTATION OF RIGHTS ACQUIRED. If a railroad requires a utility, common carrier, cable operator, or energy transporter to obtain from the railroad a right to use a railroad right-of-way, the railroad shall produce, if requested in writing, the readily available documentation from the railroad's records indicating the extent of the railroad's right, title, or interest in the property sought to be used by the utility, common carrier, cable operator, or energy transporter. The utility, common carrier, cable operator, or energy transporter shall reimburse the railroad for the reasonable cost of producing the documentation as required by this section. The reimbursable cost, including internal costs, may not exceed \$500, unless the parties agree otherwise. A railroad that produces documentation as provided by this section is not limited or prevented from asserting a right, title, or interest in real property based on documentation that has not been produced under this section.

Sec. 186.056. VALUATION OF RIGHTS ACQUIRED. (a) In the absence of an agreement to convey a permanent easement for the continued right to use a preexisting facility located in a railroad right-of-way, a utility, common carrier, cable operator, or energy transporter may obtain the right to continuously use the right-of-way through the exercise of eminent domain under Chapter 21, Property Code.

(b) The award of damages due the railroad under an eminent domain proceeding as provided by Subsection (a) is:

(1) the market value of the real property interest to be used; and

(2) if a portion of the railroad's right-of-way is taken, damages, if any, to the railroad's remaining property.

(c) The railroad may also recover:

(1) reasonable costs and expenses for interference with railroad operations, including internal costs for providing flagging services; and

(2) reasonable costs and expenses to repair any damage to its facilities caused by the maintenance, operation, or upgrade of the preexisting utility, common carrier, cable operator, or energy transporter facilities.

(d) The payment by the utility, common carrier, cable operator, or energy transporter determined under this section is the only compensation due to the railroad for the perpetual use of the interest obtained.

Sec. 186.057. RIGHT TO MAINTAIN FACILITIES. (a) A utility, common carrier, cable operator, or energy transporter may not be required to remove an existing facility for 180 days after the date the utility, common carrier, cable operator, or energy transporter receives a written notice from the railroad that an existing facility must be removed from the railroad's right-of-way if:

(1) the facility was located along, under, over, or across the railroad right-of-way with the written consent of the railroad; and

(2) the utility, common carrier, cable operator, or energy transporter is not in default under an agreement with the railroad.

(b) If a utility, common carrier, cable operator, or energy transporter requests documentation under Section 186.055, the 180-day period provided by Subsection (a) is tolled until the utility, common carrier, cable operator, or energy transporter receives a written response to its request from the railroad.

(c) If a utility, common carrier, cable operator, or energy transporter does not condemn or enter into an agreement regarding the disputed area involving the railroad's right-of-way within the 180-day period provided by Subsection (a) or any extended period provided by Subsection (b), the license or agreement between the utility, common carrier, cable operator, or energy transporter and the railroad is terminated.

(d) The possessory right provided by this section is in addition to any possessory right provided by Chapter 21, Property Code.

Sec. 186.058. LICENSE AND RENEWAL. (a) A utility, common carrier, cable operator, or energy transporter may obtain an original license or renew a license for the right to use a railroad right-of-way for a one-time fee paid based on:

(1) the agreement of the railroad and the utility, common carrier, cable operator, or energy transporter; or

(2) a mutually acceptable third-party determination of market value.

(b) A fee paid under this section is the only fee payment required. The license remains in effect without the requirement of additional fee payments for renewal of the license.

(c) The terms of the license or license renewal may provide that the railroad is not later subject to this subchapter, except the railroad continues to be subject to eminent domain authority granted by other law.

Sec. 186.059. RESTRICTIONS ON PAYMENT OF COSTS AWARDED AGAINST RAILROAD IN CONDEMNATION. If the special commissioners or a court awards costs against a railroad under Section 21.047, Property Code, because the award of damages to the railroad is equal to or less than the amount the utility, common carrier, cable operator, or energy transporter exercising the right of eminent domain under this subchapter offered to pay, the costs awarded against the railroad must be paid by the railroad without reimbursement by or contribution from any agent or representative, including an agent or representative that handled or assisted in the condemnation proceedings.

Sec. 186.060. CUMULATIVE RIGHTS AND RESPONSIBILITIES. The rights, privileges, and responsibilities provided by this subchapter are in addition to and not in diminution of or substitution for those rights granted by any other state or federal law.

Sec. 186.061. EFFECT ON OTHER LAW. This subchapter does not affect the elements a condemnor must establish by law to acquire real property.

SECTION 3. This Act takes effect September 1, 2003.

HB 2241 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

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

HB 2241, A bill to be entitled An Act relating to adoption of the Uniform Principal and Income Act.

On motion of Representative Paxton, the house concurred in the senate amendments to **HB 2241**.

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

Amend **HB 2241** by striking page 7, line 22 to page 9, line 21 and substituting the following:

Sec. 116.006. JUDICIAL CONTROL OF DISCRETIONARY POWER.

(a) The court may not order a trustee to change a decision to exercise or not to exercise a discretionary power conferred by Section 116.005 of this chapter unless the court determines that the decision was an abuse of the trustee's discretion. A trustee's decision is not an abuse of discretion merely because the court would have exercised the power in a different manner or would not have exercised the power.

(b) The decisions to which Subsection (a) applies include:

(1) a decision under Section 116.005(a) as to whether and to what extent an amount should be transferred from principal to income or from income to principal; and

(2) a decision regarding the factors that are relevant to the trust and its beneficiaries, the extent to which the factors are relevant, and the weight, if any, to be given to those factors, in deciding whether and to what extent to exercise the discretionary power conferred by Section 116.005(a).

(c) If the court determines that a trustee has abused the trustee's discretion, the court may place the income and remainder beneficiaries in the positions they would have occupied if the discretion had not been abused, according to the following rules:

(1) to the extent that the abuse of discretion has resulted in no distribution to a beneficiary or in a distribution that is too small, the court shall order the trustee to distribute from the trust to the beneficiary an amount that the court determines will restore the beneficiary, in whole or in part, to the beneficiary's appropriate position;

(2) to the extent that the abuse of discretion has resulted in a distribution to a beneficiary which is too large, the court shall place the beneficiaries, the trust, or both, in whole or in part, in their appropriate positions by ordering the trustee to withhold an amount from one or more future distributions to the beneficiary who received the distribution that was too large or ordering that beneficiary to return some or all of the distribution to the trust; and

(3) to the extent that the court is unable, after applying Subdivisions (1) and (2), to place the beneficiaries, the trust, or both, in the positions they would have occupied if the discretion had not been abused, the court may order the trustee to pay an appropriate amount from its own funds to one or more of the beneficiaries or the trust or both.

(d) If the trustee of a trust reasonably believes that one or more beneficiaries of such trust will object to the manner in which the trustee intends to exercise or not exercise a discretionary power conferred by Section 116.005 of this chapter,

the trustee may petition the court having jurisdiction over the trust, and the court shall determine whether the proposed exercise or nonexercise by the trustee of such discretionary power will result in an abuse of the trustee's discretion. The trustee shall state in such petition the basis for its belief that a beneficiary would object. The failure or refusal of a beneficiary to sign a waiver or release is not reasonable grounds for a trustee to believe the beneficiary will object. The court may appoint one or more guardians ad litem pursuant to Section 115.014 of this subtitle. If the petition describes the proposed exercise or nonexercise of the power and contains sufficient information to inform the beneficiaries of the reasons for the proposal, the facts upon which the trustee relies, and an explanation of how the income and remainder beneficiaries will be affected by the proposed exercise or nonexercise of the power, a beneficiary who challenges the proposed exercise or nonexercise has the burden of establishing that it will result in an abuse of discretion. The trustee shall advance from the trust principal all costs incident to the judicial determination, including the reasonable attorney's fees and costs of the trustee, any beneficiary or beneficiaries who are parties to the action and who retain counsel, and any guardian ad litem. At the conclusion of the proceeding, the court may award costs and reasonable and necessary attorney's fees as provided in Section 114.064 of this subtitle, including, if the court considers it appropriate, awarding part or all of such costs against the trust principal or income, awarding part or all of such costs against one or more beneficiaries or such beneficiary's or beneficiaries' share of the trust, or awarding part or all of such costs against the trustee in the trustee's individual capacity if the court determines the trustee's exercise or nonexercise of discretionary power would have resulted in an abuse of discretion or that the trustee did not have reasonable grounds for believing one or more beneficiaries will object to the proposed exercise or nonexercise of the discretionary power.

HB 2912 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

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

HB 2912, A bill to be entitled An Act relating to industrial development corporations; providing a civil penalty.

HB 2912 - STATEMENT OF LEGISLATIVE INTENT

REPRESENTATIVE KOLKHORST: I notice, Mr. Homer, that in Section 9—originally some language that we amended on the house floor, that would help land-locked communities—that was struck in the senate. Can you give me a reason why that was struck?

REPRESENTATIVE HOMER: Yes. It was felt that—the original intent of the bill was to get back to the intent of the legislation, which was to not allow for retail development. And that language spoke to that again, and that was why it was struck.

KOLKHORST: So, if a city is a small city, and doesn't have an industrial park, do you feel like that language being struck now limits them from what—I mean—

HOMER: It does limit them from offering incentives to retail companies, absolutely. But it does not limit them in any other way as far as using that money to better the lives of their citizens through building a park, or amphitheater projects, or any of those kinds of—

KOLKHORST: One of the questions you and I discussed is the use of—maybe some antique lighting in a downtown area, or that kind of infrastructure improvement. For legislative intent, what do you think this bill does in that area?

HOMER: You know, Representative Kolkhorst, it speaks under 4(b) to open space improvements. Not being an attorney, I think what it actually means is that it's talking about open space improvements around the park areas. For example, when 4(b) was drafted, it was to deal with The Ballpark in Arlington, and it was speaking to the open space improvements around that, and I think that's still what it's intended to do. But, I think it leaves the door open to think that it could be for those purposes, especially in like a historical area.

KOLKHORST: And lastly, any tourism efforts that are going on, are those grandfathered?

HOMER: If they are an effort that is in place and continuing, yes. But, if it's an effort that's—goes on for a little while and stops, and then the plan is to start another one up—no. No new startups, but one that is in place now, yes it is grandfathered in.

REMARKS ORDERED PRINTED

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

The motion prevailed without objection.

HB 2912 - STATEMENT OF LEGISLATIVE INTENT

Members, one of the things this legislation is intended to do is clarify what an economic development corporation can expend funds for with regard to retail business development projects. To that end, the bill specifies that an economic development corporation can reimburse a private communications or information services provider for telecommunications or Internet improvements. I want to clarify for the purposes of legislative intent that this bill is only intended to ensure that expenditures made to a private provider for these services can be reimbursed and is not intended, in any way, to authorize an economic development corporation to provide or support the provision of telecommunications or information services in competition with a private-sector provider.

Homer

On motion of Representative Homer, the house concurred in the senate amendments to **HB 2912** by (Record 872): 138 Yeas, 1 Nay, 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; Driver; Dunnam; Dutton; Edwards; Eiland; Eissler; Elkins; Ellis; Escobar; Farrar; Flores; Flynn; Gallego; Garza; Geren; Giddings; Goodman; Goolsby; Griggs; Grusendorf; Guillen; Gutierrez; Haggerty; Hamilton; Hamric; Harper-Brown; Hartnett; Heflin; Hegar; Hilderbran; Hill; Hochberg; Hodge; Homer; Hope; Hopson; Howard; Hughes; Hunter; Hupp; Isett; Jones, D.; Jones, E.; Jones, J.; Keel; Keffer, B.; Keffer, J.; King; Krusee; Kuempel; Laney; Laubenberg; Lewis; Mabry; Madden; 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.; Smithee; Solis; Solomons; Stick; Swinford; Taylor; Telford; Thompson; Truitt; Uresti; Van Arsdale; Villarreal; West; Wilson; Wise; Wohlgemuth; Wolens; Wong; Zedler.

Nays — Kolkhorst.

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

Absent, Excused — Marchant.

Absent — Deshotel; Dukes; Farabee; Hardcastle; Luna; Talton; Turner; Woolley.

STATEMENT OF VOTE

I was shown voting yes on Record No. 872. I intended to vote no.

Hilderbran

Senate Committee Substitute

HB 2912, A bill to be entitled An Act relating to industrial development corporations; providing a civil penalty.

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

SECTION 1. Section 2(11)(A), Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes), is amended to read as follows:

(A) "Project" shall mean the land, buildings, equipment, facilities, expenditures, targeted infrastructure, and improvements (one or more) that are for the creation or retention of primary jobs and that are ~~[to promote new and expanded business development or]~~ found by the board of directors to be required or suitable for the ~~[promotion of]~~ development, retention, or ~~[and]~~ expansion of manufacturing and industrial facilities, ~~[job creation and retention, job training, educational facilities,]~~ research and development facilities, transportation facilities (including but not limited to airports, ports, mass commuting facilities, and parking facilities), sewage or solid waste disposal facilities, recycling facilities, air or water pollution control facilities, facilities for the furnishing of water to the general public, distribution centers, small warehouse facilities capable of serving as decentralized storage and distribution centers, ~~[and]~~ primary

job training facilities for use by institutions of higher education, and regional or national corporate headquarters facilities [for the promotion of development or redevelopment and expansion, including costs of administration and operation, of a military base closed or realigned pursuant to recommendation of the Defense Closure and Realignment Commission pursuant to the Defense Base Closure and Realignment Act of 1990 (10 U.S.C. Section 2687 note) as amended, and of facilities which are related to any of the foregoing, and in furtherance of the public purposes of this Act, all as defined in the rules of the department, irrespective of whether in existence or required to be identified, acquired, or constructed thereafter].

"Project" also includes job training required or suitable for the promotion of development and expansion of business enterprises and other enterprises described by this Act, as provided by Section 38 of this Act.

"Project" also includes expenditures found by the board of directors to be required or suitable for infrastructure necessary to promote or develop new or expanded business enterprises limited to streets and roads, water and electric utilities, gas utilities, drainage and related improvements, and telecommunications and Internet improvements.

SECTION 2. Section 2, Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes), is amended by adding Subdivisions (17) and (18) to read as follows:

(17) "Primary job" means a job that is:

(A) available at a company for which a majority of the products or services of that company are ultimately exported to regional, statewide, national, or international markets infusing new dollars into the local economy; and

(B) included in one of the following sectors of the North American Industry Classification System (NAICS):

<u>NAICS Sector #</u>	<u>Description</u>
<u>111</u>	<u>Crop Production</u>
<u>112</u>	<u>Animal Production</u>
<u>113</u>	<u>Forestry and Logging</u>
<u>11411</u>	<u>Commercial Fishing</u>
<u>115</u>	<u>Support Activities for Agriculture and Forestry</u>
<u>211-213</u>	<u>Mining</u>
<u>221</u>	<u>Utilities</u>
<u>311-339</u>	<u>Manufacturing</u>
<u>42</u>	<u>Wholesale Trade</u>
<u>48-49</u>	<u>Transportation and Warehousing</u>
<u>51 (excluding 512131 and 512132)</u>	<u>Information (excluding movie theaters and drive-in theaters)</u>
<u>523-525</u>	<u>Securities, Commodity Contracts, and Other Financial Investments and Related Activities; Insurance Carriers and Related Activities; Funds, Trusts, and Other Financial Vehicles</u>
<u>5413, 5415, 5416, 5417, and 5419</u>	<u>Scientific Research and Development Services</u>
<u>551</u>	<u>Management of Companies and Enterprises</u>

922140

Correctional Institutions

(18) "Corporate headquarters facilities" means buildings proposed for construction and occupancy as the principal office for a business enterprise's administrative and management services.

SECTION 3. Section 3(b), Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) This Act shall be [~~liberally~~] construed in conformity with the intention of the legislature herein expressed.

SECTION 4. Section 4A(i), Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes), is amended to read as follows:

(i) Except as provided by this subsection, the corporation may not undertake a project the primary purpose of which is to provide transportation facilities, solid waste disposal facilities, sewage facilities, facilities for furnishing water to the general public, or air or water pollution control facilities. However, the corporation may provide those facilities to benefit property acquired for a project having another primary purpose. The corporation may undertake a project the primary purpose of which is to provide:

(1) a general aviation business service airport that is an integral part of an industrial park; or

(2) port-related facilities to support waterborne commerce.

SECTION 5. Section 4A(t), Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes), is amended to read as follows:

(t) The department, with the assistance of the Texas [~~Natural Resource Conservation~~] Commission on Environmental Quality, may encourage the cleanup of contaminated property by corporations created under this section through the use of sales and use tax proceeds. A corporation created under this section may use proceeds from the sales and use tax to undertake the cleanup of contaminated property only if the use of tax proceeds for that purpose is authorized by a majority of the qualified voters of the city voting in an election called and held for that purpose. The ballot in an election held under this subsection shall be printed to provide for voting for or against the proposition: "The use of sales and use tax proceeds for the cleanup of contaminated property."

SECTION 6. Section 4B(a)(2), Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes), is amended to read as follows:

(2) "Project" means land, buildings, equipment, facilities, expenditures, and improvements included in the definition of that term under Section 2 of this Act, and includes job training as provided by Section 38 of this Act. For purposes of this section, the term includes recycling facilities, and land, buildings, equipment, facilities, and improvements found by the board of directors to:

(A) be required or suitable for use for professional and amateur (including children's) sports, athletic, entertainment, tourist, convention, and public park purposes and events, including stadiums, ball parks, auditoriums, amphitheaters, concert halls, [~~learning centers~~], parks and park facilities, open space improvements, [~~municipal buildings~~], museums, exhibition facilities, and

related store, restaurant, concession, and automobile parking facilities, related area transportation facilities, and related roads, streets, and water and sewer facilities, and other related improvements that enhance any of those items;

(B) promote or develop new or expanded business enterprises that create or retain primary jobs, including a project to provide public safety facilities, streets and roads, drainage and related improvements, demolition of existing structures, general municipally owned improvements, as well as any improvements or facilities that are related to any of those projects and any other project that the board in its discretion determines promotes or develops new or expanded business enterprises that create or retain primary jobs;

(C) be required or suitable for the promotion of development and expansion of affordable housing, as defined by 42 U.S.C. Section 12745;

(D) be required or suitable for the development or improvement of water supply facilities, including dams, transmission lines, well field developments, and other water supply alternatives; or

(E) be required or suitable for the development and institution of water conservation programs, including incentives to install water-saving plumbing fixtures, educational programs, brush control programs, and programs to replace malfunctioning or leaking water lines and other water facilities.

SECTION 7. Section 4B(a-5), Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes), is amended to read as follows:

(a-5)(1) Notwithstanding any other provision of this section, a corporation created under this section may use proceeds from the sales and use tax to undertake a project described by Subsection (a)(2)(D) or (E) of this section only if the use of tax proceeds for that purpose is authorized by a majority of the qualified voters of the city voting in an election called and held for that purpose. The ballot in an [proposition at the] election held under this subsection shall be printed to provide for voting for or against the proposition: "The use of sales and use tax proceeds for infrastructure relating to _____ (insert water supply facilities or water conservation programs, as appropriate)."

(2) An election held under Subdivision (1) of this subsection may be authorized by the governing body of an eligible city subsequent to an earlier election authorized under Subsection (d) of this section [to adopt a sales and use tax under Subsection (d) of this section must clearly describe the project to be undertaken by the corporation if the project is described by Subsection (a)(2)(D) or (E) of this section].

SECTION 8. Section 4B(c), Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes), is amended to read as follows:

(c) The board of directors of a corporation under this section consists of seven directors who are appointed by the governing body of the eligible city for two-year terms of office. A director may be removed by the governing body of the eligible city at any time without cause. Each director of a corporation created by an eligible city with a population of 20,000 or more must be a resident of the eligible city. Each director of a corporation created by an eligible city with a population of less than 20,000 must be a resident of the eligible city, be a resident of [or] the county in which the major part of the area of the eligible city is

located, or reside at a place that is within 10 miles of the eligible city's boundaries and is in a county bordering the county in which the major part of the area of the eligible city is located. Three directors shall be persons who are not employees, officers, or members of the governing body of the eligible city. A majority of the entire membership of the board is a quorum. The board shall conduct all meetings within the boundaries of the eligible city. The board shall appoint a president, a secretary, and other officers of the corporation that the governing body of the eligible city considers necessary. The corporation's registered agent must be an individual resident of the state and the corporation's registered office must be within the boundaries of the eligible city.

SECTION 9. Section 4B(p), Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes), is amended to read as follows:

(p) The department, with the assistance of the Texas ~~[Natural Resource Conservation]~~ Commission on Environmental Quality, may encourage the cleanup of contaminated property by corporations created under this section through the use of sales and use tax proceeds. Notwithstanding any other provision of this section, a corporation created under this section may use proceeds from the sales and use tax to undertake the cleanup of contaminated property only if the use of tax proceeds for that purpose is authorized by a majority of the qualified voters of the city voting in an election called and held for that purpose. The ballot in an election held under this subsection shall be printed to provide for voting for or against the proposition: "The use of sales and use tax proceeds for the cleanup of contaminated property."

SECTION 10. Section 38(b), Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) A ~~[Except as provided by Subsection (c) of this section, a]~~ corporation may spend tax revenue received under this Act for job training offered through a business enterprise only if the business enterprise has committed in writing to:

(1) create new jobs that pay wages that are at least equal to the prevailing [average weekly] wage for the applicable occupation in the local labor market area; or

(2) increase its payroll to pay wages that are at least equal to the prevailing wage for the applicable occupation in the local labor market area [the county in which the jobs are to be located].

SECTION 11. Section 39, Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes), is amended by amending Subsections (b) and (c) and adding Subsections (e)-(h) to read as follows:

(b) At least once in each 24-month period, the following persons shall attend a training seminar regarding the operation of a corporation created under this Act ~~[sponsored by the department under Section 481.0231, Government Code]~~:

(1) the city attorney, the city administrator, or the city clerk of a city that created a corporation;

(2) the county clerk or the county attorney of a county that created a corporation; and

(3) the executive director of the corporation or other person who is responsible for the daily administration of the corporation.

(c) A corporation shall present proof of compliance with this section to the comptroller by presenting the certificates of completion issued under Subsection (h) of this section [~~Section 481.0231, Government Code,~~] for each person that was required to attend the training seminar. The comptroller may impose an administrative penalty, in an amount not to exceed \$1,000 for each violation, against a corporation that fails to present proof in accordance with this section.

(e) The training seminar described by Subsection (b) of this section must:

(1) be provided by a statewide organization that represents corporations organized under this Act, except as provided by Subsection (f) of this section;

(2) provide at least six hours of instruction devoted to topics relating to the legal and proper operation of a corporation created under this Act; and

(3) be held at least four times per calendar year in a different geographical region of this state.

(f) If the department or its successor determines that no statewide organization is able to provide a training seminar as prescribed by Subsection (e) of this section, the department or its successor, in conjunction with the attorney general and the comptroller, shall by rule develop a training seminar in conformance with this section. The department or its successor may enter into an agreement for the provision of a training seminar developed under this subsection with any person determined by the department or its successor to be qualified to provide the training seminar.

(g) A person, entity, or organization that provides a training seminar under this section may:

(1) charge a reasonable fee for attending the seminar; and

(2) compensate an individual who provides instruction at the seminar.

(h) The person, entity, or organization providing a training seminar under this section shall issue a certificate of completion, on a form approved by the comptroller, to each person who completes the training seminar.

SECTION 12. The Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes) is amended by adding Sections 40, 41, and 42 to read as follows:

Sec. 40. DIRECT INCENTIVE PROVIDED TO BUSINESS ENTERPRISE. (a) A corporation created under this Act may not provide a direct incentive to or make an expenditure on behalf of a business enterprise under a project as defined by Section 2 or 4B(a)(2) of this Act unless the corporation enters into a performance agreement with the business enterprise.

(b) A performance agreement between a corporation and business enterprise, at a minimum, must provide for a schedule of additional payroll or jobs to be created or retained and capital investment to be made as consideration for any direct incentives provided or expenditures made by the corporation under the agreement. The performance agreement must also specify the terms under which repayment must be made if the business enterprise fails to meet the performance requirements specified in the agreement.

Sec. 41. REQUIREMENT FOR THIRD-PARTY CONTRACT FOR BUSINESS RECRUITMENT OR DEVELOPMENT. (a) This section does not apply to a payment to an employee of the corporation.

(b) A corporation organized under Section 4A or 4B of this Act must enter into a written contract approved by the corporation's board of directors in connection with the payment of a commission, fee, or other compensation or thing of value to a broker, agent, or other third party who is involved in business recruitment or development.

(c) A corporation that violates Subsection (b) of this section is liable to the state for a civil penalty in an amount not to exceed \$10,000.

(d) The attorney general may bring an action to recover the civil penalty in a district court in Travis County or the county in which the violation occurred.

Sec. 42. ECONOMIC INCENTIVE FOR CERTAIN BUSINESS ENTERPRISE PROHIBITED. (a) In this section, "related party" means a person or entity that owns at least 80 percent of the business enterprise to which the sales and use tax would be rebated as part of an economic incentive.

(b) Notwithstanding any other provision of this Act, a corporation created under this Act may not offer to provide an economic incentive for a business enterprise whose business consists primarily of purchasing taxable items using a resale certificate and then reselling those items to a related party.

SECTION 13. Sections 2(11)(B) and (C), 38(a), and 38(c)-(e), Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes), and Section 481.0231, Government Code, are repealed.

SECTION 14. The changes in law made by this Act apply only to a project that is undertaken or approved, by an election or otherwise, on or after the effective date of this Act. A project that is undertaken or approved before the effective date of this Act is governed by the law in effect on the date the project is undertaken or approved, and the former law is continued in effect for that purpose.

SECTION 15. 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 2912** (Senate Committee Printing) as follows:

(1) In SECTION 1 of the bill, in amended Section 2(11)(A), Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes) (page 1, line 51), between "roads," and "water", insert "rail spurs".

(2) In SECTION 2 of the bill, in added Section 2(18), Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes) (page 2, line 25), strike "construction and occupancy" and substitute "construction or occupancy".

LEAVE OF ABSENCE GRANTED

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

Rose on motion of Hegar.

(Hegar in the chair)

**HB 3017 - HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS**

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

HB 3017, A bill to be entitled An Act relating to the organization, administration, and validation of the creation and certain action of a coordinated county transportation authority.

On motion of Representative Solomons, the house concurred in the senate amendments to **HB 3017**.

Senate Committee Substitute

HB 3017, A bill to be entitled An Act relating to the organization, administration, and validation of the creation and certain action of a coordinated county transportation authority.

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

SECTION 1. Section 460.001(3), Transportation Code, is amended to read as follows:

(3) "Board of directors [~~Executive committee~~]" means the governing body of the authority.

SECTION 2. Subchapter A, Chapter 460, Transportation Code, is amended by adding Section 460.004 to read as follows:

Sec. 460.004. REFERENCE. A reference in this chapter to the executive committee means the board of directors.

SECTION 3. Section 460.551(a), Transportation Code, is amended to read as follows:

(a) The executive committee may impose for an authority a sales and use tax at the rate of:

- (1) one-quarter of one percent;
- (2) three-eighths of one percent;
- (3) [~~(2)~~] one-half of one percent;
- (4) five-eighths of one percent;
- (5) [~~(3)~~] three-quarters of one percent; [~~or~~]
- (6) seven-eighths of one percent; or
- (7) [~~(4)~~] one percent.

SECTION 4. Section 460.056, Transportation Code, is amended by adding Subsection (f) to read as follows:

(f) The board of directors of a confirmed authority may by rule create a procedure by which a municipality described by Subsection (d) may become a participating member of an authority.

SECTION 5. Section 460.201(b), Transportation Code, is amended to read as follows:

(b) A member of the board of directors ~~[executive committee]~~ may not serve more than three consecutive terms.

SECTION 6. Subchapter D, Chapter 460, Transportation Code, is amended by adding Section 460.206 to read as follows:

Sec. 460.206. RULES. The board of directors may adopt rules relating to the creation of a vacancy on the board by the absence of a board member at the board meetings, staggering the terms of up to one-half of the board of directors, and providing for alternates.

SECTION 7. Section 460.404, Transportation Code, is amended by adding Subsection (d) to read as follows:

(d) An authority may accept gifts, grants, donations, receipts, or funds from any source to carry out its powers and duties under this chapter.

SECTION 8. Section 460.502(c), Transportation Code, is amended to read as follows:

(c) A bond issued by the authority may ~~[must]~~ have a maturity of up to 30 years from the date of issuance ~~[20 year even principal and interest payback]~~.

SECTION 9. Section 460.503, Transportation Code, is amended to read as follows:

Sec. 460.503. BOND TERMS. The bonds of an authority are fully negotiable. An authority may make the bonds redeemable before maturity. The terms and conditions of authority bonds are subject to rules adopted by the board of directors.

SECTION 10. Section 460.506, Transportation Code, is amended to read as follows:

Sec. 460.506. SECURITY PLEDGED. To secure the payment of an authority's bonds, the authority may:

(1) pledge all or part of revenue realized from any tax that is approved and levied;

(2) pledge any part of the revenue of the public transportation system; ~~[or]~~

(3) mortgage any part of the public transportation system; or

(4) pledge government grants, contractual revenue, or lease revenue.

SECTION 11. Section 460.507, Transportation Code, is amended to read as follows:

Sec. 460.507. REFUNDING BONDS. An authority may issue refunding bonds at any time ~~[if the repayment savings from the refunding bonds exceeds the cost of issuance]~~.

SECTION 12. Section 460.508(d), Transportation Code, is amended to read as follows:

(d) An authority may not have outstanding notes in excess of \$10 ~~[\$4]~~ million at any one time.

SECTION 13. (a) The creation of the Denton County Transportation Authority under Chapter 1186, Acts of the 77th Legislature, Regular Session, 2001, composed of the territory in Denton County is validated as of the date of

the election held on November 5, 2002, at which the voters of Denton County approved the confirmation of the district. Any acts and proceedings of the district in Denton County are validated as of the dates they occurred.

(b) This Act does not validate any government act or proceeding that, under the law of this state at the time the act or proceeding occurred, was a misdemeanor or a felony.

SECTION 14. This Act takes effect September 1, 2003, except Section 3 of this Act takes effect only if **HB 164**, 78th Legislature, Regular Session, 2003, is passed by the house and senate and approved by the governor.

HB 3486 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

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

HB 3486, A bill to be entitled An Act relating to a health care facility's return of certain unused drugs to a pharmacy and to reimbursement or credit under the state's medical assistance program for returned drugs.

On motion of Representative Delisi, the house concurred in the senate amendments to **HB 3486** by (Record 873): 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; Crowover; Davis, J.; Davis, Y.; Dawson; Delisi; Denny; Deshotel; Driver; Dukes; Dunnam; Dutton; Edwards; Eiland; Eissler; Elkins; Ellis; Escobar; Farabee; Farrar; Flores; Flynn; Gallego; Garza; Geren; Giddings; Goodman; Goolsby; Griggs; Grusendorf; Guillen; Gutierrez; Haggerty; Hamilton; Hamric; Harper-Brown; Hartnett; Heflin; Hilderbran; Hill; Hochberg; Hodge; Homer; Hope; 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; 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; Seaman; Smith, T.; Smith, W.; Smithee; Solis; Solomons; Stick; Swinford; Taylor; Telford; Thompson; Truitt; Turner; Uresti; Van Arsdale; Villarreal; West; Wilson; Wise; Wohlgemuth; Wolens; Wong; Woolley; Zedler.

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

Absent, Excused — Marchant; Rose.

Absent — Gattis; Hardcastle; Talton.

Senate Committee Substitute

HB 3486, A bill to be entitled An Act relating to a health care facility's return of certain unused drugs to a pharmacy and to reimbursement or credit under the state's medical assistance program for returned drugs.

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

SECTION 1. Subchapter C, Chapter 562, Occupations Code, is amended by adding Sections 562.1085 and 562.1086 to read as follows:

Sec. 562.1085. UNUSED DRUGS RETURNED BY CERTAIN PHARMACISTS. (a) A pharmacist who practices in or serves as a consultant for a health care facility in this state may return to a pharmacy certain unused drugs, other than a controlled substance as defined by Chapter 481, Health and Safety Code, purchased from the pharmacy as provided by board rule. The unused drugs must:

(1) be approved by the federal Food and Drug Administration and be:

(A) sealed in the manufacturer's original unopened tamper-evident packaging and either individually packaged or packaged in unit-dose packaging;

(B) oral or parenteral medications in sealed single-dose containers approved by the federal Food and Drug Administration;

(C) topical or inhalant drugs in sealed units-of-use containers approved by the federal Food and Drug Administration; or

(D) parenteral medications in sealed multiple-dose containers approved by the federal Food and Drug Administration from which doses have not been withdrawn; and

(2) not be the subject of a mandatory recall by a state or federal agency or a voluntary recall by a drug seller or manufacturer.

(b) A pharmacist for the pharmacy shall examine a drug returned under this section to ensure the integrity of the drug product. A health care facility may not return a drug that:

(1) has been compounded;

(2) appears on inspection to be adulterated;

(3) requires refrigeration; or

(4) has less than 120 days until the expiration date or end of the shelf life.

(c) The pharmacy may restock and redistribute unused drugs returned under this section.

(d) The pharmacy shall reimburse or credit the state Medicaid program for an unused drug returned under this section.

(e) The board shall adopt the rules, policies, and procedures necessary to administer this section, including rules that require a health care facility to inform the Health and Human Services Commission of drugs returned to a pharmacy under this section.

Sec. 562.1086. LIMITATION ON LIABILITY. (a) A pharmacist that returns unused drugs or the health care facility at which the pharmacist practices or serves and a pharmacy that accepts the unused drugs under Section 562.1085

and the employees of the pharmacist, health care facility, or pharmacy are not liable for harm caused by the accepting, dispensing, or administering of drugs returned in strict compliance with Section 562.1085 unless the harm is caused by:

(1) wilful or wanton acts of negligence;

(2) conscious indifference or reckless disregard for the safety of others;

or

(3) intentional conduct.

(b) This section does not limit, or in any way affect or diminish, the liability of a drug seller or manufacturer under Chapter 82, Civil Practice and Remedies Code.

(c) This section does not apply if harm results from the failure to fully and completely comply with the requirements of Section 562.1085.

SECTION 2. Section 431.021, Health and Safety Code, is amended to read as follows:

Sec. 431.021. PROHIBITED ACTS. The following acts and the causing of the following acts within this state are unlawful and prohibited:

(a) the introduction or delivery for introduction into commerce of any food, drug, device, or cosmetic that is adulterated or misbranded;

(b) the adulteration or misbranding of any food, drug, device, or cosmetic in commerce;

(c) the receipt in commerce of any food, drug, device, or cosmetic that is adulterated or misbranded, and the delivery or proffered delivery thereof for pay or otherwise;

(d) the distribution in commerce of a consumer commodity, if such commodity is contained in a package, or if there is affixed to that commodity a label that does not conform to the provisions of this chapter and of rules adopted under the authority of this chapter; provided, however, that this prohibition shall not apply to persons engaged in business as wholesale or retail distributors of consumer commodities except to the extent that such persons:

(1) are engaged in the packaging or labeling of such commodities;

or

(2) prescribe or specify by any means the manner in which such commodities are packaged or labeled;

(e) the introduction or delivery for introduction into commerce of any article in violation of Section 431.084, 431.114, or 431.115;

(f) the dissemination of any false advertisement;

(g) the refusal to permit entry or inspection, or to permit the taking of a sample or to permit access to or copying of any record as authorized by Sections 431.042-431.044; or the failure to establish or maintain any record or make any report required under Section 512(j), (l), or (m) of the federal Act, or the refusal to permit access to or verification or copying of any such required record;

(h) the manufacture within this state of any food, drug, device, or cosmetic that is adulterated or misbranded;

(i) the giving of a guaranty or undertaking referred to in Section 431.059, which guaranty or undertaking is false, except by a person who relied on a guaranty or undertaking to the same effect signed by, and containing the

name and address of the person residing in this state from whom the person received in good faith the food, drug, device, or cosmetic; or the giving of a guaranty or undertaking referred to in Section 431.059, which guaranty or undertaking is false;

(j) the use, removal, or disposal of a detained or embargoed article in violation of Section 431.048;

(k) the alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the labeling of, or the doing of any other act with respect to a food, drug, device, or cosmetic, if such act is done while such article is held for sale after shipment in commerce and results in such article being adulterated or misbranded;

(l)(1) forging, counterfeiting, simulating, or falsely representing, or without proper authority using any mark, stamp, tag, label, or other identification device authorized or required by rules adopted under this chapter or the regulations promulgated under the provisions of the federal Act;

(2) making, selling, disposing of, or keeping in possession, control, or custody, or concealing any punch, die, plate, stone, or other thing designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of any of the foregoing on any drug or container or labeling thereof so as to render such drug a counterfeit drug;

(3) the doing of any act that causes a drug to be a counterfeit drug, or the sale or dispensing, or the holding for sale or dispensing, of a counterfeit drug;

(m) the using by any person to the person's own advantage, or revealing, other than to the commissioner, an authorized agent, a health authority or to the courts when relevant in any judicial proceeding under this chapter, of any information acquired under the authority of this chapter concerning any method or process that as a trade secret is entitled to protection;

(n) the using, on the labeling of any drug or device or in any advertising relating to such drug or device, of any representation or suggestion that approval of an application with respect to such drug or device is in effect under Section 431.114 or Section 505, 515, or 520(g) of the federal Act, as the case may be, or that such drug or device complies with the provisions of such sections;

(o) the using, in labeling, advertising or other sales promotion of any reference to any report or analysis furnished in compliance with Sections 431.042-431.044 or Section 704 of the federal Act;

(p) in the case of a prescription drug distributed or offered for sale in this state, the failure of the manufacturer, packer, or distributor of the drug to maintain for transmittal, or to transmit, to any practitioner licensed by applicable law to administer such drug who makes written request for information as to such drug, true and correct copies of all printed matter that is required to be included in any package in which that drug is distributed or sold, or such other printed matter as is approved under the federal Act. Nothing in this subsection shall be construed to exempt any person from any labeling requirement imposed by or under other provisions of this chapter;

(q)(1) placing or causing to be placed on any drug or device or container of any drug or device, with intent to defraud, the trade name or other identifying mark, or imprint of another or any likeness of any of the foregoing;

(2) selling, dispensing, disposing of or causing to be sold, dispensed, or disposed of, or concealing or keeping in possession, control, or custody, with intent to sell, dispense, or dispose of, any drug, device, or any container of any drug or device, with knowledge that the trade name or other identifying mark or imprint of another or any likeness of any of the foregoing has been placed thereon in a manner prohibited by Subdivision (1) of this subsection; or

(3) making, selling, disposing of, causing to be made, sold, or disposed of, keeping in possession, control, or custody, or concealing with intent to defraud any punch, die, plate, stone, or other thing designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of any of the foregoing on any drug or container or labeling of any drug or container so as to render such drug a counterfeit drug;

(r) dispensing or causing to be dispensed a different drug in place of the drug ordered or prescribed without the express permission in each case of the person ordering or prescribing;

(s) the failure to register in accordance with Section 510 of the federal Act, the failure to provide any information required by Section 510(j) or (k) of the federal Act, or the failure to provide a notice required by Section 510(j)(2) of the federal Act;

(t)(1) the failure or refusal to:

(A) comply with any requirement prescribed under Section 518 or 520(g) of the federal Act; or

(B) furnish any notification or other material or information required by or under Section 519 or 520(g) of the federal Act;

(2) with respect to any device, the submission of any report that is required by or under this chapter that is false or misleading in any material respect;

(u) the movement of a device in violation of an order under Section 304(g) of the federal Act or the removal or alteration of any mark or label required by the order to identify the device as detained;

(v) the failure to provide the notice required by Section 412(b) or 412(c), the failure to make the reports required by Section 412(d)(1)(B), or the failure to meet the requirements prescribed under Section 412(d)(2) of the federal Act;

(w) except as provided under Subchapter M of this chapter and Section 562.1085, Occupations Code, the acceptance by a person of an unused prescription or drug, in whole or in part, for the purpose of resale, after the prescription or drug has been originally dispensed, or sold;

(x) engaging in the wholesale distribution of drugs or operating as a distributor or manufacturer of devices in this state without filing a licensing statement with the commissioner as required by Section 431.202 or having a license as required by Section 431.272, as applicable;

(y) engaging in the manufacture of food in this state or operating as a food wholesaler in this state without having a license as required by Section 431.222; or

(z) unless approved by the United States Food and Drug Administration pursuant to the federal Act, the sale, delivery, holding, or offering for sale of a self-testing kit designed to indicate whether a person has a human immunodeficiency virus infection, acquired immune deficiency syndrome, or a related disorder or condition.

SECTION 3. Section 32.028, Human Resources Code, is amended by adding Subsections (i), (j), and (k) to read as follows:

(i) The Health and Human Services Commission shall adopt rules governing the determination of the amount of reimbursement or credit for restocking drugs under Section 562.1085, Occupations Code, that recognize the costs of processing the drugs, including the cost of:

(1) reporting the drug's prescription number and date of original issue;

(2) verifying whether the drug's expiration date or the drug's recommended shelf life exceeds 120 days;

(3) determining the source of payment; and

(4) preparing credit records.

(j) The commission shall provide an electronic system for the issuance of credit for returned drugs that complies with the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191), as amended. To ensure a cost-effective system, only drugs for which the credit exceeds the cost of the restocking fee by at least 100 percent are eligible for credit.

(k) The commission shall establish a task force to develop the rules necessary to implement Subsections (i) and (j). The task force must include representatives of nursing facilities and pharmacies.

SECTION 4. If before implementing any provision of this Act a state agency determines that a waiver or authorization from a federal agency is necessary for implementation of that provision, the agency affected by the provision shall request the waiver or authorization and may delay implementing that provision until the waiver or authorization is granted.

SECTION 5. The Health and Human Services Commission shall adopt the rules required by Sections 32.028(i) and (j), Human Resources Code, as added by this Act, not later than December 1, 2003.

SECTION 6. (a) The Texas State Board of Pharmacy shall adopt the rules required by Section 562.1085, Occupations Code, as added by this Act, not later than December 1, 2003.

(b) Notwithstanding Section 562.1085, Occupations Code, as added by this Act, a pharmacy is not required to accept unused drugs from a health care facility before January 1, 2004.

SECTION 7. 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.

HJR 54 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

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

HJR 54, A joint resolution proposing a constitutional amendment providing that benefits in certain public retirement systems may not be reduced or impaired.

On motion of Representative King, the house concurred in the senate amendments to **HJR 54** by (Record 874): 144 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; 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; Hilderbran; Hill; Hochberg; Hodge; Homer; Hope; 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; 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; Seaman; Smith, T.; Smith, W.; Smithee; Solis; Solomons; Stick; Swinford; Taylor; Telford; Thompson; Truitt; Turner; Uresti; Van Arsdale; Villarreal; West; Wilson; Wise; Wohlgemuth; Wolens; Wong; Woolley; Zedler.

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

Absent, Excused — Marchant; Rose.

Absent — Dukes; Talton.

Senate Committee Substitute

HJR 54, A joint resolution proposing a constitutional amendment providing that certain benefits in certain public retirement systems may not be reduced or impaired.

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

SECTION 1. Article XVI, Texas Constitution, is amended by adding Section 66 to read as follows:

Sec. 66. PROTECTED BENEFITS UNDER CERTAIN PUBLIC RETIREMENT SYSTEMS. (a) This section applies only to a public retirement system that is not a statewide system and that provides service and disability retirement benefits and death benefits to public officers and employees.

(b) This section does not apply to a public retirement system that provides service and disability retirement benefits and death benefits to firefighters and police officers employed by the City of San Antonio.

(c) This section does not apply to benefits that are:

(1) health benefits;

(2) life insurance benefits; or

(3) disability benefits that a retirement system determines are no longer payable under the terms of the retirement system as those terms existed on the date the retirement system began paying the disability benefits.

(d) On or after the effective date of this section, a change in service or disability retirement benefits or death benefits of a retirement system may not reduce or otherwise impair benefits accrued by a person if the person:

(1) could have terminated employment or has terminated employment before the effective date of the change; and

(2) would have been eligible for those benefits, without accumulating additional service under the retirement system, on any date on or after the effective date of the change had the change not occurred.

(e) Benefits granted to a retiree or other annuitant before the effective date of this section and in effect on that date may not be reduced or otherwise impaired.

(f) The political subdivision or subdivisions and the retirement system that finance benefits under the retirement system are jointly responsible for ensuring that benefits under this section are not reduced or otherwise impaired.

(g) This section does not create a liability or an obligation to a retirement system for a member of the retirement system other than the payment by active members of a required contribution or a future required contribution to the retirement system.

(h) A retirement system described by Subsection (a) and the political subdivision or subdivisions that finance benefits under the retirement system are exempt from the application of this section if:

(1) the political subdivision or subdivisions hold an election on the date in May 2004 that political subdivisions may use for the election of their officers;

(2) the majority of the voters of a political subdivision voting at the election favor exempting the political subdivision and the retirement system from the application of this section; and

(3) the exemption is the only issue relating to the funding and benefits of the retirement system that is presented to the voters at the election.

SECTION 2. This constitutional amendment shall be submitted to the voters at an election to be held September 13, 2003. The ballot shall be printed to allow for voting for or against the proposition: "The constitutional amendment providing that certain benefits under certain local public retirement systems may not be reduced or impaired."

HB 1487 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

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

HB 1487, A bill to be entitled An Act relating to the licensing and regulation of certain electricians; providing penalties.

On motion of Representative Driver, the house concurred in the senate amendments to **HB 1487**.

Senate Committee Substitute

HB 1487, A bill to be entitled An Act relating to the licensing and regulation of certain electricians; providing penalties.

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

SECTION 1. Title 8, Occupations Code, is amended by adding Chapter 1305 to read as follows:

CHAPTER 1305. ELECTRICIANS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1305.001. SHORT TITLE. This chapter may be cited as the Texas Electrical Safety and Licensing Act.

Sec. 1305.002. DEFINITIONS. In this chapter:

(1) "Advisory board" means the Electrical Safety and Licensing Advisory Board.

(2) "Commission" means the Texas Commission of Licensing and Regulation.

(3) "Department" means the Texas Department of Licensing and Regulation.

(4) "Electrical code" means the National Electrical Code published by the National Fire Protection Association as adopted by the commission.

(5) "Electrical contracting" means the business of designing, installing, erecting, repairing, or altering electrical wires or conductors to be used for light, heat, power, or signaling purposes. The term includes the installation or repair of ducts, raceways, or conduits for the reception or protection of wires or conductors and the installation or repair of any electrical machinery, apparatus, or system used for electrical light, heat, power, or signaling.

(6) "Electrical contractor" means a person engaged in electrical contracting.

(7) "Electrical engineer" means a person licensed under Chapter 1001 who possesses the necessary qualifications, training, and technical knowledge to perform electrical engineering work in this state.

(8) "Electrical inspector" means a person certified by the International Association of Electrical Inspectors or International Code Council.

(9) "Electrical work" means any labor or material used in installing, maintaining, or extending an electrical wiring system and the appurtenances, apparatus, or equipment used in connection with the use of electrical energy in, on, outside, or attached to a building, residence, structure, property, or premises. The term includes service entrance conductors as defined by the National Electrical Code.

(10) "Executive director" means the executive director of the department.

(11) "Residential wireman" means a person licensed under this chapter who may only perform electrical installations in single-family and multifamily dwellings not exceeding four stories.

Sec. 1305.003. EXEMPTIONS; APPLICATION OF CHAPTER. (a) This chapter does not apply to:

(1) the installation of electrical equipment in a ship, watercraft other than a floating building, railway rolling stock, aircraft, or a motor vehicle other than a mobile home or recreational vehicle;

(2) the installation of electrical equipment underground in a mine and in self-propelled mobile surface mining machinery and its attendant electrical trailing cable;

(3) the installation of electrical equipment for generation, transformation, transmission, or distribution of power used exclusively to operate railway rolling stock or exclusively for signaling and communications purposes;

(4) the installation, maintenance, alteration, or repair of communications equipment provided by a telecommunications provider;

(5) the installation, maintenance, alteration, or repair of electrical equipment under the exclusive control of an electric utility, electric cooperative, or municipally owned utility and used for communications or metering, or for the generation, control, transformation, transmission, and distribution of electrical energy, and located:

(A) in a building used exclusively by a utility for those purposes;

(B) outdoors on property owned or leased by the utility;

(C) on public highways, streets, roads, or other public rights-of-way; or

(D) outdoors by established rights in vaults or on private property;

(6) work not specifically regulated by a municipal ordinance that is performed in or on a dwelling by a person who owns and resides in the dwelling;

(7) work involved in the manufacture of electrical equipment;

(8) electrical maintenance work if:

(A) the work is performed by a person regularly employed as a maintenance person at the building or premises;

(B) the work is performed in conjunction with the business in which the person is employed; and

(C) the person does not engage in electrical work for the public;

(9) the installation, maintenance, alteration, or repair of electrical equipment or associated wiring under the exclusive control of a gas utility and used for communications or metering or for the control, transmission, or distribution of natural gas;

(10) thoroughfare lighting, traffic signals, intelligent transportation systems, and telecommunications controlled by a governmental entity;

(11) electrical connections supplying heating, ventilation, and cooling and refrigeration equipment, including any required disconnect exclusively for the equipment, if the service is performed by a licensed air conditioning and refrigeration contractor under Chapter 1302;

(12) the design, installation, erection, repair, or alteration of Class 1, Class 2, or Class 3 remote control, signaling, or power-limited circuits, fire alarm circuits, optical fiber cables, or communications circuits, including raceways, as defined by the National Electrical Code;

(13) landscape irrigation installers, as necessary to perform the installation and maintenance of irrigation control systems, and landscapers, as necessary to perform the installation and maintenance of low-voltage exterior lighting and holiday lighting excluding any required power source;

(14) a person who is employed by and performs electrical work solely for a private industrial business, including a business that operates a chemical plant, petrochemical plant, refinery, natural gas plant, natural gas treating plant, pipeline, or oil and gas exploration and production operation;

(15) the installation, maintenance, alteration, or repair of equipment or network facilities provided or utilized by a cable operator, as that term is defined by 47 U.S.C. Section 522, as amended; and

(16) the location, design, construction, extension, maintenance, and installation of on-site sewage disposal systems in accordance with Chapter 366, Health and Safety Code.

(b) This chapter applies to all premises wiring that originates where an electric utility's facilities end and a nonutility customer's electric facilities begin, except as permitted by Section 161.123(2)(A), Utilities Code.

(c) This chapter applies to an installation in a building used by a utility for purposes other than a purpose listed in this section, including an office building, warehouse, garage, machine shop, or recreational building that is not an integral part of a generating plant, substation, or control center.

[Sections 1305.004-1305.050 reserved for expansion]

SUBCHAPTER B. ADVISORY BOARD

Sec. 1305.051. ELECTRICAL SAFETY AND LICENSING ADVISORY BOARD. (a) The advisory board consists of nine members appointed by the presiding officer of the commission with the approval of the commission as follows:

- (1) three master electrician members;
- (2) three journeyman electrician members; and
- (3) three public members.

(b) The advisory board members must include:

- (1) two members who are affiliated with a statewide association of electrical contractors not affiliated with a labor organization;
- (2) three members who are affiliated with a labor organization;
- (3) one member who is not affiliated with a statewide association of electrical contractors or with a labor organization; and
- (4) one member who is affiliated with a historically underutilized business, as that term is defined by Section 2161.001, Government Code.

(c) A licensed electrical engineer or an electrical inspector may be appointed as a public member of the advisory board.

(d) An appointment to the advisory board shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointee.

Sec. 1305.052. TERMS; VACANCIES. (a) Advisory board members serve terms of six years, with the terms of three members expiring on February 1 of each odd-numbered year.

(b) A member may not consecutively serve more than two full terms.

(c) If a vacancy occurs during a term, the presiding officer of the commission shall appoint a replacement who meets the qualifications of the vacated position to serve for the remainder of the term.

Sec. 1305.053. PRESIDING OFFICER. The presiding officer of the commission shall appoint one of the advisory board members to serve as presiding officer of the advisory board for a term of one year. The presiding officer of the advisory board may vote on any matter before the advisory board.

Sec. 1305.054. COMPENSATION; REIMBURSEMENT OF EXPENSES. Advisory board members may not receive compensation but are entitled to reimbursement for actual and necessary expenses incurred in performing the functions of the advisory board, subject to the General Appropriations Act.

Sec. 1305.055. MEETINGS. The advisory board shall meet twice annually and may meet at other times at the call of the presiding officer of the commission.

[Sections 1305.056-1305.100 reserved for expansion]

SUBCHAPTER C. POWERS AND DUTIES

Sec. 1305.101. GENERAL POWERS AND DUTIES. (a) The executive director or commission, as appropriate, shall:

(1) by rule establish the financial responsibility requirements for electrical contractors; and

(2) after publication of the National Electrical Code by the National Fire Protection Association every three years, adopt the revised National Electrical Code as the electrical code for the state.

(b) The executive director or commissioner, as appropriate, may:

(1) establish reciprocity agreements with other states that have licensing requirements substantially equivalent to the requirements of this chapter; and

(2) take other action as necessary to administer and enforce this chapter.

Sec. 1305.102. RULES. (a) The executive director shall adopt rules for the licensing of electricians and electrical contractors as prescribed by this chapter.

(b) The executive director by rule shall prescribe descriptions of the types of activities that may be performed by each class of license holder under this chapter.

(c) The executive director by rule shall adopt standards of conduct requirements for license holders under this chapter.

Sec. 1305.103. FEES. The commission shall establish and collect reasonable and necessary fees in amounts sufficient to cover the costs of administering this chapter.

Sec. 1305.104. POWERS AND DUTIES OF ADVISORY BOARD. The advisory board shall provide advice and recommendations to the department on technical matters relevant to the administration and enforcement of this chapter, including examination content, licensing standards, electrical code requirements, and continuing education requirements.

Sec. 1305.105. PERSONNEL. The department may employ personnel necessary to administer and enforce this chapter. The department shall employ an electrical occupations and code specialist to oversee the electrical licensing and safety program.

[Sections 1305.106-1305.150 reserved for expansion]

SUBCHAPTER D. LICENSE REQUIREMENTS

Sec. 1305.151. LICENSE REQUIRED. Except as provided by Section 1305.003, a person may not perform electrical work unless the person holds an appropriate license issued or recognized under this chapter.

Sec. 1305.152. APPLICATION REQUIREMENTS. (a) An applicant for a license under this chapter must:

(1) submit to the department a completed application on a form prescribed by the executive director;

(2) submit to the department any other information required by executive director rule;

(3) demonstrate to the satisfaction of the executive director the appropriate amount of electrical work experience as required by this subchapter;

(4) demonstrate the applicant's honesty, trustworthiness, and integrity;
and

(5) pay the application and examination fees.

(b) The executive director shall adopt rules to establish a process by which the department shall evaluate the experience required of applicants for a license under this chapter.

(c) The department may conduct an examination of any criminal conviction of an applicant, including obtaining any criminal history record information permitted by law.

Sec. 1305.153. REQUIREMENTS FOR MASTER ELECTRICIAN. An applicant for a license as a master electrician must:

(1) have at least 12,000 hours of on-the-job training under the supervision of a master electrician; and

(2) pass a master electrician examination administered under this chapter.

Sec. 1305.154. MASTER SIGN ELECTRICIAN. An applicant for a license as a master sign electrician must:

(1) have at least 12,000 hours of on-the-job training under the supervision of a master sign electrician; and

(2) pass a master sign electrician examination administered under this chapter.

Sec. 1305.155. JOURNEYMAN ELECTRICIAN. An applicant for a license as a journeyman electrician must:

(1) have at least 8,000 hours of on-the-job training under the supervision of a master electrician; and

(2) pass a journeyman electrician examination administered under this chapter.

Sec. 1305.156. JOURNEYMAN SIGN ELECTRICIAN. An applicant for a license as a journeyman sign electrician must:

(1) have at least 8,000 hours of on-the-job training under the supervision of a master sign electrician; and

(2) pass a journeyman sign electrician examination administered under this chapter.

Sec. 1305.157. RESIDENTIAL WIREMAN. An applicant for a license as a residential wireman must:

(1) have at least 4,000 hours of on-the-job training under the supervision of a master electrician or residential wireman; and

(2) pass a residential wireman examination administered under this chapter.

Sec. 1305.158. MAINTENANCE ELECTRICIAN. An applicant for a license as a maintenance electrician must:

(1) have at least 8,000 hours of on-the-job training under the supervision of a master electrician or maintenance electrician; and

(2) pass a maintenance electrician examination administered under this chapter.

Sec. 1305.159. ELECTRICAL CONTRACTOR. (a) An applicant for a license as an electrical contractor must:

(1) be licensed under this chapter as a master electrician or employ a person licensed under this chapter as a master electrician;

(2) establish proof of financial responsibility in the manner prescribed by the executive director; and

(3) maintain workers' compensation coverage for the contractor's employees through an insurance company authorized to engage in the business of insurance in this state or through self-insurance, or elect not to obtain workers' compensation coverage, as provided by Subchapter A, Chapter 406, Labor Code.

(b) A person who holds a master electrician license issued or recognized under this chapter may only be assigned to a single electrical contractor, unless the master electrician owns more than 50 percent of the electrical contracting business.

Sec. 1305.160. ELECTRICAL SIGN CONTRACTOR. (a) An applicant for a license as an electrical sign contractor must:

(1) be licensed under this chapter as a master sign electrician or employ a person licensed under this chapter as a master sign electrician;

(2) establish proof of financial responsibility in the manner prescribed by the executive director; and

(3) maintain workers' compensation coverage for the contractor's employees through an insurance company authorized to engage in the business of insurance in this state or through self-insurance, or elect not to obtain workers' compensation coverage, as provided by Subchapter A, Chapter 406, Labor Code.

(b) A person who holds a master sign electrician license issued or recognized under this chapter may only be assigned to a single electrical contractor, unless the master sign electrician owns more than 50 percent of the electrical sign contracting business.

Sec. 1305.161. ELECTRICAL APPRENTICE. An applicant for a license as an electrical apprentice must be at least 16 years of age and be engaged in the process of learning and assisting in the installation of electrical work under the supervision of a licensed master electrician.

Sec. 1305.162. EXAMINATIONS. (a) Examinations required by this subchapter shall be conducted throughout the state.

(b) The department shall accept, develop, or contract for the examinations required by this chapter, including the administration of the examinations. Each examination must test the knowledge of the applicant about materials and methods used in electrical installations and the standards prescribed by the National Electrical Code as adopted by the executive director.

(c) The executive director shall determine uniform standards for acceptable performance on an examination.

Sec. 1305.163. EXAMINATION RESULTS. (a) Not later than the 30th day after the date on which an examination is administered under this chapter, the department shall notify each examinee of the results of the examination. If an examination is graded or reviewed by a national testing service, the department shall notify examinees of the result of the examination not later than the 14th day after the date on which the department receives the results from the testing service.

(b) If the notice of the examination results will be delayed for more than 60 days after the examination date, the department shall notify each examinee of the reason for the delay before the 60th day.

(c) If requested in writing by a person who fails an examination administered under this chapter, the department shall provide to the person an analysis of the person's performance on the examination.

Sec. 1305.164. NONRESIDENT LICENSE APPLICANT. The executive director may issue a license under this chapter to an applicant who holds a license in another state and who submits a proper application and pays the required fees if the executive director determines that the applicant is licensed in a state with which there is an agreement to recognize licenses issued under this chapter.

Sec. 1305.165. LICENSE ISSUANCE; NONTRANSFERABILITY. (a) Not later than the 30th day after the date on which the department determines that an applicant has passed the examination required under this chapter, the executive director shall issue a license to the applicant if the applicant has complied with the application requirements and paid the fees required by this chapter.

(b) A license issued by the executive director is valid throughout this state and is not transferable.

Sec. 1305.166. DISPLAY OF LICENSE. (a) An electrical contractor and electrical sign contractor shall display the contractor's business name and the number of the license issued by the executive director on each vehicle owned by the contractor.

(b) The information required to be displayed must be:

(1) printed in letters and numbers that are at least two inches high and in a color that contrasts with the color of the background surface; and

(2) permanently affixed in conspicuous places on both sides of the vehicle.

Sec. 1305.167. LICENSE RENEWAL. (a) Except as provided by Subsection (b), a license expires annually on December 31 and may be renewed annually on payment of the required renewal fee.

(b) The executive director 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, renewal fees payable on or before December 31 shall be prorated on a monthly basis so that each license holder pays only that portion of the renewal fee that is applicable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the total renewal fee is due.

(c) Not later than the 30th day preceding the expiration date of a person's license, the department shall notify the person in writing, at the person's last known mailing address, of the impending license expiration. A person may renew an unexpired license by paying to the department, before the license expiration date, the required renewal fee.

(d) A person whose license has been expired for 90 days or less may renew the license by paying to the department the required renewal fee and a late fee in an amount equal to half of the license fee. A person whose license has been expired for more than 90 days but less than two years may renew the license by paying to the department all unpaid renewal fees and a late fee in an amount equal to the license fee. A person whose license has been expired for more than two years may not renew the license. The person may obtain a new license by submitting to reexamination and complying with the requirements and procedures for obtaining an original license.

Sec. 1305.168. CONTINUING EDUCATION. (a) To renew a master electrician, journeyman electrician, master sign electrician, journeyman sign electrician, maintenance electrician, or residential wireman license, the license holder must complete four hours of continuing education annually.

(b) Continuing education courses that satisfy the requirements of this section must address the National Electrical Code, as adopted under Section 1305.101, and state laws and rules that regulate the conduct of license holders under this chapter.

(c) The executive director by rule shall approve continuing education courses, course content, and course providers. The commission may adopt a fee for the administration of the department's duties regarding continuing education.

[Sections 1305.169-1305.200 reserved for expansion]

SUBCHAPTER E. REGULATION OF ELECTRICIANS BY LOCAL GOVERNMENTS

Sec. 1305.201. MUNICIPAL OR REGIONAL REGULATION. (a) This chapter does not prohibit a municipality or region from regulating electricians by:

- (1) enacting an ordinance requiring inspections;
- (2) offering examinations;
- (3) issuing municipal or regional licenses; or

(4) collecting permit fees for municipal or regional licenses and examinations from electricians for work performed in the municipality or region.

(b) A municipality or region may not require a person to take a municipal or regional examination if that person holds the appropriate license issued under this chapter and is working within the scope of that license.

(c) A municipality may adopt procedures for the:

(1) adoption of local amendments to the National Electrical Code; and

(2) administration and enforcement of that code.

(d) Electrical work performed within the corporate limits of a municipality must be installed in accordance with all applicable local ordinances.

(e) Electrical work performed in an unincorporated area of the state must be installed in accordance with standards at least as stringent as the requirements of the state electrical code as adopted under Section 1305.101.

Sec. 1305.202. SCOPE OF MUNICIPAL OR REGIONAL LICENSE. A license to perform electrical work issued by a municipality or region is valid only in the municipality or region or in another municipality or region under a reciprocal agreement.

[Sections 1305.203-1305.250 reserved for expansion]

SUBCHAPTER F. LICENSE DENIAL AND DISCIPLINARY ACTIONS

Sec. 1305.251. GROUNDS FOR DENIAL OR DISCIPLINARY ACTION. A person is subject to denial of a license application or disciplinary action under Section 51.353 if the person violates:

(1) this chapter or a rule adopted under this chapter; or

(2) a rule or order of the executive director or commission.

Sec. 1305.252. REQUESTED SUSPENSION BY LOCAL GOVERNMENT. A municipality or region may request suspension for just cause of the license under this chapter of a license holder working in its jurisdiction.

Sec. 1305.253. HEARINGS; ADMINISTRATIVE PROCEDURE. (a) If the department proposes to deny a license or take disciplinary action against a license holder, the license holder is entitled to a hearing.

(b) The proceedings relating to a license denial and disciplinary action by the department under this chapter are governed by Chapter 2001, Government Code. A hearing under this chapter may be conducted by a hearings officer designated by the commission.

Sec. 1305.254. NEW APPLICATION BY HOLDER OF REVOKED LICENSE. A license holder whose license has been revoked may apply for a new license after the first anniversary of the date of the revocation.

[Sections 1305.255-1305.300 reserved for expansion]

SUBCHAPTER G. ENFORCEMENT

Sec. 1305.301. ADMINISTRATIVE PENALTY. (a) The executive director may impose an administrative penalty on a person under Subchapter F, Chapter 51, regardless of whether the person holds a license under this chapter, if the person violates:

(1) this chapter or a rule adopted under this chapter; or

(2) a rule or order of the executive director or commission.

(b) An administrative penalty may not be imposed unless the person charged with a violation is provided the opportunity for a hearing.

Sec. 1305.302. CEASE AND DESIST ORDER; INJUNCTION; CIVIL PENALTY. (a) The executive director may issue a cease and desist order as necessary to enforce this chapter if the executive director determines that the action is necessary to prevent a violation of this chapter and to protect public health and safety.

(b) The attorney general or executive director may institute an action for an injunction or a civil penalty under this chapter as provided by Section 51.352.

Sec. 1305.303. CRIMINAL PENALTY. (a) A person subject to this chapter commits an offense if the person:

(1) violates the licensing requirements of this chapter;

(2) performs electrical work without a license to perform electrical work in this state; or

(3) employs an individual who does not hold the appropriate license required by this chapter.

(b) An offense under this section is a Class C misdemeanor.

SECTION 2. (a) Except as otherwise provided by this section, this Act takes effect September 1, 2003.

(b) Sections 1305.151 and 1305.303, Occupations Code, as added by this Act, take effect September 1, 2004.

(c) In making the initial appointments to the Electrical Safety and Licensing Advisory Board, the presiding officer of the Texas Commission of Licensing and Regulation shall appoint:

(1) three members for terms expiring February 1, 2005;

(2) three members for terms expiring February 1, 2007; and

(3) three members for terms expiring February 1, 2009.

(d) The executive director of the Texas Department of Licensing and Regulation and the Texas Commission of Licensing and Regulation, as appropriate, shall:

(1) adopt rules under Chapter 1305, Occupations Code, as added by this Act, relating to an original application for a license under that chapter not later than March 1, 2004; and

(2) adopt rules under Chapter 1305, Occupations Code, as added by this Act, relating to renewal of a license and continuing education requirements not later than January 1, 2005.

SECTION 3. (a) The Texas Department of Licensing and Regulation shall issue a license to a qualified applicant under this section who:

(1) applies for a license under this section not later than June 1, 2004;

(2) submits to the department the information required by rule;

(3) has the experience required by this section; and

(4) pays the application fee.

(b) An applicant for a license under this section as a master electrician who works in an area in which a municipal or regional licensing program exists is required to have:

(1) completed at least 12,000 hours of on-the-job training under the supervision of a master electrician; and

(2) held a municipal or regional master electrician license for at least one year.

(c) An applicant for a license under this section as a master electrician working in an area in which a municipal or regional licensing program does not exist is required to have completed at least 20,000 hours of on-the-job training under the supervision of a master electrician.

(d) An applicant for a license under this section as a master sign electrician working in an area in which a municipal or regional licensing program exists is required to have:

(1) completed at least 12,000 hours of on-the-job training under the supervision of a master sign electrician; and

(2) held a municipal or regional master sign electrician license for at least one year.

(e) An applicant for a license under this section as a master sign electrician working in an area in which a municipal or regional licensing program does not exist is required to have completed at least 20,000 hours of on-the-job training under the supervision of a master sign electrician.

(f) An applicant for a license under this section as a journeyman electrician is required to have:

(1) completed at least 12,000 hours of on-the-job training under the supervision of a master electrician;

(2) held a municipal or regional journeyman electrician license for at least one year; or

(3) graduated from an electrical apprenticeship program consisting of at least 576 hours of job-related education and 8,000 hours of on-the-job training.

(g) An applicant for a license under this section as a journeyman sign electrician is required to have:

(1) completed at least 12,000 hours of on-the-job training under the supervision of a licensed master sign electrician;

(2) held a municipal or regional journeyman sign electrician license for at least one year; or

(3) graduated from an electrical sign apprenticeship program consisting of at least 576 hours of job-related education and 8,000 hours of on-the-job training.

(h) An applicant for a license under this section as a residential wireman is required to have:

(1) completed at least 8,000 hours of on-the-job training under the supervision of a licensed master electrician;

(2) held a municipal or regional residential wireman license for at least one year; or

(3) graduated from a residential wireman apprenticeship program consisting of at least 288 hours of job-related education and 4,000 hours of on-the-job training.

(i) An applicant for a license under this section as a maintenance electrician is required to have:

(1) completed at least 12,000 hours of on-the-job training under the supervision of a master electrician;

(2) held a municipal or regional maintenance electrician license for at least one year; or

(3) graduated from an electrical maintenance apprenticeship program consisting of at least 576 hours of job-related education and 8,000 hours of on-the-job training.

(j) This section expires September 1, 2005.

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

Amend **CSHB 1487** as follows:

(1) In SECTION 1 of the bill, in proposed Section 1305.002, Occupations Code, between Subdivisions (8) and (9) of that section (committee printing, page 1, between lines 45 and 46), insert the following:

(9) "Electrical sign contracting" means the business of designing, manufacturing, installing, connecting, reconnecting, or servicing an electric sign, cold cathode, neon gas tubing, or outline gas tubing, or altering electric sign wiring or conductors either inside or outside of a building.

(10) "Electrical sign contractor" means a person engaged in electrical sign contracting.

(2) In SECTION 1 of the bill, in proposed Section 1305.002, Occupations Code, in Subdivision (9) of that section (committee printing, page 1, line 46), strike "(9)" and substitute "(11)".

(3) In SECTION 1 of the bill, in proposed Section 1305.002, Occupations Code, in Subdivision (10) of that section (committee printing, page 1, line 53), strike "(10)" and substitute "(12)".

(4) In SECTION 1 of the bill, in proposed Section 1305.002, Occupations Code, in Subdivision (11) of that section (committee printing, page 1, line 55), strike "(11)" and substitute "(13)".

(5) In SECTION 1 of the bill, in proposed Section 1305.102, Occupations Code, in Subsection (a) of that section (committee printing, page 4, lines 10 and 11), between "electricians" and "and electrical contractors", insert ", sign electricians, electrical sign contractors,".

(6) In SECTION 1 of the bill, in proposed Section 1305.162(b), Occupations Code (committee printing, page 5, line 67), between "installations" and "and", insert "related to the activities that may be performed within each class of license under this chapter".

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

Amend **CSHB 1487** as follows:

(1) In SECTION 1 of the bill, in proposed Section 1305.303(a), Occupations Code, after Subdivision (2) of that subsection (committee printing, page 8, line 28), strike "or".

(2) In SECTION 1 of the bill, in proposed Section 1305.303(a), Occupations Code, in Subdivision (3) of that subsection (committee printing, page 8, line 30), after "~~chapter~~" strike the underlined period and substitute "or".

(3) In SECTION 1 of the bill, in proposed Section 1305.303, Occupations Code, between Subsections (a) and (b) of that section (committee printing, page 8, between lines 30 and 31), insert the following:

(4) falsifies a certification of on-the-job training.

(4) In SECTION 3 of the bill, between Subsections (i) and (j) of that section (committee printing, page 9, between lines 52 and 53), insert:

(j) On-the-job training required by this section must be certified by a master electrician or master sign electrician, as appropriate.

(5) In SECTION 3 of the bill, in Subsection (j) of that section (committee printing, page 9, line 53), strike "(j)" and substitute "(k)".

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

Amend **CSHB 1487** as follows:

(1) In SECTION 1 of the bill, in proposed Section 1305.003(a), Occupations Code, between Subdivisions (14) and (15) of that subsection (committee printing, page 2, between lines 65 and 66), insert the following:

(15) the installation, maintenance, alteration, or repair of elevators, escalators, or related equipment, excluding any required power source, regulated under Chapter 754, Health and Safety Code;

(2) In SECTION 1 of the bill, in proposed Section 1305.003(a), Occupations Code, in Subdivision (15) of that subsection (committee printing, page 2, line 66), strike "(15)" and substitute "(16)".

(3) In SECTION 1 of the bill, in proposed Section 1305.003(a), Occupations Code, in Subdivision (16) of that subsection (committee printing, page 3, line 1), strike "(16)" and substitute "(17)".

Senate Amendment No. 4 (Senate Floor Amendment No. 4)

Amend **CSHB 1487**, in SECTION 2 of the bill, in Subsection (b) of that SECTION (committee printing, page 8, line 34), between "1305.151" and "and 1305.303", by inserting " , 1305.166,".

HB 2095 - HOUSE CONCURS IN SENATE AMENDMENTS

TEXT OF SENATE AMENDMENTS

Representative R. Cook called up with senate amendments for consideration at this time,

HB 2095, A bill to be entitled An Act relating to provision of workers' compensation insurance coverage through a certified self-insurance group; providing penalties.

On motion of Representative R. Cook, the house concurred in the senate amendments to **HB 2095**.

Senate Committee Substitute

HB 2095, A bill to be entitled An Act relating to provision of workers' compensation insurance coverage through a certified self-insurance group; providing penalties.

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

SECTION 1. Subtitle A, Title 5, Labor Code, is amended by adding Chapter 407A to read as follows:

CHAPTER 407A. GROUP SELF-INSURANCE COVERAGE

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 407A.001. DEFINITIONS. (a) In this chapter:

(1) "Administrator" means an individual, partnership, or corporation engaged by the board of trustees of a group to implement the policies established by the board of trustees and to provide day-to-day management of the group.

(2) "Commissioner" means the commissioner of insurance.

(3) "Department" means the Texas Department of Insurance.

(4) "Estimated premium subject to experience modifier" means the premium derived from applying the filed rates to estimated payrolls and before the adjustment of the premium by experience modifiers, schedule rating plan factors, deductible credits, minimum premiums, and premium discounts.

(5) "Group" means a workers' compensation self-insurance group that holds a certificate of approval under this chapter.

(6) "Modified schedule rating premium" means premium derived from applying filed rates to estimated payrolls and then adjusted by the experience modifier and any schedule rating plan factors.

(7) "Same or similar" means, with regard to members of a group, that:

(A) the governing classification code of the members of the group is the same; or

(B) the members of the group are engaged in similar operations.

(8) "Service company" means a person that provides services to the group other than services provided by the administrator, including:

(A) claims adjustment;

(B) safety engineering;

(C) compilation of statistics and the preparation of premium, loss, and tax reports;

(D) preparation of other required self-insurance reports;

(E) development of members' assessments and fees; and

(F) administration of a claim fund.

(b) For purposes of this chapter, when used as a modifier of "benefits," "liabilities," or "obligations," the term "workers' compensation" includes both workers' compensation and employers' liability.

Sec. 407A.002. APPLICATION OF CHAPTER; ESTABLISHMENT OF PRIVATE GROUP. (a) An unincorporated association or business trust composed of five or more private employers may establish a workers' compensation self-insurance group under this chapter if the employers:

(1) are engaged in the same or a similar type of business;

(2) are members of a bona fide trade or professional association that has been in existence in this state for purposes other than insurance for at least five years before the establishment of the group; and

(3) enter into agreements to pool their liabilities for workers' compensation benefits and employers' liability in this state.

(b) This chapter does not apply to public employees or governmental entities.

Sec. 407A.003. MERGER OF GROUPS. (a) Subject to the approval of the commissioner, a group may merge with another group engaged in the same or a similar type of business if the resulting group assumes in full all obligations of the merging groups.

(b) The commissioner may conduct a hearing on a proposed merger and shall conduct a hearing if any party, including a member of either group, requests a hearing.

Sec. 407A.004. GROUP NOT INSURER. A group issued a certificate of approval by the commissioner under this chapter is not:

(1) an insurer based on that certificate; and

(2) subject to the insurance laws and rules of this state except as otherwise provided by this chapter.

Sec. 407A.005. CERTIFICATE OF APPROVAL REQUIRED. An association of employers may not act as a workers' compensation self-insurance group unless it has been issued a certificate of approval by the commissioner under this chapter.

Sec. 407A.006. SERVICE OF PROCESS. (a) Each group shall be deemed to have appointed the commissioner as its attorney to receive service of legal process issued against the group in this state.

(b) The appointment of the commissioner is irrevocable, binds any successor in interest, and remains in effect as long as any obligation or liability of the group for workers' compensation benefits exists in this state.

Sec. 407A.007. HEARINGS. A hearing required under this chapter shall be conducted by the State Office of Administrative Hearings in the manner provided for a contested case under Chapter 2001, Government Code.

Sec. 407A.008. RULES. The commissioner shall adopt rules as necessary to implement this chapter.

[Sections 407A.009-407A.050 reserved for expansion]

SUBCHAPTER B. APPLICATION REQUIREMENTS FOR CERTIFICATE OF APPROVAL FOR SELF-INSURANCE GROUP

Sec. 407A.051. APPLICATION FOR INITIAL CERTIFICATE OF APPROVAL; APPROVAL REQUIREMENTS. (a) An association of employers that proposes to organize as a workers' compensation self-insurance group shall file with the department an application for a certificate of approval.

(b) The application must be in the form prescribed by the commissioner and must include:

(1) the name of the group;

(2) the location of the group's principal office;

(3) the date of organization of the group;

(4) the name and address of each employer that is a member of the group;

(5) the name, mailing address, and telephone number of the trade or professional association to which each group member belongs as required by Section 407A.002(a)(2);

(6) the governing classification code of the group or a description of the operations of each member of the group showing that the members of the group are engaged in similar operations; and

(7) any other information reasonably required by the commissioner.

(c) The application must be accompanied by:

(1) a nonrefundable \$1,000 filing fee;

(2) proof of compliance with the financial requirements under Section 407A.053;

(3) proof of compliance with the excess insurance requirements under Section 407A.054;

(4) a copy of the articles of association or declaration of trust of the group, if any;

(5) a copy of any agreements entered into with an administrator or a service company;

(6) a copy of the bylaws of the proposed group;

(7) a copy of the agreement between the group and each employer who is a member of the group that:

(A) secures the payment of workers' compensation benefits; and

(B) includes provisions for payment of assessments as provided by Section 407A.355;

(8) designation of the initial board of trustees and administrator of the group;

(9) the address in this state where the books and records of the group will be maintained at all times;

(10) a pro forma financial statement, in a form acceptable to the commissioner, that shows the financial ability of the group to pay the workers' compensation obligations of the employers who are members of the group;

(11) proof of one of the following:

(A) payment to the group, or a bona fide promise to pay on approval of the group, by each employer who is a member of the group of not less than 25 percent of that member's first year estimated modified schedule rating premium on a date prescribed by the commissioner, which shall be considered part of the first year premium payment of each member; or

(B) if the group is formed from a trust existing on September 1, 2003, that the assets of the trust are sufficient to cover the workers' compensation obligations of the trust;

(12) a \$250,000 performance bond for the administrator in the form prescribed by the commissioner;

(13) a \$250,000 performance bond for the service company in the form prescribed by the commissioner; and

(14) an indemnity agreement that meets the requirements of Section 407A.056.

(d) Not later than the 30th day after the effective date of the change, a group shall notify the commissioner of any change in:

(1) the information required to be filed under Subsection (c); or

(2) the manner of the group's compliance with Subsection (c).

(e) The commissioner shall evaluate the financial information provided with the application as necessary to ensure that:

(1) the funding is sufficient to cover expected losses and expenses; and

(2) the funds necessary to pay workers' compensation benefits will be available on a timely basis.

(f) Except as otherwise provided by this subsection, the commissioner shall act on a complete application for a certificate of approval not later than the 90th day after the date on which the application is filed with the department. If, because of the number of applications, the commissioner is unable to act on an application in a timely manner, the commissioner may extend the period for an additional 30 days.

(g) Fees collected under this section shall be deposited in the department's operating account.

Sec. 407A.052. ISSUANCE OF CERTIFICATE OF APPROVAL; REFUSAL. (a) The commissioner shall issue a certificate of approval to a proposed group on finding that the group has met the requirements of this subchapter.

(b) If the commissioner determines that a proposed group has not satisfied the requirements under this subchapter for a certificate of approval, the commissioner shall issue an order refusing the certificate. The order must set forth the reasons for the refusal.

(c) On issuance of the certificate of approval, the group is authorized to provide workers' compensation benefits.

Sec. 407A.053. FINANCIAL REQUIREMENTS. (a) To obtain a certificate of approval, each group shall comply with the financial requirements adopted under this section.

(b) The combined net worth of all employers who are members of the group must be at least \$2 million. A member of the group may not be required to submit an audited financial statement to establish the \$2 million combined net worth, but the group must file a report compiled by a certified public accountant and based on financial statements or tax returns to support the existence of a combined net worth of at least \$2 million for the initial group. In the case of a group composed of a trust existing on September 1, 2003, the trust may satisfy the financial requirements of this section by showing that the trust has participant surplus, including accrued participant dividends of at least \$2 million, in lieu of the requirement of the \$2 million combined net worth of its members. Discounted reserves may not be considered in determining whether a trust existing on September 1, 2003, has a surplus of at least \$2 million.

(c) The group must post security in the form and amount prescribed by the commissioner, not to exceed \$300,000. The security may be provided by a surety bond, security deposit, or any combination of those securities. If a surety bond is used to meet the security requirement, the surety bond must be issued by a corporate surety company authorized to transact business in this state. If a security deposit is used to meet the security requirement, the following are acceptable securities:

(1) a bond or other evidences of indebtedness issued, assumed, or guaranteed by the United States of America or by an agency or instrumentality of the United States of America;

(2) certificates of deposit in a federally insured bank;

(3) shares or savings deposits in a federally insured savings and loan association or credit union;

(4) a bond or security issued by a state and backed by the full faith and credit of that state;

(5) public securities described by Subsection (f); and

(6) commercial paper payable in United States currency that is rated in one of the two highest credit rating categories by each rating agency.

(d) Any securities posted must be deposited in the state treasury and must be assigned to and made negotiable by the executive director of the commission under a trust document acceptable to the commissioner. Interest accruing on a negotiable security deposited under this subsection shall be collected and transmitted to the depositor if the depositor is not in default.

(e) A bond or security deposit must be:

(1) made for the benefit of the state, to be used solely to pay claims and associated expenses; and

(2) payable on the failure of the group to pay workers' compensation benefits that it is legally obligated to pay.

(f) Public securities may be used as security under this section if the public securities bear interest or are sold at a discount and are issued by any corporation, denominated in United States dollars.

Sec. 407A.054. EXCESS INSURANCE REQUIREMENTS. (a) To obtain an initial certificate of approval and to be eligible to renew its certificate of approval, each group must comply with the excess insurance requirements adopted under this section.

(b) Each group shall obtain specific excess insurance for losses that exceed the group's retention in a form prescribed by the commissioner. The commissioner may establish minimum requirements for the amount of specific excess insurance based on differences among groups in size, types of employment, years in existence, and other relevant factors.

Sec. 407A.055. PREMIUM REQUIREMENTS. Each group must have an estimated premium subject to experience modifier of at least \$250,000 during the group's first year of operation. Thereafter, the annual standard premium must be at least \$500,000.

Sec. 407A.056. INDEMNITY AGREEMENT REQUIREMENTS. (a) An indemnity agreement filed under Section 407A.051 must jointly and severally bind the group and each employer who is a member of the group to meet the workers' compensation obligations of each member.

(b) The indemnity agreement must be in the form prescribed by the commissioner and must include minimum uniform substantive provisions as prescribed by the commissioner. Subject to the commissioner's approval, a group may add other provisions necessary because of that group's particular circumstances.

Sec. 407A.057. ADDITIONAL PERFORMANCE BOND REQUIREMENTS. In addition to the requirements under Section 407A.051, the commissioner may require a service company providing claim services to furnish a performance bond of \$250,000 in the form prescribed by the commissioner.

[Sections 407A.058-407A.100 reserved for expansion]

SUBCHAPTER C. TERMINATION OF CERTIFICATE OF APPROVAL

Sec. 407A.101. CERTIFICATE OF APPROVAL; TERMINATION. (a) A certificate of approval remains in effect until terminated at the request of the group or revoked by the commissioner.

(b) The commissioner may not grant the request of any group to terminate its certificate of approval unless the group has insured or reinsured all incurred workers' compensation obligations with an authorized insurer under an agreement filed with and approved in writing by the commissioner. For purposes of this subsection, those obligations include:

- (1) known claims and expenses associated with those claims; and
- (2) incurred but not reported claims and expenses associated with those claims.

[Sections 407A.102-407A.150 reserved for expansion]

SUBCHAPTER D. BOARD OF TRUSTEES

Sec. 407A.151. BOARD MEMBERSHIP. (a) Each group shall be operated by a board of trustees composed of at least five persons whom the members of the group elect for stated terms of office. The trustees must be employees, officers, or directors of employers who are members of the group. Each board member shall be a resident of this state or an officer of a corporation authorized to do business in this state.

(b) An administrator or service company of the group, or owner, officer, employee of, or any other person affiliated with the administrator or service company, may not serve on the board of trustees.

Sec. 407A.152. BOARD GENERAL POWERS AND DUTIES. The board of trustees shall:

- (1) maintain minutes of its meetings and make the minutes available to the commissioner;
- (2) designate an administrator and delineate in the written minutes of its meetings the areas of authority it delegates to the administrator; and
- (3) retain an independent certified public accountant to audit the financial statements required by Section 407A.251.

Sec. 407A.153. PROHIBITED ACTIVITIES. The board of trustees may not:

- (1) extend credit to individual members for payment of a premium, except under payment plans approved by the commissioner; or
- (2) without first advising the commissioner of the nature and purpose of the loan and obtaining prior approval from the commissioner, borrow any money from the group or in the name of the group except in the ordinary course of business.

Sec. 407A.154. GROUP FUNDS. The board of trustees shall maintain responsibility for all money collected or disbursed from the group.

[Sections 407A.155-407A.200 reserved for expansion]

SUBCHAPTER E. GROUP MEMBERSHIP; TERMINATION; LIABILITY

Sec. 407A.201. ADMISSION OF EMPLOYER AS MEMBER. (a) An employer who joins an approved workers' compensation self-insurance group shall:

- (1) submit an application for membership to the board of trustees or its administrator; and
- (2) enter into the indemnity agreement as required by Section 407A.056.

(b) The board of trustees shall maintain as a permanent record the employer's application for membership and the approval of the application.

(c) The membership of an individual member of a group is subject to cancellation by the group as provided by the bylaws of the group. An individual member may also elect to terminate participation in the group. The group shall notify the commissioner and the commission of the cancellation or termination of a membership not later than the 10th day after the date on which the cancellation or termination takes effect and shall maintain coverage of each canceled or terminated member until the 30th day after the date of the notice, at the terminating member's expense, unless before that date the commission notifies the group that the canceled or terminated member has:

- (1) obtained workers' compensation insurance coverage;
- (2) become a certified self-insurer; or
- (3) become a member of another group.

(d) The group shall pay each workers' compensation claim for which a member of the group incurs liability during the period of membership. A member who elects to terminate membership or whose membership is canceled by the group remains jointly and severally liable for the workers' compensation obligations of the group and its members incurred during the canceled or terminated member's period of membership.

(e) A member of a group is not relieved of workers' compensation liabilities incurred during its period of membership except through payment by the group or the member of required workers' compensation benefits.

(f) The insolvency or bankruptcy of a member does not relieve a group or any other member of the group of liability for the payment of any workers' compensation benefits incurred during the insolvent or bankrupt member's period of membership.

[Sections 407A.202-407A.250 reserved for expansion]

SUBCHAPTER F. EXAMINATIONS, FINANCIAL STATEMENTS, AND
OTHER REPORTS

Sec. 407A.251. FINANCIAL STATEMENT. (a) Each group shall submit to the commissioner financial statements audited by an independent certified public accountant on or before the last day of the sixth month following the end of the group's fiscal year.

(b) The financial statement must include a balance sheet, income statement, and statement of cash flow and must be prepared on the basis of accounting principles generally accepted in the United States.

(c) Loss reserves may be discounted subject to generally accepted accounting principles. The discounting must be documented in the notes accompanying the financial statement. Notwithstanding this subsection, dividends paid to members of the group must be based on undiscounted loss reserves.

(d) The actuarial opinion required by this section must be given by a member in good standing of the American Academy of Actuaries and Casualty Actuarial Society.

Sec. 407A.252. EXAMINATION. (a) The commissioner shall examine the financial condition of each group to determine the group's ability to meet the group's obligations under this subtitle. An examination under this section is subject to Article 1.15, Insurance Code, except that, to the extent of a conflict between this chapter and that article, this chapter prevails. The commissioner may examine a group annually for the first three years of the group's operation. Beginning with the fourth year of operation, the commissioner may not examine a group more frequently than once every three years unless the commissioner determines that the group:

(1) is in an impaired financial condition; or

(2) otherwise may not be able to continue to meet the group's obligations under this subtitle.

(b) The commissioner has full access to the records, officers, agents, and employees of a group as necessary to complete an examination under this section. The commissioner may recover the expenses of the examination under Article 1.16, Insurance Code, to the extent the maintenance tax under Section 407A.302 does not cover those expenses.

[Sections 407A.253-407A.300 reserved for expansion]

SUBCHAPTER G. TAXES, FEES, AND ASSESSMENTS

Sec. 407A.301. MAINTENANCE TAX FOR COMMISSION AND RESEARCH AND OVERSIGHT COUNCIL. (a) Each group shall pay a self-insurance group maintenance tax under this section for:

(1) the administration of the commission;

(2) the prosecution of workers' compensation insurance fraud in this state; and

(3) the Research and Oversight Council on Workers' Compensation.

(b) The tax liability of a group under Subsections (a)(1) and (2) is based on gross premium for the group's retention multiplied by the rate assessed insurance carriers under Sections 403.002 and 403.003.

(c) The tax liability of a group under Subsection (a)(3) is based on gross premium for the group's retention multiplied by the rate assessed insurance carriers under Section 404.003.

(d) The tax under this section does not apply to premium collected by the group for excess insurance.

(e) The tax under this section shall be collected by the comptroller as provided by Article 5.68, Insurance Code.

Sec. 407A.302. MAINTENANCE TAX FOR DEPARTMENT. (a) Subject to Subsection (b), each group shall pay the maintenance tax imposed under Article 5.68, Insurance Code, for the administrative costs incurred by the department in implementing this chapter.

(b) The tax liability of a group under this section is based on gross premium for the group's retention and does not include premium collected by the group for excess insurance.

(c) The maintenance tax assessed under this section is subject to Article 5.68, Insurance Code, and shall be collected by the comptroller in the manner provided by that article.

Sec. 407A.303. COLLECTION AND PAYMENT OF TAXES. (a) The group shall remit the taxes for deposit in the state treasury to the credit of the commission.

(b) A group commits a violation if the group does not pay the taxes imposed under Sections 407A.301 and 407A.302 in a timely manner. A violation under this subsection is a Class B administrative violation. Each day of noncompliance constitutes a separate violation.

(c) If the certificate of approval of a group is terminated, the commissioner or the executive director of the commission shall immediately notify the comptroller to collect taxes as directed under Sections 407A.301 and 407A.302.

Sec. 407A.304. PREMIUM TAX. (a) Each group shall pay to the comptroller a premium tax on gross premiums for the group's retention. The premium tax assessed under this subsection does not apply to premium collected for excess insurance.

(b) The rate for the premium tax under this section is the rate assessed under Article 4.10, Insurance Code.

[Sections 407A.305-407A.350 reserved for expansion]

SUBCHAPTER H. RATES; REFUNDS; PREMIUM PAYMENTS; RESERVES; DEFICITS

Sec. 407A.351. RATES. (a) Except as provided by Subsection (b), each group shall use the uniform classification system, experience rating plan, and rate relativities of the department.

(b) A group may:

(1) use the relativities promulgated by the department modified to produce rates in accordance with the group's historical experience; or

(2) file its own rates with the department, including any reasonable and supporting information required by the commissioner.

(c) As approved by the commissioner, a group may use rating debits or credits and optional rating plans.

(d) Rates of the group may not be excessive, inadequate, or unfairly discriminatory.

Sec. 407A.352. AUDITS. Each member of a group shall be audited annually by the administrator or by an auditor acceptable to the commissioner to verify proper classifications, experience rating, payroll, and rates. The group shall maintain a record of the audit as part of the group's records that are available to the commissioner during an examination conducted under Section 407A.252. The audit shall be performed at the expense of the group.

Sec. 407A.353. REFUNDS. (a) The board of trustees may declare refundable any money for a fund year in excess of the amount necessary to fund all obligations.

(b) The board of trustees shall give each member a written description of the group's refund plan at the time of application for membership.

Sec. 407A.354. PREMIUM PAYMENT PLAN; RESERVES. (a) Until the assets of a group reach a level sufficient to cover the group's liabilities, each group shall establish to the satisfaction of the commissioner a premium payment plan.

(b) As long as the assets of the group remain sufficient to cover the group's liabilities, the group may determine its own premium plan if the premium plan is disclosed to each member at the time of application and is filed with the commissioner.

(c) Each group shall establish and maintain actuarially appropriate loss reserves, which must include reserves for:

(1) known claims and expenses associated with those claims; and

(2) claims incurred but not reported and expenses associated with those claims.

(d) Each group shall establish and maintain bad debt reserves based on the historical experience of the group or of other groups composed of similar employer members.

Sec. 407A.355. DEFICITS; INSOLVENCIES. (a) For purposes of this section, "insolvent" means:

(1) the inability of a group to pay the group's outstanding lawful obligations as they mature in the regular course of business; or

(2) that the group's liabilities exceed the group's assets, determined without reducing liabilities by any reserve discount.

(b) If the assets of a group are at any time insufficient to enable the group to discharge its legal liabilities and other obligations and to maintain the reserves required under this chapter, the group shall make up the deficiency or levy an assessment on its members for the amount needed to make up the deficiency.

(c) In the event of a deficiency in any fund year, the deficiency shall be made up immediately from:

(1) surplus from a fund year other than the current fund year;

- (2) administrative funds;
- (3) assessments of the membership, if ordered by the group; or
- (4) any alternate method that the commissioner approves or directs.

(d) The commissioner shall be notified before any transfer of surplus funds from one fund year to another under Subsection (c).

(e) If the group fails to assess its members or to otherwise make up a deficit, the commissioner shall order the group to do so. If the commissioner determines that the group is in a hazardous financial condition, the commissioner may take action as provided by Article 21.28-A, Insurance Code, and may order the group to rectify the condition through an alternate method under Subsection (c)(4). The group is considered an insurer only for purposes of Article 21.28-A, Insurance Code. Otherwise, to the extent of a conflict between this chapter and that article, this chapter prevails.

(f) If the group fails to make the required assessment of its members after the commissioner's order under Subsection (e), or if the deficiency is not fully made up, the group shall be deemed to be insolvent.

(g) If a group is liquidated, the commissioner shall secure release of the security deposit and levy an assessment on the members of the group in an amount determined necessary by the commissioner to discharge all liabilities of the group, including the reasonable cost of liquidation.

[Sections 407A.356-407A.400 reserved for expansion]

SUBCHAPTER I. DISCIPLINARY ACTIONS; PENALTIES

Sec. 407A.401. PROHIBITED SOLICITATION. In connection with the solicitation of membership in a group, a person may not make an untrue statement of a material fact, or omit to state a material fact necessary to make the statement made, in light of the circumstances under which it is made, not misleading.

Sec. 407A.402. FINES. After notice and an opportunity for a hearing, the commissioner may impose a fine on any person or group found to be in violation of this chapter or a rule adopted under this chapter. A fine assessed under this section may not exceed \$1,000 for each act or violation and may not exceed \$10,000 in the aggregate. The amount of any fine assessed under this section shall be paid to the commissioner and deposited in the state treasury.

Sec. 407A.403. CEASE AND DESIST ORDERS. (a) After notice and an opportunity for a hearing, the commissioner may issue an order requiring a person or group to cease and desist from engaging in an act or practice found to be in violation of this chapter or a rule adopted under this chapter.

(b) On a finding, after notice and opportunity for a hearing, that a person or group has violated a cease and desist order issued under this section, the commissioner may:

- (1) impose a fine not to exceed \$1,000 for each violation of the order, not to exceed an aggregate fine of \$100,000;
- (2) revoke the group's certificate of approval or any license held by the person issued under the Insurance Code; or
- (3) impose the fine and revoke the certificate or license.

Sec. 407A.404. REVOCATION OF CERTIFICATE OF APPROVAL. (a) After notice and an opportunity for a hearing, the commissioner may revoke a group's certificate of approval if the group:

- (1) is found to be insolvent;
- (2) fails to pay a tax, assessment, or special fund contribution imposed on the group; or
- (3) fails to comply in a timely manner with this chapter, a rule adopted under this chapter, or an order of the commissioner.

(b) In addition, the commissioner may revoke a group's certificate of approval if, after notice and an opportunity for hearing, the commissioner determines that:

- (1) a certificate of approval issued to the group was obtained by fraud;
- (2) there was a material misrepresentation in the application for the certificate of approval; or
- (3) the group or its administrator has misappropriated, converted, illegally withheld, or refused to pay on proper demand any money that belongs to a member, an employee of a member, or a person otherwise entitled to the money and that has been entrusted to the group or its administrator in their fiduciary capacities.

SECTION 2. Section 401.011(27), Labor Code, is amended to read as follows:

- (27) "Insurance carrier" means:
 - (A) an insurance company;
 - (B) a certified self-insurer for workers' compensation insurance;
 - [✂]
 - (C) a certified self-insurance group under Chapter 407A; or
 - (D) a governmental entity that self-insures, either individually or collectively.

SECTION 3. (a) Except as provided by Subsection (b) of this section, this Act takes effect September 1, 2003.

(b) A workers' compensation self-insurance group created under Chapter 407A, Labor Code, as added by this Act, that is issued a certificate of approval by the commissioner of insurance under that chapter, may offer workers' compensation insurance coverage beginning January 1, 2004. Chapter 407A, Labor Code, as added by this Act, applies only to a claim for workers' compensation benefits based on a compensable injury that occurs on or after January 1, 2004. A claim based on a compensable injury that occurs before that date is governed by the law in effect on the date that the compensable injury occurred, and the former law is continued in effect for that purpose.

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

Amend **CSHB 2095**, in SECTION 1 of the bill, in added Section 407A.251, Labor Code, by striking Subsection (d) of that section (page 6, lines 55-57, senate committee printing) and substituting the following:

(d) The audited financial statements required by this section must be accompanied by an actuarial opinion on the adequacy of the group's loss reserves, including the reasonableness of any reserve discount. The actuarial opinion must be given by a member in good standing of the American Academy of Actuaries and the Casualty Actuarial Society.

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

Amend **CSHB 2095** as follows:

(1) In SECTION 1 of the bill, in added Section 407A.053(c), Labor Code (page 4, line 23, senate committee printing), strike "not to exceed \$300,000" and substitute "equal to the greater of \$300,000 or 25 percent of the group's total incurred liabilities for workers' compensation".

(2) In SECTION 1 of the bill, in added Subchapter H, Chapter 407A, Labor Code (page 9, between lines 10 and 11, senate committee printing), insert the following new Sections 407A.356 and 407A.357:

Sec. 407A.356. GUARANTY MECHANISM. (a) In the event of a liquidation under Section 407A.355, after exhausting the security required under Section 407A.053 and levying an assessment against the members of an insolvent group under Section 407A.355(g), the commissioner shall levy an assessment against all groups as necessary to ensure prompt payment of:

(1) benefits; and

(2) expenses related to payment of benefits.

(b) The assessment under this section on each group shall be based on the proportion that the premium of each group bears to the total premium of all groups.

(c) The commissioner may exempt a group from assessment under this section on a determination that the payment of the assessment would render the group insolvent.

(d) The assessment under this section does not relieve any member of an insolvent group of its joint and several liability.

(e) Subject to Section 407A.357(d), this section expires on creation of the Texas Group Self-Insurance Guaranty Association under Section 407A.357.

Sec. 407A.357. TEXAS GROUP SELF-INSURANCE GUARANTY ASSOCIATION; ADVISORY COMMITTEE. (a) Subject to Subsection (d), the Texas Group Self-Insurance Guaranty Association shall be established not later than January 1, 2006, based on recommendations from the guaranty association advisory committee established under Subsection (b). The guaranty association shall provide for the payment of workers' compensation insurance benefits and expenses related to payment of those benefits for the injured employees of an insolvent group.

(b) The guaranty association advisory committee is composed of the following voting members:

(1) three members who represent different groups under this chapter, subject to Subsection (c);

(2) one commission member who represents wage earners;

(3) one member designated by the commissioner; and

(4) the public counsel of the office of public insurance counsel.

(c) If three groups under this chapter have not been established by July 1, 2004, the advisory committee shall include representatives of any certified groups, and the commissioner shall choose the remaining voting members under Subsection (b)(1):

(1) from members of a bona fide trade association in this state that is eligible for and has applied for a certificate of approval; or

(2) if an association described by Subdivision (1) does not exist as of July 1, 2004, from any association in this state representing employers in the same or a similar business that has been in existence for at least five years for purposes other than obtaining insurance coverage.

(d) If the advisory committee under this section recommends that a guaranty association not be created, the guaranty mechanism under Section 407A.356 continues in effect.

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

Amend **CSHB 2095** as follows:

(1) Insert the following new SECTIONS in the bill (page 10, between lines 1 and 2, senate committee printing):

SECTION 3. Article 5.57A(a)(3), Insurance Code, is amended to read as follows:

(3) "Group" means:

(A) two or more business entities that join together with the approval of the Board to purchase individual workers' compensation insurance policies covering each business entity that is a part of the group; or

(B) two or more members of a trade association of business entities that join together to purchase individual workers' compensation insurance policies covering each participating trade association member.

SECTION 4. Articles 5.57A(b) and (c), Insurance Code, are amended to read as follows:

(b) On receiving approval of the Board as provided by this article, two or more business entities or two or more members of a trade association may join together to form a group to purchase individual workers' compensation insurance policies covering each member of the group.

(c) To be eligible to join a group, a business entity must be:

(1) engaged in a business pursuit that is the same as or similar to the other business entities participating in the group as determined by the Board; or

(2) a member of the same trade association as the other business entities participating in the group.

(2) Renumber existing SECTION 3 of the bill (page 10, line 2, senate committee printing) as SECTION 5 of the bill.

HB 2319 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

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

HB 2319, A bill to be entitled An Act relating to juvenile delinquency; providing a criminal penalty.

On motion of Representative Dutton, the house concurred in the senate amendments to **HB 2319**.

Senate Committee Substitute

HB 2319, A bill to be entitled An Act relating to juvenile delinquency; providing a criminal penalty.

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

SECTION 1. Section 51.02(16), Family Code, is amended to read as follows:

(16) "Traffic offense" means:

(A) a violation of a penal statute cognizable under Chapter 729, Transportation Code, except for:

(i) conduct constituting an offense under Section 521.457, Transportation Code;

(ii) conduct constituting an offense under Section 550.021, Transportation Code;

(iii) ~~[(+)]~~ conduct constituting an offense punishable as a Class B misdemeanor under Section 550.022, Transportation Code; ~~or~~

(iv) ~~[(+++)]~~ conduct constituting an offense punishable as a Class B misdemeanor under Section 550.024, Transportation Code; or

(v) conduct constituting an offense punishable as a Class B misdemeanor under Section 550.025, Transportation Code; or

(B) a violation of a motor vehicle traffic ordinance of an incorporated city or town in this state.

SECTION 2. Section 51.041(a), Family Code, is amended to read as follows:

(a) The court retains jurisdiction over a person, without regard to the age of the person, for conduct engaged in by the person before becoming 17 years of age if, as a result of an appeal by the person or the state under Chapter 56 or by the person under Article 44.47, Code of Criminal Procedure, of an order of the court, the order is reversed or modified and the case remanded to the court by the appellate court.

SECTION 3. Section 51.08(d), Family Code, is amended to read as follows:

(d) A court that has implemented a juvenile case manager program under Article 45.056 ~~[45.054]~~, Code of Criminal Procedure, may, but is not required to, waive its original jurisdiction under Subsection (b)(1).

SECTION 4. Section 51.10, Family Code, is amended by adding Subsections (j)-(l) to read as follows:

(j) The juvenile board of a county may make available to the public the list of attorneys eligible for appointment to represent children in proceedings under this title as provided in the plan adopted under Section 51.102. The list of attorneys must indicate the level of case for which each attorney is eligible for appointment under Section 51.102(b)(2).

(k) Subject to Chapter 61, the juvenile court may order the parent or other person responsible for support of the child to reimburse the county for payments the county made to counsel appointed to represent the child under Subsection (f) or (g). The court may:

(1) order payment for each attorney who has represented the child at any hearing, including a detention hearing, discretionary transfer hearing, adjudication hearing, disposition hearing, or modification of disposition hearing;

(2) include amounts paid to or on behalf of the attorney by the county for preparation time and investigative and expert witness costs; and

(3) require full or partial reimbursement to the county.

(l) The court may not order payments under Subsection (k) that exceed the financial ability of the parent or other person responsible for support of the child to meet the payment schedule ordered by the court.

SECTION 5. Section 51.101, Family Code, as added by Chapter 906, Acts of the 77th Legislature, Regular Session, 2001, is renumbered as Section 51.102 and amended to read as follows:

Sec. 51.102 [~~51.101~~]. APPOINTMENT OF COUNSEL PLAN. (a) The juvenile board in each county shall adopt a plan that:

(1) specifies the qualifications necessary for an attorney to be included on an appointment list from which attorneys are appointed to represent children in proceedings under this title; and

(2) establishes the procedures for:

(A) including attorneys on the appointment list and removing attorneys from the list; and

(B) appointing attorneys from the appointment list to individual cases.

(b) A plan adopted under Subsection (a) must:

(1) to the extent practicable, comply with the requirements of Article 26.04, Code of Criminal Procedure, except that:

(A) the income and assets of the child's parent or other person responsible for the child's support must be used in determining whether the child is indigent; and

(B) any alternative plan for appointing counsel is established by the juvenile board in the county; and

(2) recognize the differences in qualifications and experience necessary for appointments to cases in which:

(A) the allegation is:

(i) conduct indicating a need for supervision or [;]

[~~(ii)~~] delinquent conduct, and commitment to the Texas Youth Commission is not an authorized disposition; or

(ii) [~~(iii)~~] delinquent conduct, and commitment to the Texas Youth Commission without a determinate sentence is an authorized disposition; or

(B) determinate sentence proceedings have been initiated[;] or

[~~(C)~~] proceedings for discretionary transfer to criminal court have been initiated.

SECTION 6. Section 51.13(d), Family Code, is amended to read as follows:

(d) An adjudication under Section 54.03 that a child engaged in conduct that occurred on or after January 1, 1996, and that constitutes a felony offense resulting in commitment to the Texas Youth Commission under Section 54.04(d)(2), (d)(3), or (m) or 54.05(f) is a final felony conviction only for the purposes of Sections 12.42(a), (b), (c)(1), [12.42(a) - (e)] and (e), Penal Code.

SECTION 7. Section 51.17, Family Code, is amended by adding Subsections (d), (e), and (f) to read as follows:

(d) When on the motion for appointment of an interpreter by a party or on the motion of the juvenile court, in any proceeding under this title, the court determines that the child, the child's parent or guardian, or a witness does not understand and speak English, an interpreter must be sworn to interpret for the person as provided by Article 38.30, Code of Criminal Procedure.

(e) In any proceeding under this title, if a party notifies the court that the child, the child's parent or guardian, or a witness is deaf, the court shall appoint a qualified interpreter to interpret the proceedings in any language, including sign language, that the deaf person can understand, as provided by Article 38.31, Code of Criminal Procedure.

(f) Any requirement under this title that a document contain a person's signature, including the signature of a judge or a clerk of the court, is satisfied if the document contains the signature of the person as captured on an electronic device or as a digital signature. Article 2.26, Code of Criminal Procedure, applies in a proceeding held under this title.

SECTION 8. Sections 52.01(a) and (c), Family Code, are amended to read as follows:

(a) A child may be taken into custody:

(1) pursuant to an order of the juvenile court under the provisions of this subtitle;

(2) pursuant to the laws of arrest;

(3) by a law-enforcement officer, including a school district peace officer commissioned under Section 37.081, Education Code, if there is probable cause to believe that the child has engaged in:

(A) conduct that violates a penal law of this state or a penal ordinance of any political subdivision of this state; ~~or~~

(B) delinquent conduct or conduct indicating a need for supervision; or

(C) conduct that violates a condition of probation imposed by the juvenile court;

(4) by a probation officer if there is probable cause to believe that the child has violated a condition of probation imposed by the juvenile court; or

(5) pursuant to a directive to apprehend issued as provided by Section 52.015.

(c) A law-enforcement officer authorized to take a child into custody under Subdivisions (2) and (3) of Subsection (a) of this section may issue a warning notice to the child in lieu of taking the child into custody if:

(1) guidelines for warning disposition have been issued by the law-enforcement agency in which the officer works;

(2) the guidelines have been approved by the juvenile board ~~[court]~~ of the county in which the disposition is made;

(3) the disposition is authorized by the guidelines;

(4) the warning notice identifies the child and describes the child's alleged conduct;

(5) a copy of the warning notice is sent to the child's parent, guardian, or custodian as soon as practicable after disposition; and

(6) a copy of the warning notice is filed with the law-enforcement agency and the office or official designated by the juvenile board.

SECTION 9. Section 52.02(a), Family Code, is amended to read as follows:

(a) Except as provided by Subsection (c), a person taking a child into custody, without unnecessary delay and without first taking the child to any place other than a juvenile processing office designated under Section 52.025, shall do one of the following:

(1) release the child to a parent, guardian, custodian of the child, or other responsible adult upon that person's promise to bring the child before the juvenile court as requested by the court;

(2) bring the child before the office or official designated by the juvenile board if there is probable cause to believe that the child engaged in delinquent conduct, ~~[or]~~ conduct indicating a need for supervision, or conduct that violates a condition of probation imposed by the juvenile court;

(3) bring the child to a detention facility designated by the juvenile board;

(4) bring the child to a secure detention facility as provided by Section 51.12(j);

(5) bring the child to a medical facility if the child is believed to suffer from a serious physical condition or illness that requires prompt treatment; or

(6) dispose of the case under Section 52.03.

SECTION 10. Section 52.03(d), Family Code, is amended to read as follows:

(d) Statistics indicating the number and kind of dispositions made by a law-enforcement agency under the authority of this section shall be reported at least annually to the office or official designated by the juvenile board, as ordered by the board ~~[court]~~.

SECTION 11. Section 52.04(d), Family Code, is amended to read as follows:

(d) On referral of the case of a child who has not been taken into custody to the office or official designated by the juvenile board ~~[court]~~, the office or official designated by the juvenile board ~~[court]~~ shall promptly give notice of the referral and a statement of the reason for the referral to the child's parent, guardian, or custodian.

SECTION 12. Sections 53.01(a) and (c), Family Code, are amended to read as follows:

(a) On referral of a person believed to be a child or on referral of the person's case to the office or official designated by the juvenile board, the intake officer, probation officer, or other person authorized by the board ~~[court]~~ shall conduct a preliminary investigation to determine whether:

(1) the person referred to juvenile court is a child within the meaning of this title; and

(2) there is probable cause to believe the person:

(A) engaged in delinquent conduct or conduct indicating a need for supervision; or

(B) is a nonoffender who has been taken into custody and is being held solely for deportation out of the United States.

(c) When custody of a child is given to the office or official designated by the juvenile board, the intake officer, probation officer, or other person authorized by the board ~~[court]~~ shall promptly give notice of the whereabouts of the child and a statement of the reason the child was taken into custody to the child's parent, guardian, or custodian unless the notice given under Section 52.02(b) provided fair notice of the child's present whereabouts.

SECTION 13. Section 53.03, Family Code, is amended by amending Subsection (d) and adding Subsections (i) and (j) to read as follows:

(d) The juvenile board ~~[court]~~ may adopt a fee schedule for deferred prosecution services and rules for the waiver of a fee for financial hardship in accordance with guidelines that the Texas Juvenile Probation Commission shall provide. The maximum fee is \$15 a month. If the board ~~[court]~~ adopts a schedule and rules for waiver, the probation officer or other designated officer of the court shall collect the fee authorized by the schedule from the parent, guardian, or custodian of a child for whom a deferred prosecution is authorized under this section or waive the fee in accordance with the rules adopted by the board ~~[court]~~. The officer shall deposit the fees received under this section in the county treasury to the credit of a special fund that may be used only for juvenile probation or community-based juvenile corrections services or facilities in which a juvenile may be required to live while under court supervision. If the board ~~[court]~~ does not adopt a schedule and rules for waiver, a fee for deferred prosecution services may not be imposed.

(i) The court may defer prosecution for a child at any time:

(1) for an adjudication that is to be decided by a jury trial, before the jury is sworn;

(2) for an adjudication before the court, before the first witness is sworn; or

(3) for an uncontested adjudication, before the child pleads to the petition or agrees to a stipulation of evidence.

(j) The court may add the period of deferred prosecution under Subsection (i) to a previous order of deferred prosecution, except that the court may not place the child on deferred prosecution for a combined period longer than one year.

SECTION 14. Section 54.01, Family Code, is amended by amending Subsections (b), (m), (o), and (q) and adding Subsection (r) to read as follows:

(b) Reasonable notice of the detention hearing, either oral or written, shall be given, stating the time, place, and purpose of the hearing. Notice shall be given to the child and, if they can be found, to his parents, guardian, or custodian. Prior to the commencement of the hearing, the court shall inform the parties of the child's right to counsel and to appointed counsel if they are indigent and of the child's right to remain silent with respect to any allegations of delinquent conduct, ~~or~~ conduct indicating a need for supervision, or conduct that violates an order of probation imposed by a juvenile court.

(m) The detention hearing required in this section may be held in the county of the designated place of detention where the child is being held even though the designated place of detention is outside the county of residence of the child or the county in which the alleged delinquent conduct, ~~or~~ conduct indicating a need for supervision, or probation violation occurred.

(o) The court or referee shall find whether there is probable cause to believe that a child taken into custody without an arrest warrant or a directive to apprehend has engaged in delinquent conduct, ~~or~~ conduct indicating a need for supervision, or conduct that violates an order of probation imposed by a juvenile court. The court or referee must make the finding within 48 hours, including weekends and holidays, of the time the child was taken into custody. The court or referee may make the finding on any reasonably reliable information without regard to admissibility of that information under the Texas Rules of ~~Criminal~~ Evidence. A finding of probable cause is required to detain a child after the 48th hour after the time the child was taken into custody. If a court or referee finds probable cause, additional findings of probable cause are not required in the same cause to authorize further detention.

(q) If a child has not been released under Section 53.02 or this section and a petition has not been filed under Section 53.04 or 54.05 concerning the child, the court shall order the child released from detention not later than:

(1) the 30th working day after the date the initial detention hearing is held, if the child is alleged to have engaged in conduct constituting a capital felony, an aggravated controlled substance felony, or a felony of the first degree; or

(2) the 15th working day after the date the initial detention hearing is held, if the child is alleged to have engaged in conduct constituting an offense other than an offense listed in Subdivision (1) or conduct that violates an order of probation imposed by a juvenile court.

(r) On the conditional release of a child from detention by judicial order under Subsection (f), the court, referee, or detention magistrate may order that the child's parent, guardian, or custodian present in court at the detention hearing engage in acts or omissions specified by the court, referee, or detention magistrate that will assist the child in complying with the conditions of release. The order must be in writing and a copy furnished to the parent, guardian, or custodian. An order entered under this subsection may be enforced as provided by Chapter 61.

SECTION 15. The heading to Section 54.011, Family Code, is amended to read as follows:

Sec. 54.011. DETENTION HEARINGS FOR STATUS OFFENDERS AND NONOFFENDERS; PENALTY.

SECTION 16. Section 54.011, Family Code, is amended by adding Subsection (f) to read as follows:

(f) Except as provided by Subsection (a), a nonoffender, including a person who has been taken into custody and is being held solely for deportation out of the United States, may not be detained for any period of time in a secure detention facility or secure correctional facility, regardless of whether the facility is publicly or privately operated. A nonoffender who is detained in violation of this subsection is entitled to immediate release from the facility and may bring a civil action for compensation for the illegal detention against any person responsible for the detention. A person commits an offense if the person knowingly detains or assists in detaining a nonoffender in a secure detention facility or secure correctional facility in violation of this subsection. An offense under this subsection is a Class B misdemeanor.

SECTION 17. Section 54.03(i), Family Code, is amended to read as follows:

(i) In order to preserve for appellate or collateral review the failure of the court to provide the child the explanation required by Subsection (b), the attorney for the child must comply with Rule 33.1 [~~52(a)~~], Texas Rules of Appellate Procedure, before testimony begins or, if the adjudication is uncontested, before the child pleads to the petition or agrees to a stipulation of evidence.

SECTION 18. Sections 54.032(a) and (f), Family Code, are amended to read as follows:

(a) A juvenile court may defer adjudication proceedings under Section 54.03 for not more than 180 days if the child:

(1) is alleged to have engaged in conduct indicating a need for supervision that violated a penal law of this state of the grade of misdemeanor that is punishable by fine only or a penal ordinance of a political subdivision of this state;

(2) waives, under Section 51.09, the privilege against self-incrimination and testifies under oath that the allegations are true;

(3) presents to the court an oral or written request to attend a teen court program; and

(4) has not successfully completed a teen court program [~~for the violation of the same penal law or ordinance~~] in the two years preceding the date that the alleged conduct occurred.

(f) A court may transfer a case in which proceedings have been deferred as provided by this section to a court in another [~~a contiguous~~] county if the court to which the case is transferred consents. A case may not be transferred unless it is within the jurisdiction of the court to which it is transferred.

SECTION 19. Section 54.041(a), Family Code, is amended to read as follows:

(a) When a child has been found to have engaged in delinquent conduct or conduct indicating a need for supervision and the juvenile court has made a finding that the child is in need of rehabilitation or that the protection of the public or the child requires that disposition be made, the juvenile court, on notice by any reasonable method to all persons affected, may:

(1) order any person found by the juvenile court to have, by a wilful act or omission, contributed to, caused, or encouraged the child's delinquent conduct or conduct indicating a need for supervision to do any act that the juvenile court determines to be reasonable and necessary for the welfare of the child or to refrain from doing any act that the juvenile court determines to be injurious to the welfare of the child;

(2) enjoin all contact between the child and a person who is found to be a contributing cause of the child's delinquent conduct or conduct indicating a need for supervision; ~~[or]~~

(3) after notice and a hearing of all persons affected order any person living in the same household with the child to participate in social or psychological counseling to assist in the rehabilitation of the child and to strengthen the child's family environment; or

(4) after notice and a hearing of all persons affected order the child's parent or other person responsible for the child's support to pay all or part of the reasonable costs of treatment programs in which the child is required to participate during the period of probation if the court finds the child's parent or person responsible for the child's support is able to pay the costs.

SECTION 20. Sections 54.042(c) and (d), Family Code, are amended to read as follows:

(c) The order under Subsection (a)(1) shall specify a period of suspension or denial ~~[that is until the child reaches the age of 19 or for a period]~~ of 365 days; ~~whichever is longer~~.

(d) The order under Subsection (b) shall specify a period of suspension or denial ~~[that is]~~:

(1) ~~[for a period]~~ not to exceed 365 days; or

(2) of 365 days if the court finds the child has been previously adjudicated as having engaged in conduct violating Section 28.08, Penal Code; ~~until the child reaches the age of 19 or for a period not to exceed 365 days, whichever is longer~~.

SECTION 21. Section 54.05, Family Code, is amended by amending Subsection (k) and adding Subsection (l) to read as follows:

(k) The court may modify a disposition under Subsection (f) that is based on an adjudication ~~[a finding]~~ that the child engaged in delinquent conduct that violates a penal law of the grade of misdemeanor if:

(1) the child has been adjudicated as having engaged in delinquent conduct violating a penal law of the grade of felony or misdemeanor on at least one ~~[two]~~ previous occasion before the adjudication that prompted the disposition that is being modified ~~[occasions]~~; and

(2) ~~[of the previous adjudications,]~~ the conduct that was the basis ~~[for one]~~ of the adjudication that prompted the disposition that is being modified ~~[adjudications]~~ occurred after the date of the ~~[another]~~ previous adjudication.

(l) The court may extend a period of probation under this section at any time during the period of probation or, if a motion for revocation or modification of probation is filed before the period of supervision ends, before the first anniversary of the date on which the period of probation expires.

SECTION 22. Section 54.051, Family Code, is amended by amending Subsection (e) and adding Subsections (e-1), (e-2), (e-3), (g), (h), and (i) to read as follows:

(e) A district court that exercises jurisdiction over a child transferred under Subsection (d) shall place the child on community supervision under Article 42.12, Code of Criminal Procedure, for the remainder of the child's probationary period and under conditions consistent with those ordered by the juvenile court.

(e-1) The restrictions on a judge placing a defendant on community supervision imposed by Section 3g, Article 42.12, Code of Criminal Procedure, do not apply to a case transferred from the juvenile court. The minimum period of community supervision imposed by Section 3(b), Article 42.12, Code of Criminal Procedure, does not apply to a case transferred from the juvenile court.

(e-2) If a child who is placed on community supervision under this section ~~[subsection]~~ violates a condition of that supervision or if the child violated a condition of probation ordered under Section 54.04(q) and that probation violation was not discovered by the state before the child's 18th birthday, the district court shall dispose of the violation of community supervision or probation, as appropriate, in the same manner as if the court had originally exercised jurisdiction over the case. If the judge revokes community supervision, the judge may reduce the prison sentence to any length without regard to the minimum term imposed by Section 23(a), Article 42.12, Code of Criminal Procedure.

(e-3) The time that a child serves on probation ordered under Section 54.04(q) is the same as time served on community supervision ordered under this section ~~[subsection]~~ for purposes of determining the child's eligibility for early discharge from community supervision under Section 20, Article 42.12, Code of Criminal Procedure.

(g) If the juvenile court places the child on probation for an offense for which registration as a sex offender is required by Chapter 62, Code of Criminal Procedure, and defers the registration requirement until completion of treatment for the sex offense under Article 62.13, Code of Criminal Procedure, the authority under that article to reexamine the need for registration on completion of treatment is transferred to the court to which probation is transferred.

(h) If the juvenile court places the child on probation for an offense for which registration as a sex offender is required by Chapter 62, Code of Criminal Procedure, and the child registers, the authority of the court to excuse further compliance with the registration requirement under Articles 62.13(l)-(r), Code of Criminal Procedure, is transferred to the court to which probation is transferred.

(i) If the juvenile court exercises jurisdiction over a person who is 18 years of age or older under Section 51.041 or 51.0412, the court or jury may, if the person is otherwise eligible, place the person on probation under Section 54.04(q). The juvenile court shall set the conditions of probation and immediately transfer supervision of the person to the appropriate court exercising criminal jurisdiction under Subsection (e).

SECTION 23. Section 54.07, Family Code, is amended to read as follows:

Sec. 54.07. ENFORCEMENT OF ORDER. (a) Except as provided by Subsection (b) or a juvenile court child support order, any ~~Any~~ order of the juvenile court may be enforced as provided by Chapter 61 ~~[by contempt]~~.

(b) A violation of any of the following orders of the ~~The~~ juvenile court may not be enforced by contempt of court proceedings against the child:

(1) an order setting conditions of probation;

(2) an order setting conditions of deferred prosecution; and

(3) an order setting conditions of release from detention ~~[enforce its order for support or for the payment of restitution or probation fees by civil contempt proceedings after 10 days' notice to the defaulting person of his failure or refusal to carry out the terms of the order].~~

(c) This section and Chapter 61 do not preclude a ~~[On the motion of the]~~ juvenile court from summarily finding ~~[or any person or agency entitled to receive restitution or probation payments or payments for the benefit of]~~ a child or other ~~[, the juvenile court may render judgment against a defaulting]~~ person in direct contempt of the juvenile court for conduct occurring in the presence of the judge of the court. Direct contempt of the juvenile court by a child is punishable by a maximum of ~~[for any amount unpaid and owing after]~~ 10 days' confinement in a secure juvenile detention facility or by a maximum of 40 hours of community service, or both. The juvenile court may not impose a fine on a child for direct contempt ~~[notice to the defaulting person of his failure or refusal to carry out the terms of the order. The judgment may be enforced by any means available for the enforcement of judgments for other debts].~~

(d) This section and Chapter 61 do not preclude a juvenile court in an appropriate case from using a civil or coercive contempt proceeding to enforce an order.

SECTION 24. Section 54.11, Family Code, is amended by adding Subsections (l)-(n) to read as follows:

(l) Pending the conclusion of a transfer hearing, the juvenile court shall order that the person who is referred for transfer be detained in a certified juvenile detention facility as provided by Subsection (m). If the person is at least 17 years of age, the juvenile court may order that the person be detained without bond in an appropriate county facility for the detention of adults accused of criminal offenses.

(m) The detention of a person in a certified juvenile detention facility must comply with the detention requirements under this title, except that, to the extent practicable, the person must be kept separate from children detained in the same facility.

(n) If the juvenile court orders that a person who is referred for transfer be detained in a county facility under Subsection (l), the county sheriff shall take custody of the person under the juvenile court's order.

SECTION 25. Chapter 56, Family Code, is amended by adding Section 56.03 to read as follows:

Sec. 56.03. APPEAL BY STATE IN CASES OF VIOLENT OR HABITUAL OFFENDER. (a) In this section, "prosecuting attorney" means the county attorney, district attorney, or criminal district attorney who has the primary responsibility of presenting cases in the juvenile court. The term does not include an assistant prosecuting attorney.

(b) The state is entitled to appeal an order of a court in a juvenile case in which the grand jury has approved of the petition under Section 53.045 if the order:

- (1) dismisses a petition or any portion of a petition;
- (2) arrests or modifies a judgment;
- (3) grants a new trial;
- (4) sustains a claim of former jeopardy; or
- (5) grants a motion to suppress evidence, a confession, or an admission

and if:

(A) jeopardy has not attached in the case;

(B) the prosecuting attorney certifies to the trial court that the appeal is not taken for the purpose of delay; and

(C) the evidence, confession, or admission is of substantial importance in the case.

(c) The prosecuting attorney may not bring an appeal under Subsection (b) later than the 15th day after the date on which the order or ruling to be appealed is entered by the court.

(d) The state is entitled to a stay in the proceedings pending the disposition of an appeal under Subsection (b).

(e) The court of appeals shall give preference in its docket to an appeal filed under Subsection (b).

(f) The state shall pay all costs of appeal under Subsection (b), other than the cost of attorney's fees for the respondent.

(g) If the respondent is represented by appointed counsel, the counsel shall continue to represent the respondent as appointed counsel on the appeal. If the respondent is not represented by appointed counsel, the respondent may seek the appointment of counsel to represent the respondent on appeal. The juvenile court shall determine whether the parent or other person responsible for support of the child is financially able to obtain an attorney to represent the respondent on appeal. If the court determines that the parent or other person is financially unable to obtain counsel for the appeal, the court shall appoint counsel to represent the respondent on appeal.

(h) If the state appeals under this section and the respondent is not detained, the court shall permit the respondent to remain at large subject only to the condition that the respondent appear in court for further proceedings when required by the court. If the respondent is detained, on the state's filing of notice

of appeal under this section, the respondent is entitled to immediate release from detention on the allegation that is the subject of the appeal. The court shall permit the respondent to remain at large regarding that allegation subject only to the condition that the respondent appear in court for further proceedings when required by the court.

(i) The Texas Rules of Appellate Procedure apply to a petition by the state to the supreme court for review of a decision of a court of appeals in a juvenile case.

SECTION 26. Section 58.003(n), Family Code, is amended to read as follows:

(n) A record created or maintained under Chapter 62, Code of Criminal Procedure [~~Article 6252-13e.1, Revised Statutes~~], may not be sealed under this section if the person who is the subject of the record has a continuing obligation to register under that chapter [~~article~~].

SECTION 27. Section 58.005(a), Family Code, is amended to read as follows:

(a) Records and files concerning a child, including personally identifiable information, and information [~~Information~~] obtained for the purpose of diagnosis, examination, evaluation, or treatment or for making a referral for treatment of a child by a public or private agency or institution providing supervision of a child by arrangement of the juvenile court or having custody of the child under order of the juvenile court may be disclosed only to:

(1) the professional staff or consultants of the agency or institution;
(2) the judge, probation officers, and professional staff or consultants of the juvenile court;

(3) an attorney for the child;

(4) a governmental agency if the disclosure is required or authorized by law;

(5) a person or entity to whom the child is referred for treatment or services if the agency or institution disclosing the information has entered into a written confidentiality agreement with the person or entity regarding the protection of the disclosed information;

(6) the Texas Department of Criminal Justice and the Texas Juvenile Probation Commission for the purpose of maintaining statistical records of recidivism and for diagnosis and classification; or

(7) with leave of the juvenile court, any other person, agency, or institution having a legitimate interest in the proceeding or in the work of the court.

SECTION 28. Title 3, Family Code, is amended by adding Chapter 61 to read as follows:

CHAPTER 61. RIGHTS AND RESPONSIBILITIES OF PARENTS AND
OTHER ELIGIBLE PERSONS
SUBCHAPTER A. ENTRY OF ORDERS AGAINST PARENTS AND OTHER
ELIGIBLE PERSONS

Sec. 61.001. DEFINITIONS. In this chapter:

(1) "Juvenile court order" means an order by a juvenile court in a proceeding to which this chapter applies requiring a parent or other eligible person to act or refrain from acting.

(2) "Other eligible person" means the respondent's guardian, the respondent's custodian, or any other person described in a provision under this title authorizing the court order.

Sec. 61.002. APPLICABILITY. (a) Except as provided by Subsection (b), this chapter applies to a proceeding to enter a juvenile court order:

(1) for payment of probation fees under Section 54.061;

(2) for restitution under Sections 54.041(b) and 54.048;

(3) for payment of graffiti eradication fees under Section 54.0461;

(4) for community service under Section 54.044(b);

(5) for payment of costs of court under Section 54.0411 or other provisions of law;

(6) requiring the person to refrain from doing any act injurious to the welfare of the child under Section 54.041(a)(1);

(7) enjoining contact between the person and the child who is the subject of a proceeding under Section 54.041(a)(2);

(8) ordering a person living in the same household with the child to participate in counseling under Section 54.041(a)(3);

(9) requiring a parent or guardian of a child found to be truant to participate in an available program addressing truancy under Section 54.041(g);

(10) requiring a parent or other eligible person to pay reasonable attorney's fees for representing the child under Section 51.10(e);

(11) requiring the parent or other eligible person to reimburse the county for payments the county has made to an attorney appointed to represent the child under Section 51.10(i);

(12) requiring payment of deferred prosecution supervision fees under Section 53.03(d);

(13) requiring a parent or other eligible person to attend a court hearing under Section 51.115;

(14) requiring a parent or other eligible person to act or refrain from acting to aid the child in complying with conditions of release from detention under Section 54.01(r); or

(15) requiring a parent or other eligible person to act or refrain from acting under any law imposing an obligation of action or omission on a parent or other eligible person because of the parent's or person's relation to the child who is the subject of a proceeding under this title.

(b) This subchapter does not apply to the entry and enforcement of a child support order under Section 54.06.

Sec. 61.003. ENTRY OF JUVENILE COURT ORDER AGAINST PARENT OR OTHER ELIGIBLE PERSON. (a) To comply with the requirements of due process of law, the juvenile court shall:

(1) provide sufficient notice in writing or orally in a recorded court hearing of a proposed juvenile court order; and

(2) provide a sufficient opportunity for the parent or other eligible person to be heard regarding the proposed order.

(b) A juvenile court order must be in writing and a copy promptly furnished to the parent or other eligible person.

(c) The juvenile court may require the parent or other eligible person to provide suitable identification to be included in the court's file. Suitable identification includes fingerprints, a driver's license number, a social security number, or similar indicia of identity.

Sec. 61.004. APPEAL. (a) The parent or other eligible person against whom a final juvenile court order has been entered may appeal as provided by law from judgments entered in civil cases.

(b) The movant may appeal from a judgment denying requested relief regarding a juvenile court order as provided by law from judgments entered in civil cases.

(c) The pendency of an appeal initiated under this section does not abate or otherwise affect the proceedings in juvenile court involving the child.

[Sections 61.005-61.050 reserved for expansion]

SUBCHAPTER B. ENFORCEMENT OF ORDER AGAINST PARENT OR OTHER ELIGIBLE PERSON

Sec. 61.051. MOTION FOR ENFORCEMENT. (a) A party initiates enforcement of a juvenile court order by filing a written motion. In ordinary and concise language, the motion must:

(1) identify the provision of the order allegedly violated and sought to be enforced;

(2) state specifically and factually the manner of the person's alleged noncompliance;

(3) state the relief requested; and

(4) contain the signature of the party filing the motion.

(b) The movant must allege in the same motion for enforcement each violation by the person of the juvenile court orders described by Section 61.002(a) that the movant had a reasonable basis for believing the person was violating when the motion was filed.

(c) The juvenile court retains jurisdiction to enter a contempt order if the motion for enforcement is filed not later than six months after the child's 18th birthday.

Sec. 61.052. NOTICE AND APPEARANCE. (a) On the filing of a motion for enforcement, the court shall by written notice set the date, time, and place of the hearing and order the person against whom enforcement is sought to appear and respond to the motion.

(b) The notice must be given by personal service or by certified mail, return receipt requested, on or before the 10th day before the date of the hearing on the motion. The notice must include a copy of the motion for enforcement. Personal service must comply with the Code of Criminal Procedure.

(c) If a person moves to strike or specially excepts to the motion for enforcement, the court shall rule on the exception or motion to strike before the court hears evidence on the motion for enforcement. If an exception is sustained, the court shall give the movant an opportunity to replead and continue the hearing to a designated date and time without the requirement of additional service.

(d) If a person who has been personally served with notice to appear at the hearing does not appear, the juvenile court may not hold the person in contempt, but may issue a capias for the arrest of the person. The court shall set and enforce bond as provided by Subchapter C, Chapter 157. If a person served by certified mail, return receipt requested, with notice to appear at the hearing does not appear, the juvenile court may require immediate personal service of notice.

Sec. 61.053. ATTORNEY FOR THE PERSON. (a) In a proceeding on a motion for enforcement against a person who is not represented by an attorney, the court shall inform the person of the right to be represented by an attorney and, if the person is indigent, of the right to the appointment of an attorney.

(b) If the person claims indigency and requests the appointment of an attorney, the juvenile court may require the person to file an affidavit of indigency. The court may hear evidence to determine the issue of indigency.

(c) The court shall appoint an attorney to represent the person if the court determines that the person is indigent.

(d) The court shall allow an appointed or retained attorney at least 10 days after the date of the attorney's appointment or retention to respond to the movant's pleadings and to prepare for the hearing. The attorney may waive the preparation time or agree to a shorter period for preparation.

Sec. 61.054. COMPENSATION OF APPOINTED ATTORNEY. (a) An attorney appointed to represent an indigent person is entitled to a reasonable fee for services to be paid from the general fund of the county according to the schedule for compensation adopted by the county juvenile board. The attorney must meet the qualifications required of attorneys for appointment to Class B misdemeanor cases in juvenile court.

(b) For purposes of compensation, a proceeding in the supreme court is the equivalent of a proceeding in the court of criminal appeals.

(c) The juvenile court may order the parent or other eligible person for whom it has appointed counsel to reimburse the county for the fees the county pays to appointed counsel.

Sec. 61.055. CONDUCT OF ENFORCEMENT HEARING. (a) The juvenile court shall require that the enforcement hearing be recorded as provided by Section 54.09.

(b) The movant must prove beyond a reasonable doubt that the person against whom enforcement is sought engaged in conduct constituting contempt of a reasonable and lawful court order as alleged in the motion for enforcement.

(c) The person against whom enforcement is sought has a privilege not to be called as a witness or otherwise to incriminate himself or herself.

(d) The juvenile court shall conduct the enforcement hearing without a jury.

(e) The juvenile court shall include in its judgment findings as to each violation alleged in the motion for enforcement and the punishment, if any, to be imposed.

(f) If the person against whom enforcement is sought was not represented by counsel during any previous court proceeding involving a motion for enforcement, the person may through counsel raise any defense or affirmative defense to the proceeding that could have been lodged in the previous court proceeding but was not because the person was not represented by counsel.

(g) It is an affirmative defense to enforcement of a juvenile court order that the juvenile court did not provide the parent or other eligible person with due process of law in the proceeding in which the court entered the order.

Sec. 61.056. AFFIRMATIVE DEFENSE OF INABILITY TO PAY. (a) In an enforcement hearing in which the motion for enforcement alleges that the person against whom enforcement is sought failed to pay restitution, court costs, supervision fees, or any other payment ordered by the court, it is an affirmative defense that the person was financially unable to pay.

(b) The burden of proof to establish the affirmative defense of inability to pay is on the person asserting it.

(c) In order to prevail on the affirmative defense of inability to pay, the person asserting it must show that the person could not have reasonably paid the court-ordered obligation after the person discharged the person's other important financial obligations, including payments for housing, food, utilities, necessary clothing, education, and preexisting debts.

Sec. 61.057. PUNISHMENT FOR CONTEMPT. (a) On a finding of contempt, the juvenile court may commit the person to the county jail for a term not to exceed six months or may impose a fine in an amount not to exceed \$500, or both.

(b) The court may impose only a single jail sentence not to exceed six months or a single fine not to exceed \$500, or both, during an enforcement proceeding, without regard to whether the court has entered multiple findings of contempt.

(c) On a finding of contempt in an enforcement proceeding, the juvenile court may, instead of issuing a commitment to jail, enter an order requiring the person's future conduct to comply with the court's previous orders.

(d) Violation of an order entered under Subsection (c) may be the basis of a new enforcement proceeding.

(e) The juvenile court may assign a juvenile probation officer to assist a person in complying with a court order issued under Subsection (c).

(f) A juvenile court may reduce a term of incarceration or reduce payment of all or part of a fine at any time before the sentence is fully served or the fine fully paid.

(g) A juvenile court may reduce the burden of complying with a court order issued under Subsection (c) at any time before the order is fully satisfied, but may not increase the burden except following a new finding of contempt in a new enforcement proceeding.

[Sections 61.058-61.100 reserved for expansion]

SUBCHAPTER C. RIGHTS OF PARENTS

Sec. 61.101. DEFINITION. In this subchapter, "parent" includes the guardian or custodian of a child.

Sec. 61.102. RIGHT TO BE INFORMED OF PROCEEDING. (a) The parent of a child referred to a juvenile court is entitled as soon as practicable after the referral to be informed by staff designated by the juvenile board, based on the information accompanying the referral to the juvenile court, of:

- (1) the date and time of the offense;
- (2) the date and time the child was taken into custody;
- (3) the name of the offense and its penal category;
- (4) the type of weapon, if any, that was used;
- (5) the type of property taken or damaged and the extent of damage, if

any;

- (6) the physical injuries, if any, to the victim of the offense;
- (7) whether there is reason to believe that the offense was gang-related;
- (8) whether there is reason to believe that the offense was related to consumption of alcohol or use of an illegal controlled substance;

(9) if the child was taken into custody with adults or other juveniles, the names of those persons;

- (10) the aspects of the juvenile court process that apply to the child;

(11) if the child is in detention, the visitation policy of the detention facility that applies to the child;

(12) the child's right to be represented by an attorney and the local standards and procedures for determining whether the parent qualifies for appointment of counsel to represent the child; and

(13) the methods by which the parent can assist the child with the legal process.

(b) If the child was released on field release citation, or from the law enforcement station by the police, by intake, or by the judge or associate judge at the initial detention hearing, the information required by Subsection (a) may be communicated to the parent in person, by telephone, or in writing.

(c) If the child is not released before or at the initial detention hearing, the information required by Subsection (a) shall be communicated in person to the parent unless that is not feasible, in which event it may be communicated by telephone or in writing.

(d) Information disclosed to a parent under Subsection (a) is not admissible in a judicial proceeding under this title as substantive evidence or as evidence to impeach the testimony of a witness for the state.

Sec. 61.103. RIGHT OF ACCESS TO CHILD. (a) The parent of a child taken into custody for delinquent conduct, conduct indicating a need for supervision, or conduct that violates a condition of probation imposed by the juvenile court has the right to communicate in person privately with the child for reasonable periods of time while the child is in:

- (1) a juvenile processing office;
- (2) a secure detention facility;

- (3) a secure correctional facility;
- (4) a court-ordered placement facility; or
- (5) the custody of the Texas Youth Commission.

(b) The time, place, and conditions of the private, in-person communication may be regulated to prevent disruption of scheduled activities and to maintain the safety and security of the facility.

Sec. 61.104. PARENTAL WRITTEN STATEMENT. (a) When a petition for adjudication, a motion or petition to modify disposition, or a motion or petition for discretionary transfer to criminal court is served on a parent of the child, the parent must be provided with a form prescribed by the Texas Juvenile Probation Commission on which the parent can make a written statement about the needs of the child or family or any other matter relevant to disposition of the case.

(b) The parent shall return the statement to the juvenile probation department, which shall transmit the statement to the court along with the discretionary transfer report authorized by Section 54.02(e), the disposition report authorized by Section 54.04(b), or the modification of disposition report authorized by Section 54.05(e), as applicable. The statement shall be disclosed to the parties as appropriate and may be considered by the court at the disposition, modification, or discretionary transfer hearing.

Sec. 61.105. PARENTAL ORAL STATEMENT. (a) After all the evidence has been received but before the arguments of counsel at a hearing for discretionary transfer to criminal court, a disposition hearing without a jury, or a modification of disposition hearing, the court shall give a parent who is present in court a reasonable opportunity to address the court about the needs or strengths of the child or family or any other matter relevant to disposition of the case.

(b) The parent may not be required to make the statement under oath and may not be subject to cross-examination, but the court may seek clarification or expansion of the statement from the person giving the statement.

(c) The court may consider and act on the statement as the court considers appropriate.

Sec. 61.106. APPEAL OR COLLATERAL CHALLENGE. The failure or inability of a person to perform an act or to provide a right or service listed under this subchapter may not be used by the child or any party as a ground for:

- (1) appeal;
- (2) an application for a post-adjudication writ of habeas corpus; or
- (3) exclusion of evidence against the child in any proceeding or forum.

Sec. 61.107. LIABILITY. The Texas Youth Commission, a juvenile board, a court, a person appointed by the court, an employee of a juvenile probation department, an attorney for the state, a peace officer, or a law enforcement agency is not liable for a failure or inability to provide a right listed in this chapter.

SECTION 29. Sections 261.405(b) and (c), Family Code, are amended to read as follows:

(b) A report of alleged abuse, ~~or~~ neglect, or exploitation in any juvenile justice program or facility shall be made to the Texas Juvenile Probation Commission and a local law enforcement agency for investigation.

(c) The Texas Juvenile Probation Commission shall conduct an investigation as provided by this chapter if the commission receives a report of alleged abuse, ~~[or]~~ neglect, or exploitation in any juvenile justice program or facility.

SECTION 30. Article 44.47(b), Code of Criminal Procedure, is amended to read as follows:

(b) A defendant may appeal a transfer under Subsection (a) only in conjunction with the appeal of a conviction of or an order of deferred adjudication for the offense for which the defendant was transferred to criminal court.

SECTION 31. Article 45.045, Code of Criminal Procedure, is amended to read as follows:

Art. 45.045. CAPIAS PRO FINE. (a) If the defendant is not in custody when the judgment is rendered or if the defendant fails to satisfy the judgment according to its terms, the court may order a capias pro fine issued for the defendant's arrest. The capias pro fine shall state the amount of the judgment and sentence, and command the appropriate peace officer to bring the defendant before the court or place the defendant in jail until the defendant can be brought before the court.

(b) A capias pro fine may not be issued for an individual convicted for an offense committed before the individual's 17th birthday unless:

(1) the individual is 17 years of age or older;

(2) the court finds that the issuance of the capias pro fine is justified after considering:

(A) the sophistication and maturity of the individual;

(B) the criminal record and history of the individual; and

(C) the reasonable likelihood of bringing about the discharge of the judgment through the use of procedures and services currently available to the court; and

(3) the court has proceeded under Article 45.050 to compel the individual to discharge the judgment.

(c) This article does not limit the authority of a court to order a child taken into custody under Article 45.058 or 45.059.

SECTION 32. Article 45.050, Code of Criminal Procedure, as amended by Chapters 1297 and 1514, Acts of the 77th Legislature, Regular Session, 2001, is reenacted and amended to read as follows:

Art. 45.050. FAILURE TO PAY FINE; CONTEMPT: JUVENILES. (a) In this article, "child" has the meaning assigned by Article 45.058(h).

(b) A justice or municipal court may not order the confinement of a child for:

(1) the failure to pay all or any part of a fine or costs imposed for the conviction of an offense punishable by fine only; or

(2) contempt of another order of a justice or municipal court.

(c) If a child fails to obey an order of a justice or municipal court under circumstances that would constitute contempt of court, the justice or municipal court, after providing notice and an opportunity to be heard, may:

(1) ~~[has jurisdiction to]~~ refer the child to the appropriate juvenile court for delinquent conduct for contempt of the justice or municipal court order; or

(2) ~~[may]~~ retain jurisdiction of the case, hold the child in contempt of the justice or municipal court, and order either or both of the following ~~[and]~~:

(A) that the contemnor pay ~~[hold the child in contempt of the justice or municipal court order and impose]~~ a fine not to exceed \$500; or

(B) that ~~[order]~~ the Department of Public Safety ~~[to]~~ suspend the contemnor's ~~[child's]~~ driver's license or permit or, if the contemnor ~~[child]~~ does not have a license or permit, to deny the issuance of a license or permit to the contemnor ~~[child]~~ until the contemnor ~~[child]~~ fully complies with the orders of the court.

(d) A justice or municipal court may hold a person in contempt and impose a remedy authorized by Subsection (c)(2) if:

(1) the person was convicted for an offense committed before the person's 17th birthday;

(2) the person failed to obey the order while the person was 17 years of age or older; and

(3) the failure to obey occurred under circumstances that constitute contempt of court.

(e) A justice or municipal court may hold a person in contempt and impose a remedy authorized by Subsection (c)(2) if the person, while younger than 17 years of age, engaged in conduct in contempt of an order issued by the justice or municipal court, but contempt proceedings could not be held before the person's 17th birthday.

(f) A court that orders suspension or denial of a driver's license or permit under Subsection (c)(2)(B) shall notify the Department of Public Safety on receiving proof of compliance ~~[that the child has fully complied]~~ with the orders of the court.

(g) A justice or municipal court may not refer a child who violates a court order while 17 years of age or older to a juvenile court for delinquency proceedings for contempt of court.

SECTION 33. Article 45.056, Code of Criminal Procedure, is amended to read as follows:

Art. 45.056. AUTHORITY TO EMPLOY JUVENILE ~~[TRUANCY]~~ CASE MANAGERS; REIMBURSEMENT. (a) On approval of the commissioners court, city council, school district board of trustees, juvenile board, or other appropriate authority, a justice court, municipal court, school district, juvenile probation department, or other appropriate governmental entity may:

(1) employ a case manager to provide services in ~~[truancy]~~ cases involving juvenile offenders before a court consistent with the court's statutory powers; or

(2) agree in accordance with Chapter 791, Government Code, to jointly employ a case manager ~~[to provide services in truancy cases]~~.

(b) A local entity may apply or more than one local entity may jointly apply to the criminal justice division of the governor's office for reimbursement of all or part of the costs of employing one or more juvenile ~~[truancy]~~ case managers

from funds appropriated to the governor's office or otherwise available for that purpose. To be eligible for reimbursement, the entity applying must present to the governor's office a comprehensive plan to reduce juvenile crimes ~~[truancy]~~ in the entity's jurisdiction that addresses the role of the case manager in that effort.

SECTION 34. Article 45.057, Code of Criminal Procedure, is amended by amending Subsections (a), (b), (e), and (h) and adding Subsections (i)-(l) to read as follows:

(a) In this article:

(1) "Child" ~~["child"]~~ has the meaning assigned by Article 45.058(h).

(2) "Residence" means any place where the child lives or resides for a period of at least 30 days.

(3) "Parent" includes a person standing in parental relation, a managing conservator, or a custodian.

(b) On a finding by a justice or municipal court that a child committed an offense that the court has jurisdiction of under Article 4.11 or 4.14, ~~[other than a traffic offense,]~~ the court has jurisdiction to enter an order:

(1) referring the child or the child's parent~~[-managing conservator, or guardian]~~ for services under Section 264.302, Family Code;

(2) requiring that the child attend a special program that the court determines to be in the best interest of the child and, if the program involves the expenditure of county funds, that is approved by the county commissioners court, including a rehabilitation, counseling, self-esteem and leadership, work and job skills training, job interviewing and work preparation, self-improvement, parenting, manners, violence avoidance, tutoring, sensitivity training, parental responsibility, community service, restitution, advocacy, or mentoring program; or

(3) ~~[if the court finds the parent, managing conservator, or guardian, by act or omission, contributed to, caused, or encouraged the child's conduct,]~~ requiring that the child's parent~~[-managing conservator, or guardian]~~ do any act or refrain from doing any act that the court determines will increase the likelihood that the child will comply with the orders of the court and that is reasonable and necessary for the welfare of the child, including:

(A) attend a parenting class or parental responsibility program; and

(B) attend the child's school classes or functions.

(e) A justice or municipal court shall endorse on the summons issued to a parent~~[-managing conservator, or guardian]~~ an order to appear personally at the hearing with the child. The summons must include a warning that the failure of the parent~~[-managing conservator, or guardian]~~ to appear may result in arrest and is [be punishable as] a Class C misdemeanor.

(h) A child and parent required to appear before the court have an obligation to provide the court in writing with the current address and residence of the child. The obligation does not end when the child reaches age 17. On or before the seventh day after the date the child or parent changes residence, the child or parent shall notify the court of the current address in the manner directed

by the court. A violation of this subsection may result in arrest and is a Class C misdemeanor. The obligation to provide notice terminates on discharge and satisfaction of the judgment or final disposition not requiring a finding of guilt.

(i) If an appellate court accepts an appeal for a trial de novo, the child and parent shall provide the notice under Subsection (h) to the appellate court.

(j) The child and parent are entitled to written notice of their obligation under Subsections (h) and (i), which may be satisfied by being given a copy of those subsections by:

(1) the court during their initial appearance before the court;

(2) a peace officer arresting and releasing a child under Article 45.058(a) on release; and

(3) a peace officer that issues a citation under Section 543.003, Transportation Code, or Article 14.06(b) of this code.

(k) It is an affirmative defense to prosecution under Subsection (h) that the child and parent were not informed of their obligation under this article.

(l) Any ~~other~~ order under this article is enforceable by the justice or municipal court by contempt.

SECTION 35. Subchapter B, Chapter 45, Code of Criminal Procedure, is amended by adding Article 45.060 to read as follows:

Art. 45.060. UNADJUDICATED CHILDREN, NOW ADULTS; NOTICE ON REACHING AGE OF MAJORITY; OFFENSE. (a) Except as provided by Articles 45.058 and 45.059, an individual may not be taken into secured custody for offenses alleged to have occurred before the individual's 17th birthday.

(b) On or after an individual's 17th birthday, if the court has used all available procedures under this chapter to secure the individual's appearance to answer allegations made before the individual's 17th birthday, the court may issue a notice of continuing obligation to appear by personal service or by mail to the last known address and residence of the individual. The notice must order the individual to appear at a designated time, place, and date to answer the allegations detailed in the notice.

(c) Failure to appear as ordered by the notice under Subsection (b) is a Class C misdemeanor independent of Section 38.10, Penal Code, and Section 543.003, Transportation Code.

(d) It is an affirmative defense to prosecution under Subsection (c) that the individual was not informed of the individual's obligation under Articles 45.057(h) and (i) or did not receive notice as required by Subsection (b).

(e) A notice of continuing obligation to appear issued under this article must contain the following statement provided in boldfaced type or capital letters:

"WARNING: COURT RECORDS REVEAL THAT BEFORE YOUR 17TH BIRTHDAY YOU WERE ACCUSED OF A CRIMINAL OFFENSE AND HAVE FAILED TO MAKE AN APPEARANCE OR ENTER A PLEA IN THIS MATTER. AS AN ADULT, YOU ARE NOTIFIED THAT YOU HAVE A CONTINUING OBLIGATION TO APPEAR IN THIS CASE. FAILURE TO APPEAR AS REQUIRED

BY THIS NOTICE MAY BE AN ADDITIONAL CRIMINAL
OFFENSE AND RESULT IN A WARRANT BEING ISSUED FOR
YOUR ARREST."

SECTION 36. Article 62.13, Code of Criminal Procedure, is amended by amending Subsections (b), (j), (n), and (q) and adding Subsection (s) to read as follows:

(b) During or after ~~[After]~~ disposition of a case under Section 54.04, Family Code, for adjudication of an offense for which registration is required under this chapter, the juvenile court on motion of the respondent shall conduct a hearing to determine whether the interests of the public require registration under this chapter. The motion may be filed and the hearing held regardless of whether the respondent is under 18 years of age.

(j) After a hearing under Subsection (b) or under a plea agreement under Subsection (f), the juvenile court may enter an order deferring decision on requiring registration until the respondent has completed ~~[a sex offender]~~ treatment for the respondent's sexual offense [program] as a condition of probation or while committed to the Texas Youth Commission. The court retains discretion to require or to excuse registration at any time during the treatment ~~[program]~~ or on its successful or unsuccessful completion. During the period of deferral, registration may not be required. Following successful completion of treatment, registration is excused unless a hearing under this article is held on motion of the state and the court determines the interests of the public require registration. Not later than the 10th day after the date of the respondent's successful completion of treatment, the treatment provider shall notify the juvenile court and prosecuting attorney of the completion.

(n) Only one ~~[A]~~ motion may be filed under Subsection (l) ~~[only]~~ if a previous motion under this article has ~~[not]~~ been filed concerning that case.

(q) If the court grants the motion, ~~[a copy of]~~ the clerk of the court ~~[court's order]~~ shall by certified mail, return receipt requested, send a copy of the order to the department, to each local law enforcement authority that the person has proved to the juvenile court has registration information about the person, and ~~[be sent]~~ to each public or ~~[and]~~ private agency or organization that the person has proved to the juvenile court has information about the person that is currently available to the public with or without payment of a fee. The clerk of the court shall by certified mail, return receipt requested, send a copy of the order to any other agency or organization designated by the person. The person shall identify the agency or organization and its address and pay a fee of \$20 to the court for each agency or organization the person designates ~~[determines may be in possession of sex offender registration information. The order shall require the recipient to conform its records to the court's orders either by deleting the information or changing its status to nonpublic, as the order requires].~~

(s) A person required to register as a sex offender in this state because of an out-of-state adjudication of delinquent conduct may file in the juvenile court of the person's county of residence a petition under Subsection (a) for an order to excuse compliance with this chapter. If the person is already registered as a sex offender in this state because of an out-of-state adjudication of delinquent

conduct, the person may file in the juvenile court of the person's county of residence a petition under Subsection (l) for an order removing the person from sex offender registries in this state. On receipt of a petition to excuse compliance or for removal, the juvenile court shall conduct a hearing and make rulings as in other cases under this article. An order entered under this subsection requiring removal of registration information applies only to registration information derived from registration in this state.

SECTION 37. Chapter 62, Code of Criminal Procedure, is amended by adding Article 62.14 to read as follows:

Art. 62.14. REMOVING JUVENILE REGISTRATION INFORMATION WHEN DUTY TO REGISTER EXPIRES. (a) When a person is no longer required to register as a sex offender for an adjudication of delinquent conduct, the department shall remove all information about the person from the sex offender registry.

(b) The duty to remove information under Subsection (a) arises if:

(1) the department has received notice from a local law enforcement authority under Subsection (c) or (d) that the person is no longer required to register or will no longer be required to renew registration and the department verifies the correctness of that information;

(2) the juvenile court that adjudicated the case for which registration is required requests removal and the department determines that the duty to register has expired; or

(3) the person or the person's representative requests removal and the department determines that the duty to register has expired.

(c) When a person required to register for an adjudication of delinquent conduct appears before a local law enforcement authority to renew or modify registration information, the authority shall determine whether the duty to register has expired. If the authority determines that the duty to register has expired, the authority shall remove all information about the person from the sex offender registry and notify the department that the person's duty to register has expired.

(d) When a person required to register for an adjudication of delinquent conduct appears before a local law enforcement authority to renew registration information, the authority shall determine whether the renewal is the final annual renewal of registration required by law. If the authority determines that the person's duty to register will expire before the next annual renewal is scheduled, the authority shall automatically remove all information about the person from the sex offender registry on expiration of the duty to register and notify the department that the information about the person has been removed from the registry.

(e) When the department has removed information under Subsection (a), the department shall notify all local law enforcement authorities that have provided registration information to the department about the person of the removal. A local law enforcement authority that receives notice from the department under this subsection shall remove all registration information about the person from its registry.

(f) When the department has removed information under Subsection (a), the department shall notify all public and private agencies or organizations to which it has provided registration information about the person of the removal. On receiving notice, the public or private agency or organization shall remove all registration information about the person from any registry the agency or organization maintains that is accessible to the public with or without charge.

SECTION 38. The heading to Section 25.093, Education Code, is amended to read as follows:

Sec. 25.093. PARENT CONTRIBUTING TO NONATTENDANCE ~~[TRUANCY]~~.

SECTION 39. Section 25.094(d), Education Code, as amended by Chapters 1297 and 1514, Acts of the 77th Legislature, Regular Session, 2001, is reenacted and amended to read as follows:

(d) If the justice or municipal court believes that a child has violated an order issued under Subsection (c), the court may proceed as authorized by Article 45.050, Code of Criminal Procedure ~~[Section 54.023, Family Code, by holding the child in contempt and imposing a fine not to exceed \$500 or by referring the child to juvenile court for delinquent conduct].~~

(d-1) Pursuant to an order of the justice or municipal court based on an affidavit showing probable cause to believe that an individual has committed an offense under this section, a peace officer may take the individual into custody. A peace officer taking an individual into custody under this subsection shall:

(1) promptly notify the individual's parent, guardian, or custodian of the officer's action and the reason for that action; and

(2) without unnecessary delay:

(A) release the individual to the individual's parent, guardian, or custodian or to another responsible adult, if the person promises to bring the individual to the justice or municipal court as requested by the court; or

(B) bring the individual to a justice or municipal court with venue over the offense.

SECTION 40. The heading to Section 25.0952, Education Code, is amended to read as follows:

Sec. 25.0952. PROCEDURES APPLICABLE TO SCHOOL ATTENDANCE-RELATED ~~[TRUANCY RELATED]~~ OFFENSES.

SECTION 41. Sections 29.087(d) and (f), Education Code, as added by Chapter 1514, Acts of the 77th Legislature, Regular Session, 2001, are amended to read as follows:

(d) A student is eligible to participate in a program authorized by this section if:

(1) the student has been ordered by a court under Article 45.054, Code of Criminal Procedure, or by the Texas Youth Commission to:

(A) participate in a preparatory class for the high school equivalency examination; or

(B) take the high school equivalency examination administered under Section 7.111; or

(2) the following conditions are satisfied:

(A) the student is at least 16 years of age at the beginning of the school year or semester;

(B) the student is a student at risk of dropping out of school, as defined by Section 29.081;

(C) the student and the student's parent or guardian agree in writing to the student's participation;

(D) at least two school years have elapsed since the student first enrolled in ninth grade and the student has accumulated less than one quarter of the credits required to graduate under the minimum graduation requirements of the district or school; and

(E) any other conditions specified by the commissioner.

(f) Except as otherwise provided by this subsection, a student participating in a program authorized by this section, other than a student ordered to participate under Subsection (d)(1), must have taken the exit-level assessment instruments specified by Section 39.025(a) before entering the program or must take those assessment instruments during the first year in which the student is enrolled in the program. The commissioner may authorize a student to take the assessment instruments required by Section 39.023(a) to be administered to students in grade 10 instead of the exit-level assessment instruments. Except for a student ordered to participate under Subsection (d)(1), a [A] student participating in the program may not take the high school equivalency examination unless the student has taken the assessment instruments required by this subsection.

SECTION 42. Subchapter E, Chapter 30, Education Code, is amended by adding Section 30.104 to read as follows:

Sec. 30.104. CREDIT FOR COMPLETION OF EDUCATIONAL PROGRAMS; HIGH SCHOOL DIPLOMA AND CERTIFICATE. (a) A school district shall grant to a student credit toward the academic course requirements for high school graduation for courses the student successfully completes in Texas Youth Commission educational programs.

(b) A student may graduate and receive a diploma from a Texas Youth Commission educational program if:

(1) the student successfully completes the curriculum requirements identified by the State Board of Education under Section 28.025(a) and complies with Section 39.025(a); or

(2) the student successfully completes the curriculum requirements under Section 28.025(a) as modified by an individualized education program developed under Section 29.005.

(c) A Texas Youth Commission educational program may issue a certificate of course-work completion to a student who successfully completes the curriculum requirements identified by the State Board of Education under Section 28.025(a) but who fails to comply with Section 39.025(a).

SECTION 43. Subchapter C, Chapter 71, Government Code, is amended by adding Section 71.0352 to read as follows:

Sec. 71.0352. JUVENILE DATA: JUSTICE, MUNICIPAL, AND JUVENILE COURTS. As a component of the official monthly report submitted to the Office of Court Administration of the Texas Judicial System:

(1) justice and municipal courts shall report the number of cases filed for the following offenses:

(A) failure to attend school under Section 25.094, Education Code;

(B) parent contributing to nonattendance under Section 25.093, Education Code; and

(C) violation of a local daytime curfew ordinance adopted under Section 341.905 or 351.903, Local Government Code; and

(2) in cases in which a child fails to obey an order of a justice or municipal court under circumstances that would constitute contempt of court, the justice or municipal court shall report the number of incidents in which the child is:

(A) referred to the appropriate juvenile court for delinquent conduct as provided by Article 45.050(c)(1), Code of Criminal Procedure, and Section 51.03(a)(2), Family Code; or

(B) held in contempt, fined, or denied driving privileges as provided by Article 45.050(c)(2), Code of Criminal Procedure.

SECTION 44. Section 411.151(a), Government Code, is amended to read as follows:

(a) The director shall expunge a DNA record of a person from the DNA database if the person:

(1) notifies the director in writing that the DNA record has been ordered to be expunged under this section or Chapter 55, Code of Criminal Procedure, ~~;~~ and

~~[(2)]~~ provides the director with a certified copy of the court order that expunges the DNA record; or

(2) provides the director with a certified copy of a court order issued under Section 58.003, Family Code, that seals the juvenile record of the adjudication that resulted in the DNA record.

SECTION 45. Section 552.028(c), Government Code, is amended to read as follows:

(c) In this section, "correctional facility" means:

(1) a secure correctional facility, as defined by Section 1.07, Penal Code;

(2) a secure correctional facility and a secure detention facility, as defined by Section 51.02, Family Code; and

(3) a place designated by the law of this state, another state, or the federal government for the confinement of a person arrested for, charged with, or convicted of a criminal offense.

SECTION 46. Section 61.073, Human Resources Code, is amended to read as follows:

Sec. 61.073. RECORDS OF EXAMINATIONS AND TREATMENT. The commission shall keep written records of all examinations and conclusions based on them and of all orders concerning the disposition or treatment of each child subject to its control. Except as provided by Section 61.093(c), these records and all other information concerning a child, including personally identifiable

information, are not public and are available only according to the provisions of Section 58.005, Family Code, Section 61.0731, Human Resources Code, and Chapter 61, Code of Criminal Procedure.

SECTION 47. Subchapter E, Chapter 61, Human Resources Code, is amended by adding Section 61.0731 to read as follows:

Sec. 61.0731. INFORMATION AVAILABLE TO CHILDREN, PARENTS, AND OTHERS. (a) In the interest of achieving the purpose of the commission and protecting the public, the commission may disclose records and other information concerning a child to the child and the child's parent or guardian only if disclosure would not materially harm the treatment and rehabilitation of the child and would not substantially decrease the likelihood of the commission receiving information from the same or similar sources in the future. Information concerning a child who is age 18 or older may not be disclosed to the child's parent or guardian without the child's consent.

(b) The commission may disclose information regarding a child's location and committing court to a person having a legitimate need for the information.

SECTION 48. Section 61.084(e), Human Resources Code, is amended to read as follows:

(e) Except as provided by Subsection [~~(d)~~] (f) or (g), the commission shall discharge from its custody a person not already discharged on the person's 21st birthday.

SECTION 49. Section 141.042, Human Resources Code, is amended by amending Subsections (a) and (d) and adding Subsection (h) to read as follows:

(a) The commission shall adopt reasonable rules that provide:

(1) minimum standards for personnel, staffing, case loads, programs, facilities, record keeping, equipment, and other aspects of the operation of a juvenile board that are necessary to provide adequate and effective probation services;

(2) a code of ethics for probation, detention, and corrections officers and for the enforcement of that code;

(3) appropriate educational, preservice and in-service training, and certification standards for probation, detention, and corrections officers or court-supervised community-based program personnel;

(4) minimum standards for public and private juvenile pre-adjudication secure detention facilities, public juvenile post-adjudication secure correctional facilities that are operated under the authority of a juvenile board, and private juvenile post-adjudication secure correctional facilities, except those facilities exempt from certification by Section 42.052(g) [~~42.052(e)~~]; and

(5) ~~[procedures for the implementation of a progressive sanctions program under Chapter 59, Family Code.~~

~~[(5) procedures for implementation of the progressive sanctions guidelines in Chapter 59, Family Code; and~~

~~[(6)]~~ minimum standards for juvenile justice alternative education programs created under Section 37.011, Education Code, in collaboration and conjunction with the Texas Education Agency, or its designee.

(d) The commission shall biennially ~~[annually]~~ inspect all public and private juvenile pre-adjudication secure detention facilities and all public and private juvenile post-adjudication secure correctional facilities except a facility operated or certified by the Texas Youth Commission and shall biennially ~~[annually]~~ monitor compliance with the standards established under Subsection (a)(4) if the juvenile board has elected to comply with those standards or shall biennially ~~[annually]~~ ensure that the facility is certified by the American Correctional Association if the juvenile board has elected to comply with those standards.

(h) A juvenile board that does not accept state aid funding from the commission under Section 141.081 shall report to the commission each month on a form provided by the commission the same data as that required of counties accepting state aid funding regarding juvenile justice activities under the jurisdiction of the board. If the commission makes available free software to the board for the automation and tracking of juveniles under the jurisdiction of the board, the commission may require the monthly report to be provided in an electronic format adopted by rule by the commission.

SECTION 50. Section 141.049(a), Human Resources Code, is amended to read as follows:

(a) The commission shall keep an information file about each complaint filed with the commission relating to a juvenile board funded by the commission. The commission shall investigate the allegations in the complaint and make a determination of whether there has been a violation of the commission's rules relating to juvenile probation programs, services, or facilities.

SECTION 51. Section 141.061(a), Human Resources Code, is amended to read as follows:

(a) To be eligible for appointment as a probation officer, a person who was ~~[has]~~ not ~~[been]~~ employed as a probation officer before ~~[since]~~ September 1, 1981, must:

(1) be of good moral character;

(2) have acquired a bachelor's degree conferred by a college or university accredited by an accrediting organization recognized by the Texas Higher Education Coordinating Board;

(3) have either:

(A) one year of graduate study in criminology, corrections, counseling, law, social work, psychology, sociology, or other field of instruction approved by the commission; or

(B) one year of experience in full-time case work, counseling, or community or group work:

(i) in a social service, community, corrections, or juvenile agency that deals with offenders or disadvantaged persons; and

(ii) that the commission determines provides the kind of experience necessary to meet this requirement;

(4) have satisfactorily completed the course of preservice training or instruction required by the commission;

(5) have passed the tests or examinations required by the commission; and

(6) possess the level of certification required by the commission.

SECTION 52. Section 8.07(a), Penal Code, is amended to read as follows:

(a) A person may not be prosecuted for or convicted of any offense that the person committed when younger than 15 years of age except:

(1) perjury and aggravated perjury when it appears by proof that the person had sufficient discretion to understand the nature and obligation of an oath;

(2) a violation of a penal statute cognizable under Chapter 729, Transportation Code, except for:

(A) an offense under Section 521.457, Transportation Code;

(B) an offense under Section 550.021, Transportation Code;

(C) ~~(B)~~ an offense punishable as a Class B misdemeanor under Section 550.022, Transportation Code; ~~or~~

(D) ~~(C)~~ an offense punishable as a Class B misdemeanor under Section 550.024, Transportation Code; or

(E) an offense punishable as a Class B misdemeanor under Section 550.025, Transportation Code;

(3) a violation of a motor vehicle traffic ordinance of an incorporated city or town in this state;

(4) a misdemeanor punishable by fine only other than public intoxication;

(5) a violation of a penal ordinance of a political subdivision;

(6) a violation of a penal statute that is, or is a lesser included offense of, a capital felony, an aggravated controlled substance felony, or a felony of the first degree for which the person is transferred to the court under Section 54.02, Family Code, for prosecution if the person committed the offense when 14 years of age or older; or

(7) a capital felony or an offense under Section 19.02 for which the person is transferred to the court under Section 54.02(j)(2)(A), Family Code.

SECTION 53. Section 12.42(f), Penal Code, is amended to read as follows:

(f) For the purposes of Subsections (a), (b), (c)(1), ~~(a)-(e)~~ and (e), an adjudication by a juvenile court under Section 54.03, Family Code, that a child engaged in delinquent conduct on or after January 1, 1996, constituting a felony offense for which the child is committed to the Texas Youth Commission under Section 54.04(d)(2), (d)(3), or (m), Family Code, or Section 54.05(f), Family Code, is a final felony conviction.

SECTION 54. Section 521.201, Transportation Code, is amended to read as follows:

Sec. 521.201. LICENSE INELIGIBILITY IN GENERAL. The department may not issue any license to a person who:

(1) is under 15 years of age;

(2) is under 18 years of age unless the person complies with the requirements imposed by Section 521.204;

(3) is shown to be addicted to the use of alcohol, a controlled substance, or another drug that renders a person incapable of driving;

(4) holds a driver's license issued by this state or another state or country that is revoked, canceled, or under suspension;

(5) has been determined by a judgment of a court to be totally incapacitated or incapacitated to act as the operator of a motor vehicle unless the person has, by the date of the license application, been:

(A) restored to capacity by judicial decree; or

(B) released from a hospital for the mentally incapacitated on a certificate by the superintendent or administrator of the hospital that the person has regained capacity;

(6) the department determines to be afflicted with a mental or physical disability or disease that prevents the person from exercising reasonable and ordinary control over a motor vehicle while operating the vehicle on a highway, except that a person may not be refused a license because of a physical defect if common experience shows that the defect does not incapacitate a person from safely operating a motor vehicle;

(7) has been reported by a court under Section 729.003 for failure to appear ~~[or for default in payment of a fine]~~ unless the court has filed an additional report on final disposition of the case; or

(8) has been reported by a court for failure to appear or default in payment of a fine for a misdemeanor that is not covered under Subdivision (7) and that is punishable by a fine only, including a misdemeanor under a municipal ordinance, committed by a person who was under 17 years of age at the time of the alleged offense, unless the court has filed an additional report on final disposition of the case.

SECTION 55. Section 521.294, Transportation Code, is amended to read as follows:

Sec. 521.294. DEPARTMENT'S DETERMINATION FOR LICENSE REVOCATION. The department shall revoke the person's license if the department determines that the person:

(1) is incapable of safely operating a motor vehicle;

(2) has not complied with the terms of a citation issued by a jurisdiction that is a party to the Nonresident Violator Compact of 1977 for a traffic violation to which that compact applies;

(3) has failed to provide medical records or has failed to undergo medical or other examinations as required by a panel of the medical advisory board;

(4) has failed to pass an examination required by the director under this chapter;

(5) has been reported by a court under Section 729.003 for failure to appear ~~[or for default in payment of a fine]~~ unless the court files an additional report on final disposition of the case;

(6) has been reported within the preceding two years by a justice or municipal court for failure to appear or for a default in payment of a fine for a misdemeanor punishable only by fine, other than a failure ~~[or default]~~ reported

under Section 729.003, committed by a person who is at least 14 years of age but younger than 17 years of age when the offense was committed, unless the court files an additional report on final disposition of the case; or

(7) has committed an offense in another state or Canadian province that, if committed in this state, would be grounds for revocation.

SECTION 56. Subchapter O, Chapter 521, Transportation Code, is amended by adding Section 521.3451 to read as follows:

Sec. 521.3451. SUSPENSION OR DENIAL ON ORDER OF JUSTICE OR MUNICIPAL COURT FOR CONTEMPT OF COURT; REINSTATEMENT.

(a) The department shall suspend or deny the issuance of a license or instruction permit on receipt of an order to suspend or deny the issuance of the license or permit from a justice or municipal court under Article 45.050, Code of Criminal Procedure.

(b) The department shall reinstate a license or permit suspended or reconsider a license or permit denied under Subsection (a) on receiving notice from the justice or municipal court that ordered the suspension or denial that the contemnor has fully complied with the court's order.

SECTION 57. Section 543.117, Transportation Code, is amended to read as follows:

Sec. 543.117. OFFENSE IN CONSTRUCTION OR MAINTENANCE WORK ZONE. A charge may not be dismissed under this subchapter for an offense to which Section 542.404 [~~or 729.004~~] applies except upon motion of the attorney representing the state.

SECTION 58. Section 729.001(a), Transportation Code, is amended to read as follows:

(a) A person who is younger than 17 years of age commits an offense if the person operates a motor vehicle on a public road or highway, a street or alley in a municipality, or a public beach in violation of any traffic law of this state, including:

- (1) Chapter 502, other than Section 502.282 or 502.412;
- (2) Chapter 521, other than an offense under Section 521.457;
- (3) Subtitle C, other than an offense punishable by imprisonment or by confinement in jail under Section 550.021, 550.022, [~~or~~] 550.024, or 550.025;
- (4) Chapter 601;
- (5) Chapter 621;
- (6) Chapter 661; and
- (7) Chapter 681.

SECTION 59. The heading to Section 729.003, Transportation Code, is amended to read as follows:

Sec. 729.003. ~~PROCEDURE [AND JURISDICTION]~~ IN CASES INVOLVING MINORS.

SECTION 60. Section 729.003(d), Transportation Code, is amended to read as follows:

~~(d)~~ A court shall report to the Department of Public Safety a person charged with a traffic offense under this chapter who does not appear before the court as required by law. In addition to any other action or remedy provided by

law, the department may deny renewal of the person's driver's license under Section 521.310 or Chapter 706. The court also shall report to the department on final disposition of the case.

SECTION 61. The following laws are repealed:

- (1) Sections 52.027, 54.023, and 54.06(d), Family Code;
- (2) Sections 729.003(a), (b), (c), (e), (f), and (g) and 729.004, Transportation Code;
- (3) Sections 61.084(d) and 141.042(f), Human Resources Code; and
- (4) Section 45.054, Code of Criminal Procedure, as added by Chapter 1297, Acts of the 77th Legislature, Regular Session, 2001.

SECTION 62. (a) This Act takes effect September 1, 2003.

(b) Except as provided by Subsections (d), (e), and (g) of this section, this Act applies only to conduct that occurs on or after the effective date of this Act. Conduct violating the penal law of this state occurs on or after the effective date of this Act if any element of the violation occurs on or after that date.

(c) Conduct that occurs before the effective date of this Act is governed by the law in effect at the time the conduct occurred, and that law is continued in effect for that purpose.

(d) This Act applies only to an appeal by the state under Section 56.01, Family Code, of an order by a juvenile court rendered on or after the effective date of this Act. An appeal of an order rendered before the effective date of this Act is governed by the law in effect at the time the order was rendered, and that law is continued in effect for that purpose.

(e) Section 54.051, Family Code, Article 62.13, Code of Criminal Procedure, and Section 12.42, Penal Code, as amended by this Act apply to all cases without regard to whether the conduct or proceedings occur before, on, or after the effective date of this Act.

(f) The section of this Act amending Section 29.087, Education Code, as added by Chapter 1514, Acts of the 77th Legislature, Regular Session, 2001, takes effect only if that section of the Education Code does not expire September 1, 2003.

(g) Section 54.011(f), Family Code, as added by this Act, applies only to a nonoffender who is detained in a secure detention facility or secure correctional facility on or after the effective date of this Act. A nonoffender who is detained in a secure detention facility or secure correctional facility before the effective date of this Act is not entitled to bring a civil action under Section 54.011(f), Family Code, as added by this Act.

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

Amend **CSHB 2319** in SECTION 28 of the bill, in proposed Section 61.053(a), Family Code (Senate Committee Printing, page 12, line 7), between "enforcement" and "against", by inserting "where incarceration is a possible punishment".

**HB 76 - HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS**

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

HB 76, A bill to be entitled An Act relating to procedures adopted by a state entity to ensure an employment preference for veterans.

On motion of Representative Wise, the house concurred in the senate amendments to **HB 76** by (Record 875): 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; Chavez; Chisum; Christian; Coleman; Cook, B.; Cook, R.; Corte; Crabb; Crownover; Davis, J.; Davis, Y.; Dawson; 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; Hilderbran; Hill; Hochberg; Hodge; Homer; Hope; 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; 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; Seaman; Smith, T.; Smith, W.; Smithee; Solis; Solomons; Stick; Swinford; Taylor; Telford; Thompson; Truitt; Turner; Uresti; Van Arsdale; Villarreal; West; Wilson; Wise; Wohlgemuth; Wolens; Wong; Woolley; Zedler.

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

Absent, Excused — Marchant; Rose.

Absent — Castro; Delisi; Puente; Talton.

STATEMENT OF VOTE

When Record No. 875 was taken, I was in the house but away from my desk. I would have voted yes.

Castro

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

Amend **HB 76** by adding appropriately numbered new SECTIONS to the bill and renumbering subsequent SECTIONS accordingly, to read as follows:

SECTION _____. Chapter 657, Government Code, is amended by designating Sections 657.001 through 657.009 as Subchapter A and adding a heading for Subchapter A to read as follows:

SUBCHAPTER A. GENERAL PROVISIONS

SECTION _____. Chapter 657, Government Code, is amended by adding Subchapter B to read as follows:

SUBCHAPTER B. ENFORCEMENT

Sec. 657.051. COMPLIANCE WITH LAW; HEARING. (a) If a public official fails to comply with a provision of this chapter, a district court in the district in which the individual is a public official may require the public official to comply with the provision on the filing of a motion, petition, or other appropriate pleading by an individual entitled to a benefit under the provision.

(b) The court shall order a speedy hearing and shall advance the hearing on the calendar.

Sec. 657.052. ENFORCEMENT BY DISTRICT OR COUNTY ATTORNEY. On application to the district attorney, criminal district attorney, or county attorney of the appropriate county by an individual who the attorney reasonably believes is entitled to the benefit of a provision of this chapter, the district attorney, criminal district attorney, or county attorney shall:

(1) appear and act as attorney for the individual in an amicable adjustment of the claim; or

(2) file or prosecute a motion, petition, or other appropriate pleading to specifically require compliance with the provision.

Sec. 657.053. COURT COSTS AND FEES. A person applying for a preference under this chapter may not be charged court costs or fees for a claim, motion, petition, or other pleading filed under Section 657.051.

**HB 532 - HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS**

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

HB 532, A bill to be entitled An Act relating to creating the offense of improper sexual relations between employees of a public or private primary or secondary school and certain students.

On motion of Representative Giddings, the house concurred in the senate amendments to **HB 532**.

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

On page 1, line 13, between "school" and "and", insert "at which the employee works".

**HB 651 - HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS**

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

HB 651, A bill to be entitled An Act relating to the creation of a savings incentive program for state agencies.

On motion of Representative Pitts, the house concurred in the senate amendments to **HB 651**.

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

Amend **HB 651** as follows:

(1) In proposed Section 2108.103, strike subsection (a) and substitute the following: "(a) The affected agency retains one-fourth of the amount of savings verified by the comptroller, not to exceed one percent of the amount of undedicated general revenue derived from nonfederal sources appropriated to the agency for the fiscal year in which the savings are realized."

(2) Add a new Section 2108.104 as follows: "Sec. 2108.104. In order for a state agency to receive any savings derived from lowered utility costs under this section, the state agency must demonstrate to the comptroller that the agency has maximized savings on utility expenses by implementing all energy and water conservation programs in compliance with rules adopted under Section 447.002."

HB 736 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

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

HB 736, A bill to be entitled An Act relating to use of the internal mail system of a governmental agency to deliver political advertising; providing a criminal penalty.

On motion of Representative Denny, the house concurred in the senate amendments to **HB 736**.

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

Amend **HB 736** as follows:

(1) On page 1, line 24, between "agency" and "to", insert "or municipality".

(2) On page 1, line 26, between "agency" and the ":", insert "or municipality."

HB 3232 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

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

HB 3232, A bill to be entitled An Act relating to the collection of costs incurred by a municipality in remedying substandard conditions on a property.

On motion of Representative T. Smith, the house concurred in the senate amendments to **HB 3232** by (Record 876): 142 Yeas, 0 Nays, 2 Present, not voting.

Yeas — Allen; Alonzo; Bailey; Baxter; Berman; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Burnam; Callegari; Campbell; Capelo; Casteel; Castro; Chavez; Chisum; Christian; Coleman; Cook, B.; Cook, R.; Corte; Crabb; Crownover; Davis, J.; Davis, Y.; Dawson; Delisi; Denny; Deshotel; Driver; 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; Hilderbran; Hill; Hochberg; Hodge; Homer; Hope; 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; 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; Seaman; Smith, T.; Smith, W.; Smithee; Solis; Solomons; Stick; Swinford; Taylor; Telford; Thompson; Truitt; Turner; Uresti; Van Arsdale; Villarreal; West; Wilson; Wise; Wohlgemuth; Wong; Woolley; Zedler.

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

Absent, Excused — Marchant; Rose.

Absent — Canales; Dukes; Talton; Wolens.

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

Amend **HB 3232** by inserting the following section and renumbering the subsequent sections appropriately:

SECTION: _____. Subchapter A, Chapter 342, Health and Safety Code, Section 342.0075 applies only to a county with two or more municipalities each with a population of 300,000 or more.

HB 1691 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

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

HB 1691, A bill to be entitled An Act relating to use of the compensatory education allotment to fund certain programs for students who have dyslexia or a related disorder.

On motion of Representative Phillips, the house concurred in the senate amendments to **HB 1691** by (Record 877): 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; Eiland; Eissler; Elkins; Ellis; Escobar; Farabee; Farrar; Flores; Flynn; Gallego; Garza; Gattis; Geren; Giddings; Goodman; Goolsby; Griggs; Grusendorf; Guillen; Gutierrez; Haggerty; Hamilton; Hamric; Harper-Brown; Hartnett; Heflin; Hilderbran; Hill; Hochberg; Hodge; Homer; Hope; 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; 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; Seaman; Smith, T.; Smith, W.; Smithee; Solis;

Solomons; Swinford; Taylor; Telford; Thompson; Truitt; Turner; Uresti; Van Arsdale; Villarreal; West; Wilson; Wise; Wohlgemuth; Wolens; Wong; Woolley; Zedler.

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

Absent, Excused — Marchant; Rose.

Absent — Hardcastle; Stick; Talton.

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

Amend **HB 1691** as follows:

(1) In SECTION 1 of the bill, in proposed Subsection (c-1), Section 42.152, Education Code (House Engrossment, page 1, line 9), between "fund" and ":", insert "in proportion to the percentage of students served by the program that meet the criteria in Section29.081 (d) or (g)".

HB 3168 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

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

HB 3168, A bill to be entitled An Act relating to determination of workers' compensation benefits and to dispute resolution regarding those benefits.

On motion of Representative Giddings, the house concurred in the senate amendments to **HB 3168** by (Record 878): 141 Yeas, 0 Nays, 3 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; 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; Hilderbran; Hill; Hochberg; Homer; Hope; 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; Martinez Fischer; McCall; McClendon; McReynolds; Menendez; Mercer; Merritt; Miller; Moreno, J.; Moreno, P.; Morrison; Mowery; Nixon; Noriega; Oliveira; Olivo; Paxton; Peña; Phillips; Pickett; Pitts; Puente; Quintanilla; Raymond; Reyna; Riddle; Ritter; Rodriguez; Seaman; Smith, T.; Smith, W.; Smithee; Solis; Solomons; Stick; Swinford; Taylor; Telford; Thompson; Truitt; Uresti; Van Arsdale; Villarreal; West; Wilson; Wise; Wohlgemuth; Wolens; Wong; Woolley; Zedler.

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

Absent, Excused — Marchant; Rose.

Absent — Dukes; Hodge; Talton; Turner.

Senate Committee Substitute

HB 3168, A bill to be entitled An Act relating to the determination of workers' compensation benefits and the resolution of disputes regarding those benefits.

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

SECTION 1. Section 413.031, Labor Code, is amended by amending Subsection (e) and adding Subsection (m) to read as follows:

(e) Except as provided by Subsections ~~[Subsection]~~ (d), (f), and (m), a review of the medical necessity of a health care service provided under this chapter or Chapter 408 shall be conducted by an independent review organization under Article 21.58C, Insurance Code, in the same manner as reviews of utilization review decisions by health maintenance organizations. It is a defense for the insurance carrier if the carrier timely complies with the decision of the independent review organization.

(m) The commission by rule may prescribe an alternate dispute resolution process to resolve disputes regarding medical services costing less than the cost of a review of the medical necessity of a health care service by an independent review organization. The cost of a review under the alternate dispute resolution process shall be paid by the nonprevailing party.

SECTION 2. Section 408.123, Labor Code, is amended by adding Subsections (d)-(g) to read as follows:

(d) Except as otherwise provided by this section, an employee's first valid certification of maximum medical improvement and first valid assignment of an impairment rating is final if the certification or assignment is not disputed before the 91st day after the date written notification of the certification or assignment is provided to the employee and the carrier by verifiable means.

(e) An employee's first certification of maximum medical improvement or assignment of an impairment rating may be disputed after the period described by Subsection (d) if:

(1) compelling medical evidence exists of:

(A) a significant error by the certifying doctor in applying the appropriate American Medical Association guidelines or in calculating the impairment rating;

(B) a clearly mistaken diagnosis or a previously undiagnosed medical condition; or

(C) improper or inadequate treatment of the injury before the date of the certification or assignment that would render the certification or assignment invalid; or

(2) other compelling circumstances exist as prescribed by commission rule.

(f) If an employee has not been certified as having reached maximum medical improvement before the expiration of 104 weeks after the date income benefits begin to accrue or the expiration date of any extension of benefits under Section 408.104, the impairment rating assigned after the expiration of either of those periods is final if the impairment rating is not disputed before the 91st day

after the date written notification of the certification or assignment is provided to the employee and the carrier by verifiable means. A certification or assignment may be disputed after the 90th day only as provided by Subsection (e).

(g) If an employee's disputed certification of maximum medical improvement or assignment of impairment rating is finally modified, overturned, or withdrawn, the first certification or assignment made after the date of the modification, overturning, or withdrawal becomes final if the certification or assignment is not disputed before the 91st day after the date notification of the certification or assignment is provided to the employee and the carrier by verifiable means. A certification or assignment may be disputed after the 90th day only as provided by Subsection (e).

SECTION 3. The change in law made by this Act by the amendment of Section 408.123, Labor Code, applies only to a certification of maximum medical improvement and assignment of an impairment rating that is made on or after the effective date of this Act. A certification of maximum medical improvement or assignment of an impairment rating that is made before the effective date of this Act is governed by the law in effect on the date the certification or assignment was made, and the former law is continued in effect for that purpose.

SECTION 4. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2003.

HB 2933 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

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

HB 2933, A bill to be entitled An Act relating to the abolition of the Commission on Human Rights and the transfer of its functions to a civil rights division within the attorney general's office.

On motion of Representative Flores, the house concurred in the senate amendments to **HB 2933**.

Senate Committee Substitute

HB 2933, A bill to be entitled An Act relating to the abolition of the Commission on Human Rights and the transfer of its functions to the Texas Workforce Commission.

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

SECTION 1. Subchapter A, Chapter 21, Labor Code, is amended by adding Section 21.0015 to read as follows:

Sec. 21.0015. TEXAS WORKFORCE COMMISSION CIVIL RIGHTS DIVISION. The powers and duties exercised by the Commission on Human Rights under this chapter are transferred to the Texas Workforce Commission civil rights division. A reference in this chapter to the "commission" means the Texas Workforce Commission civil rights division.

SECTION 2. Chapter 301, Labor Code, is amended by adding Subchapter I to read as follows:

SUBCHAPTER I. CIVIL RIGHTS DIVISION

Sec. 301.151. DEFINITIONS. In this subchapter:

(1) "Director" means the director of the division.

(2) "Division" means the civil rights division of the commission.

(3) "Human rights commission" means the Commission on Human Rights established by this subchapter.

Sec. 301.152. GENERAL PROVISIONS. (a) The division is an independent division in the commission. The division shall be responsible for administering Chapter 21 of this code and Chapter 301, Property Code, including exercising the powers and duties formerly exercised by the former Commission on Human Rights under those laws.

(b) A reference in Chapter 21 of this code, Chapter 301, Property Code, or any other law to the former Commission on Human Rights means the division.

Sec. 301.153. HUMAN RIGHTS COMMISSION. (a) The division is governed by the human rights commission, which consists of seven members as follows:

(1) one member who represents industry;

(2) one member who represents labor; and

(3) five members who represent the public.

(b) The members of the human rights commission established under this section shall be appointed by the governor. In making appointments to the human rights commission, the governor shall strive to achieve representation on the human rights commission that is diverse with respect to disability, religion, age, economic status, sex, race, and ethnicity.

(c) The governor shall appoint the public members of the human rights commission from a list of names of individuals suggested by civil rights organizations and groups.

(d) The term of office of each commissioner is six years. The governor shall designate one commissioner to serve as presiding officer.

(e) A commissioner is entitled to reimbursement of actual and necessary expenses incurred in the performance of official duties.

(f) The human rights commission shall establish policies for the division and supervise the director in administering the activities of the division.

(g) The human rights commission is the state authority established as a fair employment practice agency and is authorized, with respect to an unlawful employment practice, to:

(1) grant relief from the practice;

(2) seek relief from the practice; or

(3) institute criminal proceedings.

Sec. 301.154. DIRECTOR. (a) The director shall be appointed by the human rights commission to administer the powers and duties of the division.

(b) To be eligible for appointment, the director must have relevant experience in the area of civil rights, specifically in working to prevent the types of discrimination the division is charged with preventing. The director must

demonstrate a commitment to equal opportunity for minorities, women, and the disabled. The director should also have relevant experience with housing and employment discrimination claims.

Sec. 301.155. INVESTIGATOR TRAINING PROGRAM; PROCEDURES MANUAL. (a) A person who is employed under this chapter by the division as an investigator may not conduct an investigation until the person completes a comprehensive training and education program for investigators that complies with this section.

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

(1) the requirements relating to employment adopted under the Americans with Disabilities Act (42 U.S.C. Section 12101 et seq.) and its subsequent amendments, with a special emphasis on requirements regarding reasonable accommodations;

(2) various types of disabilities and accommodations appropriate in an employment setting for each type of disability; and

(3) fair employment and housing practices.

(c) Each investigator shall annually complete a continuing education program designed to provide investigators with the most recent information available regarding the issues described by Subsection (b), including legislative and judicial changes in the law.

(d) The director shall develop and biennially update an investigation procedures manual. The manual must include investigation procedures and information and may include information regarding the Equal Employment Opportunity Commission and the United States Department of Housing and Urban Development.

Sec. 301.156. ANALYSIS OF DISCRIMINATION COMPLAINTS; REPORT. (a) The division shall collect and report statewide information relating to employment and housing discrimination complaints as required by this section.

(b) Each state fiscal year, the division shall collect and analyze information regarding employment and housing discrimination complaints filed with the division, the Equal Employment Opportunity Commission, the United States Department of Housing and Urban Development, and local commissions in this state. The information must include:

(1) an analysis of employment complaints filed by the basis of the complaint, including:

(A) sex, race, color, age, disability, national origin, religion, and genetic information; and

(B) retaliatory actions against the complainant;

(2) an analysis of housing complaints filed by the basis of the complaint, including sex, race, color, disability, national origin, religion, and familial status;

(3) an analysis of employment complaints filed by issue, including discharge, terms and conditions, sexual harassment, promotion, hiring, demotion, and layoff;

(4) an analysis of housing complaints filed by issue, including terms and conditions, refusal to rent or sell, discriminatory financing or advertising, and false representation;

(5) an analysis of employment and housing cases closed by the reason the case was closed, including findings or determinations of cause or no cause, successful conciliation, right to sue issued, complaint withdrawn after resolution, no-fault settlement, failure to cooperate by the complainant, and lack of jurisdiction; and

(6) the average processing time for complaints resolved by the division in each state fiscal year, regardless of whether the complaint was filed in the same fiscal year in which the complaint was resolved.

(c) The results of an analysis required under this section shall be included in the commission's annual report to the governor and legislature.

SECTION 3. Subchapter A, Chapter 301, Property Code, is amended by adding Section 301.0015 to read as follows:

Sec. 301.0015. TEXAS WORKFORCE COMMISSION CIVIL RIGHTS DIVISION. The powers and duties exercised by the Commission on Human Rights under this chapter are transferred to the Texas Workforce Commission civil rights division. A reference in this chapter to the "commission" means the Texas Workforce Commission civil rights division.

SECTION 4. The following laws are repealed:

- (1) Chapter 416, Government Code;
- (2) Sections 21.002(2) and (3), Labor Code; and
- (3) Sections 301.003(3), 301.061, and 301.064, Property Code.

SECTION 5. On the effective date of this Act:

(1) the Commission on Human Rights as it exists immediately before the effective date of this Act is abolished and the offices of the members of the commission serving on that date are abolished;

(2) all powers, duties, functions, and activities performed by the Commission on Human Rights immediately before the effective date of this Act are transferred to the Texas Workforce Commission civil rights division;

(3) a rule, form, order, or procedure adopted by the Commission on Human Rights is a rule, form, order, or procedure of the Texas Workforce Commission civil rights division and remains in effect until changed by the Texas Workforce Commission;

(4) a reference in law to the Commission on Human Rights means the Texas Workforce Commission civil rights division;

(5) a complaint, investigation, or other proceeding pending before the Commission on Human Rights under Chapter 21, Labor Code, Chapter 301, Property Code, or any other law is transferred without change in status to the Texas Workforce Commission civil rights division;

(6) all obligations, rights, and contracts of the Commission on Human Rights are transferred to the Texas Workforce Commission civil rights division; and

(7) all property, including records and money, in the custody of the Commission on Human Rights and all funds appropriated by the legislature for the Commission on Human Rights, including federal funds, shall be transferred to the Texas Workforce Commission civil rights division.

SECTION 6. Not later than November 1, 2003, the governor shall appoint new members to the Commission on Human Rights established under Subchapter I, Chapter 301, Labor Code, as added by this Act. In appointing members under this section, the governor shall appoint:

- (1) two members for terms expiring February 1, 2005;
- (2) two members for terms expiring February 1, 2007; and
- (3) three members for terms expiring February 1, 2009.

SECTION 7. This Act takes effect September 1, 2003.

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

Amend **CSHB 2933** as follows:

(1) on page 1, line 51, strike Subsection (c) and reletter subsequent Subsections accordingly.

(2) on page 3, line 18, strike "416" and substitute "461."

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

Amend **CSHB 2933**, on page 3, line 59, by striking SECTION 7, and substituting the following:

"SECTION 7. This act shall take effect upon certification of the Texas Workforce Commission Civil Rights Division by the appropriate federal agency, and the transfer of related federal funds. Upon certification of Texas Workforce Commission Civil Rights Division by the appropriate federal agency, the Workforce Commission shall file with the Secretary of State for publication in the Texas Register."

HB 3305 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

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

HB 3305, A bill to be entitled An Act relating to ensuring cost savings in the operations of certain governmental entities that provide criminal justice and public safety services.

On motion of Representative Berman, the house concurred in the senate amendments to **HB 3305** by (Record 879): 140 Yeas, 0 Nays, 2 Present, not voting.

Yeas — Allen; Alonzo; Bailey; Baxter; Berman; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Burnam; Callegari; Campbell; Capelo; Casteel; Castro; Chavez; Chisum; Christian; Coleman; Cook, B.; Cook, R.; Corte; Crabb; Crownover; Davis, J.; Davis, Y.; Dawson; Delisi; Denny; Deshotel; Dukes; Dunnam; Dutton; Edwards; Eiland; Eissler; Elkins; Ellis; Escobar; Farabee; Farrar; Flores; Flynn; Gallego; Garza; Gattis; Geren; Giddings; Goodman; Goolsby; Griggs; Guillen; Gutierrez; Haggerty; Hamilton; Hamric; Hardcastle;

Harper-Brown; Hartnett; Heflin; Hilderbran; Hill; Hochberg; Hodge; Homer; Hope; Hopson; Howard; Hunter; Hupp; Isett; Jones, D.; Jones, E.; Jones, J.; Keel; Keffer, B.; Keffer, J.; King; Kolkhorst; Krusee; Kuempel; Laney; Laubenber; Lewis; Luna; Mabry; Madden; 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; Seaman; Smith, T.; Smith, W.; Smithee; Solis; Solomons; Stick; Swinford; Telford; Thompson; Truitt; Turner; Uresti; Van Arsdale; Villarreal; West; Wilson; Wise; Wohlgemuth; Wolens; Wong; Woolley; Zedler.

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

Absent, Excused — Marchant; Rose.

Absent — Canales; Driver; Grusendorf; Hughes; Talton; Taylor.

Senate Committee Substitute

HB 3305, A bill to be entitled An Act relating to certain surcharges assessed and collected by the Texas Alcoholic Beverage Commission.

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

SECTION 1. Section 5.50(b), Alcoholic Beverage Code, is amended to read as follows:

(b) The commission may not increase or decrease a fee set by this code, but if a statute is enacted creating a certificate, permit, or license and there is no fee established, the commission by rule may set a fee. The commission by rule shall assess and collect annual surcharges from all holders of a certificate, permit, or license issued by the commission in addition to any fee set by this code. ~~[The surcharges shall be set at a level so that the anticipated total of all fees collected by the commission for a fiscal year and all surcharges for a fiscal year are equal to the legislative appropriation to the commission for the regulation of alcoholic beverages.]~~ In assessing a surcharge, the commission may not overly penalize any segment of the alcoholic beverage industry or impose an undue hardship on small businesses.

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.

HB 3629 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

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

HB 3629, A bill to be entitled An Act relating to the creation of the Spring Branch Area Community Improvement District; providing the authority to issue bonds.

On motion of Representative Bohac, the house concurred in the senate amendments to **HB 3629** by (Record 880): 142 Yeas, 0 Nays, 2 Present, not voting.

Yeas — Allen; Alonzo; Bailey; Baxter; Berman; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Burnam; Callegari; Campbell; 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; Guillen; Gutierrez; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Heflin; Hilderbran; Hill; Hochberg; Homer; Hope; 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; 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; Seaman; Smith, T.; Smith, W.; Smithee; Solis; Solomons; Stick; Swinford; Taylor; Telford; Thompson; Truitt; Turner; Uresti; Van Arsdale; Villarreal; West; Wilson; Wise; Wohlgemuth; Wolens; Wong; Woolley; Zedler.

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

Absent, Excused — Marchant; Rose.

Absent — Canales; Grusendorf; Hodge; Talton.

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

Amend **HB 3629** as follows:

- (1) On page 2, line 57, insert "and" after the semicolon.
- (2) On page 2, line 59, strike ";" and substitute a period.
- (3) On page 2, lines 60-61, strike subsection (5).
- (4) On page 2, lines 62-66, strike subsection (c).
- (5) On page 4, line 26, strike "and" and substitute "or".
- (6) On page 4, lines 27-30, strike subsection (2) and insert the following new subsection:

(2) at least 50 owners of real property in the district that will be subject to the assessment, if more than 50 persons own real property subject to the assessment in the district as determined by the most recent certified tax appraisal roll for Harris County.

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

- (1) Amend **HB 3629** (committee report) on page one, between lines 10-11 by inserting the following:

SUBCHAPTER A. SPRING BRANCH AREA COMMUNITY
IMPROVEMENT DISTRICT

(2) Amend **HB 3629** (committee report) on page 6 after line 6 by inserting the following:

SUBCHAPTER B. TEMPLE HEALTH AND BIOSCIENCE
ECONOMIC DEVELOPMENT DISTRICT

ARTICLE 1. LEGISLATIVE FINDINGS AND INTENT;
CONSTRUCTION OF ACT

SECTION 1.001. DECLARATION OF LEGISLATIVE FINDINGS AND INTENT. (a) The creation of a district under this Act is essential to accomplish the purposes of Section 52-a, Article III, and Section 59, Article XVI, Texas Constitution, and to accomplish other public purposes stated in this Act.

(b) This Act is enabling legislation enacted to further the public purposes under Section 52-a, Article III, Texas Constitution.

(c) The creation of a district under this Act is necessary to further the public purpose of improving the economy of the state and the City of Temple by providing for the development of health and bioscience operations and facilities.

(d) A district created under this Act serves the public purposes stated in this section.

SECTION 1.002. CONSTRUCTION OF ACT. (a) This Act shall be liberally construed in conformity with the legislative findings and purposes set forth in this Act.

(b) Chapter 311, Government Code (Code Construction Act), applies to this Act.

(c) A reference to a section without further identification is a reference to a section of this Act.

ARTICLE 2. GENERAL PROVISIONS

SECTION 2.001. DEFINITIONS. In this Act:

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

(2) "Bond" means an interest-bearing obligation issued by the district under this Act, including a bond, certificate, note, or other evidence of indebtedness.

(3) "City council" means the governing body of the City of Temple.

(4) "Director" means a board member.

(5) "District" means the Temple Health and Bioscience Economic Development District.

(6) "Project" means a project established under Section 5.010 and includes the land, buildings, equipment, facilities, infrastructure, improvements, and other property necessary to accomplish the purposes of the project.

SECTION 2.002. NATURE OF DISTRICT. The district is a special district and a political subdivision of this state under Section 59, Article XVI, Texas Constitution.

ARTICLE 3. CREATION OF DISTRICT

SECTION 3.001. APPLICATION FOR PETITION TO CREATE DISTRICT. (a) If 10 or more qualified voters of the City of Temple file a written application with the city, the city shall issue to the applicants a petition to be

circulated among the qualified voters of the city for the signatures of voters who desire that a local option election be called in the city to determine whether to create the district:

(1) with the power to impose an ad valorem tax not to exceed 15 cents per \$100 valuation of all taxable property in the district; or

(2) without the power to impose an ad valorem tax.

(b) If the district is created without the power to impose an ad valorem tax and 10 or more qualified voters of the City of Temple file a written application with the city for a petition to enable the district to impose a tax, the city shall issue to the applicants a petition to be circulated among the qualified voters of the city for the signatures of voters who desire to enable the district to impose an ad valorem tax not to exceed 15 cents per \$100 valuation of all taxable property in the district.

(c) At the request of petitioners under this section, a petition for a local option election to determine whether the district may impose an ad valorem tax may also express that at the same election the district shall be authorized to issue bonds payable in whole or in part from that ad valorem tax as permitted under Section 6.010.

SECTION 3.002. HEADING, STATEMENT, AND ISSUE ON APPLICATION FOR PETITION TO CREATE DISTRICT. (a) An application for a petition under Section 3.001 to create the district with the power to impose an ad valorem tax must be entitled: "Application for Local Option Election Petition to Create the Temple Health and Bioscience Economic Development District with the Power to Impose an Ad Valorem Tax not to Exceed 15 Cents per \$100 Valuation of all Taxable Property in the District." The application must contain a statement just before the signatures of the applicants that reads substantially as follows: "The petitioners whose signatures appear on this petition intend that the Temple Health and Bioscience Economic Development District referred to in the issue set out above be created." If the petition also seeks an election to authorize the issuance of bonds by the district payable in whole or in part from ad valorem taxes, the statement: "and to Issue Bonds Payable in Whole or in Part from the Ad Valorem Tax" must be appended to the end of the title specified in this subsection.

(b) An application for a petition under Section 3.001(a) to create the district without the power to impose the ad valorem tax must be entitled: "Application for Local Option Election Petition to Create the Temple Health and Bioscience Economic Development District." The application must contain a statement just before the signatures of the applicants that reads substantially as follows: "The petitioners whose signatures appear on this petition intend that the Temple Health and Bioscience Economic Development District referred to in the issue set out above be created."

(c) If the district initially is created without ad valorem taxing authority, an application for a petition under Section 3.001(b) seeking an election to enable the district to impose an ad valorem tax not to exceed 15 cents per \$100 valuation of all taxable property in the district must be entitled: "Application for Local Option Election Petition to Enable the Temple Health and Bioscience Economic

Development District to Impose an Ad Valorem Tax not to Exceed 15 cents per \$100 Valuation of all Taxable Property in the District." The application must contain a statement just before the signatures of the applicants that reads substantially as follows: "The petitioners whose signatures appear on this petition intend that the Temple Health and Bioscience Economic Development District be enabled to impose an ad valorem tax not to exceed 15 cents per \$100 valuation of all taxable property in the district." If the petition also seeks an election to authorize the issuance of bonds by the district payable in whole or in part from ad valorem taxes, the statement: "and to Issue Bonds Payable in Whole or in Part from the Ad Valorem Tax" must be appended to the title specified by this subsection.

(d) Each petition must show the date it is issued by the City of Temple and be serially numbered. Each page of a petition must bear the same date and serial number.

SECTION 3.003. COPIES OF PETITION. (a) The City of Temple shall supply as many copies of the petition as required by the applicants but not to exceed more than one page of the petition for every 10 registered voters in the city. Each copy shall bear the date, number, and seal on each page as required on the original petition.

(b) The City of Temple shall keep a copy of each petition and a record of the applicants for that petition.

SECTION 3.004. FILING AND VERIFICATION OF PETITION. (a) Not later than the 120th day after the date on which a petition is issued by the City of Temple under Section 3.002, the applicants requesting the petition may file a request with the City of Temple for the petition to be verified under Subsection (b).

(b) If a request for verification is made under Subsection (a), the City of Temple shall examine the names of the signers of petitions and determine whether the signers of the petition were qualified voters of the city at the time the petition was issued. The City of Temple shall certify to the city council the number of qualified voters signing the petition not later than the 15th day after the date the request for verification was filed.

(c) A signature may not be counted under this section if there is good reason to believe that:

- (1) the signature is not the actual signature of the purported signer;
- (2) the voter registration certificate number is not correct;
- (3) the signature duplicates a name or the handwriting used in any other signature on the petition; or
- (4) the signer's residence address cannot be verified.

SECTION 3.005. REQUIREMENTS TO ORDER ELECTION. (a) Not later than the date of the second regular session of the city council convened after a petition has been verified under Section 3.004, the city council shall order a local option election to be held on the issue set out in the petition if the petition contains the following:

(1) the actual signatures of a number of qualified voters of the City of Temple equal to at least 10 percent of the registered voters of the city who voted in the most recent general election in the city;

(2) a notation showing the residence address of each signer;

(3) each signer's voter registration certificate number; and

(4) each signer's printed name.

(b) The following shall be entered in the city council minutes:

(1) the dates a petition is presented to and verified by the City of Temple;

(2) the names of the signers; and

(3) the action taken on the petition.

SECTION 3.006. NOTICE AND CONDUCT OF ELECTION; RESULTS.

(a) If the requirements to order an election under Section 3.005 are met, the city council shall give notice of the election on the issue set out in the verified petition by publishing a substantial copy of the election order once a week for two consecutive weeks in a newspaper with general circulation in the City of Temple. The first publication must appear before the 14th day before the date set for the election. If the election order includes the issue of whether the district may issue bonds, the first publication must appear before the 31st day before the date set for the election.

(b) The order calling the election must:

(1) define the district boundaries to be the boundaries of the City of Temple as the boundaries of the city are adjusted from time to time by the city; and

(2) call for the election to be held within those boundaries.

(c) The ballot at an election held under this section must be printed to permit voting for or against the proposition set forth below that was covered by the verified petition:

(1) "Authorizing the creation of the Temple Health and Bioscience Economic Development District and the imposition of an ad valorem tax not to exceed the rate of 15 cents per \$100 valuation of all taxable property in the district.;

(2) "Authorizing the creation of the Temple Health and Bioscience Economic Development District and the imposition of an ad valorem tax not to exceed the rate of 15 cents per \$100 valuation of all taxable property in the district and to issue bonds payable in whole or in part from the ad valorem tax.;

(3) "Authorizing the creation of the Temple Health and Bioscience Economic Development District.;

(4) "Authorizing the imposition of an ad valorem tax not to exceed the rate of 15 cents per \$100 valuation of all taxable property in the district.;

(5) "Authorizing the imposition of an ad valorem tax not to exceed the rate of 15 cents per \$100 valuation of all taxable property in the district and to issue bonds payable in whole or in part from the ad valorem tax."

(d) The district is created if a majority of the registered voters of the proposed district voting at the election favor creation. The district may impose an ad valorem tax not to exceed the rate of 15 cents per \$100 valuation of all taxable

property in the district if a majority of the registered voters of the district voting at the election favor its imposition. The district may issue bonds payable wholly or partially from ad valorem taxes if a majority of the registered voters of the district voting at the election favor the authorization.

(e) If a majority of the registered voters of the proposed district voting at the election to create the district vote against creating the district, another election on the question of creating the district may not be held before the first anniversary of the date of the most recent election concerning the creation. If a majority of the registered voters of the district voting at the election to establish the power of the district to impose an ad valorem tax vote against the power, another election on the question may not be held before the first anniversary of the date of the most recent election concerning the question. If a majority of the registered voters of the district voting at the election to authorize the district to issue bonds payable wholly or partially from ad valorem taxes vote against the authorization, another election on the question may not be held before the first anniversary of the date of the most recent election concerning the question.

(f) The City of Temple shall hold an election provided under this section on the earliest of the uniform election dates under Section 41.001, Election Code, to occur following the adoption of the order calling the election by the city council.

SECTION 3.007. TEMPORARY BOARD. (a) After creation of the district under Section 3.006(d), the city council by resolution shall appoint seven directors to serve on a temporary board.

(b) In the resolution, the city council shall stagger the terms of the directors appropriately so that four directors serve until directors are elected under Section 4.003(1) and three directors serve until directors are elected under Section 4.003(2).

ARTICLE 4. BOARD OF DIRECTORS

SECTION 4.001. GOVERNING BODY. The district is governed by a board of seven directors elected as provided by this Act.

SECTION 4.002. TERMS. Except as provided by Section 3.007, directors serve staggered three-year terms.

SECTION 4.003. DATE OF ELECTIONS. The district shall hold board elections as follows:

(1) four directors must be elected on the regular election day on which certain members of the city council and the mayor of the City of Temple are elected; and

(2) three directors must be elected on the regular election day on which the other members of the city council of the City of Temple are elected.

SECTION 4.004. QUALIFICATIONS. A director:

(1) must be a registered voter of the City of Temple; and

(2) may not be:

(A) an elected official; or

(B) employed by the district or the City of Temple.

SECTION 4.005. BOARD VACANCY. A vacancy in the office of director shall be filled by the remaining directors for the unexpired term.

SECTION 4.006. DIRECTOR'S BOND; OATH. (a) As soon as practicable after a director is elected or appointed, the director shall execute a bond for \$10,000 payable to the district and conditioned on the faithful performance of the director's duties.

(b) The bond must be approved by the board.

(c) Each director shall take the oath of office prescribed by the constitution for public office.

(d) The bond and oath shall be filed with the district and the district shall retain the bond and oath in its records.

SECTION 4.007. BOARD OFFICERS. (a) The board shall elect from the board a presiding officer, a secretary, and any other officers the board considers necessary.

(b) The board by resolution shall establish the powers and duties of the officers, consistent with this Act.

SECTION 4.008. COMPENSATION; EXPENSES. A director serves without compensation but is entitled to reimbursement for actual and necessary expenses approved by the board.

SECTION 4.009. MEETINGS AND NOTICE. (a) The board may establish regular meetings to conduct district business and may hold special meetings at other times as necessary.

(b) The board shall provide the notice prepared under Subchapter C, Chapter 551, Government Code, to the City of Temple's secretary. In addition to the requirements imposed by that subchapter on the district, the city shall post the notice at the usual location at which notices of city council meetings are posted.

SECTION 4.010. EMPLOYEES; PERSONS HIRED BY BOARD. (a) The board shall employ any person the board considers necessary to conduct district affairs, including:

- (1) engineers;
- (2) attorneys;
- (3) financial advisors;
- (4) economists;
- (5) a general manager;
- (6) a utility operator;
- (7) bookkeepers;
- (8) auditors; and
- (9) clerical workers.

(b) The board by resolution shall determine the compensation and terms of service of any person employed or hired by the district.

(c) The board may remove any employee.

(d) The board may require an employee to execute a bond payable to the district and conditioned on the faithful performance of the person's duties.

ARTICLE 5. POWERS AND DUTIES

SECTION 5.001. GENERAL POWERS OF DISTRICT. The district has all powers necessary or convenient to carry out and effect the purposes and provisions of this Act.

SECTION 5.002. RULES. The board may adopt rules to govern the district, including its operations, employees, and property.

SECTION 5.003. DISTRICT OFFICE. The board shall designate and establish a district office in the City of Temple.

SECTION 5.004. PROPERTY. The district may exercise any type of property right, including the power to acquire, sell, or lease as lessee or lessor, regarding any type of property interest in the district or for use in the district under terms and conditions determined by the board.

SECTION 5.005. AGREEMENTS; GRANTS. The district may make an agreement with or accept a gift, grant, or loan from any person for any district purpose, including a contract to manage or maintain a district project.

SECTION 5.006. COMPETITIVE BIDDING. (a) Except as provided by Subsection (b), Section 375.221, Local Government Code, applies to the district.

(b) Section 375.221, Local Government Code, does not apply to a contract between the district and:

- (1) another governmental entity;
- (2) a nonprofit corporation, including a scientific research corporation;

or

(3) a corporation created under the Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes).

SECTION 5.007. RELATION TO OTHER LAW ON CONTRACTS. This Act states the procedures necessary to award contracts and supersedes any law or other requirement otherwise applicable to the district regarding the award of contracts.

SECTION 5.008. FEES FOR USE OF DISTRICT IMPROVEMENTS. The district may establish and maintain reasonable and nondiscriminatory rates, fares, charges, rents, or other fees or compensation for the use of the improvements constructed, operated, or maintained by the district.

SECTION 5.009. PROGRAMS. (a) The district may establish and provide for the administration of one or more programs to:

- (1) promote state or local economic development; and
- (2) stimulate business and commercial activity in the district that relates

to a project.

(b) As part of a program established under Subsection (a), the district may:

- (1) make loans or grants of public money for a public purpose as provided by Section 52-a, Article III, Texas Constitution; or
- (2) provide district personnel and services for the program.

(c) The district may contract with any person to administer a program under this section.

SECTION 5.010. PROJECTS. (a) The district may establish projects for:

- (1) bioscience and health products, including projects related to:
 - (A) research and development;
 - (B) invention and discovery;
 - (C) commercialization;
 - (D) production and manufacturing of goods and products, including facilities for manufacturing; and

(E) development of production process and delivery system purposes in, involved in, based on, or related to, or intended to advance the state of knowledge, skill, and understanding of, the biosciences, including:

- (i) wet laboratories;
- (ii) clean rooms;
- (iii) dry laboratories;
- (iv) research and development facilities;
- (v) genetics facilities and equipment;
- (vi) pharmaceutical facilities and equipment;
- (vii) biotechnology incubators;
- (viii) bioscience and biotech health care facilities;
- (ix) biotech facilities;
- (x) bioscience facilities; and
- (xi) other similar projects;

(2) bioscience education, including health or biotech education facilities regardless of any affiliation with other institutions of higher, vocational, or job training education;

- (3) access to public safety facilities and equipment;
- (4) streets and roads;
- (5) drainage services;
- (6) wastewater services;
- (7) potable water services;
- (8) telecommunication facilities;
- (9) demolition of existing structures;
- (10) development and institution of water conservation programs;
- (11) chilled water services;
- (12) steam services;
- (13) industrial gases services;
- (14) other utility and process and production services; or
- (15) the support of any other type of health or bioscience projects.

(b) A project established under Subsection (a) must be related to the bioscience or health purposes of the district.

SECTION 5.011. SUITS. (a) The district may sue and be sued.

(b) Service of process in a suit may be made by serving any two directors.

(c) The district may not be required to give security for costs and may appeal from a judgment without giving a supersedeas or cost bond.

SECTION 5.012. SEAL. The district may adopt a seal.

SECTION 5.013. NONPROFIT CORPORATION. (a) The board by resolution may authorize the creation of a nonprofit corporation under the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes), including creation of a scientific corporation. The nonprofit corporation shall assist and act on behalf of the district in implementing a project or providing a service authorized by this Act.

(b) The board shall appoint the board of directors of a nonprofit corporation. The board may appoint a director of the district's board to serve as a director of the nonprofit corporation. The board of directors of the nonprofit corporation shall serve in the same manner as the board of directors of a local government corporation created under Chapter 431, Transportation Code.

(c) The nonprofit corporation:

(1) has the powers of and is considered for purposes of this Act to be a local government corporation created under Chapter 431, Transportation Code; and

(2) may implement any project and provide any service authorized by this Act.

ARTICLE 6. GENERAL FINANCIAL PROVISIONS

SECTION 6.001. USE OF DISTRICT MONEY. The district may use district money for any district purpose, including to pay:

(1) for projects; and

(2) district bonds or other obligations.

SECTION 6.002. INVESTMENTS. (a) The district may invest money it receives under this Act.

(b) The district may hire a person to invest district money on terms the board considers advisable.

SECTION 6.003. DISBURSEMENTS OR TRANSFERS OF MONEY. The board by resolution shall establish the number of directors' signatures and the procedure required for a disbursement or transfer of district money.

SECTION 6.004. DEPOSITORY INSTITUTION. The district may designate financial institutions to serve as the depository bank or banks for the district.

SECTION 6.005. ACCOUNTS; FISCAL YEAR. (a) The district may establish an accounting system for the district for each year.

(b) The district may establish a fiscal year for the district.

SECTION 6.006. PROJECT FUND. (a) The district by resolution shall establish a project fund.

(b) The district may establish separate accounts within the project fund.

(c) The district shall deposit into the project fund all district money, including:

(1) the proceeds from any ad valorem tax imposed by the district;

(2) all revenue from the sale of district bonds or other obligations; and

(3) any other money acquired or received by the district.

SECTION 6.007. AUDIT. (a) The district shall contract with an independent certified public accountant or a certified public accounting firm to audit the district's affairs annually, including the district's financial records. The contract must be a written contract.

(b) The district shall make the audit available for inspection by the public and the City of Temple.

SECTION 6.008. ASSESSMENTS. The district may impose an assessment on property in the district, including a leasehold interest, by agreement with the property owner.

SECTION 6.009. LIABILITIES. The district may incur liabilities, including those incurred by:

(1) borrowing money on terms and conditions the board determines; and

(2) issuing bonds or other obligations under Section 6.010.

SECTION 6.010. BONDS AND OTHER OBLIGATIONS. (a) The district may issue bonds, including revenue bonds, or other obligations to pay the costs of a project in the district.

(b) In exercising the district's borrowing power, the district may issue a bond or other obligation in the form of a bond, note, certificate of participation or other instrument evidencing a proportionate interest in payments to be made by the district, or other type of obligation.

ARTICLE 7. AD VALOREM TAX

SECTION 7.001. IMPOSITION OF AD VALOREM TAX. If authorized at an election held under Section 3.006, the district:

(1) may by order impose an annual ad valorem tax on taxable property in the district to pay for projects; and

(2) shall by order impose an ad valorem tax to pay for bonds that are payable wholly or partly from ad valorem taxes.

SECTION 7.002. TAX RATE. (a) The board shall determine the tax rate.

(b) The tax rate may not exceed 15 cents per each \$100 of assessed valuation of taxable property in the district.

SECTION 7.003. TAX ASSESSOR-COLLECTOR. The board may:

(1) appoint a district tax assessor-collector; or

(2) contract for the assessment and collection of taxes as provided by the Tax Code.

ARTICLE 8. DISSOLUTION OF DISTRICT

SECTION 8.001. DISSOLUTION OF DISTRICT. The district may be dissolved only as provided by this article.

SECTION 8.002. DISSOLUTION BY ORDER OF CITY COUNCIL. (a) The board may petition the city council to dissolve the district if the board finds that the district:

(1) has not issued bonds or other obligations under Section 6.010 and that the purposes of the district are impracticable, or reasonably and economically cannot be successful or accomplished; or

(2) has paid, or otherwise provided for payment of, all bonds and other obligations issued under Section 6.010 and that the purposes of the district have been accomplished.

(b) On receipt of a petition under Subsection (a), the city council shall hold a public hearing to determine whether the dissolution of the district serves the best interests of the City of Temple and the residents of the city.

(c) After the hearing, the city council shall:

(1) enter in its records the appropriate findings and order dissolving of the district if the city council unanimously determines that the best interests of the City of Temple and the residents of the city will be served by dissolving the district; or

(2) enter its order providing that the district has not been dissolved if the city council does not unanimously determine that the best interests of the City of Temple and the residents of the city will be served by dissolving the district.

(d) On dissolution of the district under this section:

(1) all money and other property of the district is transferred to the City of Temple; and

(2) the City of Temple shall assume any remaining contracts or other obligations of the district.

SECTION 8.003. DISSOLUTION OF DISTRICT ON AGREEMENT WITH CITY. (a) The district may be dissolved by agreement between the city council and the board.

(b) On dissolution of the district under this section:

(1) all money and other property of the district is transferred to the City of Temple; and

(2) the City of Temple shall assume the district's responsibilities regarding all district contracts, debts, bonds, and other obligations.

SECTION 8.004. EFFECT OF DISSOLUTION ON TAXES. On dissolution of the district, any taxes imposed by the district are abolished.

ARTICLE 9. EFFECTIVE DATE

SECTION 9.001. EFFECTIVE DATE. This subchapter 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.

HB 1287 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

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

HB 1287, A bill to be entitled An Act relating to the location and operation of concrete crushing facilities.

On motion of Representative Chisum, the house concurred in the senate amendments to **HB 1287** by (Record 881): 140 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; Dukes; Dunnam; Dutton; Edwards; Eiland; Eissler; Elkins; Ellis; Escobar; Farabee; Farrar; Flores; Flynn; Gallego; Garza; Gattis; Geren; Giddings; Goodman; Goolsby; Griggs; Guillen; Gutierrez; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Heflin; Hilderbran; Hill; Hochberg; Hodge; Homer; Hope; Hopson; Hughes; Hunter; Hupp; Isett; Jones, D.; Jones, E.; Jones, J.; Keel; Keffer, B.; Keffer, J.; King; Kolkhorst; Krusee; Kuempel; Laney; Laubenberg; Luna; Mabry; Madden; 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; Seaman; Smith, T.; Smith, W.; Smithee; Solis; Stick; Swinford; Taylor; Telford; Thompson; Truitt; Turner; Uresti; Van Arsdale; Villarreal; West; Wilson; Wise; Wohlgemuth; Wolens; Wong; Woolley; Zedler.

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

Absent, Excused — Marchant; Rose.

Absent — Driver; Grusendorf; Howard; Lewis; Solomons; Talton.

Senate Committee Substitute

HB 1287, A bill to be entitled An Act relating to the location and operation of certain portable facilities.

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

SECTION 1. Section 382.056(r), Health and Safety Code, is amended to read as follows:

(r) This section does not apply to:

(1) the relocation or change of location of a portable facility to a site where a portable facility ~~[permitted by the commission is located if no portable facility]~~ has been located at the proposed site at any time during the previous two years; ~~[or]~~

(2) a facility located temporarily in the right-of-way, or contiguous to the right-of-way, of a public works project; or

(3) a facility described by Section 382.065(c), unless that facility is in a county with a population of 2.4 million or more or in a county adjacent to such a county.

SECTION 2. Section 382.065, Health and Safety Code, as added by Chapter 965, Acts of the 77th Legislature, Regular Session, 2001, is amended to read as follows:

Sec. 382.065. CERTAIN LOCATIONS FOR OPERATING CONCRETE CRUSHING FACILITY PROHIBITED. (a) The commission by rule shall prohibit the ~~[location of or]~~ operation of a concrete crushing facility within 440 yards of a building in use ~~[used]~~ as a single or multifamily residence, school, or place of worship at the time the application for a permit to operate the facility at a site near the residence, school, or place of worship is filed with the commission. The measurement of distance for purposes of this subsection shall be taken from the point on the concrete crushing facility that is nearest to the residence, school, or place of worship toward the point on the residence, school, or place of worship that is nearest the concrete crushing facility.

(b) Subsection (a) ~~[This section]~~ does not apply to a ~~[an existing]~~ concrete crushing facility;

(1) at a location for which commission authorization for the operation of a concrete crushing facility was in effect on September 1, 2001; or

(2) at a location that satisfies the distance requirements of Subsection (a) at the time the application for the initial authorization for the operation of that facility at that location is filed with the commission, provided that the authorization is granted and maintained, regardless of whether a single or multifamily residence, school, or place of worship is subsequently built or put to use within 440 yards of the facility.

(c) Except as provided by Subsection (d), Subsection (a) does not apply to a concrete crushing facility that:

(1) is engaged in crushing concrete and other materials produced by the demolition of a structure at the location of the structure and the concrete and other materials are being crushed primarily for use at that location;

(2) operates at that location for not more than 180 days;

(3) the commission determines will cause no adverse environmental or health effects by operating at that location; and

(4) complies with conditions stated in commission rules, including operating conditions.

(d) Notwithstanding Subsection (c), Subsection (a) applies to a concrete crushing facility in a county with a population of 2.4 million or more or in a county adjacent to such a county.

SECTION 3. The Texas Commission on Environmental Quality shall adopt rules to implement Section 382.065, Health and Safety Code, as amended by this Act, as soon as practicable and not later than January 1, 2004.

SECTION 4. (a) 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) A change in law made by this Act the effect of which is to restrict the location or operation of a concrete crushing facility does not apply to a facility for which an application for authorization to operate at a particular location is filed before the effective date of this Act.

HB 3141 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

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

HB 3141, A bill to be entitled An Act relating to stamping of cigarettes in interstate commerce.

On motion of Representative Wilson, the house concurred in the senate amendments to **HB 3141** by (Record 882): 140 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; 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; Giddings; Goodman; Goolsby; Griggs; Guillen; Gutierrez; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Heflin; Hilderbran; Hill; Hochberg; Hodge; Homer; Hope; Hopson; 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; 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; Seaman; Smith, T.; Smith, W.; Smithee; Solis; Solomons; Stick; Swinford; Taylor; Telford; Thompson; Truitt; Turner; Uresti; Van Arsdale; Villarreal; West; Wilson; Wise; Wohlgemuth; Wolens; Wong; Woolley; Zedler.

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

Absent, Excused — Marchant; Rose.

Absent — Crownover; Geren; Grusendorf; Howard; Puente; Talton.

Senate Committee Substitute

HB 3141, A bill to be entitled An Act relating to stamping of cigarettes in interstate commerce.

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

SECTION 1. Section 154.152, Tax Code, is amended by adding Subsections (c), (d), and (e) to read as follows:

(c) A person may not transport or cause to be transported from this state cigarettes for sale in another state without first affixing to the cigarettes the stamp required by the state in which the cigarettes are to be sold or paying any other excise tax on the cigarettes imposed by the state in which the cigarettes are to be sold.

(d) A person may not affix to cigarettes the stamp required by another state or pay any other excise tax on the cigarettes imposed by another state if the other state prohibits stamps from being affixed to the cigarettes, prohibits the payment of any other excise tax on the cigarettes, or prohibits the sale of the cigarettes.

(e) Not later than the 15th day after the end of each calendar quarter, a person who transports or causes to be transported from this state cigarettes for sale in another state shall submit to the attorney general a report identifying:

(1) the quantity of cigarettes, by brand style, transported or caused to be transported in the preceding calendar quarter; and

(2) the name and address of each recipient of the cigarettes.

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.

HB 716 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

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

HB 716, A bill to be entitled An Act relating to the punishment for assaults committed against certain sports officials.

On motion of Representative Delisi, the house concurred in the senate amendments to **HB 716**.

Senate Committee Substitute

HB 716, A bill to be entitled An Act relating to the punishment for assaults committed against certain sports participants.

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

SECTION 1. Subsections (c) and (e), Section 22.01, Penal Code, are amended to read as follows:

(c) An offense under Subsections (a)(2) or (3) is a Class C misdemeanor, except that the [an] offense [under Subsection (a)(3)] is:

(1) a Class A misdemeanor if the offense is [was] committed under Subsection (a)(3) against an elderly individual or disabled individual, as those terms are defined by Section 22.04; or

(2) a Class B misdemeanor if the offense is committed by a person who is not a sports participant against a person the actor knows is a sports participant either:

(A) while the participant is performing duties or responsibilities in the participant's capacity as a sports participant; or

(B) in retaliation for or on account of the participant's performance of a duty or responsibility within the participant's capacity as a sports participant.

(e) In this section:

(1) "Family" has the meaning assigned by Section 71.003, Family Code.

(2) "Household" has the meaning assigned by Section 71.005, Family Code.

(3) "Sports participant" means a person who participates in any official capacity with respect to an interscholastic, intercollegiate, or other organized amateur or professional athletic competition and includes an athlete, referee, umpire, linesman, coach, instructor, administrator, or staff member.

SECTION 2. 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.

SECTION 3. This Act takes effect September 1, 2003.

**SB 103 - REQUEST OF SENATE GRANTED
CONFERENCE COMMITTEE APPOINTED**

On motion of Representative Alonzo, the house granted the request of the senate for the appointment of a conference committee on **SB 103**.

The chair announced the appointment of the following conference committee, on the part of the house, on **SB 103**: Alonzo, chair; J. Davis; Escobar; Hegar; and Driver.

**SB 264 - REQUEST OF SENATE GRANTED
CONFERENCE COMMITTEE APPOINTED**

On motion of Representative Chisum, the house granted the request of the senate for the appointment of a conference committee on **SB 264**.

The chair announced the appointment of the following conference committee, on the part of the house, on **SB 264**: Callegari, chair; Talton; Mercer; Edwards; and Hilderbran.

**SB 286 - REQUEST OF SENATE GRANTED
CONFERENCE COMMITTEE APPOINTED**

On motion of Representative Chisum, the house granted the request of the senate for the appointment of a conference committee on **SB 286**.

The chair announced the appointment of the following conference committee, on the part of the house, on **SB 286**: Morrison, chair; Delisi; West; F. Brown; and Gallego.

**SB 585 - REQUEST OF SENATE GRANTED
CONFERENCE COMMITTEE APPOINTED**

On motion of Representative Isett, the house granted the request of the senate for the appointment of a conference committee on **SB 585**.

The chair announced the appointment of the following conference committee, on the part of the house, on **SB 585**: Isett, chair; Truitt; Flynn; Deshotel; and Pickett.

**SB 970 - REQUEST OF SENATE GRANTED
CONFERENCE COMMITTEE APPOINTED**

On motion of Representative Puente, the house granted the request of the senate for the appointment of a conference committee on **SB 970**.

The chair announced the appointment of the following conference committee, on the part of the house, on **SB 970**: Puente, chair; Hardcastle; Geren; Kolkhorst; and R. Cook.

**SB 1000 - REQUEST OF SENATE GRANTED
CONFERENCE COMMITTEE APPOINTED**

On motion of Representative McClendon, the house granted the request of the senate for the appointment of a conference committee on **SB 1000**.

The chair announced the appointment of the following conference committee, on the part of the house, on **SB 1000**: Goodman, chair; Lewis; Villarreal; Madden; and J. Davis.

**SB 1182 - REQUEST OF SENATE GRANTED
CONFERENCE COMMITTEE APPOINTED**

On motion of Representative Farabee, the house granted the request of the senate for the appointment of a conference committee on **SB 1182**.

The chair announced the appointment of the following conference committee, on the part of the house, on **SB 1182**: Farabee, chair; J. Davis; Capelo; McReynolds; and Truitt.

**SB 1262 - REQUEST OF SENATE GRANTED
CONFERENCE COMMITTEE APPOINTED**

On motion of Representative Hilderbran, the house granted the request of the senate for the appointment of a conference committee on **SB 1262**.

The chair announced the appointment of the following conference committee, on the part of the house, on **SB 1262**: Hegar, chair; Laubenberg; Paxton; Hamilton; and Harper-Brown.

**SB 1320 - REQUEST OF SENATE GRANTED
CONFERENCE COMMITTEE APPOINTED**

On motion of Representative Capelo, the house granted the request of the senate for the appointment of a conference committee on **SB 1320**.

The chair announced the appointment of the following conference committee, on the part of the house, on **SB 1320**: Capelo, chair; Truitt; Naishtat; Coleman; and Dawson.

**SB 1597 - REQUEST OF SENATE GRANTED
CONFERENCE COMMITTEE APPOINTED**

On motion of Representative Thompson, the house granted the request of the senate for the appointment of a conference committee on **SB 1597**.

The chair announced the appointment of the following conference committee, on the part of the house, on **SB 1597**: Thompson, chair; Hupp; Y. Davis; Driver; and Keel.

**SB 1652 - REQUEST OF SENATE GRANTED
CONFERENCE COMMITTEE APPOINTED**

On motion of Representative McClendon, the house granted the request of the senate for the appointment of a conference committee on **SB 1652**.

The chair announced the appointment of the following conference committee, on the part of the house, on **SB 1652**: Morrison, chair; Nixon; Goolsby; Bonnen; and Stick.

**SB 1936 - REQUEST OF SENATE GRANTED
CONFERENCE COMMITTEE APPOINTED**

On motion of Representative Thompson, the house granted the request of the senate for the appointment of a conference committee on **SB 1936**.

The chair announced the appointment of the following conference committee, on the part of the house, on **SB 1936**: Coleman, chair; Wong; Bailey; Edwards; and Talton.

**SB 1952 - REQUEST OF SENATE GRANTED
CONFERENCE COMMITTEE APPOINTED**

On motion of Representative Allen, the house granted the request of the senate for the appointment of a conference committee on **SB 1952**.

The chair announced the appointment of the following conference committee, on the part of the house, on **SB 1952**: Swinford, chair; Allen; Casteel; Chisum; and Gallego.

SB 1952 - RULES SUSPENDED

Representative Allen moved to suspend House Rule 13, Section 11 to permit the conference committee on **SB 1952** to analyze only those sections included in the text of the conference committee report.

The motion prevailed.

**HR 1756 - ADOPTED
(by McClendon)**

Representative McClendon moved to suspend all necessary rules to take up and consider at this time **HR 1756**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 1756, Honoring Shunn D. Rector of Houston on her college graduation and her legislative service.

HR 1756 was adopted without objection.

**HCR 278 - ADOPTED
(by Laney)**

Representative Laney moved to suspend all necessary rules to take up and consider at this time **HCR 278**.

The motion prevailed without objection.

The following resolution was laid before the house:

HCR 278, Honoring Shirley Igo of Plainview on her distinguished tenure as National PTA president.

HCR 278 was adopted without objection.

HB 2877 - 24 HOUR LAYOUT RULE SUSPENDED

Representative Bonnen moved to suspend House Rule 13, Section 10 to allow the house to not concur with senate amendments and request the appointment of a conference committee for **HB 2877**.

HB 2877 - POINT OF ORDER

Representative Rodriguez 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 3588 - MOTION TO SUSPEND RULES

Representative Solis moved to suspend House Rule 13, Section 8 in order to give instructions to the conference committee on **HB 3588** as follows:

To not present to the house any conference committee report that deletes Wise Amendment No. 47 as amended.

A record vote was requested.

The outcome of the motion could not be determined (a quorum was not present) by (Record 883): 43 Yeas, 48 Nays, 2 Present, not voting.

Yeas — Alonzo; Burnam; Capelo; Castro; Chisum; Coleman; Corte; Davis, J.; Deshotel; Dunnam; Dutton; Ellis; Escobar; Farabee; Farrar; Flores; Garza; Gutierrez; Hochberg; Hodge; Hopson; Laney; Lewis; Luna; Mabry; McClendon; McReynolds; Menendez; Moreno, J.; Naishtat; Noriega; Olivo; Peña; Pickett; Puente; Quintanilla; Raymond; Rodriguez; Solis; Telford; Thompson; Villarreal; Wise.

Nays — Allen; Baxter; Berman; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Callegari; Casteel; Crabb; Crownover; Dawson; Delisi; Driver; Eissler; Elkins; Flynn; Gattis; Hamric; Harper-Brown; Heflin; Hill; Hope; Howard; Hunter; Hupp; Isett; Keel; Krusee; Laubenberg; Madden; Mercer; Merritt; Miller; Mowery; Phillips; Pitts; Reyna; Seaman; Smith, T.; Solomons; Taylor; Truitt; Wohlgemuth; Wong; Woolley; Zedler.

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

Absent, Excused — Marchant; Rose.

Absent — Bailey; Campbell; Canales; Chavez; Christian; Cook, B.; Cook, R.; Davis, Y.; Denny; Dukes; Edwards; Eiland; Gallego; Geren; Giddings; Goodman; Goolsby; Griggs; Grusendorf; Guillen; Haggerty; Hamilton; Hardcastle; Hartnett; Hilderbran; Homer; Hughes; Jones, D.; Jones, E.; Jones, J.; Keffer, B.; Keffer, J.; King; Kolkhorst; Kuempel; Martinez Fischer; McCall; Moreno, P.; Morrison; Nixon; Oliveira; Paxton; Riddle; Ritter; Smith, W.; Smithee; Stick; Swinford; Talton; Turner; Uresti; Van Arsdale; West; Wilson; Wolens.

STATEMENTS OF VOTE

When Record No. 883 was taken, I was temporarily out of the house chamber. I would have voted yes.

Guillen

When Record No. 883 was taken, I was temporarily out of the house chamber. I would have voted no.

Kolkhorst

When Record No. 883 was taken, I was in the governor's office working on a conference committee. I would have voted no.

McCall

SB 945 - STATEMENT OF VOTE

On May 27, when Record No. 749 (double motion to reconsider and table) was taken, I was in the house but away from my desk. I would have voted yes.

T. Smith

SB 1154 - STATEMENT BY REPRESENTATIVE KEEL

SB 1154 (relating to state publications maintained by the Texas State Library and Archives Commission) (by Sen. Shapleigh / House sponsor: Hilderbran), includes a house amendment, the substance of which is essentially the same as **HB 1770** (relating to the creation and taxes of a library district) (by Rep. Keel / Senate sponsor: Wentworth). **HB 1770** had unanimously passed the House Committee on State Cultural and Recreational Resources as well as the full House and the Senate Committee on Intergovernmental Relations, but died on the Senate intent calendar on the 5/28/03 midnight deadline. Sen. Shapleigh and Rep. Hilderbran, in enacting **SB 1154**, as amended, have done a commendable service to the integrity of government.

In 1997 legislation was adopted to provide communities in defined areas, such as a school district not served by a public library, the opportunity to petition for a local election on the creation of a library district. Citizens could thus vote whether or not to reserve a portion of the sales tax, not exceeding one-half of a cent, for the funding of a public library. The legislation did not accord this option to areas that were already at the maximum sales tax rate of two cents, thus effectively prohibiting the measure as ever being a tax increase beyond the maximum sales tax rate. Municipalities that already had a public library were also specifically excluded, protecting such municipalities and their taxpayers from a duplicative use of sales tax revenue.

In 2002, citizens in the Lake Travis School District, pursuant to the 1997 law, submitted to the Travis County Commissioners Court a petition that would have resulted in a vote by citizens in the Lake Travis area on the issue of whether or not to create a library district. The election was possible because there is no public library in the district and the local sales tax rate would not have exceeded the two cent limit anywhere within the boundary of the proposed library district, including within the Village of Bee Cave. This was so in regard specifically to the Village of Bee Cave for two reasons: First, the Village of Bee Cave had not yet used up the entire two cents of taxing authority within its city limits, and secondly, the Village of Bee Cave does not have a municipal public library.

Following the submission of the petition by citizens to the Travis County Commissioners Court, officials of the Village of Bee Cave placed some books on shelves in their municipal conference room, labeled it a "library," and then took legal action to enjoin the County Commissioners Court from calling an election, arguing that they already had a municipal public library. Through that legal maneuver, the Village delayed the vote by the citizens beyond the uniform election date. The Village then enacted a tax increase, bringing the Village's sales tax up to the maximum amount allowed by law—the full two cents. The Village's action in this regard was designed to permanently deny citizens the ability to vote on the creation of the proposed library district for the Lake Travis School District area by, in essence, cutting ahead of the citizen petition and forestalling any portion of sales taxes collected in the Village of Bee Cave to help fund the district.

The house amendment to **SB 1154** provides a definition for what constitutes a bona fide library. The definition merely establishes accreditation in the State Library System—an objective standard that already exists under state law—as the benchmark for what constitutes a municipal public library. This eliminates the use of a "sham" library, as was used by Village of Bee Cave officials, to deny a lawful petition by citizens for an election. Secondly, the language in the amendment provides that in cases where such a situation occurred as with the Village of Bee Cave, the election can proceed in the initial order of events—that is, when the sales tax allocation was still available for all voters in the proposed district boundaries, both inside and outside the city limits of Bee Cave, to approve or defeat.

It is important to memorialize in the House Journal the history of sales tax rates adopted by the Village of Bee Cave. The Village of Bee Cave has a relatively small residential footprint with a significant retail presence that generates a disproportionately high amount of sales tax revenue compared to the small number of residents in the Village.

The one-cent municipal sales tax rate in the Village has been in effect since 1988. Under state law, such revenues are eligible to fund any general municipal purpose.

In 1989, the Village enacted an additional one-half cent sales tax rate allowed under state law for the specific purpose of providing "property tax relief." This was done, despite the fact that Village residents already pay among the lowest city property tax rates of all cities in Texas. Other Lake Travis area residents have made the observation that, in the case of the Village of Bee Cave, the use of this special tax rate constitutes, in fact, property tax "avoidance" rather than property tax "relief," considering that property tax revenues from Bee Cave residents in 2002 totaled less than \$188,000 while sales tax revenues exceeded \$1.3 million. This legitimately raises the question of whether such action by the Village of Bee Cave honestly reflected the spirit of the original legislative intent that allowed an increased sales tax rate justified as property tax relief.

In 2001, the Village enacted an additional one-quarter cent sales tax rate allowed under state law for the purpose of "street maintenance and repair." This money is supposed to only be used for the maintenance and repair of local streets.

It should be noted that the Village of Bee Cave, as noted in their own official website, has very little locally maintained streets, the vast majority of roadway in the Village being state or county-maintained roads. Unfortunately, there is no enforcement mechanism in current state law that ensures that the sales tax increase enacted by the Village of Bee Cave is actually being spent on street maintenance. It appears it is not being so spent.

In 2002 the Village, after successfully thwarting the citizen's right to vote on the library district, raised its sales tax by another one-quarter cent—to the maximum local sales tax rate allowed by state law—under the auspices of "economic development." It should be noted that the Village of Bee Cave is currently in the process of overseeing the development of a large retail mall at the intersection of Highway 71 West and Bee Cave Road. Village officials, in addition to using taxpayer money to hire lobbyists to attempt to defeat the passage of **HB 1770** and **SB 1154**, have now engaged the developer of the proposed mall, at their suggestion, to attempt to affect the course of the legislation by claiming that his development might be in jeopardy if the particulars of **SB 1154** are allowed to become law. Of course, this is untrue, since the development of a mall would simply make the Village even more awash in sales tax revenue than it already is.

But in any event, regardless of the potential economic benefit of a private financial venture to the state and local tax coffers, such ventures cannot be used to justify the denying of the lawful right of citizens to petition for an election to decide the use of a portion of sales tax dollars for a specific purpose. It is also a fact that the majority of roads affected by the mall development are state highways, funded primarily by federal and state monies. Even if the library district were to be created by the voters, the Village will continue to receive all revenues generated by the total combined sales tax rate of one and three-quarters cents.

Under the Texas Constitution and the laws of this state, the state government judiciously grants to local governments certain powers. The power to enact a sales tax in Texas is a power held by the state, and only by specific legislation does the state cede this authority to municipalities. In cases where these powers are exercised outside the scope of reason—and may in fact constitute an abuse of power—it is not only appropriate, but obligatory that the state legislature address the issue. The house amendment to **SB 1154** is necessary because officials of the Village of Bee Cave may have acted in bad faith and in any event have generated scrutiny about the actual necessity of their sales tax increases and the use of the revenues arising from those tax increases.

The creation of a sham library as a legal maneuver to prevent a lawful citizen election on the use of a portion of sales tax revenue generated well-deserved criticism of the integrity of the Village's actions. It is fortunate that **SB 1154** passed in spite of the well-funded attempt by lobbyists paid by the Village of Bee Cave to kill the measure. Sales tax revenue, like all tax revenue, in the truest sense belongs to the taxpayers – not governments. The Village of Bee Cave has lost sight of that truism, especially in light of the fact that the legislature

has specifically provided for the right of taxpayers to dictate the use of sales tax dollars for specific purposes, such as is provided for in the creation of library districts where no genuine public library exists. The governor should sign the bill.

PROVIDING FOR ADJOURNMENT

Representative Chisum moved that, pending the receipt of messages from the senate, the house adjourn until 10 a.m. tomorrow.

The motion prevailed without objection.

(Baxter in the chair)

ADJOURNMENT

In accordance with a previous motion, the house, at 8:10 p.m., adjourned until 10 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. 52

HB 146, HB 418, HB 453, HB 508, HB 552, HB 649, HB 703, HB 752, HB 830, HB 831, HB 875, HB 885, HB 888, HB 893, HB 1230, HB 1241, HB 1246, HB 1274, HB 1329, HB 1441, HB 1458, HB 1473, HB 1497, HB 1838, HB 1840, HB 1877, HB 1885, HB 1899, HB 1905, HB 1920, HB 1921, HB 1934, HB 1975, HB 2002, HB 2005, HB 2029, HB 2040, HB 2043, HB 2063, HB 2064, HB 2081, HB 2085, HB 2099, HB 2128, HB 2138, HB 2147, HB 2148, HB 2149, HB 2152, HB 2156, HB 2159, HB 2180, HB 2199, HB 2208, HB 2251, HB 2322, HB 2323, HB 2376, HB 2386, HB 2388, HB 2416, HB 2528, HB 2548, HB 2562, HB 2579, HB 2609, HB 2613, HB 2636, HB 2650, HB 2661, HB 2663, HB 2678, HB 2684, HB 2721, HB 2725, HB 2726, HB 2764, HB 2799, HB 2801, HB 2819, HB 2823, HB 2844, HB 2847, HB 2856, HB 2886, HB 2889, HB 2898, HB 2902, HB 2916, HB 2924, HB 2985, HB 2989, HB 3070, HB 3074, HB 3087, HB 3102, HB 3114, HB 3122, HB 3124, HB 3125, HB 3167, HB 3174, HB 3190, HB 3282, HB 3312, HB 3383, HB 3439, HB 3460, HB 3504, HB 3567, HB 3594, HB 3635, HCR 27, HCR 90, HCR 156, HCR 204, HCR 266

House List No. 53

HB 85, HB 179, HB 217, HB 826, HB 833, HB 867, HB 1046, HB 1060, HB 1077, HB 1087, HB 1090, HB 1114, HB 1166, HB 1173, HB 1180, HB 1192, HB 1193, HB 1194, HB 1195, HB 1218, HB 1863, HB 1872, HB 1931, HB 1972, HB 2033, HB 2198, HB 2252, HB 2261, HB 2444,

HB 2660, HB 2692, HB 2701, HB 2732, HB 2846, HB 2937, HB 2961, HB 2970, HB 3030, HB 3179, HB 3193, HB 3194, HB 3200, HB 3211, HB 3229, HB 3237, HB 3257, HB 3264, HB 3308, HB 3330, HB 3374, HB 3540, HB 3559, HB 3560, HB 3583, HB 3584, HB 3591, HB 3597, HB 3602, HB 3603, HB 3612, HB 3624, HB 3636, HCR 58, HCR 92, HCR 161, HCR 186, HCR 258, HCR 270, HJR 21, HJR 55

House List No. 54

HCR 125, HCR 272, HJR 16

Senate List No. 40

SB 5, SB 6, SB 18, SB 24, SB 25, SB 51, SB 92, SB 113, SB 115, SB 258, SB 325, SB 356, SB 439, SB 487, SB 494, SB 599, SB 613, SB 637, SB 681, SB 721, SB 739, SB 741, SB 757, SB 791, SB 805, SB 810, SB 837, SB 861, SB 891, SB 902, SB 905, SB 968, SB 972, SB 1019, SB 1022, SB 1109, SB 1127, SB 1128, SB 1159, SB 1180, SB 1211, SB 1215, SB 1230, SB 1315, SB 1362, SB 1388, SB 1459, SB 1461, SB 1484, SB 1546, SB 1559, SB 1581, SB 1614, SB 1665, SB 1700, SB 1794, SB 1805, SB 1826, SB 1899, SB 1925, SB 1928, SB 1930, SB 1933, SB 1935, SB 1940, SB 1948, SB 1955, SCR 46, SCR 49, SCR 58

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
Friday, May 30, 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:

HCR 250 Branch SPONSOR: Carona
Congratulating Brent and Kindra Franklin of Arlington on the birth of their daughter, Brenna Kathryn Franklin.

THE SENATE HAS CONCURRED IN HOUSE AMENDMENTS TO THE FOLLOWING MEASURES:

SB 193 (viva-voce vote)

SB 211 (viva-voce vote)

SB 275 (viva-voce vote)

SB 759	(31 Yeas, 0 Nays)
SB 840	(viva-voce vote)
SB 876	(31 Yeas, 0 Nays)
SB 900	(viva-voce vote)
SB 930	(viva-voce vote)
SB 1017	(viva-voce vote)
SB 1047	(30 Yeas, 0 Nays)
SB 1154	(viva-voce vote)
SB 1389	(viva-voce vote)
SB 1567	(31 Yeas, 0 Nays)
SB 1582	(viva-voce vote)

THE SENATE HAS REFUSED TO CONCUR IN HOUSE AMENDMENTS TO THE FOLLOWING MEASURES AND REQUESTS THE APPOINTMENT OF A CONFERENCE COMMITTEE TO ADJUST THE DIFFERENCES BETWEEN THE TWO HOUSES:

SB 16

Senate Conferees: Staples - Chair/Barrientos/Janek/Shapiro/Van de Putte

SB 160

Senate Conferees: Nelson - Chair/Janek/Lindsay/Shapiro/Van de Putte

SB 463

Senate Conferees: Janek - Chair/Armbrister/Fraser/Hinojosa/Jackson

SB 473

Senate Conferees: Ellis, Rodney - Chair/Carona/Hinojosa/Ratliff/Williams

SB 610

Senate Conferees: Nelson - Chair/Carona/Ellis, Rodney/Lindsay/Whitmire

SB 631

Senate Conferees: Harris - Chair/Brimer/Hinojosa/Ratliff/Shapiro

SB 976

Senate Conferees: Shapiro - Chair/Fraser/Staples/Van de Putte/West

SB 1015

Senate Conferees: Wentworth - Chair/Ellis, Rodney/Ratliff/Whitmire/Williams

SB 1059

Senate Conferees: Ellis, Rodney - Chair/Averitt/Duncan/Harris/Whitmire

SB 1639

Senate Conferees: Staples - Chair/Armbrister/Bivins/Duncan/Hinojosa

THE SENATE HAS GRANTED THE REQUEST OF THE HOUSE FOR THE APPOINTMENT OF A CONFERENCE COMMITTEE ON THE FOLLOWING MEASURES:

HB 4

Senate Conferees: Ratliff - Chair/Armbrister/Duncan/Harris/Nelson

HB 547

Senate Conferees: Averitt - Chair/Duncan/Hinojosa/Lindsay/Wentworth

THE SENATE HAS ADOPTED THE FOLLOWING CONFERENCE COMMITTEE REPORTS:

HB 1702 (31 Yeas, 0 Nays)

SB 718 (31 Yeas, 0 Nays)

SB 880 (viva-voce vote)

Respectfully,

Patsy Spaw

Secretary of the Senate

Message No. 2

MESSAGE FROM THE SENATE

SENATE CHAMBER

Austin, Texas

Friday, May 30, 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 7 Gallego SPONSOR: Madla

In memory of Jose Ricardo Nevarez of Uvalde.

HCR 86 Gallego SPONSOR: Madla

Recognizing March 31, 2003, as Texas Civilian Conservation Corps Day at the State Capitol.

HCR 274 Homer SPONSOR: Deuell

In memory of Quentin Miller of Cooper.

SCR 61 Duncan

In memory of Susan Wilkes of Lubbock.

THE SENATE HAS CONCURRED IN HOUSE AMENDMENTS TO THE FOLLOWING MEASURES:

SB 315 (30 Yeas, 1 Nay)

SB 346 (31 Yeas, 0 Nays)

SB 381 (31 Yeas, 0 Nays)

SB 392 (31 Yeas, 0 Nays)

SB 396 (31 Yeas, 0 Nays)

SB 624	(viva-voce vote)
SB 688	(31 Yeas, 0 Nays)
SB 871	(viva-voce vote)
SB 1007	(31 Yeas, 0 Nays)
SB 1053	(viva-voce vote)
SB 1161	(viva-voce vote)
SB 1272	(viva-voce vote)
SB 1273	(viva-voce vote)
SB 1276	(viva-voce vote)
SB 1318	(viva-voce vote)
SB 1460	(viva-voce vote)
SB 1464	(viva-voce vote)
SB 1465	(viva-voce vote)
SB 1488	(31 Yeas, 0 Nays)
SB 1494	(31 Yeas, 0 Nays)
SB 1522	(31 Yeas, 0 Nays)
SB 1570	(viva-voce vote)
SB 1725	(31 Yeas, 0 Nays)
SB 1765	(31 Yeas, 0 Nays)
SB 1820	(31 Yeas, 0 Nays)
SB 1912	(31 Yeas, 0 Nays)
SB 1923	(viva-voce vote)
SB 1932	(31 Yeas, 0 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 103

Senate Conferees: Van de Putte - Chair/Ogden/Ratliff/Whitmire/Williams

SB 264

Senate Conferees: Lucio - Chair/Armbrister/Brimer/Madla/Nelson

SB 286

Senate Conferees: Shapleigh - Chair/Averitt/Bivins/Ellis, Rodney/Ratliff

SB 585

Senate Conferees: Duncan - Chair/Armbrister/Averitt/Madla/Staples

SB 970

Senate Conferees: Shapleigh - Chair/Barrientos/Duncan/Hinojosa/Lucio

SB 1000

Senate Conferees: West - Chair/Armbrister/Duncan/Harris/Whitmire

SB 1182

Senate Conferees: Deuell - Chair/Carona/Lindsay/Shapleigh/West

SB 1252

Senate Conferees: Armbrister - Chair/Fraser/Hinojosa/Lucio/Williams

SB 1262

Senate Conferees: Armbrister - Chair/Brimer/Lucio/Madla/Ratliff

SB 1320

Senate Conferees: Nelson - Chair/Carona/Deuell/Gallegos/Janek

SB 1597

Senate Conferees: Hinojosa - Chair/Carona/Ellis, Rodney/Ogden/Whitmire

SB 1652

Senate Conferees: Shapiro - Chair/Averitt/Janek/Ogden/West

SB 1936

Senate Conferees: Ellis, Rodney - Chair/Deuell/Gallegos/Lindsay/Whitmire

SB 1952

Senate Conferees: Ellis, Rodney - Chair/Armbrister/Harris/Nelson/Whitmire

THE SENATE HAS GRANTED THE REQUEST OF THE HOUSE FOR THE APPOINTMENT OF A CONFERENCE COMMITTEE ON THE FOLLOWING MEASURES:

HB 7

Senate Conferees: Bivins - Chair/Nelson/Staples/West/Zaffirini

HB 111

Senate Conferees: Zaffirini - Chair/Carona/Gallegos/Harris/Shapleigh

HB 320

Senate Conferees: Fraser - Chair/Bivins/Duncan/Lucio/Shapiro

HB 329

Senate Conferees: Fraser - Chair/Brimer/Jackson/Shapleigh/Van de Putte

HB 335

Senate Conferees: Lindsay - Chair/Brimer/Deuell/Gallegos/Wentworth

HB 425

Senate Conferees: West - Chair/Armbrister/Harris/Ratliff/Whitmire

HB 1883

Senate Conferees: Ogden - Chair/Barrientos/Madla/Shapleigh/Wentworth

HB 3015

Senate Conferees: Shapiro - Chair/Bivins/Duncan/Ogden/West

HB 3459

Senate Conferees: Bivins - Chair/Duncan/Ogden/Shapiro/Zaffirini

HJR 68

Senate Conferees: Fraser - Chair/Bivins/Duncan/Ellis, Rodney/Estes

THE SENATE HAS TAKEN THE FOLLOWING OTHER ACTION:

HB 2877

May 30, 2003 - Final passage reconsidered by unanimous consent May 30, 2003
- Two floor amendments adopted May 30, 2003 - Again finally passed by a viva voce vote

Respectfully,

Patsy Spaw

Secretary of the Senate

Message No. 3

MESSAGE FROM THE SENATE

SENATE CHAMBER

Austin, Texas

Friday, May 30, 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 277

Solomons

SPONSOR: Carona

Instructing the enrolling clerk of the senate to make technical corrections to **SJR 42**.

Respectfully,

Patsy Spaw

Secretary of the Senate

Message No. 4

MESSAGE FROM THE SENATE

SENATE CHAMBER

Austin, Texas

Friday, May 30, 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:

SCR 60

Carona

Requesting that the chief clerk of the house be authorized to return **HB 2180** to the senate for further consideration.

Respectfully,

Patsy Spaw

Secretary of the Senate

Message No. 5

MESSAGE FROM THE SENATE

SENATE CHAMBER

Austin, Texas

Friday, May 30, 2003 - 5

The Honorable Speaker of the House

House Chamber

Austin, Texas

Mr. Speaker:

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

THE SENATE HAS CONCURRED IN HOUSE AMENDMENTS TO THE FOLLOWING MEASURES:

SB 19	(viva-voce vote)
SB 284	(viva-voce vote)
SB 618	(viva-voce vote)
SB 705	(31 Yeas, 0 Nays)
SB 1054	(viva-voce vote)
SB 1165	(viva-voce vote)
SB 1192	(31 Yeas, 0 Nays)
SB 1343	(viva-voce vote)
SB 1382	(viva-voce vote)
SB 1463	(31 Yeas, 0 Nays)
SB 1470	(31 Yeas, 0 Nays)
SB 1633	(viva-voce vote)
SB 1803	(viva-voce vote)
SB 1902	(viva-voce vote)
SB 1904	(viva-voce vote)

THE SENATE HAS REFUSED TO CONCUR IN HOUSE AMENDMENTS TO THE FOLLOWING MEASURES AND REQUESTS THE APPOINTMENT OF A CONFERENCE COMMITTEE TO ADJUST THE DIFFERENCES BETWEEN THE TWO HOUSES:

SB 4

Senate Conferees: Zaffirini - Chair/Averitt/Shapiro/Van de Putte/Whitmire

SB 76

Senate Conferees: Zaffirini - Chair/Carona/Shapiro/Shapleigh/Van de Putte

SB 86

Senate Conferees: Wentworth - Chair/Janek/Madla/Shapiro/West

SB 127

Senate Conferees: Fraser - Chair/Armbrister/Averitt/Jackson/Van de Putte

SB 270

Senate Conferees: Jackson - Chair/Armbrister/Bivins/Lucio/Ratliff

SB 474

Senate Conferees: Lucio - Chair/Deuell/Janek/Shapiro/Van de Putte

SB 671

Senate Conferees: Staples - Chair/Armbrister/Averitt/Ogden/Van de Putte

SB 826

Senate Conferees: Whitmire - Chair/Hinojosa/Nelson/Ratliff/Williams

SB 929

Senate Conferees: Shapiro - Chair/Bivins/Madla/Van de Putte/Williams

SB 1108

Senate Conferees: Shapiro - Chair/Janek/Nelson/Staples/West

SB 1131

Senate Conferees: Harris - Chair/Deuell/Janek/Lindsay/Lucio

SB 1369

Senate Conferees: Duncan - Chair/Bivins/Ogden/Williams/Zaffirini

SB 1370

Senate Conferees: Duncan - Chair/Bivins/Ogden/Williams/Zaffirini

SB 1413

Senate Conferees: Deuell - Chair/Barrientos/Jackson/Madla/Staples

SB 1664

Senate Conferees: Averitt - Chair/Bivins/Lindsay/Van de Putte/Williams

SB 1782

Senate Conferees: Lindsay - Chair/Armbrister/Ogden/Shapiro/Shapleigh

SB 1828

Senate Conferees: Averitt - Chair/Armbrister/Bivins/Duncan/Ellis, Rodney

THE SENATE HAS GRANTED THE REQUEST OF THE HOUSE FOR THE APPOINTMENT OF A CONFERENCE COMMITTEE ON THE FOLLOWING MEASURES:

HB 411

Senate Conferees: Ellis, Rodney - Chair/Ogden/Shapiro/Shapleigh/Staples

HB 471

Senate Conferees: Lucio - Chair/Lindsay/Madla/Ogden/Wentworth

HB 1082

Senate Conferees: Staples - Chair/Brimer/Harris/Hinojosa/Lucio

HB 1119

Senate Conferees: Brimer - Chair/Armbrister/Averitt/Deuell/Janek

HB 1129

Senate Conferees: Gallegos - Chair/Brimer/Deuell/Lindsay/Madla

HB 1163

Senate Conferees: Harris - Chair/Armbrister/Madla/Nelson/Ratliff

HB 1493

Senate Conferees: Harris - Chair/Averitt/Jackson/Lucio/Staples

HB 1538

Senate Conferees: Shapleigh - Chair/Nelson/Ratliff/Wentworth/Whitmire

HB 1541

Senate Conferees: Lindsay - Chair/Armbrister/Averitt/Barrientos/Shapiro

HB 1566

Senate Conferees: Ratliff - Chair/Averitt/Janek/Van de Putte/Williams

HB 1576

Senate Conferees: Shapleigh - Chair/Ellis, Rodney/Fraser/Nelson/Ratliff

HB 1606

Senate Conferees: Ellis, Rodney - Chair/Brimer/Ogden/Ratliff/Whitmire

HB 1695

Senate Conferees: Nelson - Chair/Armbrister/Ellis, Rodney/Shapiro/Staples

HB 1865

Senate Conferees: Williams - Chair/Armbrister/Ellis, Rodney/Fraser/Staples

HB 2020

Senate Conferees: Duncan - Chair/Armbrister/Barrientos/Bivins/Estes

HB 2075

Senate Conferees: Fraser - Chair/Deuell/Lindsay/Lucio/Madla

HB 2292

Senate Conferees: Nelson - Chair/Barrientos/Bivins/Janek/Zaffirini

HB 2424

Senate Conferees: Armbrister - Chair/Bivins/Brimer/Ellis, Rodney/Staples

HB 2455

Senate Conferees: Nelson - Chair/Armbrister/Ellis, Rodney/Jackson/Ogden

HB 2588

Senate Conferees: Harris - Chair/Brimer/Duncan/Lucio/Madla

HB 2593

Senate Conferees: Estes - Chair/Fraser/Lindsay/Madla/Van de Putte

HB 3042

Senate Conferees: Ellis, Rodney - Chair/Armbrister/Bivins/Brimer/Wentworth

HB 3442

Senate Conferees: Averitt - Chair/Barrientos/Bivins/Duncan/Staples

HB 3546

Senate Conferees: Lucio - Chair/Brimer/Madla/Ogden/Staples

HB 3588

Senate Conferees: Ogden - Chair/Barrientos/Deuell/Lindsay/Shapleigh

HB 3622

Senate Conferees: Deuell - Chair/Armbrister/Carona/Duncan/Lindsay

HJR 28

Senate Conferees: Lucio - Chair/Armbrister/Madla/Ogden/Shapiro

HJR 85

Senate Conferees: Estes - Chair/Fraser/Lindsay/Madla/Van de Putte

THE SENATE HAS DISCHARGED ITS CONFEREES AND CONCURRED
IN HOUSE AMENDMENTS TO THE FOLLOWING MEASURES:

SB 1252 (viva-voce vote)

Respectfully,

Patsy Spaw

Secretary of the Senate

APPENDIX

ENROLLED

May 29 - HB 12, HB 13, HB 32, HB 42, HB 54, HB 124, HB 135,
HB 136, HB 145, HB 146, 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 403, HB 406, HB 408, HB 415,
HB 418, HB 420, HB 424, HB 447, HB 453, HB 469, HB 470, HB 500,
HB 508, HB 552, HB 559, HB 560, HB 565, HB 567, HB 573, HB 616,
HB 649, HB 653, HB 670, HB 673, HB 674, HB 703, HB 752, HB 803,
HB 830, HB 831, HB 875, HB 885, HB 888, HB 893, HB 946, HB 983,
HB 1020, HB 1027, HB 1036, HB 1223, HB 1230, HB 1241, HB 1246,

HB 1274, HB 1329, HB 1372, HB 1380, HB 1401, HB 1441, HB 1458, HB 1473, HB 1497, HB 1510, HB 1512, HB 1518, HB 1549, HB 1592, HB 1597, HB 1602, HB 1609, HB 1615, HB 1629, HB 1670, HB 1675, HB 1678, HB 1681, HB 1686, HB 1697, HB 1709, HB 1713, HB 1749, HB 1767, HB 1769, HB 1777, HB 1784, HB 1791, HB 1797, HB 1798, HB 1799, HB 1800, HB 1823, HB 1828, HB 1838, HB 1840, HB 1877, HB 1882, HB 1885, HB 1899, HB 1905, HB 1920, HB 1921, HB 1934, HB 1945, HB 1975, HB 2002, HB 2005, HB 2029, HB 2040, HB 2043, HB 2063, HB 2064, HB 2071, HB 2081, HB 2085, HB 2099, HB 2112, HB 2128, HB 2138, HB 2147, HB 2148, HB 2149, HB 2152, HB 2154, HB 2156, HB 2159, HB 2162, HB 2180, HB 2185, HB 2199, HB 2208, HB 2250, HB 2251, HB 2320, HB 2322, HB 2323, HB 2376, HB 2377, HB 2386, HB 2388, HB 2409, HB 2416, HB 2496, HB 2528, HB 2529, HB 2540, HB 2548, HB 2562, HB 2579, HB 2609, HB 2613, HB 2622, HB 2636, HB 2650, HB 2661, HB 2663, HB 2678, HB 2684, HB 2703, HB 2721, HB 2725, HB 2726, HB 2764, HB 2799, HB 2801, HB 2819, HB 2823, HB 2844, HB 2847, HB 2856, HB 2886, HB 2889, HB 2898, HB 2902, HB 2916, HB 2924, HB 2985, HB 2989, HB 3014, HB 3024, HB 3070, HB 3074, HB 3087, HB 3102, HB 3114, HB 3122, HB 3124, HB 3125, HB 3167, HB 3174, HB 3175, HB 3190, HB 3282, HB 3304, HB 3312, HB 3338, HB 3383, HB 3439, HB 3460, HB 3461, HB 3504, HB 3567, HB 3594, HB 3635, HCR 27, HCR 59, HCR 90, HCR 156, HCR 204, HCR 266

SENT TO THE GOVERNOR

May 29 - HB 28, HB 148, HB 164, HB 174, HB 195, HB 219, HB 264, HB 554, HB 558, HB 562, HB 622, HB 686, HB 724, HB 728, HB 778, HB 823, HB 898, HB 912, HB 913, HB 919, HB 928, HB 1056, HB 1088, HB 1113, HB 1125, HB 1171, HB 1189, HB 1207, HB 1251, HB 1309, HB 1338, HB 1339, HB 1387, HB 1391, HB 1398, HB 1476, HB 1481, HB 1496, HB 1499, HB 1526, HB 1529, HB 1653, HB 1729, HB 1776, HB 1813, HB 1815, HB 1952, HB 1984, HB 2038, HB 2061, HB 2076, HB 2089, HB 2094, HB 2131, HB 2172, HB 2200, HB 2227, HB 2300, HB 2328, HB 2341, HB 2518, HB 2554, HB 2558, HB 2561, HB 2654, HB 2786, HB 2887, HB 2930, HB 2975, HB 3075, HB 3128, HB 3139, HB 3208, HB 3213, HB 3214, HB 3221, HB 3235, HB 3517, HB 3556, HB 3561, HB 3569, HB 3595, HB 3605, HB 3607, HCR 15, HCR 34, HCR 73, HCR 89, HCR 251, HCR 261

SENT TO THE SECRETARY OF THE STATE

May 29 - HJR 61

SIGNED BY THE GOVERNOR

May 29 - HB 89, HB 587, HB 655, HB 829, HB 1022, HB 1056

