

HOUSE JOURNAL

SEVENTY-EIGHTH LEGISLATURE, REGULAR SESSION

PROCEEDINGS

EIGHTY-FOURTH DAY — SUNDAY, JUNE 1, 2003

The house met at 9 a.m. and, at the request of the speaker, was called to order by Representative Truitt.

The roll of the house was called and a quorum was announced present (Record 897).

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 Representative Chisum, as follows:

Our great and sovereign God, we thank you that you have promised that wherever two or three are gathered in your name, you will be in their midst.

We thank you that your mercies are new every morning and that you are faithful to guide those who are willing to follow.

We thank you that your grace is extended to each of us to accomplish things with you that we cannot accomplish on our own.

And we thank you for your forgiveness, enabling us to overcome our foibles and flaws and start anew.

And we ask today that you would help us to see you in every situation we are in, in every decision that we make, so that at the end of the day, we can hear you say, "Well done my faithful servant, enter into the joy of the Lord." Amen.

CAPITOL PHYSICIAN

The chair recognized Representative Delisi who presented Dr. Troy Fiesinger of Waco as the "Doctor for the Day."

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

HR 1657 - ADOPTED (by Menendez)

Representative Menendez moved to suspend all necessary rules to take up and consider at this time **HR 1657**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 1657, In memory of Private First Class Anthony Scott "Scotty" Miller of San Antonio.

HR 1657 was read and was unanimously adopted by a rising vote.

On motion of Representative Chisum, the names of all the members of the house were added to **HR 1657** as signers thereof.

INTRODUCTION OF GUESTS

The chair recognized Representative Menendez who introduced the family of Private First Class Anthony Scott "Scotty" Miller.

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 1852 - NOTICE OF INTRODUCTION

Pursuant to the provisions of Rule 13, Section 9(f) of the House Rules, the chair announced the introduction of **HR 1852**, suspending the limitations on the conferees for **HB 1365**.

HR 1804 - NOTICE OF INTRODUCTION

Pursuant to the provisions of Rule 13, Section 9(f) of the House Rules, the chair announced the introduction of **HR 1804**, suspending the limitations on the conferees for **SB 1936**.

HR 1850 - NOTICE OF INTRODUCTION

Pursuant to the provisions of Rule 13, Section 9(f) of the House Rules, the chair announced the introduction of **HR 1850**, suspending the limitations on the conferees for **HB 3442**.

HR 1851 - NOTICE OF INTRODUCTION

Pursuant to the provisions of Rule 13, Section 9(f) of the House Rules, the chair announced the introduction of **HR 1851**, suspending the limitations on the conferees for **SB 86**.

HR 1803 - NOTICE OF INTRODUCTION

Pursuant to the provisions of Rule 13, Section 9(f) of the House Rules, the chair announced the introduction of **HR 1803**, suspending the limitations on the conferees for **HB 3184**.

HR 1848 - ADOPTED
(by Quintanilla)

Representative Quintanilla moved to suspend all necessary rules to take up and consider at this time **HR 1848**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 1848, Honoring Alex Ramos of Mountain View High School on his track and field accomplishments.

HR 1848 was adopted without objection.

HR 1849 - ADOPTED
(by Quintanilla)

Representative Quintanilla moved to suspend all necessary rules to take up and consider at this time **HR 1849**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 1849, Congratulating Ashley Quintanilla of El Paso on her receipt of a Serna Star Award.

HR 1849 was adopted without objection.

HR 1853 - ADOPTED
(by Quintanilla)

Representative Quintanilla moved to suspend all necessary rules to take up and consider at this time **HR 1853**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 1853, Congratulating Jose Serna for his nomination to the Senior Citizens Hall of Fame.

HR 1853 was adopted without objection.

HR 1854 - ADOPTED
(by Quintanilla)

Representative Quintanilla moved to suspend all necessary rules to take up and consider at this time **HR 1854**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 1854, Congratulating Dave McKinney on being selected as El Paso Times 2003 Boys' Track and Field Coach of the Year.

HR 1854 was adopted without objection.

SB 1639 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Hope submitted the conference committee report on **SB 1639**.

SB 1639 - POINT OF ORDER

Representative Burnam raised a point of order against further consideration of the conference committee report on **SB 1639** under Rule 11, Sections 2 and 3 of the House Rules on the grounds that the conference committee report contains amendments that are not germane to the original bill.

The chair overruled the point of order.

SB 1639 - POINT OF ORDER

Representative Burnam raised a point of order against further consideration of the conference committee report on **SB 1639** under Rule 8, Section 3 of the House Rules and Article III, Section 35(a) of the Texas Constitution on the grounds that the conference committee report gives **SB 1639** more than one subject.

The chair overruled the point of order, speaking as follows:

Representative Burnam raises a point of order against further consideration of the Conference Committee Report on **SB 1639** under Article III, Section 35 of the Texas Constitution and Rule 8, Section 3 of the House Rules, in that the bill contains more than one subject.

The bill includes provisions regulating spacing and production of groundwater as well as provisions relating to the control of instream flows of surface water. Mr. Burnam argues that these are considered two different subjects under current Texas law and cannot properly be considered in the same bill under the Texas Constitution and the rules of the house, which restate the constitutional rule.

As stated in a ruling of May 22, 1999: In considering the constitutionality of laws, courts are under a duty to give a constitutional construction if possible...The standard for finding a violation of the one-subject rule is very high; courts typically find violations of the one-subject rule only when there is no conceivable single subject that describes all the elements of the bill. (76 H.J. 2912 (1999))

The chair has reviewed all house rulings on this issue over the last 30 years and failed to find a single instance in which such a point of order was sustained, a likely result of the very high standard for finding a violation of the rule.

The chair believes that **SB 1639** can be construed in a constitutional manner in that each element relates to the regulation of the waters of the state and would be so construed by a court. Accordingly, the point of order is respectfully overruled.

Representative Hope moved to adopt the conference committee report on **SB 1639**.

A record vote was requested.

The motion prevailed by (Record 898): 131 Yeas, 8 Nays, 2 Present, not voting.

Yeas — Allen; Bailey; Baxter; Berman; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Callegari; Campbell; Capelo; Casteel; Chisum; Christian; Cook, B.; Cook, R.; Crabb; Crownover; Davis, J.; Davis, Y.; Dawson; Delisi; Denny; Deshotel; Driver; 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; Hughes; Hunter; Hupp; Isett; Jones, D.; Jones, E.; Jones, J.; Keel; Keffer, B.; Keffer, J.; King; Kolkhorst; Krusee; Kuempel; Laney; Laubenberg; Lewis; Luna; Madden; Marchant; Martinez Fischer; McCall; McClendon; McReynolds; Menendez; Mercer; Merritt; Miller; Morrison; Mowery; Nixon; Noriega; Oliveira; Paxton; Peña; Phillips; Pickett; Pitts; Puente; Quintanilla; Raymond; Reyna; Ritter; Rose; Seaman; Smith, T.; Smith, W.; Smithee; Solis; Solomons; Stick; Swinford; Talton; Taylor; Telford; Thompson; Turner; Uresti; Van Arsdale; West; Wise; Wohlgemuth; Wolens; Wong; Woolley; Zedler.

Nays — Alonzo; Burnam; Escobar; Moreno, P.; Naishtat; Olivo; Rodriguez; Villarreal.

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

Absent — Canales; Castro; Chavez; Coleman; Corte; Mabry; Moreno, J.; Riddle; Wilson.

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 1566 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Telford submitted the following conference committee report on **HB 1566** :

Austin, Texas, May 29, 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 1566** 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.

Ratliff
Janek
Averitt

Telford
Morrison
Goolsby
F. Brown
Homer

On the part of the senate

On the part of the house

HB 1566, A bill to be entitled An Act relating to lower-division and upper-division courses offered by Texas A&M University-Texarkana.

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

SECTION 1. Sections 87.571(a), (b), and (c), Education Code, are amended to read as follows:

(a) Texas A&M University-Texarkana is a coeducational [~~upper-level~~] institution of higher education located in the City of Texarkana. The university is a component of The Texas A&M University System and is under the management and control of the board of regents of The Texas A&M University System.

(b) The board has the same powers and duties concerning the university as are conferred on the board by law concerning Texas A&M University. The [~~except that the~~] university may [~~not~~] offer lower-division courses, but is not required to do so in any academic year for which the legislature does not appropriate money specifically for that purpose [~~freshman or sophomore programs~~].

(c) The university may offer lower-division courses on the campus of Texarkana College or in a permanent building located on property acquired by the university for a permanently relocated campus. The university may not offer lower-division courses on the campus of Texarkana College without prior approval from Texarkana College [~~The university may enter into a partnership agreement with the Texarkana College District in the manner authorized by Subchapter N, Chapter 51.~~].

SECTION 2. This Act takes effect September 1, 2003.

Representative Telford moved to adopt the conference committee report on **HB 1566**.

The motion prevailed.

HB 1695 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Denny submitted the following conference committee report on **HB 1695** :

Austin, Texas, May 30, 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 1695** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Nelson	Denny
Shapiro	Uresti
Staples	Howard
Armbrister	Bohac
Ellis, Rodney	Harper-Brown
On the part of the senate	On the part of the house

HB 1695, A bill to be entitled An Act relating to certain election processes and procedures.

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

SECTION 1. Section 1.006, Election Code, is amended to read as follows:

Sec. 1.006. EFFECT OF WEEKEND OR HOLIDAY. (a) If the last day for performance of an act is a Saturday, Sunday, or legal state or national holiday, the act is timely if performed on the next regular business day, except as otherwise provided by this code.

(b) If the last day for performance of an act is extended under Subsection (a), the extended date is used to determine any other dates and deadlines, and the dates or times of any related procedures, that are expressly required to be made on a date or at a time determined in relation to the last day for performance of the act.

(c) A declaration of ineligibility of a candidate is considered to be the performance of an act under this section for purposes of causing the candidate's name to be omitted from the ballot.

(d) The filing of a document, including a withdrawal request or resignation, is considered to be the performance of an act under this section for purposes of creating a vacancy to be filled at a subsequent election.

(e) The death of a person is not considered to be the performance of an act under this section.

SECTION 2. Section 2.025, Election Code, is amended to read as follows:

Sec. 2.025. RUNOFF ELECTION DAY. (a) Except as otherwise provided by this code [~~Subsection (b)~~], a runoff election shall be held not earlier than the 20th or later than the 45th [~~30th~~] day after the date the final canvass of the main election is completed.

(b) A runoff election date later than [~~may be held after~~] the period prescribed by Subsection (a) may be prescribed by a home-rule city charter [~~law but not later than the 45th day after the date the final canvass of the main election is completed only to:~~

~~[(1) permit a joint runoff election to be held with another political subdivision in accordance with Chapter 271; or~~

~~[(2) avoid holding the runoff on:~~

~~[(A) a legal state or national holiday; or~~

~~[(B) a weekend day within three days of a legal state or national holiday].~~

(c) This section [Subsection (b)] supersedes a law outside this subchapter to the extent of a conflict notwithstanding Section 2.022.

SECTION 3. Section 13.072(c), Election Code, is amended to read as follows:

(c) Except as provided by Subsection (d) ~~or (e)~~, if the registrar determines that an application does not comply with Section 13.002 or does not indicate that the applicant is eligible for registration, the registrar shall reject the application.

SECTION 4. Section 13.073, Election Code, is amended by adding Subsection (c) to read as follows:

(c) If the registrar rejects an application for incompleteness but receives a completed application not later than the 10th day after the date the notice is delivered under Subsection (a) or the date the incomplete application is returned under Subsection (b), as applicable, the original date of submission of the incomplete application is considered to be the date of submission to the registrar for the purpose of determining the effective date of registration.

SECTION 5. Section 15.025, Election Code, is amended to read as follows:

Sec. 15.025. EFFECTIVE DATE OF CERTAIN CHANGES IN REGISTRATION INFORMATION [IN PRECINCT OF NEW RESIDENCE].

(a) Except as provided by Subsections (b) and (d), the [The] registration of a voter described by this subsection whose information [residence] is changed on the registration records [to another county election precinct in the same county] becomes effective as to the change [in the precinct of new residence] on the 30th day after:

(1) the date the voter submits to the registrar [receives] a notice of a change in registration information under Section 15.021 or a ~~[voter's]~~ response under Section 15.053, indicating the change ~~[of residence]~~; or

(2) the date the voter submits a statement of residence to an election officer under Section 63.0011 or a registration application or change of address to an agency employee under Chapter 20, indicating the change ~~[of residence]~~.

(b) A change in registration information covered by this section is effective for purposes of early voting if it will be effective on election day.

(c) For purposes of determining the effective date of a change in registration information covered by this section, a document submitted by mail is considered to be submitted to the registrar on the date it is placed with postage prepaid and properly addressed in the United States mail. The date indicated by the post office cancellation mark is considered to be the date the document was placed in the mail unless proven otherwise.

(d) If the 30th day before the date of an election is a Saturday, Sunday, or legal state or national holiday, the document is considered to be timely if it is submitted to the registrar on or before the next regular business day.

SECTION 6. Sections 16.033(c) and (d), Election Code, are amended to read as follows:

(c) The notice must include:

(1) a request for information relevant to determining the voter's eligibility for registration; and

(2) a warning that the voter's registration is subject to cancellation if the registrar does not receive an appropriate reply on or before the 30th ~~[60th]~~ day after the date the notice is mailed.

(d) Except as provided by Subsection (e), the registrar shall cancel a voter's registration if:

(1) after considering the voter's reply, the registrar determines that the voter is not eligible for registration;

(2) no reply is received from the voter on or before the 30th ~~[60th]~~ day after the date the notice is mailed to the voter under Subsection (b); or

(3) each notice mailed under Subsection (b) is returned undelivered to the registrar with no forwarding information available.

SECTION 7. Sections 16.0332(a) and (b), Election Code, are amended to read as follows:

(a) After the registrar receives a list under Section 62.113, Government Code, of persons excused or disqualified from jury service because of citizenship status, the registrar shall deliver to each registered voter whose name [who] appears on the list a written notice requiring the voter to submit to the registrar [provide] proof of United States citizenship in the form of a certified copy of the voter's birth certificate, United States passport, or certificate of naturalization or any other [a] form prescribed by the secretary of state. The notice shall be delivered by forwardable mail to the mailing address on the voter's registration application and to any new address of the voter known to the registrar.

(b) If a voter fails to submit to [provide] the registrar [with] proof of citizenship on or before the 30th [31st] day after the date the notice is mailed ~~[to the voter]~~, the registrar shall cancel the voter's registration.

SECTION 8. Section 16.036(a), Election Code, is amended to read as follows:

(a) Immediately after cancellation of a voter's registration under Section 16.031(a)(3), 16.033, ~~[or]~~ 16.0331, or 16.0332, the registrar shall deliver written notice of the cancellation to the voter.

SECTION 9. Section 19.001(a), Election Code, is amended to read as follows:

(a) Before May 15 of each year, the registrar shall prepare and submit to the comptroller of public accounts a statement containing:

(1) the total number of initial registrations for the previous voting year;

(2) the total number of registrations canceled under Sections 16.031(a)(1), ~~[and]~~ 16.033, and 16.0332 for the previous voting year; and

(3) the total number of registrations for which information was updated for the previous voting year.

SECTION 10. Section 19.004, Election Code, is amended by amending Subsection (a) and adding Subsection (d) to read as follows:

(a) Except as provided by Subsection (d), state [State] funds disbursed under this chapter may be used only to defray expenses of the registrar's office in connection with voter registration, including additional expenses related to:

(1) implementation of the National Voter Registration Act of 1993 (42 U.S.C. Section 1973gg et seq.); and

(2) complying with the weekly updating requirements prescribed by Section 18.063.

(d) If the secretary of state determines that federal matching funds are available under the federal Help America Vote Act of 2002, the secretary of state shall certify to the comptroller the amount of state funds required to qualify for the maximum amount of federal matching funds. On receipt of the certification, the comptroller shall deposit from funds otherwise available under this chapter an amount equal to the certified amount in the election improvement fund established under Section 31.011.

SECTION 11. Section 32.091, Election Code, is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

(a) Except as provided by Subsection (c), an [An] election judge or clerk is entitled to compensation for services rendered at a precinct polling place at an hourly rate not to exceed the amount fixed by the appropriate authority, which amount must be at least the federal minimum hourly wage. A judge or clerk may be compensated at that rate for services rendered under Section 62.014(c).

(c) For a primary or runoff primary election, the minimum hourly rate is the greater of the maximum rate provided by Subsection (a) or, if the election officer attended a training program as provided by Subchapter F, \$7.

SECTION 12. Section 32.111, Election Code, is amended to read as follows:

Sec. 32.111. TRAINING STANDARDS FOR ELECTION JUDGES. (a) The secretary of state shall ~~[governing body of a political subdivision that holds elections or the county executive committee of a political party that holds primary elections may]:~~

(1) adopt ~~[minimum]~~ standards of training in election law and procedure for presiding or alternate election judges ~~[serving in its elections];~~ ~~[and]~~

(2) develop materials for a standardized curriculum for that training;
and

(3) distribute the materials as necessary to the governing bodies of political subdivisions that hold elections and to each county executive committee of a political party that holds a primary election ~~[require that a person meet those standards before appointment or service as a judge].~~

(b) The [Minimum] training standards may include required attendance at appropriate training programs or the passage of an examination at the end of a training program.

SECTION 13. Section 32.112, Election Code, is amended to read as follows:

Sec. 32.112. EXPENSE OF TRAINING JUDGES. The governing body of a political subdivision may appropriate funds to:

(1) compensate its election judges, early voting clerk, and deputy early voting clerks in charge of early voting polling places for attending a training program required under Section 32.111 ~~[programs]~~, at an hourly rate not to

exceed the maximum rate of compensation of an election judge for services rendered at a precinct polling place or, if applicable, for attending a training program under Section 32.114; and

(2) pay the expenses of conducting the programs.

SECTION 14. Sections 32.113(a) and (b), Election Code, are amended to read as follows:

(a) The governing body of a political subdivision other than a county may, and the county executive committee of a political party shall, provide training ~~[programs]~~ for its election officers using the standardized training program and materials developed and provided by the secretary of state under Section 32.111.

(b) A political subdivision or county executive committee may conduct its training ~~[programs]~~ independently or jointly with other entities.

SECTION 15. Section 32.114, Election Code, is amended by amending Subsection (a) and adding Subsection (e) to read as follows:

(a) The county clerk shall provide one or more sessions of ~~[a]~~ training using the standardized training program and materials developed and provided by the secretary of state under Section 32.111 ~~[program]~~ for the election judges and clerks appointed to serve in elections ordered by the governor or a county authority. Each election judge shall complete the training program.

(e) An election judge, early voting clerk, or deputy early voting clerk in charge of an early voting polling place is entitled to compensation for attending the training program at an hourly rate not to exceed \$7.

SECTION 16. Sections 41.001(a) and (b), Election Code, are amended to read as follows:

(a) Except as otherwise provided by this subchapter, each general or special election in this state shall be held on one of the following dates:

- (1) ~~[the first Saturday in February;~~
- ~~[(2)]~~ the first Saturday in May;
- ~~[(3) the second Saturday in September;]~~ or
- ~~(2)~~ ~~[(4)]~~ the first Tuesday after the first Monday in November.

(b) Subsection (a) does not apply to:

- (1) a runoff election;
- (2) ~~[an election for the issuance or assumption of bonds for any purpose authorized by law relating to public schools or colleges or the levy of a tax for the maintenance of a public school or college, if the governing body of the political subdivision having jurisdiction of the public school or college issuing or assuming the bonds or levying the tax:~~

~~[(A) by resolution, order, or ordinance, finds that holding the election on a date other than a uniform election date is in the public interest, which finding is conclusive and incontestable; and~~

~~[(B) the election is the only election of the type described by this subdivision held by that political subdivision on a date other than a uniform election date during the state fiscal biennium;~~

- ~~[(3)]~~ an election to resolve a tie vote;
- ~~(3)~~ ~~[(4)]~~ an election held under an order of a court or other tribunal;
- ~~(4)~~ ~~[(5)]~~ an emergency election ordered under Section 41.0011;

(5) ~~(6)~~ an expedited election to fill a vacancy in the legislature held under Section 203.013; or

(6) ~~(7)~~ an election held under a statute that expressly provides that the requirement of Subsection (a) does not apply to the election.

SECTION 17. Section 41.001(e), Election Code, is amended to read as follows:

(e) In addition to a date prescribed by Subsection (a), an [An] election for an office in which a majority vote is required and that is [may not be held on the September or February uniform election date. This subsection does not apply to an election] conducted under Section 26.045, Local Government Code, may be held on the first Saturday in February or the second Saturday in September, which are considered to be dates that comply with Subsection (a) and Section 26.045, Local Government Code.

SECTION 18. Section 41.007(b), Election Code, is reenacted to read as follows:

(b) The runoff primary election date is the second Tuesday in April following the general primary election.

SECTION 19. Section 67.003, Election Code, is amended to read as follows:

Sec. 67.003. TIME FOR LOCAL CANVASS. Each local canvassing authority shall convene to conduct the local canvass at the time set by the canvassing authority's presiding officer:

(1) on the seventh day after election day for:

(A) the general election for state and county officers; or

(B) an election of a political subdivision that is held jointly with an

election of:

(i) a county; or

(ii) one or more other political subdivisions under an election services contract with the county election officer; or

(2) not earlier than the third day or later than the sixth day after election day for an election other than an [the general] election described by Subdivision (1) [for state and county officers].

SECTION 20. Section 83.006(b), Election Code, is amended to read as follows:

(b) To be eligible for appointment as early voting clerk under this section, a person must meet the requirements for eligibility for service as a presiding election judge, except that:

(1) an appointee must be a qualified voter of the political subdivision and is not required to be a qualified voter of any other particular territory; ~~and~~

(2) in an election in which an officer of the political subdivision is a candidate, an appointee's status as an employee of the political subdivision does not make the appointee ineligible for appointment as the clerk; and

(3) an appointee who is a permanent employee of the political subdivision and a qualified voter of any territory is not required to be a qualified voter of the political subdivision.

SECTION 21. Section 83.007(b), Election Code, is amended to read as follows:

(b) To be eligible for appointment as early voting clerk under this section, a person must meet the requirements for eligibility for service as a presiding election judge, except that:

(1) an [the] appointee must be a qualified voter of the territory covered by the election and is not required to be a qualified voter of any other particular territory; and

(2) an appointee who is a permanent employee of the authority ordering the election and a qualified voter of any territory is not required to be a qualified voter of the territory covered by the election.

SECTION 22. Section 83.032(b), Election Code, is amended to read as follows:

(b) For a temporary deputy to be eligible for appointment as a deputy early voting clerk under this section, the temporary deputy must meet the requirements for eligibility for service as a presiding election judge, except that:

(1) an appointee is not required to be a qualified voter of any particular territory other than the county, in the case of an appointment by a county clerk, or the city, in the case of an appointment by a city secretary; ~~and~~

(2) in an election in which the early voting clerk is a candidate, an appointee's status as an employee of the clerk does not make the appointee ineligible for appointment as a deputy early voting clerk; and

(3) an appointee who is a permanent employee of the county or city, as applicable, and a qualified voter of any territory is not required to be a qualified voter of the county or city, as applicable.

SECTION 23. Section 84.032, Election Code, is amended by amending Subsection (b) and adding Subsection (e) to read as follows:

(b) A request must:

(1) be in writing and signed by the applicant;

(2) specify the election for which the application was made; and

(3) except as provided by Subsection (c), ~~(d)~~, or (e), be received by the early voting clerk:

(A) not later than the third day before election day; and

(B) if an early voting ballot sent to the applicant is returned to the clerk as a marked ballot, before the marked ballot's arrival at the address on the carrier envelope.

(e) An applicant may also submit a request at any time after the early voting ballot is returned to the early voting clerk as a marked ballot and before the ballot is delivered to the early voting ballot board by appearing in person and executing an affidavit that the applicant did not mark the ballot.

SECTION 24. Section 85.001(c), Election Code, is amended to read as follows:

(c) If the date prescribed by Subsection (a) or (b) for beginning the period is a Saturday, Sunday, or legal state holiday, the early voting period begins [:-

~~(4)]~~ on the next regular business day[; ~~or~~

~~[(2) on that Saturday or Sunday if early voting is ordered to be conducted on that day under Section 85.006].~~

SECTION 25. Section 86.003(c), Election Code, is amended to read as follows:

(c) The address to which the balloting materials must be addressed is the address at which the voter is registered to vote, or the registered mailing address if different, unless the ground for voting by mail is:

(1) absence from the county of residence, in which case the address must be an address outside the voter's county of residence;

(2) confinement in jail, in which case the address must be the address of the jail or of a relative described by Section 84.002(a)(4); or

(3) age or disability and the voter is living at a hospital, nursing home or other long-term care facility, or retirement center, or with a relative described by Section 84.002(a)(3), in which case the address must be the address of that facility or relative.

SECTION 26. Section 86.007(d), Election Code, is amended to read as follows:

(d) A marked ballot voted by mail that arrives after the time prescribed by Subsection (a) shall be counted if:

(1) the ballot was cast from an address outside the United States;

(2) the carrier envelope was placed for delivery before the time the ballot is required to arrive under Subsection (a); and

(3) the ballot arrives at the address on the carrier envelope not later than:

(A) the fifth day after the date of:

(i) the general election for state and county officers; or

(ii) an election of a political subdivision that is held jointly

with an election of:

(a) a county; or

(b) one or more political subdivisions under an election services contract with the county election officer; or

(B) the second day after the date of an election other than an [the general] election described by Paragraph (A) [for state and county officers].

SECTION 27. Section 87.0241, Election Code, is amended by amending Subsection (b) and adding Subsection (c) to read as follows:

(b) The board may not count early voting ballots until:

(1) the polls open on election day; or

(2) in an election conducted by an authority of a county with a population of 100,000 or more or conducted jointly with such a county, the end of the period for early voting by personal appearance.

(c) The secretary of state shall prescribe any procedures necessary for implementing this section in regard to elections described by Subsection (b)(2).

SECTION 28. Section 87.027, Election Code, is amended by amending Subsections (a), (c), (d), (i), and (j) and adding Subsection (a-1) to read as follows:

(a) Except as provided by Subsection (a-1), a [A] signature verification committee may be appointed in any election. The early voting clerk is the authority responsible for determining whether a signature verification committee is to be appointed. If the clerk determines that a committee is to be appointed, the clerk shall issue a written order calling for the appointment. [Section 87.0271 supersedes this section to the extent of a conflict.]

(a-1) A signature verification committee shall be appointed in the general election for state and county officers on submission to the early voting clerk of a written request for the committee by at least 15 registered voters of the county. The request must be submitted not later than the preceding October 1, and a request submitted by mail is considered to be submitted at the time of its receipt by the clerk.

(c) Not later than the fifth day after the date the early voting clerk issues the order calling for the appointment of a signature verification committee, or not later than October 15 for a committee required under Subsection (a-1), the appropriate authority shall appoint the members of the committee and designate one of the appointees as chair, subject to Subsection (d). The authority shall fill a vacancy on the committee by appointment as soon as possible after the vacancy occurs, subject to Subsection (d). The early voting clerk shall post notice of the name and residence address of each appointee. The notice must remain posted continuously for the period beginning the day after the date of the appointment and ending on the last day of the committee's operation in the election.

(d) The early voting clerk shall determine the number of members who are to compose the signature verification committee and shall state that number in the order calling for the committee's appointment. A committee must consist of not fewer than five members. In an election [and, in elections] in which party alignment is indicated on the ballot, each county chair of a political party with a nominee or aligned candidate on the ballot shall submit to the appointing authority a list of names of persons eligible to serve on the signature verification committee. The authority shall appoint at least two persons from each list to serve as members of the committee. The same number of members must be appointed from each list. The authority shall appoint the chair of the committee from the list provided by the political party whose nominee for governor received the most votes in the county in the most recent gubernatorial general election. A vacancy on the committee shall be filled by appointment from the original list or from a new list submitted by the appropriate county chair [must be balanced as equally as possible by members of each political party required to nominate candidates by primary election].

(i) The signature verification committee shall compare the signature on each carrier envelope certificate, except those signed for a voter by a witness, with the signature on the voter's ballot application to determine whether the signatures are those of the same person. The committee may also compare the signatures with the signature on the voter's registration application to confirm that the signatures are those of the same person [match] but may not use the registration application signature to determine that the signatures are not those of the same person [do not match]. A determination under this subsection that the signatures are not those of

the same person [~~do not match~~] must be made by a majority vote of the committee's membership. The committee shall place the jacket envelopes, carrier envelopes, and applications of voters whose signatures are not those of the same person [~~do not match~~] in separate containers from those of voters whose signatures are those of the same person [~~match~~]. The committee chair shall deliver the sorted materials to the early voting ballot board at the time specified by the board's presiding judge but within the period permitted for the early voting clerk's delivery of early voting ballots to the board.

(j) If a signature verification committee is appointed, the early voting ballot board shall follow the same procedure for accepting the early voting ballots voted by mail as in an election without a signature verification committee, except that the board may not determine whether a voter's signatures on the carrier envelope certificate and ballot application are those of the same person [~~match~~] if the committee has determined that the signatures are those of the same person [~~match~~]. If the committee has determined that the signatures are not those of the same person [~~do not match~~], the board may make a determination that the signatures are those of the same person [~~match~~] by a majority vote of the board's membership.

SECTION 29. Section 87.041(b), Election Code, is amended to read as follows:

(b) A ballot may be accepted only if:

- (1) the carrier envelope certificate is properly executed;
- (2) neither the voter's signature on the ballot application nor the signature on the carrier envelope certificate is determined to have been executed by a person other than the voter, unless signed by a witness;
- (3) the voter's ballot application states a legal ground for early voting by mail;
- (4) the voter is registered to vote, if registration is required by law;
- (5) the address to which the ballot was mailed to the voter, as indicated by the application, was outside the voter's county of residence, if the ground for early voting is absence from the county of residence; [~~and~~]
- (6) for a voter to whom a statement of residence form was required to be sent under Section 86.002(a), the statement of residence is returned in the carrier envelope and indicates that the voter satisfies the residence requirements prescribed by Section 63.0011; and
- (7) the address to which the ballot was mailed to the voter is an address that is otherwise required by Sections 84.002 and 86.003.

SECTION 30. Section 87.101, Election Code, is amended to read as follows:

Sec. 87.101. [~~PREPARATION OF BALLOTS;~~] DELIVERY OF BALLOTS TO COUNTING STATION. [~~(a)~~] On the direction of the presiding judge, the early voting ballot board [~~, in accordance with Section 85.032(b),~~] shall deliver to the central counting station [~~open~~] the container for the early voting electronic system ballots that are to be counted by automatic tabulating

equipment at a central counting station. The board shall make the delivery without opening the container and~~[, remove the ballots from the container, and remove any ballots enclosed in ballot envelopes from their envelopes.~~

~~[(b) On the direction of the presiding judge, the early voting ballot board may prepare the ballots for delivery to the central counting station at any time after they are received and shall deliver them]~~ in accordance with the procedure applicable to electronic system ballots cast at a precinct polling place.

SECTION 31. Section 87.1231(a), Election Code, is amended to read as follows:

~~[(a)]~~ Not later than the time of the local canvass, the early voting clerk shall deliver to the local canvassing authority a report of the total number of early voting votes for each candidate or measure by election precinct. The report may reflect the total for votes by mail and the total for votes by personal appearance.

SECTION 32. Section 87.125(a), Election Code, is amended to read as follows:

(a) The early voting ballot board shall convene to count ballots voted by mail described by Section 86.007(d) at the time set by the presiding judge of the board ~~[(a)]~~:

- (1) on the sixth day after the date of:
 - (A) the [a] general election for state and county officers; or
 - (B) an election of a political subdivision that is held jointly with an

election of:

- (i) a county; or
- (ii) one or more political subdivisions under an election

services contract with the county election officer;

(2) on the second [fifth] day after the date of a primary [or special] election, at a time following the last mail delivery, or on an earlier day or at an earlier time if the early voting clerk certifies that all ballots mailed from outside the United States have been received; or

(3) not earlier than the third day or later than the fifth day after the date of an election other than an election described by Subdivision (1) or (2).

SECTION 33. Section 102.003(b), Election Code, is amended to read as follows:

(b) An application may be submitted after the last day of the period for early voting by personal appearance and before 5 ~~[2]~~ p.m. on election day.

SECTION 34. Section 104.003, Election Code, is amended to read as follows:

Sec. 104.003. TIME AND PLACE FOR VOTING. Voting under this chapter shall be conducted on election day, beginning at 7 ~~[8]~~ a.m. and concluding at 7 ~~[2]~~ p.m., at the main early voting polling place~~[, except that the voting shall begin at 7 a.m. and conclude at 7 p.m. in an election in which mechanical voting machines are used]~~. However, if the early voting ballots voted by mail are processed at a location other than the main early voting polling place, the early voting clerk may require the voting to be conducted at that location.

SECTION 35. Section 112.002, Election Code, is amended by amending Subsection (a) and adding Subsections (c) and (d) to read as follows:

(a) After changing residence to another county, a person is eligible to vote a limited ballot by personal appearance during the early voting period or by mail if:

(1) the person would have been eligible to vote in the county of former residence on election day if still residing in that county; and

(2) ~~[the date of the election is not more than 90 days after the new residence is established; and~~

~~[(3)]~~ a voter registration for the person in the county of new residence is not effective on or before election day.

(c) Before being accepted for voting under this chapter, the voter must execute a statement including:

(1) a statement that the voter satisfies the applicable requirements prescribed by Subsection (a);

(2) the voter's residence address or, if the residence has no address, the address at which the voter receives mail and a concise description of the voter's residence;

(3) the month, day, and year of the voter's birth; and

(4) the date the statement is executed.

(d) A statement executed under Subsection (c) shall be submitted:

(1) to an election officer at the main early voting polling place, if the person is voting by personal appearance; or

(2) with the person's application for a ballot to be voted by mail, if the person is voting by mail.

SECTION 36. Section 127.066(c), Election Code, is amended to read as follows:

(c) After the box is sealed, it shall be delivered to the central counting station by two election officers [in accordance with the procedure for delivering ballot box no. 3 to the central counting station]. The officers shall deliver the box to the presiding judge of the central counting station or to the judge's designee.

SECTION 37. Chapter 144, Election Code, is amended by adding Section 144.006 to read as follows:

Sec. 144.006. FILING DEADLINE FOR DECLARED WRITE-IN CANDIDATE. Except as otherwise provided by law, a declaration of write-in candidacy must be filed not later than 5 p.m. of the fifth day after the date an application for a place on the ballot is required to be filed in an election in which:

(1) the filing deadline for an application for a place on the ballot is the 45th day before election day; and

(2) write-in votes may be counted only for names appearing on a list of declared write-in candidates.

SECTION 38. Section 172.024(a), Election Code, is amended to read as follows:

(a) The filing fee for a candidate for nomination in the general primary election is as follows:

(1) United States senator \$5,000 [~~\$4,000~~]

(2) office elected statewide, except United States senator. 3,750 [~~3,000~~]

(3) United States representative. 3,125 [~~2,500~~]

(4) state senator 1,250 [~~1,000~~]

- (5) state representative 750 [~~600~~]
- (6) member, State Board of Education 300 [~~250~~]
- (7) chief justice or justice, court of appeals, other than a justice specified by Subdivision (8) 1,875 [~~1,500~~]
- (8) chief justice or justice of a court of appeals that serves a court of appeals district in which a county with a population of more than 850,000 is wholly or partly situated 2,500 [~~2,000~~]
- (9) district judge or judge specified by Section 52.092(d) for which this schedule does not otherwise prescribe a fee 1,500 [~~1,200~~]
- (10) district or criminal district judge of a court in a judicial district wholly contained in a county with a population of more than 850,000 2,500 [~~2,000~~]
- (11) judge, statutory county court, other than a judge specified by Subdivision (12) 1,500 [~~1,200~~]
- (12) judge of a statutory county court in a county with a population of more than 850,000 2,500 [~~2,000~~]
- (13) district attorney, criminal district attorney, or county attorney performing the duties of a district attorney 1,250 [~~1,000~~]
- (14) county commissioner, county clerk, sheriff, county tax assessor-collector, county treasurer, or judge, constitutional county court:
 - (A) county with a population of 200,000 or more 1,250 [~~1,000~~]
 - (B) county with a population of under 200,000 750 [~~600~~]
- (15) justice of the peace or constable:
 - (A) county with a population of 200,000 or more 1,000 [~~800~~]
 - (B) county with a population of under 200,000 375 [~~300~~]
- (16) county surveyor, inspector of hides and animals, or public weigher 75 [~~50~~]
- (17) office of the county government for which this schedule does not otherwise prescribe a fee 750 [~~600~~]

SECTION 39. Sections 172.126(a) and (c), Election Code, are amended to read as follows:

(a) The primary elections in a county may be conducted jointly at the regular polling places designated for the general election for state and county officers. The county clerk shall supervise the overall conduct of the joint primary elections. This section applies to the conduct of joint primary elections notwithstanding and in addition to other applicable provisions of this code. The decision to conduct a joint general primary election or runoff primary election, as applicable, must be made by majority vote of the full membership of the commissioners court and with the unanimous approval of the county clerk and the county chair of each political party required to nominate candidates by primary election.

(c) One set of election officers shall conduct the primary elections at each polling place. Not later than the second Monday in December preceding the primary elections, each county chair shall deliver to the county clerk a list of the names of the election judges and clerks for that party. The presiding judge of each party, or alternate judge if applicable, serves as a co-judge for the precinct. If an

eligible presiding co-judge and alternate co-judge cannot be found to serve for a particular party in a precinct, a joint primary may not be conducted in that precinct, and that precinct must be consolidated with another precinct that has an eligible presiding co-judge and alternate co-judge to serve for each party. The county clerk shall appoint the election clerks in accordance with rules prescribed by the secretary of state. The secretary of state shall prescribe the maximum number of clerks that may be appointed for each precinct. The early voting ballot board and any central counting station shall also be composed of and administered by one set of election officers that provides representation for each party, and the secretary of state by rule shall prescribe procedures consistent with this subsection for the appointment of those officers.

SECTION 40. Section 173.005(a), Election Code, is amended to read as follows:

~~[(a)]~~ The maximum hourly rate payable with state funds in a particular primary election year to election judges serving in a primary election for attending training programs is the same as the maximum rate prescribed by this code for a political subdivision's compensation for attending a training program for election judges appointed to serve in elections ordered by the governor or a county authority ~~[of its election judges for the same activity].~~

SECTION 41. Section 173.011(b), Election Code, is amended to read as follows:

(b) Any surplus remaining in a county primary fund shall be remitted to the secretary of state ~~[county clerk]~~ immediately after the final payment from the fund of the necessary expenses for holding the primary elections for that year, but not later than July 1 following the applicable primary election. The surplus in the primary fund shall be remitted regardless of whether state funds were requested by the chair. ~~[Any surplus primary funds received by the county clerk under this subsection may be used only for paying the remaining expenses of the joint primary election.]~~

SECTION 42. Section 212.001, Election Code, is amended to read as follows:

Sec. 212.001. GENERAL REQUIREMENTS FOR RECOUNT DOCUMENT. A recount document submitted under this title must:

- (1) be in writing;
- (2) identify the office or measure for which a recount is desired;
- (3) state the grounds for the recount;
- (4) state the side of the measure that the person requesting the recount represents, if applicable;
- (5) identify the election precincts, grouped by county or other appropriate territorial unit if the election involves more than one local canvassing authority, for which a recount is desired and must indicate the method of voting used in each precinct;
- (6) be signed by:
 - (A) the person requesting the recount or, if there is more than one, any one or more of them; or
 - (B) an agent of the person requesting the recount;

(7) state each requesting person's name, residence address, and, if authorization to obtain the recount is based on eligibility to vote in the election, voter registration number, and county of registration if the election covers territory in more than one county;

(8) designate an agent who is a resident of this state to receive notice under this title on behalf of the person requesting the recount if:

(A) the person requesting the recount is not a resident of this state;

or

(B) there is more than one person requesting the recount;

(9) state the mailing address and at least one telephone number, if any, at which the person requesting the recount or an agent, identified by name, may receive notice given under this title; ~~and~~

(10) state the mailing address and at least one telephone number, if any, at which the opposing candidates for the office or their agents, identified by name, may receive notice given under this title; and

(11) be accompanied by a deposit as provided by Subchapter E.

SECTION 43. Section 212.088(a), Election Code, is amended to read as follows:

(a) If the deadline for submitting an expedited recount petition falls on a Saturday, Sunday, or legal state holiday, the deadline is extended to 10 ~~[9]~~ a.m. of the next regular business day.

SECTION 44. Section 212.111(b), Election Code, is amended to read as follows:

(b) The ~~[Except as provided by Subsection (e), the]~~ deposit must be in the form of cash or a cashier's check or money order made payable to the recount coordinator.

SECTION 45. Section 277.002(a), Election Code, is amended to read as follows:

(a) For a petition signature to be valid, a petition must:

(1) contain in addition to the signature:

(A) the signer's printed name;

(B) the signer's:

(i) date of birth and residence address; or

(ii) [the signer's] voter registration number and, if the territory from which signatures must be obtained is situated in more than one county, the county of registration; and

(C) ~~[the signer's residence address; and~~

~~[(D)]~~ the date of signing; and

(2) comply with any other applicable requirements prescribed by law.

SECTION 46. Section 41.253(b), Education Code, is amended to read as follows:

(b) The transitional board of trustees shall divide the consolidated district into nine single-member trustee districts in accordance with the procedures provided by Section 11.052. The transitional board shall order an election for the initial board of trustees to be held on the first May ~~February~~ uniform election date after the effective date of a consolidation order.

SECTION 47. Section 49.103(b), Water Code, is amended to read as follows:

(b) An election shall be held on the uniform election date, established by the Election Code, in ~~[either February or]~~ May of each even-numbered year to elect the appropriate number of directors.

SECTION 48. Section 56.804(a), Water Code, is amended to read as follows:

(a) The election shall be held on a uniform election day in ~~[February or]~~ May.

SECTION 49. Sections 13.072(e), 15.026, 41.001(d), 87.0271, 87.1231(b), 145.006, 173.005(b), and 212.111(c), Election Code, are repealed.

SECTION 50. (a) Notwithstanding any other enactment of the 78th Legislature, Regular Session, 2003, that amends Section 41.007(b), Election Code, including SECTION 1, **HB 2496**, and SECTION 16, **HB 1549**, the runoff primary election day remains on the second Tuesday in April following the general primary election as provided by SECTION 18 of this Act.

(b) Notwithstanding any other enactment of the 78th Legislature, Regular Session, 2003, that modifies Section 41.001(a), Election Code, including SECTION 14, **HB 1549**, the uniform election date remains on the first Saturday in May, as provided by SECTION 16 of this Act.

(c) Section 2.056(b), Election Code, as added by SECTION 1, **HB 1344**, Acts of the 78th Legislature, Regular Session, 2003, is amended to read as follows:

(b) This section applies to a general or special election for an office of a political subdivision other than a county.

(d) Notwithstanding any other enactment of the 78th Legislature, Regular Session, 2003, including SECTION 1, **HB 1476**, Sections 2.051-2.053, Election Code, are repealed.

(e) Subsection (c) of this section takes effect on the date that **HB 1344**, Acts of the 78th Legislature, Regular Session, 2003, takes effect. If **HB 1344** does not take effect, Subsection (c) has no effect.

(f) Subsection (d) of this section takes effect on the date that **HB 1476**, Acts of the 78th Legislature, Regular Session, 2003, takes effect. If **HB 1476** does not take effect, Subsection (d) has no effect.

SECTION 51. (a) This Act takes effect September 1, 2003.

(b) As they relate to the holding of an election, the changes in law made by this Act apply only to an election ordered on or after September 1, 2003.

(c) Not later than December 31, 2003, a political subdivision that before October 1, 2003, held its general election for officers on the February or September uniform election date shall change the election date to a date authorized by Section 41.001, Election Code, as amended by this Act. An election on the new date may not be held before the uniform election date in May 2004.

HB 1695 - STATEMENT OF LEGISLATIVE INTENT

REPRESENTATIVE HOWARD: How do the changes in this bill affect the constitutional amendment election scheduled for September 13, 2003?

REPRESENTATIVE DENNY: Mr. Howard, it does not affect this election, rather, it will affect elections called and scheduled after September 2003.

HOWARD: Does the effective date of this Act have any effect on the September 13, 2003 constitutional election?

DENNY: No, the effective date of this Act would only affect an election called or scheduled after September 1, 2003. The constitutional amendment election has already been scheduled for September 13, and the governor will call for that election before September so that our elections administrators can order the ballots and scheduling polling places and get workers...etc. Therefore, the September 13 constitutional amendment election is not affected by this Act.

REMARKS ORDERED PRINTED

Representative Howard moved to print remarks between Representative Howard and Representative Denny.

The motion prevailed without objection.

Representative Denny moved to adopt the conference committee report on **HB 1695**.

A record vote was requested.

The motion prevailed by (Record 899): 102 Yeas, 36 Nays, 2 Present, not voting.

Yeas — Baxter; Berman; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Burnam; Callegari; Campbell; Capelo; Chisum; Christian; Cook, B.; Cook, R.; Corte; Crabb; Crownover; Davis, J.; Dawson; Delisi; Denny; Driver; Dutton; Eissler; Elkins; Farabee; Farrar; Flynn; Gattis; Geren; Goodman; Goolsby; Griggs; Grusendorf; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Heflin; Hegar; Hilderbran; Hill; Hope; Hopson; Howard; Hughes; Hunter; Hupp; Isett; Jones, D.; Jones, E.; Jones, J.; Keel; Keffer, B.; Keffer, J.; King; Krusee; Kuempel; Laney; Laubenberg; Mabry; Madden; Marchant; McCall; Mercer; Merritt; Miller; Moreno, J.; Morrison; Mowery; Nixon; Paxton; Phillips; Pickett; Pitts; Puente; Quintanilla; Reyna; Riddle; Seaman; Smith, T.; Smith, W.; Smithee; Solis; Solomons; Stick; Swinford; Talton; Taylor; Uresti; Van Arsdale; West; Wilson; Wise; Wohlgemuth; Wolens; Wong; Woolley; Zedler.

Nays — Alonzo; Bailey; Canales; Castro; Chavez; Coleman; Davis, Y.; Deshotel; Dukes; Eiland; Ellis; Flores; Gallego; Garza; Giddings; Guillen; Gutierrez; Hochberg; Hodge; Homer; Lewis; Luna; Martinez Fischer; McClendon; McReynolds; Menendez; Naishtat; Noriega; Olivo; Peña; Raymond; Ritter; Rodriguez; Rose; Thompson; Villarreal.

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

Absent — Allen; Casteel; Dunnam; Edwards; Escobar; Kolkhorst; Moreno, P.; Oliveira; Telford; Turner.

STATEMENTS OF VOTE

When Record No. 899 was taken, I was in the house but away from my desk. I would have voted no.

Dunnam

When Record No. 899 was taken, my vote failed to register. I would have voted no.

Edwards

I was shown voting no on Record No. 899. I intended to vote yes.

Flores

(Christian in the chair)

HJR 68 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Hupp submitted the following conference committee report on **HJR 68** :

Austin, Texas, May 30, 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 **HJR 68** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Bivins
Ellis, Rodney
Estes
Fraser

On the part of the senate

Heflin
Corte
Pitts
Hupp

On the part of the house

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

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

SECTION 1. Subsections (r) and (s), Section 49-b, Article III, Texas Constitution, are amended to read as follows:

(r) Receipts of all kinds of the Veterans' Land Fund, the Veterans' Housing Assistance Fund, or the Veterans' Housing Assistance Fund II that the Board determines are not required for the payment of principal of and interest on the general obligation bonds benefiting those funds, including payments by the

Board under a bond enhancement agreement with respect to principal of or interest on the bonds, may be used by the Board, to the extent not inconsistent with the proceedings authorizing the bonds to:

(1) make temporary transfers to another of those funds to avoid a temporary cash deficiency in that fund or make a transfer to another of those funds for the purposes of that fund;

(2) pay the principal of and interest on general obligation bonds issued to provide money for another of those funds or make bond enhancement payments with respect to the bonds; or

(3) pay the principal of and interest on revenue bonds of the Board or make bond enhancement payments with respect to the bonds [~~if the bonds are issued to provide funds to purchase lands and sell lands to veterans or make home mortgage loans to veterans~~].

(s) If the Board determines that assets from the Veterans' Land Fund, the Veterans' Housing Assistance Fund, or the Veterans' Housing Assistance Fund II are not required for the purposes of the fund, the Board may:

(1) transfer the assets to another of those funds;

(2) use the assets to secure revenue bonds issued by the Board; [~~or~~]

(3) use the assets to plan and design, operate, maintain, enlarge, or improve veterans cemeteries; or

(4) use the assets to plan and design, construct, acquire, own, operate, maintain, enlarge, improve, furnish, or equip veterans homes.

SECTION 2. Section 5, Article VII, Texas Constitution, is amended to read as follows:

Sec. 5. (a) The permanent school fund consists of all land appropriated for public schools by this constitution or the other laws of this state, other properties belonging to the permanent school fund, and all revenue derived from the land or other properties. The available school fund consists of the distributions made to it from the total return on all investment assets of [~~principal of all bonds and other funds, and the principal arising from the sale of the lands hereinbefore set apart to said school fund, shall be~~] the permanent school fund, [~~and all the interest derivable therefrom and~~] the taxes [~~herein~~] authorized by this constitution or general law to be part of [~~and levied shall be~~] the available school fund, and appropriations made to the available school fund by the legislature. The total amount distributed from the permanent school fund to the available school fund:

(1) in each year of a state fiscal biennium must be an amount that is not more than six percent of the average of the market value of the permanent school fund, excluding real property belonging to the fund that is managed, sold, or acquired under Section 4 of this article, on the last day of each of the 16 state fiscal quarters preceding the regular session of the legislature that begins before that state fiscal biennium, in accordance with the rate adopted by:

(A) a vote of two-thirds of the total membership of the State Board of Education, taken before the regular session of the legislature convenes; or

(B) the legislature by general law or appropriation, if the State Board of Education does not adopt a rate as provided by Paragraph (A) of this subdivision; and

(2) over the 10-year period consisting of the current state fiscal year and the nine preceding state fiscal years may not exceed the total return on all investment assets of the permanent school fund over the same 10-year period.

(b) The expenses of managing permanent school fund land and investments shall be paid by appropriation from the permanent school fund.

(c) The available school fund shall be applied annually to the support of the public free schools. Except as provided by this section, the legislature may not enact a [no] law [shall ever be enacted] appropriating any part of the permanent school fund or available school fund to any other purpose. The permanent school fund and the available school fund may not [whatever, nor shall the same, or any part thereof ever] be appropriated to or used for the support of any sectarian school. The[-; and the] available school fund [herein provided] shall be distributed to the several counties according to their scholastic population and applied in the [such] manner [as may be] provided by law.

(d) [(b)] The legislature by law may provide for using the permanent school fund [and the income from the permanent school fund] to guarantee bonds issued by school districts or by the state for the purpose of making loans to or purchasing the bonds of school districts for the purpose of acquisition, construction, or improvement of instructional facilities including all furnishings thereto. If any payment is required to be made by the permanent school fund as a result of its guarantee of bonds issued by the state, an amount equal to this payment shall be immediately paid by the state from the treasury to the permanent school fund. An amount owed by the state to the permanent school fund under this section shall be a general obligation of the state until paid. The amount of bonds authorized hereunder shall not exceed \$750 million or a higher amount authorized by a two-thirds record vote of both houses of the legislature. If the proceeds of bonds issued by the state are used to provide a loan to a school district and the district becomes delinquent on the loan payments, the amount of the delinquent payments shall be offset against state aid to which the district is otherwise entitled.

(e) [(c)] The legislature may appropriate part of the available school fund for administration of [the permanent school fund or of] a bond guarantee program established under this section.

(f) [(d)] Notwithstanding any other provision of this constitution, in managing the assets of the permanent school fund, the State Board of Education may acquire, exchange, sell, supervise, manage, or retain, through procedures and subject to restrictions it establishes and in amounts it considers appropriate, any kind of investment, including investments in the Texas growth fund created by Article XVI, Section 70, of this constitution, that persons of ordinary prudence, discretion, and intelligence, exercising the judgment and care under the circumstances then prevailing, acquire or retain for their own account in the management of their affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital.

(g) Notwithstanding Subsection (a) of this section, the total amount distributed from the permanent school fund to the available school fund for the state fiscal years beginning September 1, 2003, and September 1, 2004, must be an amount equal to 4.5 percent of the average of the market value of the permanent school fund, excluding real property belonging to the fund that is managed, sold, or acquired under Section 4 of this article, on the last day of each of the 16 state fiscal quarters preceding the regular session of the 78th Legislature.

(h) Subsection (g) of this section and this subsection expire December 1, 2006.

SECTION 3. The constitutional amendment proposed by SECTION 1 of this resolution 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 authorizing the Veterans' Land Board to use assets in certain veterans' land and veterans' housing assistance funds to provide veterans homes for the aged or infirm and to make principal, interest, and bond enhancement payments on revenue bonds."

SECTION 4. The constitutional amendment proposed by SECTION 2 of this resolution 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 relating to the use of income and appreciation of the permanent school fund."

Representative Hupp moved to adopt the conference committee report on **HJR 68**.

A record vote was requested.

The motion prevailed by (Record 900): 142 Yeas, 0 Nays, 3 Present, not voting.

Yeas — Allen; Alonzo; Bailey; Baxter; Berman; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Callegari; Campbell; Canales; Capelo; Casteel; Chisum; 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; 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; Wohlgemuth; Wolens; Wong; Woolley; Zedler.

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

Absent — Burnam; Castro; Chavez; Dunnam; Wise.

STATEMENT OF VOTE

When Record No. 900 was taken, I was in the house but away from my desk. I would have voted yes.

Dunnam

SB 16 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Woolley submitted the conference committee report on **SB 16**.

Representative Woolley moved to adopt the conference committee report on **SB 16**.

The motion prevailed.

SB 103 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Alonzo submitted the conference committee report on **SB 103**.

Representative Alonzo moved to adopt the conference committee report on **SB 103**.

A record vote was requested.

The motion prevailed by (Record 901): 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; Coleman; Cook, B.; Cook, R.; Corte; Davis, J.; Davis, Y.; Dawson; Delisi; Denny; Deshotel; Driver; 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; Hagar; 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; Marchant; Martinez Fischer; McCall; McClendon; McReynolds; Menendez; Mercer; Merritt; Miller; Moreno, J.; Morrison; Mowery; Naishtat; Nixon; Noriega; Oliveira; Olivo; Paxton; Peña; Phillips; Pickett; Pitts; Puente; Quintanilla; Raymond; Reyna; Riddle; Ritter; Rodriguez; Rose; Seaman; Smith, T.; Smith, W.; Smithee; Solis; Solomons; Stick; Swinford; Talton; Taylor; Telford; Thompson; Truitt; Turner; Uresti; Van Arsdale; Villarreal; West; Wilson; Wise; Wohlgeomuth; Wong; Woolley; Zedler.

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

Absent — Crabb; Crownover; Escobar; Heflin; Hill; Moreno, P.; Wolens.

SB 1010 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Giddings submitted the conference committee report on **SB 1010**.

Representative Giddings moved to adopt the conference committee report on **SB 1010**.

The motion prevailed.

SJR 30 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Callegari submitted the conference committee report on **SJR 30**.

Representative Callegari moved to adopt the conference committee report on **SJR 30**.

A record vote was requested.

The motion prevailed by (Record 902): 141 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(C); Coleman; Cook, B.; Cook, R.; Corte; Crownover; Davis, J.; Davis, Y.; Dawson; Delisi; Denny; Deshotel; Driver; Dukes; Dunnam; Dutton; Edwards; Eiland; Eissler; Elkins; Ellis; Escobar; 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.; 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; Raymond; Reyna; Riddle; Ritter; Rodriguez; Rose; Seaman; Smith, T.; Smith, W.; Smithee; Solis; Solomons; Stick; Swinford; Talton; Taylor; Telford; Truitt; Turner; Uresti; Van Arsdale; Villarreal; West; Wilson; Wise; Wohlgemuth; Wolens; Wong; Woolley; Zedler.

Present, not voting — Mr. Speaker.

Absent — Crabb; Farabee; Farrar; Heflin; Hill; Keffer, J.; Quintanilla; Thompson.

HB 2588 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Goodman submitted the following conference committee report on **HB 2588** :

Austin, Texas, May 30, 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 2588** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Harris
Madla
Lucio
Brimer

Goodman
Morrison
Reyna
Baxter

On the part of the senate

On the part of the house

HB 2588, A bill to be entitled An Act relating to certain fees and costs that may be collected and to certain attorney's fees and costs that may be imposed in relation to certain child support matters.

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

SECTION 1. Section 157.167, Family Code, is amended by amending Subsection (b) and adding Subsection (d) to read as follows:

(b) Except as provided by Subsection (d), for ~~For~~ good cause shown, the court may waive the requirement that the respondent pay attorney's fees and costs if the court states the reasons supporting that finding.

(d) If the court finds that the respondent is in contempt of court for failure or refusal to pay child support and that the respondent owes \$20,000 or more in child support arrearages, the court may not waive the requirement that the respondent pay attorney's fees and costs unless the court also finds that the respondent:

(1) is involuntarily unemployed or is disabled; and

(2) lacks the financial resources to pay the attorney's fees and costs.

SECTION 2. The heading to Section 231.103, Family Code, is amended to read as follows:

Sec. 231.103. APPLICATION AND SERVICE FEES ~~FEES~~.

SECTION 3. Section 231.103, Family Code, is amended by amending Subsection (a) and adding Subsections (d)-(h) to read as follows:

(a) The Title IV-D agency may:

(1) charge a reasonable application fee;

(2) charge a \$25 annual service fee; and

(3) to the extent permitted by federal law, recover costs for the services provided in a Title IV-D case.

(d) The Title IV-D agency may only charge an annual service fee in a Title IV-D case if the recipient of Title IV-D services has never received public assistance under Part A of Title IV of the federal Social Security Act (42 U.S.C. Section 601 et seq.) and the recipient receives more than \$500 in support payments in a year. The annual service fee may only be deducted from support payments that exceed \$500 annually.

(e) The Title IV-D agency may impose and collect a fee as authorized by federal law for each request for parent locator services under Section 231.101(a).

(f) The state disbursement unit established and operated by the Title IV-D agency under Chapter 234 may collect a monthly service fee of \$3 deducted from support payments in a case for which the Title IV-D agency is not providing services.

(g) The Title IV-D agency by rule shall establish procedures for the imposition of fees and recovery of costs authorized under this section.

(h) The attorney general child support application and service fee account is an account in the general revenue fund in the state treasury. The account consists of all fees and costs collected under this section. The Title IV-D agency may only use the money in the account for agency program expenditures.

SECTION 4. Section 234.008, Family Code, is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

(a) Except as provided by Subsection (c), not [Not] later than the second business day after the date the state disbursement unit receives a child support payment, the state disbursement unit shall distribute the payment to the Title IV-D agency or the obligee.

(c) In a case in which a service fee is authorized under Section 231.103(d), the state disbursement unit shall deduct the amount of the fee from the support payment before the payment is disbursed to the obligee.

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

(b) The Title IV-D agency may not collect the \$25 annual service fee authorized by Section 231.103, Family Code, as amended by this Act, before January 1, 2004.

(c) The change in law made by this Act does not by itself constitute a material and substantial change of circumstances under Section 156.401, Family Code, sufficient to warrant modification of a court order or a portion of a decree that provides for the support of a child rendered before the effective date of this Act.

Representative Goodman moved to adopt the conference committee report on **HB 2588**.

The motion prevailed.

SB 280 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Solomons submitted the conference committee report on **SB 280**.

Representative Solomons moved to adopt the conference committee report on **SB 280**.

A record vote was requested.

The motion prevailed by (Record 903): 145 Yeas, 1 Nay, 1 Present, not voting.

Yeas — Allen; Alonzo; Bailey; Baxter; Berman; Bohac; Bonnen; Branch; Brown, F.; Burnam; Callegari; Campbell; Canales; Capelo; Casteel; Castro; Chavez; Chisum; Christian(C); Coleman; Cook, B.; Cook, R.; 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; 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; Taylor; Telford; Thompson; Truitt; Turner; Uresti; Van Arsdale; Villarreal; West; Wilson; Wise; Wohlgemuth; Wolens; Wong; Woolley; Zedler.

Nays — Hodge.

Present, not voting — Mr. Speaker.

Absent — Brown, B.; Corte; Talton.

SB 473 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Giddings submitted the conference committee report on **SB 473**.

Representative Giddings moved to adopt the conference committee report on **SB 473**.

The motion prevailed.

HR 1855 - NOTICE OF INTRODUCTION

Pursuant to the provisions of Rule 13, Section 9(f) of the House Rules, the chair announced the introduction of **HR 1855**, suspending the limitations on the conferees for **SB 1320**.

SB 361 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Hill submitted the conference committee report on **SB 361**.

Representative Hill moved to adopt the conference committee report on **SB 361**.

A record vote was requested.

The motion prevailed by (Record 904): 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; 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;

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; Wohlgenuth; Wolens; Wong; Woolley; Zedler.

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

Absent — Dunnam; Wise.

STATEMENT OF VOTE

When Record No. 904 was taken, I was in the house but away from my desk. I would have voted yes.

Dunnam

SB 1182 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Farabee submitted the conference committee report on **SB 1182**.

Representative Farabee moved to adopt the conference committee report on **SB 1182**.

A record vote was requested.

The motion prevailed by (Record 905): 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(C); 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, J.; Keel; Keffer, B.; Keffer, J.; King; Kolkhorst; Krusee; Kuempel; Laney; Laubenberg; Lewis; Luna; Mabry; 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; 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.

Present, not voting — Mr. Speaker.

Absent — Jones, E.; Madden; Rose.

SB 160 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Capelo submitted the conference committee report on **SB 160**.

Representative Capelo moved to adopt the conference committee report on **SB 160**.

The motion prevailed.

HR 1858 - NOTICE OF INTRODUCTION

Pursuant to the provisions of Rule 13, Section 9(f) of the House Rules, the chair announced the introduction of **HR 1858**, suspending the limitations on the conferees for **HB 2455**.

SB 826 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Keel submitted the conference committee report on **SB 826**.

Representative Keel moved to adopt the conference committee report on **SB 826**.

The motion prevailed.

SB 1000 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Goodman submitted the conference committee report on **SB 1000**.

Representative Goodman moved to adopt the conference committee report on **SB 1000**.

A record vote was requested.

The motion prevailed by (Record 906): 143 Yeas, 0 Nays, 1 Present, not voting.

Yeas — Allen; Alonzo; Bailey; Berman; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Burnam; Callegari; Campbell; Canales; Capelo; Casteel; Castro; Chavez; Chisum; Christian(C); Coleman; Cook, B.; Cook, R.; 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, J.; Keel; Keffer, B.; Keffer, J.; King; Kolkhorst; Krusee; Kuempel; Laney; Laubenberg; Lewis; Luna; Marchant; Martinez Fischer; McCall; McClendon; McReynolds; Menendez; Mercer;

Merritt; Miller; 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.

Present, not voting — Mr. Speaker.

Absent — Baxter; Corte; Jones, E.; Mabry; Madden; Moreno, J.

SB 1413 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Hardcastle submitted the conference committee report on **SB 1413**.

(Puente in the chair)

Representative Hardcastle moved to adopt the conference committee report on **SB 1413**.

A record vote was requested.

The motion prevailed by (Record 907): 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.; 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; Hughes; Hunter; Hupp; Isett; Jones, D.; Jones, J.; Keel; Keffer, B.; Keffer, J.; King; Kolkhorst; Krusee; Kuempel; Laney; Laubenberg; Lewis; Luna; Mabry; Marchant; Martinez Fischer; McCall; McClendon; McReynolds; Menendez; Mercer; Merritt; Miller; Moreno, J.; Moreno, P.; Morrison; Mowery; Naishtat; Nixon; Noriega; Oliveira; Olivo; Paxton; Peña; Phillips; Pickett; Pitts; Quintanilla; Raymond; Reyna; Riddle; Ritter; Rodriguez; Rose; Seaman; Smith, T.; Smith, W.; Smithee; Solis; Solomons; Stick; Swinford; Talton; Taylor; Telford; Thompson; Truitt; Turner; Uresti; Van Arsdale; Villarreal; West; Wilson; Wise; Wohlgemuth; Wolens; Wong; Woolley; Zedler.

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

Absent — Dawson; Howard; Jones, E.; Madden.

STATEMENT OF VOTE

When Record No. 907 was taken, I was in the house but away from my desk. I would have voted yes.

Madden

SB 1771 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative J. Keffer submitted the conference committee report on **SB 1771**.

SB 1771 - STATEMENT OF LEGISLATIVE INTENT

REPRESENTATIVE SOLIS: On **SB 1771** you just announced two amendments that were taken away. But the Section C of the bill—regarding the use of the funds for economic development, infrastructure development, community development, job training programs, and business incentives—that was kept intact. Is that correct?

REPRESENTATIVE J. KEFFER: Yes. Yes it was.

SOLIS: The bill itself—and you recall we've had this debate on the house floor before in reference to some of these funds and the commitment made by the governor, and we've talked about the state of the state in reference to some of the border health science institutes.

J. KEFFER: Yes. I do remember that. And we've had several. As a matter of fact, several months ago when we were debating on the floor, you and Representative Oliveira got up and talked about the use of these funds along the border.

SOLIS: And what we're doing with this bill—this is the mechanism which the governor had discussed—I know on the state of the state, but also with myself and Representative Oliveira and other members of the house—as to what the intent is for some of these funds, specifically the border health institute, including the regional academic health center. And also, there were some funds that were discussed, and I'm not sure if you're aware of this or not, some of the commitments made by the governor as to how these funds would be dispersed—some of the figures we've discussed. And I'm not sure if you're aware of this or not—so it's in the form of a question, to try to establish intent on this bill—of the funds discussed for the regional academic health center was something like \$19.6 million. There was an Anbrooke Campus, part of the border initiative, was \$5 million, \$2 million for Laredo, and \$10 million for El Paso. But I want to thank you and the committee for working with myself and several members of the border, including Representative Escobar, who is trying to get some funds for the Rangel School of Pharmacy and is still in the process of working with the governor's office on that. I just want to make sure we're on the same page, and I believe we are, on what the governor committed early on in the session.

J. KEFFER: Of course, not being able to speak for the governor, but I think this bill and subsequent bills on economic development were written so broadly to be able to take in these worthwhile projects that you're talking about, and certainly we want to make every recommendation so the governor looks seriously upon these projects.

SOLIS: And I appreciate that Chairman Keffer, and that is why I pointed out Section C of the bill. Because I believe the way it was drafted at that point would show support for the commitments made by the governor on the health science institutions, including the Rangel School of Pharmacy.

REMARKS ORDERED PRINTED

Representative Raymond moved to print remarks between Representative J. Keffer and Representative Solis.

The motion prevailed without objection.

Representative J. Keffer moved to adopt the conference committee report on **SB 1771**.

The motion prevailed.

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. 57 and 58).

HB 1204 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Baxter submitted the following conference committee report on **HB 1204** :

Austin, Texas, May 31, 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 1204** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Wentworth
Brimer
Madla
Ellis, Rodney

Baxter
Howard
Mowery
Haggerty
Wohlgemuth

On the part of the senate

On the part of the house

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 and in the unincorporated area of a county.

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

SECTION 1. The heading of Section 242.001, Local Government Code, is amended to read as follows:

Sec. 242.001. REGULATION OF SUBDIVISIONS IN EXTRATERRITORIAL JURISDICTION GENERALLY.

SECTION 2. (a) Section 242.001(a), Local Government Code, as amended by Chapters 736 and 1028, Acts of the 77th Legislature, Regular Session, 2001, is reenacted and amended to read as follows:

(a) This section applies only to a county operating under Sections 232.001-232.005 or Subchapter B, C, or E, Chapter 232, and a municipality that has extraterritorial jurisdiction in that county. Subsections (b)-(g) ~~[(b)-(e)]~~ do not apply:

(1) within a county that contains extraterritorial jurisdiction of a municipality with a population of 1.9 million or more; or

(2) within a county within 50 miles of an international border, or to which Subchapter C, Chapter 232, applies.

(b) This section takes effect only if **HB 1197**, Acts of the 78th Legislature, Regular Session, 2003, does not become law. If that bill becomes law, this section has no effect.

SECTION 3. (a) Section 242.001(a), Local Government Code, as amended by Chapters 736 and 1028, Acts of the 77th Legislature, Regular Session, 2001, is reenacted and amended to read as follows:

(a) This section applies only to a county operating under Sections 232.001-232.005 or Subchapter B, C, or E, Chapter 232, and a municipality that has extraterritorial jurisdiction in that county. Subsections (b)-(g) ~~[(b)-(e)]~~ do not apply:

(1) within a county that contains extraterritorial jurisdiction of a municipality with a population of 1.9 million or more; ~~[(e)]~~

(2) within a county within 50 miles of an international border, or to which Subchapter C, Chapter 232, applies; or

(3) to a tract of land subject to a development agreement under Subchapter G, Chapter 212, or other provisions of this code.

(b) This section takes effect only if **HB 1197**, Acts of the 78th Legislature, Regular Session, 2003, becomes law. If that bill does not become law, this section has no effect.

SECTION 4. Section 242.001, Local Government Code, is amended by reenacting and amending Subsection (c), as amended by Chapters 736 and 1028, Acts of the 77th Legislature, Regular Session, 2001, and by amending Subsections (d), (f), and (g) and adding Subsections (h) and (i) to read as follows:

(c) Except as provided by Subsections (d)(3) and (4), a municipality and a county may not both regulate subdivisions and approve related permits in the extraterritorial jurisdiction of a municipality after an agreement under Subsection (d) is executed. The municipality and the county shall enter into a written agreement that identifies the governmental entity authorized to regulate subdivision plats and approve related permits in the extraterritorial jurisdiction. For a municipality in existence on September 1, 2001, the municipality and county shall enter into a written agreement under this subsection on or before April 1, 2002. For a municipality incorporated after September 1, 2001, the municipality and county shall enter into a written agreement under this subsection

not later than the 120th day after the date the municipality incorporates. On reaching an agreement, the municipality and county shall certify that the agreement complies with the requirements of this chapter. The municipality and the county shall adopt the agreement by order, ordinance, or resolution. The agreement must be amended by the municipality and the county if necessary to take into account an expansion or reduction in the extraterritorial jurisdiction of the municipality. The municipality shall notify the county of any expansion or reduction in the municipality's extraterritorial jurisdiction. Any expansion or reduction in the municipality's extraterritorial jurisdiction that affects property that is subject to a preliminary or final plat, a plat application, or an application for a related permit filed with the municipality or the county or that was previously approved under Section 212.009 or Chapter 232 does not affect any rights accrued under Chapter 245. The approval of the plat, ~~or~~ any permit, a plat application, or an application for a related permit remains effective as provided by Chapter 245 regardless of the change in designation as extraterritorial jurisdiction of the municipality.

(d) An agreement under Subsection (c) may grant the authority to regulate subdivision plats and approve related permits in the extraterritorial jurisdiction of a municipality as follows:

(1) the municipality may be granted exclusive jurisdiction to regulate subdivision plats and approve related permits in the extraterritorial jurisdiction and may regulate subdivisions under Subchapter A of Chapter 212 and other statutes applicable to municipalities;

(2) the county may be granted exclusive jurisdiction to regulate subdivision plats and approve related permits in the extraterritorial jurisdiction and may regulate subdivisions under Sections 232.001-232.005, Subchapter B or C, Chapter 232, and other statutes applicable to counties;

(3) the municipality and the county may apportion the area within the extraterritorial jurisdiction of the municipality with the municipality regulating subdivision plats and approving related permits in the area assigned to the municipality and the county regulating subdivision plats and approving related permits in the area assigned to the county; or

(4) the municipality and the county may enter into an interlocal agreement that:

(A) establishes one office that is authorized to:

(i) accept plat applications for tracts of land located in the extraterritorial jurisdiction;

(ii) collect municipal and county plat application fees in a lump-sum amount; and

(iii) provide applicants one response indicating approval or denial of the plat application; and

(B) establishes a single set of consolidated and consistent ~~set of~~ regulations related to plats, subdivision construction plans, and subdivisions of land as authorized by Chapter 212, Sections 232.001-232.005, Subchapters B and C, Chapter 232, and other statutes applicable to municipalities and counties that will be enforced in the extraterritorial jurisdiction.

(f) If a certified agreement between a county and municipality as required by Subsection (c) is not in effect on or before the applicable date prescribed by Section 242.0015(a), the municipality and the county must enter into arbitration as provided by Section 242.0015. If the arbitrator or arbitration panel, as applicable, has not reached a decision in the 60-day period as provided by Section 242.0015, the arbitrator or arbitration panel, as applicable, shall issue an interim decision regarding the regulation of plats and subdivisions and approval of related permits in the extraterritorial jurisdiction of the municipality. The interim decision shall provide for a single set of regulations and authorize a single entity to regulate plats and subdivisions. The interim decision remains in effect only until the arbitrator or arbitration panel reaches a final decision. [This subsection applies until an agreement is reached under Subsection (d). For an area in a municipality's extraterritorial jurisdiction, as defined by Section 212.001, a plat may not be filed with the county clerk without the approval of both the municipality and the county. If a municipal regulation and a county regulation relating to plats and subdivisions of land conflict, the more stringent regulation prevails. However, if one governmental entity requires a plat to be filed for the subdivision of a particular tract of land in the extraterritorial jurisdiction of the municipality and the other governmental entity does not require the filing of a plat for that subdivision, the authority responsible for approving plats for the governmental entity that does not require the filing shall issue on request of the subdivider a written certification stating that a plat is not required to be filed for that subdivision of the land. The certification must be attached to a plat required to be filed under this subsection.]

(g) If a regulation or agreement adopted under this section relating to plats and subdivisions of land or subdivision development establishes a plan for future roads that conflicts with a proposal or plan for future roads adopted by a metropolitan planning organization, the proposal or plan of the metropolitan planning organization prevails. [Subsection (f) applies to a county and area to which Subsections (b)-(e) do not apply].

(h) This subsection applies only to a county to which Subsections (b)-(g) do not apply, except that this subsection does not apply to a county subject to Section 242.002. For an area in a municipality's extraterritorial jurisdiction, as defined by Section 212.001, a plat may not be filed with the county clerk without the approval of both the municipality and the county. If a municipal regulation and a county regulation relating to plats and subdivisions of land conflict, the more stringent regulation prevails. However, if one governmental entity requires a plat to be filed for the subdivision of a particular tract of land in the extraterritorial jurisdiction of the municipality and the other governmental entity does not require the filing of a plat for that subdivision, the authority responsible for approving plats for the governmental entity that does not require the filing shall issue on request of the subdivider a written certification stating that a plat is not required to be filed for that subdivision of the land. The certification must be attached to a plat required to be filed under this subsection.

(i) Property subject to pending approval of a preliminary or final plat application filed after September 1, 2002, that is released from the extraterritorial jurisdiction of a municipality shall be subject only to county approval of the plat application and related permits and county regulation of that plat. This subsection does not apply to the simultaneous exchange of extraterritorial jurisdiction between two or more municipalities or an exchange of extraterritorial jurisdiction that is contingent on the subsequent approval by the releasing municipality.

SECTION 5. Chapter 242, Local Government Code, is amended by adding Section 242.0015 to read as follows:

Sec. 242.0015. ARBITRATION REGARDING SUBDIVISION REGULATION AGREEMENT. (a) This section applies only to a county and a municipality that are required to make an agreement as described under Section 242.001(f). If a certified agreement between a county and a municipality with an extraterritorial jurisdiction that extends 3.5 miles or more from the corporate boundaries of the municipality is not in effect on or before January 1, 2004, the parties must arbitrate the disputed issues. If a certified agreement between a county and a municipality with an extraterritorial jurisdiction that extends less than 3.5 miles from the corporate boundaries of the municipality is not in effect on or before January 1, 2006, the parties must arbitrate the disputed issues. A party may not refuse to participate in arbitration requested under this section. An arbitration decision under this section is binding on the parties.

(b) The county and the municipality must agree on an individual to serve as arbitrator. If the county and the municipality cannot agree on an individual to serve as arbitrator, the county and the municipality shall each select an arbitrator and the arbitrators selected shall select a third arbitrator.

(c) The third arbitrator selected under Subsection (b) presides over the arbitration panel.

(d) Not later than the 30th day after the date the county and the municipality are required to have an agreement in effect under Section 242.001(f), the arbitrator or arbitration panel, as applicable, must be selected.

(e) The authority of the arbitrator or arbitration panel is limited to issuing a decision relating only to the disputed issues between the county and the municipality regarding the authority of the county or municipality to regulate plats, subdivisions, or development plans.

(f) Each party is equally liable for the costs of an arbitration conducted under this section.

(g) The arbitrator or arbitration panel, as applicable, shall render a decision under this section not later than the 60th day after the date the arbitrator or arbitration panel is selected. If after a good faith effort the arbitrator or panel has not reached a decision as provided under this subsection, the arbitrator or panel shall continue to arbitrate the matter until the arbitrator or panel reaches a decision.

(h) A municipality and a county may not arbitrate the subdivision of an individual plat under this section.

SECTION 6. Subchapter A, Chapter 212, Local Government Code, is amended by adding Section 212.0025 to read as follows:

Sec. 212.0025. CHAPTER-WIDE PROVISION RELATING TO REGULATION OF PLATS AND SUBDIVISIONS IN EXTRATERRITORIAL JURISDICTION. The authority of a municipality under this chapter relating to the regulation of plats or subdivisions in the municipality's extraterritorial jurisdiction is subject to any applicable limitation prescribed by an agreement under Section 242.001.

SECTION 7. Subchapter A, Chapter 232, Local Government Code, is amended by adding Section 232.0013 to read as follows:

Sec. 232.0013. CHAPTER-WIDE PROVISION RELATING TO REGULATION OF PLATS AND SUBDIVISIONS IN EXTRATERRITORIAL JURISDICTION. The authority of a county under this chapter relating to the regulation of plats or subdivisions in the extraterritorial jurisdiction of a municipality is subject to any applicable limitation prescribed by an agreement under Section 242.001 or by Section 242.002.

SECTION 8. Section 232.0015(b), Local Government Code, is amended to read as follows:

(b) Except as provided by Section 232.0013, this ~~[This]~~ subchapter does not apply to a subdivision of land to which Subchapter B applies.

SECTION 9. Section 232.009(b), Local Government Code, is amended to read as follows:

(b) A person who owns real property in a tract that has been ~~[has]~~ subdivided and ~~[land]~~ that is subject to the subdivision controls of the county in which the property ~~[land]~~ is located may apply in writing to the commissioners court of the county for permission to revise the subdivision plat that applies to the property and that is filed for record with the county clerk.

SECTION 10. Subchapter A, Chapter 232, Local Government Code, is amended by adding Section 232.0095 to read as follows:

Sec. 232.0095. ALTERNATIVE PROCEDURES FOR PLAT REVISION. (a) This section applies only to real property located outside municipalities and outside the extraterritorial jurisdiction, as determined under Chapter 42, of municipalities with a population of 1.5 million or more.

(b) As an alternative to the provisions in Section 232.009 governing the revision of plats, a county by order may adopt the provisions in Sections 212.013, 212.014, 212.015, and 212.016 governing plat vacations, replatting, and plat amendment within a municipality's jurisdiction. A county that adopts the provisions in those sections may approve a plat vacation, a replat, and an amending plat in the same manner and under the same conditions, including the notice and hearing requirements, as a municipal authority responsible for approving plats under those sections.

SECTION 11. Section 232.100, Local Government Code, is amended to read as follows:

Sec. 232.100. APPLICABILITY. This subchapter applies only to the subdivision of the land that is:

- (1) subject to county regulations under Subchapter A or B; and
- (2) in a county that:

(A) has a population of 150,000 or more and is adjacent to an international border;

(B) has a population of 700,000 or more; ~~or~~

(C) is adjacent to a county with a population of 700,000 or more and is within the same metropolitan statistical area as that adjacent county, as designated by the United States Office of Management and Budget; or

(D) is adjacent to a county with a population of 700,000 or more, is not within the same metropolitan statistical area as that adjacent county, and has a population that has increased after the 1990 decennial census, from one decennial census to the next, by more than 40 percent.

SECTION 12. If any provision of this Act or its application to any county, municipality, or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

SECTION 13. Except as provided by Section 242.001(i), Local Government Code, as added by this Act, the changes in law made by this Act to Chapters 212, 232, and 242, Local Government Code, apply only to a development agreement or subdivision plat that is filed on or after the effective date of this Act, and to the subdivision covered by the plat. A development agreement or subdivision plat that is filed before the effective date of this Act, and the subdivision covered by the plat, are governed by the law in effect immediately preceding that date, and the former law is continued in effect for that purpose.

SECTION 14. 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 Baxter moved to adopt the conference committee report on **HB 1204**.

A record vote was requested.

The motion prevailed by (Record 908): 147 Yeas, 0 Nays, 1 Present, not voting.

Yeas — Allen; Alonzo; Bailey; Baxter; Berman; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Burnam; Callegari; Campbell; Canales; Capelo; Casteel; Castro; Chavez; Chisum; Christian; Coleman; Cook, B.; Cook, R.; Corte; Crownover; Davis, J.; Davis, Y.; Dawson; Delisi; Denny; Deshotel; Driver; Dukes; Dunnam; Dutton; Edwards; 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; 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(C); 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.

Present, not voting — Mr. Speaker.

Absent — Crabb; Goodman.

SB 279 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Solomons submitted the conference committee report on **SB 279**.

Representative Solomons moved to adopt the conference committee report on **SB 279**.

The motion prevailed.

(Escobar in the chair)

SB 929 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Grusendorf submitted the conference committee report on **SB 929**.

SB 929 - STATEMENT OF LEGISLATIVE INTENT

REPRESENTATIVE CHISUM: Mr. Grusendorf, I noticed in a resolution that I'm going to be bringing up later, a privileged resolution, that we have a conflict of the dates on the reviews and, I believe in my review, it's going to say March 1, 2004. What does yours say?

REPRESENTATIVE GRUSENDORF: June 1, 2004.

CHISUM: Mr. Grusendorf, would it be in your understanding that—since the sunset is in a very critical schedule to meet the requirements of the next legislative session—that my resolution would trump yours? So that the requirement of the comptroller's office to submit their review to the Sunset Commission would in fact be March 1, 2004?

GRUSENDORF: This is a question you and I talked about 30 seconds before we came to the microphone.

CHISUM: And now we're here.

GRUSENDORF: And now we're here, Mr. Chisum. I'm not sure. Since the sunset is not doing the comprehensive review, I would think that they might be able to get the report from the comptroller later than they normally would if they were doing the review themselves. I don't know of the answer and you're probably more familiar with the sunset process than I am.

CHISUM: And that probably is—I'm sure the comptroller's office and the Sunset Commission can work these differences out, and I think they'll get it done in a timely manner, but whatever works in order to do this limited review of the

service centers. We would just hope the comptroller would at least try to adjust her schedule to meet with the sunset so we don't have a delay in reporting back to the legislature under TEA, which is the review that is going to be taking place during this interim.

GRUSENDORF: I agree, and I feel confident that they will work together to make sure the pieces come together. But my main concern—and I want to give my word again—I want to stress that my main concern is to the service center people—is that we only have one review.

CHISUM: And I think that's the biggest issue here—that we have no intent of doing two reviews. And the comptroller is getting the money to do this with—I believe in your bill, \$750,000—and we would hope that they could make that review happen in such a manner that they could meet the requirements so the sunset could do their business for the legislature prior to us coming back in.

REMARKS ORDERED PRINTED

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

The motion prevailed without objection.

Representative Grusendorf moved to adopt the conference committee report on **SB 929**.

The motion prevailed.

BILLS AND RESOLUTIONS SIGNED BY THE SPEAKER

Notice was given at this time that the speaker had signed bills and resolutions in the presence of the house (see the addendum to the daily journal, Signed by the Speaker, Senate List No. 42).

(Kolkhorst in the chair)

HB 329 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Naishtat submitted the following conference committee report on **HB 329** :

Austin, Texas, May 31, 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 329** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Fraser
Shapleigh
Brimer

Naishtat
Ritter
Seaman
Madden

On the part of the senate

On the part of the house

HB 329, A bill to be entitled An Act relating to the regulation of mold assessors and remediators, civil liability for mold remediation, and insurance coverage on mold claims; providing civil and administrative penalties.

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

SECTION 1. Subtitle B, Title 12, Occupations Code, is amended by adding Chapter 1958 to read as follows:

CHAPTER 1958. MOLD ASSESSORS AND REMEDIATORS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1958.001. DEFINITIONS. In this chapter:

(1) "Board" means the Texas Board of Health.

(2) "Commissioner" means the commissioner of public health.

(3) "Department" means the Texas Department of Health.

(4) "License" means a license issued under this chapter.

(5) "Mold" means any living or dead fungi or related products or parts, including spores, hyphae, and mycotoxins.

(6) "Mold assessment" means:

(A) an inspection, investigation, or survey of a dwelling or other structure to provide the owner or occupant with information regarding the presence, identification, or evaluation of mold;

(B) the development of a mold management plan or remediation protocol; or

(C) the collection or analysis of a mold sample.

(7) "Mold remediation" means the removal, cleaning, sanitizing, demolition, or other treatment, including preventive activities, of mold or mold-contaminated matter that was not purposely grown at that location.

Sec. 1958.002. SCOPE OF AUTHORITY. (a) This chapter applies only to the regulation of mold-related activities that affect indoor air quality, including a mold-related activity performed by a third party for compensation at a property owned or operated by a governmental entity.

(b) This chapter does not apply to:

(1) the following activities when not conducted for the purpose of mold assessment or mold remediation:

(A) routine cleaning;

(B) the diagnosis, repair, cleaning, or replacement of plumbing, heating, ventilation, air conditioning, electrical, or air duct systems or appliances;

(C) commercial or residential real estate inspections; and

(D) the incidental discovery or emergency containment of potential mold contamination during the conduct or performance of services listed in this subsection;

(2) the repair, replacement, or cleaning of construction materials during the building phase of the construction of a structure;

(3) the standard performance of custodial activities for, preventive maintenance of, and the routine assessment of property owned or operated by a governmental entity; or

(4) a pest control inspection conducted by a person regulated under Chapter 1951.

[Sections 1958.003-1958.050 reserved for expansion]

SUBCHAPTER B. POWERS AND DUTIES

Sec. 1958.051. GENERAL POWERS AND DUTIES OF DEPARTMENT; SCOPE OF AUTHORITY. The department shall administer this chapter to protect the public from the adverse health effects of mold.

Sec. 1958.052. PUBLIC EDUCATION PROGRAM. (a) The department shall conduct a statewide education and outreach program regarding the importance of, and ways to improve, air quality in buildings, including the importance of, and the ways to recognize, prevent, control, and mitigate, mold occurrence and other indoor air quality factors that adversely affect human health.

(b) The program may include:

(1) the development and distribution of information to the public concerning indoor air quality and mold;

(2) educational programs;

(3) informational or educational exhibits; and

(4) any other methods of education or communication that the department considers appropriate.

(c) The department may contract with governmental entities or other persons to provide the program.

Sec. 1958.053. GENERAL RULEMAKING AUTHORITY. The board shall adopt substantive and procedural rules as necessary or desirable for the board, department, and commissioner to discharge their powers and duties under this chapter.

Sec. 1958.054. RULES REGARDING PERFORMANCE STANDARDS AND WORK PRACTICES. The board by rule shall establish minimum performance standards and work practices for conducting a mold assessment or mold remediation in this state.

Sec. 1958.055. FEES. (a) The board shall establish reasonable and necessary fees to administer this chapter, including fees for licenses, registrations, and examinations. The board shall set the fees in an amount sufficient to recover the costs of administering this chapter, not to exceed the caps established under Subsection (b).

(b) A fee set under this section may not exceed:

(1) \$400 for a license issued to an individual;

(2) \$750 for a license issued to a person who is not an individual; and

(3) \$60 for a registration issued to an employee of a license holder.

Sec. 1958.056. INSPECTIONS. (a) The department shall conduct inspections as necessary to ensure compliance with this chapter.

(b) The board shall adopt rules regarding compliance investigations.

Sec. 1958.057. COMPLAINTS. The department shall investigate any complaint regarding mold-related activities.

Sec. 1958.058. SAFETY STANDARDS. The board may develop and establish mold safety standards for license holders if appropriate scientific information exists regarding the effect of mold.

Sec. 1958.059. CODE OF ETHICS. The board by rule shall adopt a code of ethics for license holders that promotes the education of mold assessors and mold remediators concerning the ethical, legal, and business principles that should govern their conduct.

[Sections 1958.060-1958.100 reserved for expansion]

SUBCHAPTER C. LICENSE AND REGISTRATION REQUIREMENTS

Sec. 1958.101. LICENSE REQUIRED; RULES. (a) A person may not engage in:

(1) mold assessment unless the person holds a mold assessment license;

or

(2) mold remediation unless the person holds a mold remediation license.

(b) The board shall adopt rules regarding:

(1) the scope of mold-related work for which a license is required, including the supervision of employees or other persons by license holders; and

(2) renewal requirements for a license issued under this chapter.

Sec. 1958.102. EXEMPTIONS. (a) An owner or tenant, or a managing agent or employee of an owner or tenant, is not required to be licensed under this chapter to perform mold assessment or mold remediation on property owned or leased by the owner or tenant. This exemption does not apply:

(1) if the managing agent or employee engages in the business of performing mold assessment or mold remediation for the public;

(2) if the mold remediation is performed in an area in which the mold contamination affects a total surface area of 25 contiguous square feet or more; or

(3) to a person who is exempt under Subsection (e).

(b) An employee of a license holder is not required to be licensed under this chapter to perform mold assessment or mold remediation while supervised by the license holder, as provided by rules adopted under Section 1958.101.

(c) A person is not required to be licensed under this chapter to perform mold remediation in an area in which the mold contamination affects a total surface area for the project of less than 25 contiguous square feet.

(d) A person is not required to be licensed under this chapter to perform mold assessment or mold remediation in a one-family or two-family dwelling that the person constructed or improved if the person performs the mold assessment or mold remediation at the same time the person performs the construction or improvement or at the same time the person performs repair work on the construction or improvement. This exemption does not apply if the person engages in the business of performing mold assessment or mold remediation for the public.

(e) An owner, or a managing agent or employee of an owner, is not required to be licensed under this chapter to perform mold assessment or mold remediation on a residential property owned by that person with fewer than 10 dwelling units. This exemption does not apply if the managing agent or employee engages in the business of performing mold assessment or mold remediation for the public.

Sec. 1958.103. REGISTRATION REQUIREMENTS FOR EMPLOYEES. The board may adopt rules to require the registration of employees supervised by license holders.

Sec. 1958.104. RULES REGARDING LICENSE APPLICATION. The board shall adopt rules regarding a license application. The board shall adopt rules that establish minimum requirements for a license, including:

- (1) the type of license;
- (2) the term of the license;
- (3) the qualifications for the license, including any previous training required under Section 1958.106;
- (4) renewal requirements for the license, including ongoing continuing education required under Section 1958.106; and
- (5) liability insurance requirements for the license.

Sec. 1958.105. EXAMINATION. The department may require that an applicant for a license pass a competency examination to qualify for the license.

Sec. 1958.106. TRAINING; CONTINUING EDUCATION. (a) The board shall adopt rules regarding training required under this chapter and continuing education required for a license holder under this chapter.

(b) The rules may include requirements regarding training and continuing education providers, including rules establishing:

- (1) accreditation by the department;
- (2) curriculum requirements; and
- (3) qualifications.

Sec. 1958.107. RECIPROCITY. The board may adopt rules that facilitate reciprocity and communication with other states that have a similar licensing program.

[Sections 1958.108-1958.150 reserved for expansion]

SUBCHAPTER D. PRACTICE BY LICENSE HOLDER

Sec. 1958.151. SCOPE OF WORK ANALYSIS. (a) A license holder who intends to perform mold assessment on a mold remediation project shall prepare a work analysis for the project. The license holder shall provide the analysis to the client before the mold remediation begins.

- (b) The work analysis must specify:
- (1) the rooms or areas where the work will be performed;
 - (2) the quantities of materials to be removed or cleaned at the project;
 - (3) the proposed methods for each type of remediation in each type of area in the project; and
 - (4) the proposed clearance criteria for each type of remediation in each type of area in the project.

Sec. 1958.152. REMEDIATION WORK PLAN. (a) A license holder who intends to perform mold remediation shall prepare a work plan providing instructions for the remediation efforts to be performed for the mold remediation project. The license holder shall provide the work plan to the client before the mold remediation begins.

(b) The license holder shall maintain a copy of the work plan at the job site where the remediation is being performed.

Sec. 1958.153. NOTICE OF PROJECT. (a) Except as provided by Subsection (b), not later than the fifth day before the date on which a license holder starts mold remediation at a property, the license holder shall notify the department in writing about the project.

(b) In an emergency, notice to the department under Subsection (a) may be made verbally but must be made not later than the next business day after the license holder identifies the emergency. For purposes of this subsection, an emergency exists if a delay in mold remediation services in response to a water damage occurrence would increase mold contamination.

(c) The board shall adopt rules to implement this section, including rules:

(1) describing the information that must be provided in the notice; and

(2) authorizing verbal notification to the department in an emergency.

Sec. 1958.154. CERTIFICATE OF MOLD REMEDIATION; DUTY OF PROPERTY OWNER. (a) Not later than the 10th day after the date on which a license holder completes mold remediation at a property, the license holder shall provide a certificate of mold remediation to the property owner. The certificate must include a statement by a mold assessment license holder that, based on visual, procedural, and analytical evaluation, the mold contamination identified for the project has been remediated as outlined in the mold management plan or remediation protocol. If the mold assessment license holder determines that the underlying cause of the mold has been remediated so that it is reasonably certain that the mold will not return from that remediated cause, the mold assessment license holder shall indicate on the certificate that the underlying cause of the mold has been remediated.

(b) If a property owner sells property, the property owner shall provide to the buyer a copy of each certificate that has been issued for the property under this section.

(c) The board shall adopt rules to implement this section, other than rules described by Subsection (d).

(d) The commissioner of insurance shall adopt rules describing the information that must be provided in the certificate of mold remediation. In adopting the rules, the commissioner shall design the certificate as necessary to comply with any requirements imposed under Article 21.21-11, Insurance Code.

Sec. 1958.155. CONFLICT OF INTEREST; DISCLOSURE REQUIRED.

(a) A license holder may not perform both mold assessment and mold remediation on the same project.

(b) A person may not own an interest in both the entity that performs assessment services and an entity that performs remediation services on the same project.

(c) A license holder who is not an individual shall disclose to the department the name, address, and occupation of each person that has an ownership interest in the license holder. The license holder shall report any changes in ownership to the department. The board shall adopt rules to implement this section, including rules regarding the form of the disclosure and the time required to make disclosures or to report a change in ownership.

Sec. 1958.156. RECORD REQUIREMENTS; DUTIES OF MOLD REMEDIATORS. (a) A mold remediator shall maintain a record regarding each mold remediation performed for at least three years after the date of completion of the mold remediation on a property.

(b) The mold remediator shall make the record available for inspection by the department or any law enforcement entity.

(c) The record must contain:

(1) photographs of the scene of the mold remediation taken before and after the remediation;

(2) the written contract between the mold remediator or any other party regarding the mold remediation;

(3) all invoices issued regarding the mold remediation; and

(4) any other material required by the department.

(d) Not later than one week after completion of a mold remediation, the mold remediator license holder shall provide the property owner with copies of all photographs required by this section.

Sec. 1958.157. OFFICE LOCATION. A license holder shall maintain an office in this state.

[Sections 1958.158-1958.200 reserved for expansion]

SUBCHAPTER E. DISCIPLINARY PROCEDURES

Sec. 1958.201. DISCIPLINARY ACTION. If a license holder violates this chapter or an order or rule adopted under this chapter, the department, after providing the person with notice and an opportunity for a hearing, shall take one or more of the following actions:

(1) revoke, suspend, or refuse to renew the license;

(2) impose an administrative penalty;

(3) bring an action to collect a civil penalty; or

(4) reprimand the person.

[Sections 1958.202-1958.250 reserved for expansion]

SUBCHAPTER F. ADMINISTRATIVE PENALTY

Sec. 1958.251. IMPOSITION OF ADMINISTRATIVE PENALTY. The commissioner may impose an administrative penalty on a person who violates this chapter or a rule adopted or order issued under this chapter.

Sec. 1958.252. AMOUNT OF PENALTY. (a) The amount of an administrative penalty may not exceed \$5,000 for each violation. Each day a violation continues under Section 1958.101 or 1958.155 may be considered a separate violation for purposes of imposing a penalty.

(b) In determining the amount of the penalty, the commissioner shall consider:

(1) whether the violation was committed knowingly, intentionally, or fraudulently;

(2) the seriousness of the violation;

(3) any hazard created to the health and safety of the public;

(4) the person's history of previous violations; and

(5) any other matter that justice may require.

Sec. 1958.253. EXCEPTION TO ADMINISTRATIVE PENALTY. (a) The commissioner may choose not to impose an administrative penalty under this subchapter if, not later than the 10th day after the date of written notice of the violation under Section 1958.254, the person provides conclusive evidence that the circumstances giving rise to the violation have been corrected and all actual damages are paid.

(b) This section does not apply to a violation alleged under Section 1958.101 or 1958.155.

Sec. 1958.254. NOTICE; OPPORTUNITY FOR HEARING; ORDER. (a) The commissioner may impose an administrative penalty under this subchapter only after the person charged with a violation is given a written notice and the opportunity for a hearing.

(b) The written notice must state the facts that constitute the alleged violation and the law or rule on which the violation is based.

(c) If a hearing is held, the commissioner shall make findings of fact and issue a written decision as to:

(1) the occurrence of the violation; and

(2) the amount of any penalty that is warranted.

(d) If the person charged with a violation fails to exercise the opportunity for a hearing, the commissioner, after determining that a violation occurred and the amount of the penalty that is warranted, may impose a penalty and shall issue an order requiring the person to pay any penalty imposed.

(e) Not later than the 30th day after the date the commissioner issues an order after determining that a violation occurred, the commissioner shall inform the person charged with the violation of the amount of any penalty imposed.

(f) The commissioner may consolidate a hearing under this section with another proceeding.

Sec. 1958.255. OPTIONS FOLLOWING DECISION: PAY OR APPEAL. (a) Not later than the 30th day after the date the commissioner's decision or order becomes final as provided by Section 2001.144, Government Code, the person shall:

(1) pay the administrative penalty; or

(2) file a petition for judicial review contesting the fact of the violation, the amount of the penalty, or both.

(b) Within the 30-day period, a person who acts under Subsection (a)(2) may stay enforcement of the penalty by:

(1) paying the penalty to the commissioner for placement in an escrow account; or

(2) giving the commissioner a bond in a form approved by the commissioner that:

(A) is for the amount of the penalty; and

(B) is effective until judicial review of the commissioner's decision or order is final.

Sec. 1958.256. COLLECTION OF PENALTY. At the request of the commissioner, the attorney general may bring a civil action to recover an administrative penalty imposed under this subchapter.

Sec. 1958.257. JUDICIAL REVIEW. Judicial review of a decision or order of the commissioner imposing a penalty under this subchapter is instituted by filing a petition with a district court in Travis County and is under the substantial evidence rule as provided by Subchapter G, Chapter 2001, Government Code.

Sec. 1958.258. REMITTANCE OF PENALTY AND INTEREST OR RELEASE OF BOND. If after judicial review the administrative penalty is reduced or is not upheld by the court, the commissioner shall:

(1) remit the appropriate amount, plus accrued interest, to the person not later than the 30th day after the date of the determination, if the person paid the penalty; or

(2) execute a release of the bond, if the person gave a bond.

[Sections 1958.259-1958.300 reserved for expansion]

SUBCHAPTER G. OTHER PENALTIES; ENFORCEMENT PROVISIONS;
EXEMPTIONS FROM CIVIL LIABILITY

Sec. 1958.301. CIVIL PENALTY. (a) A person who violates this chapter or a rule adopted under this chapter is liable for a civil penalty in an amount not to exceed \$2,000 for the first violation or \$10,000 for a second or later violation.

(b) The commissioner may request the attorney general or the district, county, or city attorney having jurisdiction to bring an action to collect a civil penalty under this section.

Sec. 1958.302. INJUNCTIVE RELIEF. The commissioner may request the attorney general or the district, county, or city attorney having jurisdiction to bring an action for a restraining order, injunction, or other relief the court determines is appropriate if it appears to the department that a person is violating or has violated this chapter or a rule adopted under this chapter.

Sec. 1958.303. EXEMPTION FROM CIVIL LIABILITY FOR CERTAIN PROPERTY OWNERS. A property owner is not liable for damages related to mold remediation on a property if:

(1) a certificate of mold remediation has been issued under this chapter for that property; and

(2) the damages accrued on or before the date of the issuance of the certificate.

Sec. 1958.304. EXEMPTION FROM CIVIL LIABILITY FOR CERTAIN GOVERNMENTAL ENTITIES. A person is not liable in a civil lawsuit for damages related to a decision to allow occupancy of a property after mold remediation has been performed on the property if:

(1) a certificate of mold remediation has been issued under this chapter for the property;

(2) the property is owned or occupied by a governmental entity, including a school; and

(3) the decision was made by the owner, occupier, or any person authorized by the owner or occupier to make the decision.

SECTION 2. Subchapter B, Chapter 21, Insurance Code, is amended by adding Article 21.21-11 to read as follows:

Art. 21.21-11. PROHIBITION OF CERTAIN UNDERWRITING DECISIONS BASED ON PREVIOUS MOLD CLAIM OR DAMAGE

Sec. 1. DEFINITIONS. In this article:

(1) "Insurer" means an insurance company, reciprocal or interinsurance exchange, mutual insurance company, capital stock company, county mutual insurance company, farm mutual insurance company, Lloyd's plan, or other legal entity authorized to write residential property insurance in this state. The term includes an affiliate, as described by Section 823.003(a), if that affiliate is authorized to write and is writing residential property insurance in this state. The term does not include:

(A) an eligible surplus lines insurer regulated under Chapter 981;

(B) the Texas Windstorm Insurance Association under Article 21.49; or

(C) the FAIR Plan Association under Article 21.49A.

(2) "Mold" means any living or dead fungi or related products or parts, including spores, hyphae, and mycotoxins.

(3) "Mold remediation" means the removal, cleaning, sanitizing, demolition, or other treatment, including preventive activities, of mold or mold-contaminated matter that was not purposely grown at that location.

(4) "Residential property insurance" means insurance against damage to or loss of real or tangible personal property at a fixed location provided in a homeowners insurance policy or residential fire and allied lines insurance policy.

Sec. 2. APPLICABILITY. This article applies to each insurer that writes residential property insurance in this state.

Sec. 3. PROHIBITION. An insurer may not make an underwriting decision regarding a residential property insurance policy based on previous mold damage or a claim for mold damage if:

(1) the applicant for insurance coverage has property eligible for coverage under a residential property policy;

(2) the property has had mold damage;

(3) mold remediation has been performed on the property; and

(4) the property was:

(A) remediated, as evidenced by a certificate of mold remediation issued to the property owner under Section 1958.154, Occupations Code, that establishes that the underlying cause of the mold at the property has been remediated; or

(B) inspected by an independent assessor or adjustor who determined, based on the inspection, that the property does not contain evidence of mold damage.

Sec. 4. RULES. The commissioner shall adopt rules as necessary to implement this article.

Sec. 5. PENALTY. An insurer that violates this article is subject, after notice and opportunity for hearing, to sanctions as provided by Chapters 82, 83, and 84 of this code.

SECTION 3. The Texas Board of Health shall adopt the rules required by Chapter 1958, Occupations Code, as added by this Act, not later than April 1, 2004.

SECTION 4. (a) Except as provided by Subsection (b) of this section, this Act takes effect September 1, 2003.

(b) A person is not required to comply with Section 1958.101(a), Occupations Code, as added by this Act, until appropriate rules have been adopted under Section 3 of this Act.

Representative Naishtat moved to adopt the conference committee report on **HB 329**.

The motion prevailed.

HB 335 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Hamric submitted the following conference committee report on **HB 335** :

Austin, Texas, May 31, 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 335** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Lindsay
Wentworth
Brimer
Gallegos
Deuell

Hamric
Lewis
Pickett
McCall
Casteel

On the part of the senate

On the part of the house

HB 335, A bill to be entitled An Act relating to the public sale of certain real property; providing penalties.

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

SECTION 1. Subchapter C, Chapter 34, Civil Practice and Remedies Code, is amended by adding Section 34.0445 to read as follows:

Sec. 34.0445. PERSONS ELIGIBLE TO PURCHASE REAL PROPERTY.

(a) An officer conducting a sale of real property under this subchapter may not execute or deliver a deed to the purchaser of the property unless the purchaser exhibits to the officer an unexpired written statement issued to the person in the

manner prescribed by Section 34.015, Tax Code, showing that the county assessor-collector of the county in which the sale is conducted has determined that:

(1) there are no delinquent ad valorem taxes owed by the person to that county; and

(2) for each school district or municipality having territory in the county there are no known or reported delinquent ad valorem taxes owed by the person to that school district or municipality.

(b) An individual may not bid on or purchase the property in the name of any other individual. An officer conducting a sale under this subchapter may not execute a deed in the name of or deliver a deed to any person other than the person who was the successful bidder.

(c) The deed executed by the officer conducting the sale must name the successful bidder as the grantee and recite that the successful bidder exhibited to that officer an unexpired written statement issued to the person in the manner prescribed by Section 34.015, Tax Code, showing that the county assessor-collector of the county in which the sale was conducted determined that:

(1) there are no delinquent ad valorem taxes owed by the person to that county; and

(2) for each school district or municipality having territory in the county there are no known or reported delinquent ad valorem taxes owed by the person to that school district or municipality.

(d) If a deed contains the recital required by Subsection (c), it is conclusively presumed that this section was complied with.

(e) A person who knowingly violates this section commits an offense. An offense under this subsection is a Class B misdemeanor.

(f) To the extent of a conflict between this section and any other law, this section controls.

SECTION 2. Subchapter A, Chapter 34, Tax Code, is amended by adding Section 34.015 to read as follows:

Sec. 34.015. PERSONS ELIGIBLE TO PURCHASE REAL PROPERTY.

(a) In this section, "person" does not include a taxing unit or an individual acting on behalf of a taxing unit.

(b) An officer conducting a sale of real property under Section 34.01 may not execute a deed in the name of or deliver a deed to any person other than the person who was the successful bidder. The officer may not execute or deliver a deed to the purchaser of the property unless the purchaser exhibits to the officer an unexpired written statement issued under this section to the person by the county assessor-collector of the county in which the sale is conducted showing that:

(1) there are no delinquent taxes owed by the person to that county; and

(2) for each school district or municipality having territory in the county there are no known or reported delinquent ad valorem taxes owed by the person to that school district or municipality.

(c) On the written request of any person, a county assessor-collector shall issue a written statement stating whether there are any delinquent taxes owed by the person to that county or to a school district or municipality having territory in that county. A request for the issuance of a statement by the county assessor-collector under this subsection must:

(1) sufficiently identify any property subject to taxation by the county or by a school district or municipality having territory in the county, regardless of whether the property is located in the county, that the person owns or formerly owned so that the county assessor-collector and the collector for each school district or municipality having territory in the county may determine whether the property is included on a current or a cumulative delinquent tax roll for the county, the school district, or the municipality under Section 33.03;

(2) specify the address to which the county assessor-collector should send the statement;

(3) include any additional information reasonably required by the county assessor-collector; and

(4) be sworn to and signed by the person requesting the statement.

(d) On receipt of a request under Subsection (c), the county assessor-collector shall send to the collector for each school district and municipality having territory in the county, other than a school district or municipality for which the county assessor-collector is the collector, a request for information as to whether there are any delinquent taxes owed by the person to that school district or municipality. The county assessor-collector shall specify the date by which the collector must respond to the request.

(e) If the county assessor-collector determines that there are delinquent taxes owed to the county, the county assessor-collector shall include in the statement issued under Subsection (c) the amount of delinquent taxes owed by the person to that county. If the county assessor-collector is the collector for a school district or municipality having territory in the county and the county assessor-collector determines that there are delinquent ad valorem taxes owed by the person to the school district or municipality, the assessor-collector shall include in the statement issued under Subsection (c) the amount of delinquent taxes owed by the person to that school district or municipality.

(f) If the county assessor-collector receives a response from the collector for a school district or municipality having territory in the county indicating that there are delinquent taxes owed to that school district or municipality on the person's current or former property for which the person is personally liable, the county assessor-collector shall include in the statement issued under Subsection (c):

(1) the amount of delinquent taxes owed by the person to that school district or municipality; and

(2) the name and address of the collector for that school district or municipality.

(g) If the county assessor-collector determines that there are no delinquent taxes owed by the person to the county or to a school district or municipality for which the county assessor-collector is the collector, the county assessor-collector

shall indicate in the statement issued under Subsection (c) that there are no delinquent ad valorem taxes owed by the person to the county or to the school district or municipality.

(h) If the county assessor-collector receives a response from the collector for any school district or municipality having territory in that county indicating that there are no delinquent ad valorem taxes owed by the person to that school district or municipality, the county assessor-collector shall indicate in the statement issued under Subsection (c) that there are no delinquent ad valorem taxes owed by the person to that school district or municipality.

(i) If the county assessor-collector does not receive a response from the collector for any school district or municipality to whom the county assessor-collector sent a request under Subsection (d) as to whether there are delinquent taxes on the person's current or former property owed by the person to that school district or municipality, the county assessor-collector shall indicate in the statement issued under Subsection (c) that there are no reported delinquent taxes owed by the person to that school district or municipality.

(j) To cover the costs associated with the issuance of statements under Subsection (c), a county assessor-collector may charge the person requesting a statement a fee not to exceed \$10 for each statement requested.

(k) A statement under Subsection (c) must be issued in the name of the requestor, bear the requestor's name, include the dates of issuance and expiration, and be eligible for recording under Section 12.001(b), Property Code. A statement expires on the 90th day after the date of issuance.

(l) The deed executed by the officer conducting the sale must name the successful bidder as the grantee and recite that the successful bidder exhibited to that officer an unexpired written statement issued to the person in the manner prescribed by this section, showing that the county assessor-collector of the county in which the sale was conducted determined that:

(1) there are no delinquent ad valorem taxes owed by the person to that county; and

(2) for each school district or municipality having territory in the county there are no known or reported delinquent ad valorem taxes owed by the person to that school district or municipality.

(m) If a deed contains the recital required by Subsection (l), it is conclusively presumed that this section was complied with.

(n) A person who knowingly violates this section commits an offense. An offense under this subsection is a Class B misdemeanor.

(o) To the extent of a conflict between this section and any other law, this section controls.

SECTION 3. This Act takes effect September 1, 2003. The change in law made by this Act applies only to a public sale of real property conducted on or after October 1, 2003. A public sale of real property conducted before October 1, 2003, is governed by the law in effect on the date the sale was conducted, and the former law is continued in effect for that purpose.

Representative Hamric moved to adopt the conference committee report on **HB 335**.

The motion prevailed.

HB 2075 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Hilderbran submitted the following conference committee report on **HB 2075** :

Austin, Texas, May 31, 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 2075** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Fraser
Deuell
Lindsay
Madla

Hilderbran
Hupp
Taylor
McClendon
Zedler

On the part of the senate

On the part of the house

HB 2075, A bill to be entitled An Act relating to regulating health and safety conditions at youth camps.

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

SECTION 1. Section 141.007, Health and Safety Code, is amended by adding Subsections (d), (e), (f), and (g) to read as follows:

(d) An employee or agent of the department who enters a youth camp to investigate and inspect conditions shall:

(1) notify the person in charge of the camp or the person's designee of any violations as they are discovered; and

(2) allow the camp to correct the violations while the investigation and inspection is occurring.

(e) The department may not extend or delay an investigation or inspection to allow the youth camp to correct a violation under Subsection (d)(2).

(f) An employee or agent of the department performing an investigation and inspection under this section may not report a violation that is significant under the department's rules if the violation is corrected during the investigation and inspection.

(g) A penalty may not be imposed on a youth camp for a violation that is significant under the department's rules if the violation is corrected during an investigation and inspection under this section.

SECTION 2. Section 141.008(a), Health and Safety Code, is amended to read as follows:

(a) The board may adopt rules to implement this chapter. In adopting the rules the board shall comply with Subchapter B, Chapter 2001, Government Code, including Sections 2001.032(b) and 2001.033, Government Code. In developing the rules, the board shall consult parents, youth camp operators, and appropriate public and private officials and organizations.

SECTION 3. Section 141.010, Health and Safety Code, is amended to read as follows:

Sec. 141.010. ADVISORY COMMITTEE. (a) The board shall appoint a committee to advise the board in the development of standards and procedures, make recommendations to the board regarding the content of the rules adopted to implement this Act, and perform any other functions requested by the board in the implementation and administration of the Act.

(b) The advisory committee may not exceed nine members, at least two of whom shall be members of the general public. The other members should be experienced camping professionals who represent the camping communities of the state. In making the appointments, the board shall attempt to reflect the geographic diversity of the state in proportion to the number of camps licensed by the department in each geographic area of the state.

~~[(c) A person is not eligible to be appointed and serve as a public member of an advisory committee if the person or the person's spouse:~~

~~[(1) is licensed by an occupational regulatory agency in the health care field;~~

~~[(2) is employed by a health care facility, corporation, or agency or by a corporation authorized to underwrite health care insurance;~~

~~[(3) governs or administers a health care facility, corporation, or agency;~~

~~[(4) has a financial interest, other than a consumer's interest, in a health care facility, corporation, or agency; or~~

~~[(5) is a youth camp operator; is employed by a youth camp facility or a youth camp operator; governs or administers a youth camp facility, corporation, or agency; or has a financial interest, other than a consumer's interest, in a youth camp facility, corporation, or agency.]~~

(c) Advisory committee members serve for staggered six-year terms, with the terms of three members expiring on August 31 of each odd-numbered year.

(d) A vacancy on the advisory committee is filled by the board in the same manner as other appointments to the advisory committee.

(e) The advisory committee will meet annually and at the call of the commissioner.

~~(f) [A member of the advisory committee is entitled to reimbursement for expenses incurred in performing duties under this Act. The reimbursement may not exceed the amount specified in the General Appropriations Act for travel and per diem allowances for state employees.]~~

~~[(g)]~~ The advisory committee may elect a chairperson, vice-chairperson, and secretary from among its members and may adopt rules for the conduct of its own activities.

SECTION 4. Section 141.016(c), Health and Safety Code, is amended to read as follows:

(c) The penalty may not exceed \$1,000 [~~\$2,000~~] a day for each violation.

SECTION 5. Subsections (d), (e), (f), and (g), Section 141.007, Health and Safety Code, as added by Section 1 of this Act, apply only to an investigation and inspection of a youth camp that occurs on or after the effective date of Section 1 of this Act. An investigation and inspection that occurred before the effective date of Section 1 of this Act is governed by the law in effect on the date the investigation and inspection occurred, and the former law is continued in effect for that purpose.

SECTION 6. This Act takes effect September 1, 2003.

Representative Hilderbran moved to adopt the conference committee report on **HB 2075**.

The motion prevailed.

HB 2415 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Hopson submitted the following conference committee report on **HB 2415** :

Austin, Texas, May 31, 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 2415** 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.

Averitt	Hopson
Duncan	J. Keffer
Armbrister	Solomons
On the part of the senate	On the part of the house

HB 2415, A bill to be entitled An Act relating to the postjudgment interest rate.

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

SECTION 1. Section 304.003(c), Finance Code, is amended to read as follows:

(c) The postjudgment interest rate is:

(1) the prime rate as published by the Federal Reserve Bank of New York on [auction rate quoted on a discount basis for 52-week treasury bills issued by the United States government as most recently published by the Federal Reserve Board before] the date of computation;

(2) five [~~10~~] percent a year if the weekly average one-year constant maturity treasury yield [auction rate] described by Subdivision (1) is less than five [~~10~~] percent; or

(3) 15 ~~[20]~~ percent a year if the weekly average one-year constant maturity treasury yield ~~[auction rate]~~ described by Subdivision (1) is more than 15 ~~[20]~~ percent.

SECTION 2. (a) The changes in law made by this Act apply in a case in which a final judgment is signed or subject to appeal on or after the effective date of this Act.

(b) This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2003.

Representative Hopson moved to adopt the conference committee report on **HB 2415**.

A record vote was requested.

The motion prevailed by (Record 909): 142 Yeas, 0 Nays, 2 Present, not voting.

Yeas — Allen; Alonzo; Bailey; Baxter; Berman; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Callegari; Campbell; Canales; Capelo; Casteel; 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; Hope; Hopson; Howard; Hughes; Hunter; Hupp; Isett; Jones, D.; Jones, J.; Keel; Keffer, B.; Keffer, J.; King; Krusee; Kuempel; Laney; Laubenberg; Lewis; Luna; Mabry; 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.

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

Absent — Burnam; Castro; Chavez; Homer; Jones, E.; Madden.

HB 3622 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative B. Brown submitted the following conference committee report on **HB 3622** :

Austin, Texas, May 31, 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 3622** 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.

Deuell	B. Brown
Lindsay	Homer
Duncan	Hardcastle
	Geren

On the part of the senate On the part of the house

HB 3622, A bill to be entitled An Act relating to the creation, administration, powers, duties, operation, and financing of the Kingsborough Municipal Utility District Nos. 1, 2, 3, 4, and 5 of Kaufman County.

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

SECTION 1. DEFINITIONS. In this Act:

(1) "Board" or "boards" means, as appropriate, the board of directors of one or all of the Kingsborough municipal utility districts.

(2) "Commission" means the Texas Commission on Environmental Quality.

(3) "District" or "districts" means, as appropriate, one or all of the Kingsborough Municipal Utility District Nos. 1, 2, 3, 4, and 5 of Kaufman County.

SECTION 2. CREATION. (a) Five conservation and reclamation districts, to be known as the Kingsborough Municipal Utility District Nos. 1, 2, 3, 4, and 5 of Kaufman County, are created in Kaufman County, subject to approval at a confirmation election under Section 13 of this Act.

(b) Each district is a governmental agency and a political subdivision of this state.

SECTION 3. AUTHORITY FOR CREATION. Each district is created under and is essential to accomplish the purposes of Section 52, Article III, and Section 59, Article XVI, Texas Constitution.

SECTION 4. FINDING OF BENEFIT AND PUBLIC PURPOSE. (a) Each district is created to serve a public use and benefit.

(b) All of the land and other property included within the boundaries of each district will be benefited by the works and projects that are to be accomplished by the district under powers conferred by Section 52, Article III, and Section 59, Article XVI, Texas Constitution.

SECTION 5. BOUNDARIES. The boundaries of each district are as follows:

(1) Kingsborough Municipal Utility District No. 1:

BEING all that certain lot, tract or parcel of land located in the J. G. Moore Survey, Abstract No. 309 and the Martha Musick Survey, Abstract No. 312, Kaufman County, Texas, and being more particularly described by metes and bounds as follows:

COMMENCING at the intersection of the of the Northeasterly right-of-way line of Farm-Market 2757 (a 100 foot wide right-of-way), and the Northwesterly line of said J. G. Moore Survey and the Southeasterly line of said Martha Musick Survey;

THENCE North 44 deg. 34 min. 48 sec. East, along the common line between said J. G. Moore Survey and the Martha Musick Survey, a distance of 1644.55 feet, to the POINT OF BEGINNING of the herein described tract of land;

THENCE North 44 deg. 34 min. 48 sec. East, continuing along the common line between said J. G. Moore Survey and the Martha Musick Survey, a distance of 2015.87 feet;

THENCE North 44 deg. 20 min. 17 sec. West, departing said common line, a distance of 763.42 feet;

THENCE North 44 deg. 46 min. 22 sec. East, a distance of 110.79 feet;

THENCE North 45 deg. 13 min. 38 sec. West, a distance of 1367.42 feet;

THENCE North 44 deg. 46 min. 22 sec. East, a distance of 247.49 feet;

THENCE South 68 deg. 13 min. 38 sec. East, a distance of 627.70 feet;

THENCE North 44 deg. 26 min. 44 sec. East, a distance of 853.26 feet;

THENCE North 45 deg. 59 min. 01 sec. West, a distance of 1118.32 feet;

THENCE North 25 deg. 16 min. 32 sec. East, a distance of 918.27 feet;

THENCE North 27 deg. 53 min. 12 sec. East, a distance of 712.32 feet;

THENCE North 44 deg. 02 min. 09 sec. East, a distance of 693.71 feet, to the Southwesterly right-of-way line of High Country Lane (a 60 foot wide right-of-way);

THENCE South 45 deg. 14 min. 23 sec. East, along the Southwesterly right-of-way line of said High Country Lane, a distance of 263.11 feet, to the intersection of the Southwesterly right-of-way line of said High Country Lane and the Southwesterly right-of-way line of Farm-Market 741 (a variable width right-of-way), and being the beginning of a non-tangent curve to the left having a radius of 999.93 feet;

THENCE along the Southwesterly right-of-way line of said Farm-Market 741 as follows;

Along said non-tangent curve to the left and in a Southeasterly direction, through a central angle of 09 deg. 56 min. 12 sec., an arc length of 173.42 feet, said non-tangent curve also having a long chord which bears South 40 deg. 16 min. 17 sec. East, 173.20 feet;

South 45 deg. 14 min. 23 sec. East, a distance of 1653.79 feet, to the beginning of a non-tangent curve to the left having a radius of 11,472.09 feet;

Along said non-tangent curve to the left and in a Southeasterly direction, through a central angle of 03 deg. 05 min. 42 sec., an arc length of 619.69 feet, said non-tangent curve to the left having a long chord which bears South 46 deg. 47 min. 14 sec. East, 619.62 feet;

South 45 deg. 21 min. 23 sec. East, a distance of 182.35 feet, to the beginning of a non-tangent curve to the left having a radius of 2993.57 feet;

Along said non-tangent curve to the left and in a Southeasterly direction, through a central angle of 04 deg. 13 min. 00 sec., an arc length of 220.31 feet, said non-tangent curve to the left also having a long chord which bears South 47 deg. 27 min. 53 sec. East, 220.26 feet;

South 49 deg. 34 min. 23 sec. East, a distance of 222.84 feet, to the beginning of a curve to the left having a radius of 1858.59 feet;

Along said curve to the left and in a Southeasterly direction, through a central angle of 07 deg. 34 min. 00 sec., an arc length of 245.45 feet, said curve to the left also having a long chord which bears South 53 deg. 21 min. 23 sec. East, 245.27 feet;

South 57 deg. 08 min. 23 sec. East, a distance of 300.24 feet, to the beginning of a curve to the left having a radius of 11,472.09 feet;

Along said curve to the left and in a Southwesterly direction, through a central angle of 02 deg. 58 min. 15 sec., an arc length of 594.81 feet, said curve to the left also having a long chord which bears South 55 deg. 39 min. 16 sec. East, 594.75 feet;

South 57 deg. 06 min. 23 sec. East, a distance of 327.99 feet, to the beginning of a curve to the right having a radius of 5684.58 feet;

Along said curve to the right and in a Southeasterly direction, through a central angle of 12 deg. 08 min. 00 sec., an arc length of 1203.80 feet, said curve also having a long chord which bears South 51 deg. 02 min. 23 sec. East, 1201.56 feet;

South 44 deg. 58 min. 23 sec. East, a distance of 755.25 feet;

South 45 deg. 13 min. 23 sec. East, a distance of 238.92 feet, to the North corner of the Dallas East Estates which is located to the Southwest of said Farm-Market 741;

THENCE South 44 deg. 19 min. 24 sec. West, departing the Southwesterly right-of-way line of said Farm-Market 741 and along the Northwesterly boundary line of said Dallas East Addition, a distance of 1401.27 feet, to the most Westerly corner of said Dallas East Addition;

THENCE South 44 deg. 45 min. 48 sec. East, along the most Southwesterly boundary line of said Dallas East Addition, a distance of 1444.80 feet, to the Northwesterly right-of-way line of said Farm-Market 741;

THENCE along the Northwesterly right-of-way line of said Farm-Market 741 as follows;

South 44 deg. 20 min. 25 sec. West, a distance of 545.05 feet;

North 45 deg. 39 min. 35 sec. West, a distance of 10.00 feet;

South 44 deg. 20 min. 25 sec. West, a distance of 700.00 feet;

South 45 deg. 39 min. 35 sec. East, a distance of 10.00 feet;

South 44 deg. 20 min. 25 sec. West, a distance of 933.41 feet;

THENCE North 49 deg. 43 min. 48 sec. East, departing the Northwesterly right-of-way line of said Farm-Market 741, a distance of 794.74 feet;

THENCE North 78 deg. 41 min. 33 sec. West, a distance of 280.00 feet;

THENCE North 46 deg. 19 min. 02 sec. West, a distance of 1073.59 feet;

THENCE North 66 deg. 21 min. 14 sec. East, a distance of 1045.54 feet;

THENCE South 81 deg. 36 min. 53 sec. West, a distance of 327.60 feet;

THENCE South 72 deg. 56 min. 15 sec. West, a distance of 778.38 feet;
THENCE South 87 deg. 16 min. 19 sec. West, a distance of 610.31 feet;
THENCE North 77 deg. 32 min. 02 sec. West, a distance of 731.98 feet;
THENCE North 58 deg. 36 min. 37 sec. West, a distance of 578.95 feet, to the POINT OF BEGINNING and containing 692.696 acres (30,173,840 square feet) of land.

(2) Kingsborough Municipal Utility District No. 2:

BEING all that certain lot, tract or parcel of land located in the J. G. Moore Survey, Abstract No. 309, Kaufman County, Texas, and being a portion of that certain tract of land described as Tract K31 in the deed to West Foundation, according to the deed filed for record in Volume 720, Page 860 of the Deed Records of Kaufman County, Texas, and being more particularly described by metes and bounds as follows:

BEGINNING at the intersection of the Southwesterly boundary line of said Tract K31 and the Southeasterly right-of-way line of Farm-Market 741 (a 90 foot wide right-of-way), said iron rod being in the center of County Road No. 269;

THENCE along the Southwesterly right-of-way line of said Farm-Market 741 as follows:

North 43 deg. 59 min. 38 sec. East, along the Southeasterly right-of-way line of said Farm-Market 741, a distance of 2525.09 feet;

North 44 deg. 20 min. 25 sec. East, a distance of 4582.54 feet, to the beginning of a curve to the left having a radius of 761.20 feet;

Along said curve to the left, through a central angle of 11 deg. 23 min. 36 sec., an arc length of 151.37 feet and having a long chord which bears North 38 deg. 38 min. 37 sec. East, 151.12 feet;

North 44 deg. 20 min. 25 sec. East, a distance of 463.83 feet, to the beginning of a curve to the left having a radius of 127.30 feet;

Along said curve to the left, through a central angle of 40 deg. 09 min. 07 sec., an arc length of 89.21 feet and having a long chord which bears North 24 deg. 15 min. 15 min. East, 87.40 feet;

THENCE North 44 deg. 20 min. 24 sec. East, along the Northwesterly line of said Tract K31, a distance of 14.48 feet, to a point in County Road No. 260 (an undefined width right of way);

THENCE South 46 deg. 07 min. 54 sec. East, along said County Road No. 260, a distance of 3434.03 feet;

THENCE South 44 deg. 14 min. 23 sec. West, departing said County Road No. 260, a distance of 5193.79 feet, to the beginning of a non-tangent curve to the left having a radius of 2640.00 feet;

THENCE along said non-tangent curve to the left, through a central angle of 90 deg. 07 min. 01 sec., an arc length of 4152.29 feet, and having a long chord which bears South 89 deg. 10 min. 52 sec. West, 3737.33 feet, to a point in County Road No. 269 (an undefined width right-of-way);

THENCE North 45 deg. 52 min. 38 sec. West, along said County Road No. 269, a distance of 747.41 feet to the POINT OF BEGINNING and containing 484.081 acres (21,086,547 square feet) of land.

(3) Kingsborough Municipal Utility District No. 3:

BEING all that certain lot, tract or parcel of land located in the J. G. Moore Survey, Abstract No. 309, Kaufman County, Texas, and being more particularly described by metes and bounds as follows:

BEGINNING at the intersection of the of the Northeasterly right-of-way line of Farm-Market 2757 (a 100 foot wide right-of-way), and the Northwesterly line of said J. G. Moore Survey and the Southeasterly line of said Martha Musick Survey;

THENCE North 44 deg. 34 min. 48 sec. East, along the common line between said J. G. Moore Survey and the Martha Musick Survey, a distance of 1644.55 feet;

THENCE South 58 deg. 36 min. 37 sec. East, departing said common line, a distance of 578.95 feet;

THENCE South 77 deg. 32 min. 02 sec. East, a distance of 731.98 feet;

THENCE North 87 deg. 16 min. 19 sec. East, a distance of 610.31 feet;

THENCE North 72 deg. 56 min. 15 sec. East, a distance of 778.38 feet;

THENCE North 81 deg. 36 min. 53 sec. East, a distance of 327.60 feet;

THENCE South 66 deg. 21 min. 14 sec. East, a distance of 1045.54 feet;

THENCE South 46 deg. 19 min. 02 sec. East, a distance of 1073.59 feet;

THENCE South 78 deg. 41 min. 33 sec. East, a distance of 280.00 feet;

THENCE South 49 deg. 43 min. 48 sec. East, a distance of 794.74 feet, to a point on the Northwesterly right-of-way line of Farm- Market 741 (an 80 foot wide right-of-way);

THENCE along the Northwesterly right-of-way line of said Farm- Market 741 as follows;

South 44 deg. 20 min. 25 sec. West, a distance of 1657.58 feet;

South 43 deg. 59 min. 38 sec. West, a distance of 2422.82 feet, to the intersection of the Northwesterly right-of-way line of said Farm-Market 741 and the Northeasterly right-of-way line of the aforementioned Farm-Market 2757;

THENCE along the Northeasterly right-of-way line of said Farm-Market 2757 as follows;

South 89 deg. 23 min. 24 sec. West, a distance of 138.28 feet;

North 44 deg. 17 min. 39 sec. West, a distance of 1248.09 feet;

North 45 deg. 23 min. 39 sec. West, a distance of 624.62 feet;

North 45 deg. 36 min. 39 sec. West, a distance of 3302.91 feet, to the POINT OF BEGINNING and containing 392.241 acres (17,086,006 square feet) of land.

(4) Kingsborough Municipal Utility District No. 4:

BEING all that certain lot, tract or parcel of land located in the Martha Musick Survey, Abstract No. 312 and the J. G. Moore Survey, Abstract No. 309, Kaufman County, Texas, and being the remainder of those certain tracts of land described as Tracts K14 through K20, in the deed the West Foundation, as filed for record in Volume 720, Page 860 of the Deed Records of Kaufman County, Texas, and being more particularly described by metes and bounds as follows:

BEGINNING at the intersection of the Southerly right-of-way line of Interstate 20 (a variable width right-of-way) and the Southeasterly right-of-way line of Farm-Market 741 (a variable width right-of-way at this point);

THENCE along the Southerly right-of-way line of said Interstate 20 as follows;

North 83 deg. 22 min. 27 sec. East, a distance of 751.86 feet; North 88 deg. 29 min. 25 sec. East, a distance of 474.54 feet; South 84 deg. 18 min. 42 sec. East, a distance of 952.45 feet; South 78 deg. 59 min. 16 sec. East, a distance of 4.49 feet to the intersection of the Southerly right-of-way line of Interstate 20 and the Northeasterly boundary line of the aforementioned Tract K17, said point also being the intersection of the said Southerly right-of-way line and the Southwesterly boundary line of that certain called 113.75 acre tract of land conveyed to Austin W. Shipley, according to the deed filed for record in Volume 270, Page 221, Deed Records, Kaufman County, Texas;

THENCE South 45 deg. 06 min. 28 sec. East, along the common boundary line between said Tract K17 and said called 113.75 acre tract, at a distance of approximately 1240 feet passing the most Southerly corner of said called 113.75 acre tract and the East corner of that certain tract of land conveyed to Gordon T. West, according to the deed filed for record in Volume 1636, Page 43, Deed Records, Kaufman County, Texas, and continuing along the common boundary line between said Tract K17 and said Gordon T. West tract, in all a distance of 2131.39 feet to the Northwest boundary line of that certain called 300 acre tract of land conveyed to Gordon T. West, according to the deed filed for record in Volume 1636, Page 43, Deed Records, Kaufman County, Texas;

THENCE South 44 deg. 34 min. 38 sec. West, along the common boundary line of said Tract K17 and said called 300 acre tract, and generally along a barbed wire fence, a distance of 1891.96 feet, to the South corner of said Tract K17 and the West corner of said called 300 acre tract, said iron rod also being the North corner of the aforementioned Tract K19;

THENCE South 46 deg. 09 min. 59 sec. East, along the common boundary line between said called 300 acre tract and said Tract K19, a distance of 3513.32 feet, to the Northwesterly right-of-way line of Griffin Lane (a 50 foot wide right-of-way);

THENCE South 43 deg. 50 min. 01 sec. West, along the Northwesterly right-of-way line of said Griffin Lane, a distance of 2649.80 feet, to the Northeasterly right-of-way line of the aforementioned Farm-Market 741;

THENCE along the Northeasterly right-of-way line of said Farm-Market 741 as follows;

North 45 deg. 13 min. 23 sec. West, a distance of 4.98 feet;

North 44 deg. 58 min. 23 sec. West, at a distance of 632.24 feet passing a wood monument found, and continuing in all a distance of 755.05 feet, said point being the beginning of a curve to the left having a radius of 5774.58 feet;

Along said curve to the left, through a central angle of 12 deg. 08 min. 00 sec., an arc length of 1222.86 feet, and having a long chord of North 51 deg. 02 min. 23 sec. West, 1220.58 feet;

North 57 deg. 06 min. 23 sec. West, generally along a barbed wire fence, a distance of 328.05 feet, said point being the beginning of a curve to the right having a radius of 11,382.09 feet;

Along said curve to the right and along said fence, through a central angle of 11 deg. 54 min. 00 sec., an arc length of 2363.99 feet, and having a long chord which bears North 51 deg. 11 min. 23 sec. West, 2359.75 feet;
North 45 deg. 14 min. 23 sec. West, generally along said fence, a distance of 1653.79 feet, said point being the beginning of a curve to the right having a radius of 909.93 feet;

THENCE along said curve to the right and along the Easterly right-of-way line of said Farm-Market 741 and generally along said fence, through a central angle of 90 deg. 33 min. 04 sec., an arc length of 1438.07 feet, and having a long chord which bears North 00 deg. 02 min. 09 sec. East, 1293.01 feet;

THENCE along the Southeasterly right-of-way line of said Farm-Market 741 as follows;

North 45 deg. 18 min. 41 sec. East, a distance of 199.54 feet;

North 46 deg. 06 min. 41 sec. East, a distance of 1039.75 feet;

North 46 deg. 21 min. 41 sec. East, a distance of 759.38 feet, said point being the beginning of a curve to the left having a radius of 999.93 feet;

Along said curve to the left, through a central angle of 14 deg. 28 min. 00 sec., an arc length of 252.47 feet, and having a long chord which bears North 39 deg. 07 min. 41 sec. East, 251.80 feet;

North 31 deg. 53 min. 41 sec. East, a distance of 210.50 feet, said point being the beginning of a curve to the right having a radius of 909.38 feet;

Along said curve to the right, through a central angle of 01 deg. 00 min. 31 sec., an arc length of 16.01 feet, and having a long chord which bears North 32 deg. 23 min. 57 sec. East, 16.01 feet to the POINT OF BEGINNING and containing 606.441 acres (26,416,564 square feet) of land.

(5) Kingsborough Municipal Utility District No. 5:

BEING all that certain lot, tract or parcel of land located in the J. G. Moore Survey, Abstract No. 309, Kaufman County, Texas, and being a portion of that certain tract of land described as Tract K31 in the deed to West Foundation, according to the deed filed for record in Volume 720, Page 860 of the Deed Records of Kaufman County, Texas, and being more particularly described by metes and bounds as follows:

BEGINNING at a 5/8 inch iron rod found for the South corner of said Tract K31, said iron rod being in County Road No. 269 (an undefined width public roadway);

THENCE North 45 deg. 52 min. 38 sec. West, along the Southwest boundary line of said Tract K31, and generally along said County Road No. 269, a distance of 2640.00 feet, said point being the beginning of a non-tangent curve to the right having a radius of 2640.00 feet;

THENCE departing the Southwest boundary line of said Tract K31, through a central angle of 90 deg. 07 min. 01 sec., an arc length of 4152.29 feet, said non-tangent curve also having a long chord which bears North 89 deg. 10 min. 52 sec. East, a distance of 3737.33 feet, to the Southeast boundary line of said Tract K31;

THENCE South 44 deg. 14 min. 23 sec. West, along the Southeast boundary line of said Tract K31, a distance of 2640.00 feet, to the POINT OF BEGINNING and containing 125.839 acres (5,481,550 square feet) of land.

SECTION 6. FINDINGS RELATING TO BOUNDARIES. The legislature finds that the boundaries and field notes of each 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 7. GENERAL POWERS. Each district has all of the rights, powers, privileges, authority, functions, and duties provided by the general law of this state, including Chapters 49 and 54, Water Code, applicable to municipal utility districts created under Section 59, Article XVI, Texas Constitution. This Act prevails over any provision of general law that is in conflict or inconsistent with this Act.

SECTION 8. ADDITIONAL POWERS. (a) Each district has the additional rights, powers, privileges, authority, and functions provided by this section.

(b) To the extent authorized by Section 52, Article III, Texas Constitution, a district may provide for the construction, maintenance, and operation inside or outside the boundaries of the district of:

- (1) paved roads and turnpikes; or
- (2) works, facilities, or improvements related to the roads and turnpikes.

SECTION 9. BONDS. (a) Each district may issue bonds as provided by Chapters 49 and 54, Water Code, and the general laws of this state.

(b) A district may issue bonds, notes, or other obligations of the district to finance construction, maintenance, and operation under Section 8 of this Act and may impose a tax to pay the principal of or interest on bonds issued under this subsection.

(c) A district may not issue bonds under Subsection (b) of this section unless the issuance is approved by a vote of a two-thirds majority of the qualified voters of the district voting at an election called for that purpose. Bonds, notes, or other obligations issued or incurred under Subsection (b) of this section may not exceed one-fourth of the assessed value of the real property in the district.

(d) Sections 49.181 and 49.182, Water Code, do not apply to projects undertaken by a district under Section 8(b) of this Act or to bonds issued by a district under Subsection (b) of this section.

SECTION 10. EMINENT DOMAIN. (a) Within the boundaries of a district, a district may exercise the power of eminent domain for all public purposes.

(b) Outside the boundaries of a district, a district may exercise the power of eminent domain only for the purpose of constructing, acquiring, operating, repairing, or maintaining water supply lines or sanitary sewer lines.

(c) A district's power of eminent domain is exercised in the same manner as required for a county.

SECTION 11. BOARD OF DIRECTORS. (a) Each district is governed by a board of five directors.

(b) Temporary directors serve until initial directors are elected under Section 13 of this Act.

(c) Initial directors serve until permanent directors are elected under Section 14 of this Act.

(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 12. APPOINTMENT OF TEMPORARY DIRECTORS. (a) On or after the effective date of this Act, a person who owns land in a district may submit a petition to the commission requesting that the commission appoint as temporary directors the five persons named in the petition.

(b) Subject to Subsection (e) of this section, the commission shall appoint as temporary directors the five persons named in the first petition received by the commission for each district.

(c) If a temporary director fails to qualify for office, the commission shall appoint a person to fill the vacancy.

(d) As soon as practicable after all of the temporary directors have qualified, the temporary directors shall meet and elect officers from among their membership.

(e) The commission may appoint temporary directors for a district that is located wholly or partly within an area designated by ordinance or resolution of the City of Crandall as the water service area, extraterritorial jurisdiction, or corporate limits of that city only if the city has given its express written consent to the creation of the district. The City of Crandall may give its consent only on the execution of a written agreement between the developer of the district and the Crandall Independent School District providing that the developer of the district will:

(1) fund the construction of buildings and improvements for the school district; and

(2) establish an educational fund for the school district of an amount based on an annually determined transaction fee on the sale and resale of any home within the district boundaries for the duration of the existence of the district.

SECTION 13. CONFIRMATION AND INITIAL DIRECTORS' ELECTION. (a) Subject to Subsection (b) of this section, the temporary board of directors of each district shall call and hold an election to confirm establishment of the district and to elect five initial directors in the manner provided by Chapter 49, Water Code.

(b) A temporary board of directors may call and hold an election to confirm establishment of a district that is located wholly or partly within an area designated by ordinance or resolution of the City of Crandall as the water service area, extraterritorial jurisdiction, or corporate limits of that city only if the city has given its express written consent to the creation of the district. The City of

Crandall may give its consent only on the execution of a written agreement between the developer of the district and the Crandall Independent School District providing that the developer of the district will:

(1) fund the construction of buildings and improvements for the school district; and

(2) establish an educational fund for the school district of an amount based on an annually determined transaction fee on the sale and resale of any home within the district boundaries for the duration of the existence of the district.

SECTION 14. ELECTION OF DIRECTORS. Each board shall call and hold elections to elect permanent directors in the manner provided by Chapter 49, Water Code.

SECTION 15. EFFECTIVE DATE; EXPIRATION DATE. (a) This Act takes effect on the date on or after September 1, 2003, on which a settlement agreement between the City of Crandall and the developer of the districts is legally executed regarding a pending petition before the Texas Commission on Environmental Quality for the right to provide retail water service to certain areas within the districts. If the settlement agreement is legally executed before September 1, 2003, this Act takes effect September 1, 2003.

(b) If the creation of a district is not confirmed at a confirmation election held under Section 13 of this Act before September 1, 2005, the provisions of this Act relating to that district expire on that date.

Representative B. Brown moved to adopt the conference committee report on **HB 3622**.

The motion prevailed.

HB 411 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Grusendorf submitted the following conference committee report on **HB 411** :

Austin, Texas, May 31, 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 411** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Ellis, Rodney
Staples
Shapleigh
Shapiro
Ogden

On the part of the senate

Grusendorf
Eissler
Deshotel

On the part of the house

HB 411, A bill to be entitled An Act relating to improvement of science instruction and student performance in public schools.

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

SECTION 1. Subchapter B, Chapter 21, Education Code, is amended by adding Section 21.0484 to read as follows:

Sec. 21.0484. MASTER SCIENCE TEACHER CERTIFICATION. (a) To ensure that there are teachers with special training to work with other teachers and with students in order to improve student science performance, the board shall establish:

(1) a master science teacher certificate to teach science at elementary school grade levels;

(2) a master science teacher certificate to teach science at middle school grade levels; and

(3) a master science teacher certificate to teach science at high school grade levels.

(b) The board shall issue the appropriate master science teacher certificate to each eligible person.

(c) To be eligible for a master science teacher certificate, a person must:

(1) hold a teaching certificate issued under this subchapter;

(2) have at least three years of teaching experience;

(3) satisfactorily complete a knowledge-based course of instruction on the science of teaching children science that includes training in science instruction and professional peer mentoring techniques that, through scientific testing, have been proven effective;

(4) perform satisfactorily on the appropriate master science teacher certification examination prescribed by the board; and

(5) satisfy any other requirements prescribed by the board.

(d) The course of instruction prescribed under Subsection (c)(3) shall be developed by the board in consultation with science faculty members at institutions of higher education.

SECTION 2. Subchapter I, Chapter 21, Education Code, is amended by adding Section 21.413 to read as follows:

Sec. 21.413. MASTER SCIENCE TEACHER GRANT PROGRAM. (a) The commissioner shall establish a master science teacher grant program to encourage teachers to:

(1) become certified as master science teachers; and

(2) work with other teachers and with students in order to improve student science performance.

(b) From funds appropriated for the purpose, the commissioner shall make grants to school districts as provided by this section to pay stipends to selected certified master science teachers who teach at high-need campuses.

(c) The commissioner shall annually identify each high-need campus in a school district using criteria established by the commissioner by rule, including performance on the science assessment instrument administered under Section 39.023. The commissioner shall also use the criteria to rank campuses in order of greatest need.

(d) A school district may apply to the commissioner for grants for each high-need campus identified by the commissioner to be used to pay stipends to certified master science teachers in accordance with this section. Unless reduced under Subsection (g) or (i), each grant is in the amount of \$5,000. The commissioner shall approve the application if the district:

(1) applies within the period and in the manner required by rule adopted by the commissioner; and

(2) agrees to use each grant only for the purpose of paying a year-end stipend to a master science teacher:

(A) who holds the appropriate certificate issued under Section 21.0484;

(B) who teaches in a position prescribed by the district at a high-need campus identified by the commissioner;

(C) whose primary duties include:

(i) teaching science; and

(ii) serving as a science teaching mentor to other teachers for the amount of time and in the manner established by the district and by rule adopted by the commissioner; and

(D) who satisfies any other requirements established by rule adopted by the commissioner.

(e) Unless reduced under Subsection (g) or (i), a stipend under Subsection (d)(2) is in the amount of \$5,000.

(f) The commissioner shall adopt rules for the distribution of grants to school districts following the year of the initial grant. A district that has been approved for a grant to pay a stipend to a certified master science teacher is not required to reapply for a grant for two consecutive school years following the year of the initial grant if the district:

(1) continues to pay a stipend as provided by Subsection (g); and

(2) notifies the commissioner in writing, within the period and in the manner prescribed by the commissioner, that the circumstances on which the grant was based have not changed.

(g) The commissioner shall reduce payments to a school district proportionately to the extent a teacher does not meet the requirements under Subsection (d)(2) for the entire school year. A district that employs more certified master science teachers than the number of grants available under this section shall select the certified master science teachers to whom to pay stipends based on a policy adopted by the board of trustees of the district, except that a district shall pay a stipend for two additional consecutive school years to a teacher the district has selected for and paid a stipend for a school year, who remains eligible for a stipend under Subsection (d)(2), and for whom the district receives a grant under this section for those years. A decision of the district under this subsection is final and may not be appealed. The district may not apportion among teachers a stipend paid for with a grant the district receives under this section. The district may use local money to pay additional stipends in amounts determined by the district.

(h) A grant a school district receives under this section is in addition to any funding the district receives under Chapter 42. The commissioner shall distribute funds under this section with the Foundation School Program payment to which the district is entitled as soon as practicable after the end of the school year as determined by the commissioner. A district to which Chapter 41 applies is entitled to the grants paid under this section. The commissioner shall determine the timing of the distribution of grants to a district that does not receive Foundation School Program payments.

(i) This section does not create a property right to a grant or stipend. A school district is entitled to a grant to carry out the purposes of this section only to the extent the commissioner makes the grant in accordance with this section and only to the extent sufficient state funds are appropriated for those purposes. If state funds are appropriated but are insufficient to fully fund a grant, the commissioner shall reduce the grant paid to each district and the district shall reduce the stipend the district pays to each teacher under this section proportionately so that each selected teacher receives the same amount of money.

(j) A decision of the commissioner concerning the amount of money to which a school district is entitled under this section is final and may not be appealed. Each district shall, in the manner and at the time prescribed by the commissioner, provide to the commissioner proof acceptable to the commissioner of the master science teacher certification of a teacher to whom the district is paying a stipend under this section.

(k) The commissioner may audit the expenditure of money appropriated for purposes of this section. A district's use of the money appropriated for purposes of this section shall be verified as part of the district audit under Section 44.008.

(l) A stipend a teacher receives under this section is not considered in determining whether the district is paying the teacher the minimum monthly salary under Section 21.402.

(m) The commissioner may adopt other rules as necessary to implement this section.

SECTION 3. Subchapter J, Chapter 21, Education Code, is amended by adding Section 21.456 to read as follows:

Sec. 21.456. SCIENCE TRAINING. (a) The commissioner shall develop and have approved by the board training materials and other teacher training resources for a school district to use in assisting science teachers in developing:

(1) expertise in the appropriate science curriculum; and

(2) comprehension of the instructional approaches that, through scientific testing, have been proven effective in improving student science skills.

(b) To the extent practicable, the training materials and other teacher training resources required under Subsection (a) shall address instructional approaches designed to reduce any identified disparities in student science performance between groups of students.

(c) The commissioner shall develop materials and resources under this section in consultation with appropriate faculty members at institutions of higher education.

(d) The commissioner shall make the training materials and other teacher training resources required under Subsection (a) available to science teachers through a variety of mechanisms, including distance learning, mentoring programs, small group inquiries, computer-assisted training, and mechanisms based on trainer-of-trainer models.

(e) The commissioner shall use funds appropriated for the purpose to administer this section.

SECTION 4. Subchapter C, Chapter 29, Education Code, is amended by adding Section 29.089 to read as follows:

Sec. 29.089. AFTER-SCHOOL AND SUMMER INTENSIVE SCIENCE INSTRUCTION PROGRAMS. (a) A school district may provide an intensive after-school program or an intensive program during the period that school is recessed for the summer to provide science instruction to:

(1) students who are not performing at grade level in science to assist those students in performing at grade level;

(2) students who are not performing successfully in a science course to assist those students in successfully completing the course; or

(3) students other than those described by Subdivision (1) or (2), as determined by the district.

(b) Before providing a program under this section, the board of trustees of a school district must adopt a policy for:

(1) determining student eligibility for participating in the program that:

(A) prescribes the grade level or course a student must be enrolled in to be eligible; and

(B) provides for considering teacher recommendations in determining eligibility;

(2) ensuring that parents of or persons standing in parental relation to eligible students are provided notice of the program;

(3) ensuring that eligible students are encouraged to attend the program;

(4) ensuring that the program is offered at one or more locations in the district that are easily accessible to eligible students; and

(5) measuring student progress on completion of the program.

(c) The commissioner by rule shall:

(1) prescribe a procedure that a school district must follow to apply for and receive funding for a program under this section;

(2) adopt guidelines for determining which districts receive funding if there is not sufficient funding for each district that applies;

(3) require each district providing a program to report student performance results to the commissioner within the period and in the manner prescribed by the rule; and

(4) based on district reports under Subdivision (3) and any required analysis and verification of those reports, disseminate to each district in this state information concerning instructional methods that have proved successful in improving student performance in science.

(d) A program provided under this section shall be paid for with funds appropriated for that purpose.

SECTION 5. Section 39.023(a), Education Code, is amended to read as follows:

(a) The agency shall adopt or develop appropriate criterion-referenced assessment instruments designed to assess essential knowledge and skills in reading, writing, mathematics, social studies, and science. All students, except students assessed under Subsection (b) or (l) or exempted under Section 39.027, shall be assessed in:

(1) mathematics, annually in grades three through seven without the aid of technology and in grades eight through 11 with the aid of technology on any assessment instruments that include algebra;

(2) reading, annually in grades three through nine;

(3) writing, including spelling and grammar, in grades four and seven;

(4) English language arts, in grade 10;

(5) social studies, in grades eight and 10; ~~and~~

(6) science, in grades five, eight, and 10; and

(7) any other subject and grade required by federal law.

SECTION 6. (a) If the Act of the 78th Legislature, Regular Session, 2003, relating to renumbering or relettering certain provisions of enacted codes takes effect, Section 822.201(b), Government Code, as amended by Chapters 118, 834, and 1301, Acts of the 77th Legislature, Regular Session, 2001, is reenacted and amended to read as follows:

(b) "Salary and wages" as used in Subsection (a) means:

(1) normal periodic payments of money for service the right to which accrues on a regular basis in proportion to the service performed;

(2) amounts by which the member's salary is reduced under a salary reduction agreement authorized by Chapter 610;

(3) amounts that would otherwise qualify as salary and wages under Subdivision (1) but are not received directly by the member pursuant to a good faith, voluntary written salary reduction agreement in order to finance payments to a deferred compensation or tax sheltered annuity program specifically authorized by state law or to finance benefit options under a cafeteria plan qualifying under Section 125 of the Internal Revenue Code of 1986, if:

(A) the program or benefit options are made available to all employees of the employer; and

(B) the benefit options in the cafeteria plan are limited to one or more options that provide deferred compensation, group health and disability insurance, group term life insurance, dependent care assistance programs, or group legal services plans;

(4) performance pay awarded to an employee by a school district as part of a total compensation plan approved by the board of trustees of the district and meeting the requirements of Subsection (e);

(5) the benefit replacement pay a person earns under Subchapter H, Chapter 659, ~~[as added by Chapter 417, Acts of the 74th Legislature, 1995,]~~ except as provided by Subsection (c);

(6) stipends paid to teachers in accordance with Section 21.410, 21.411, 21.412, or 21.413, Education Code;

(7) amounts by which the member's salary is reduced or that are deducted from the member's salary as authorized by Subchapter J, Chapter 659; and

(8) a merit salary increase made under Section 51.962, Education Code.

(b) If the Act of the 78th Legislature, Regular Session, 2003, relating to renumbering or relettering certain provisions of enacted codes does not take effect, Section 822.201(b), Government Code, as amended by Chapters 118, 834, and 1301, Acts of the 77th Legislature, Regular Session, 2001, is reenacted and amended to read as follows:

(b) "Salary and wages" as used in Subsection (a) means:

(1) normal periodic payments of money for service the right to which accrues on a regular basis in proportion to the service performed;

(2) amounts by which the member's salary is reduced under a salary reduction agreement authorized by Chapter 610;

(3) amounts that would otherwise qualify as salary and wages under Subdivision (1) but are not received directly by the member pursuant to a good faith, voluntary written salary reduction agreement in order to finance payments to a deferred compensation or tax sheltered annuity program specifically authorized by state law or to finance benefit options under a cafeteria plan qualifying under Section 125 of the Internal Revenue Code of 1986, if:

(A) the program or benefit options are made available to all employees of the employer; and

(B) the benefit options in the cafeteria plan are limited to one or more options that provide deferred compensation, group health and disability insurance, group term life insurance, dependent care assistance programs, or group legal services plans;

(4) performance pay awarded to an employee by a school district as part of a total compensation plan approved by the board of trustees of the district and meeting the requirements of Subsection (e);

(5) the benefit replacement pay a person earns under Subchapter H, Chapter 659, [~~as added by Chapter 417, Acts of the 74th Legislature, 1995,~~] except as provided by Subsection (c);

(6) stipends paid to teachers in accordance with Section 21.410, Education Code; Section 21.411, Education Code, as added by Chapter 834, Acts of the 77th Legislature, Regular Session, 2001; Section 21.411, Education Code, as added by Chapter 1301, Acts of the 77th Legislature, Regular Session, 2001; or Section 21.413, Education Code;

(7) amounts by which the member's salary is reduced or that are deducted from the member's salary as authorized by Subchapter J, Chapter 659; and

(8) a merit salary increase made under Section 51.962, Education Code.

SECTION 7. (a) The State Board for Educator Certification shall propose rules establishing requirements and prescribing an examination for master science teacher certification as required by Section 21.0484, Education Code, as added by this Act, not later than January 1, 2005.

(b) Beginning with the 2005-2006 school year:

(1) the commissioner of education shall pay grants under Section 21.413, Education Code, as added by this Act; and

(2) school districts receiving grants shall pay stipends to certified master science teachers under Section 21.413, Education Code, as added by this Act.

SECTION 8. This Act takes effect September 1, 2003.

Representative Grusendorf moved to adopt the conference committee report on **HB 411**.

The motion prevailed.

HB 727 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Delisi submitted the following conference committee report on **HB 727** :

Austin, Texas, May 31, 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 727** 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

Delisi

Gallegos

Gutierrez

Deuell

Capelo

On the part of the senate

On the part of the house

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

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 32.059 to read as follows:

Sec. 32.059. CONTRACTS FOR DISEASE MANAGEMENT PROGRAMS. (a) The department shall request contract proposals from providers of disease management programs to provide program services to recipients of medical assistance who:

(1) have a disease or other chronic health condition, such as heart disease, hemophilia, diabetes, respiratory illness, end-stage renal disease, HIV infection, or AIDS, that the department determines is a disease or condition that needs disease management; and

(2) are not eligible to receive those services under a Medicaid managed care plan.

(b) The department may contract with a public or private entity to:

(1) write the requests for proposals;

(2) determine how savings will be measured;

(3) identify populations that need disease management;

(4) develop appropriate contracts; and

(5) assist the department in:

(A) developing the content of disease management programs; and

(B) obtaining funding for those programs.

(c) The department, by rule, shall prescribe the minimum requirements a provider of a disease management program must meet to be eligible to receive a contract under this section. The provider must, at a minimum, be required to:

(1) use disease management approaches that are based on evidence-supported models, minimum standards of care, and clinical outcomes; and

(2) ensure that a recipient's primary care physician and other appropriate specialty physicians, or registered nurses, advanced practice nurses, or physician assistants specified and directed or supervised in accordance with applicable law by the recipient's primary care physician or other appropriate specialty physicians, become directly involved in the disease management program through which the recipient receives services.

(d) The department may not award a contract for a disease management program under this section unless the contract includes a written guarantee of state savings on expenditures for the group of medical assistance recipients covered by the program.

(e) The department may enter into a contract under this section with a comprehensive hemophilia diagnostic treatment center that receives funding through a maternal and child health services block grant under Section 501(a)(2), Social Security Act (42 U.S.C. Section 701), and the center shall be considered a disease management provider.

(f) Directly or through a provider of a disease management program that enters into a contract with the department under this section, the department shall, as appropriate and to the extent possible without cost to the state:

(1) identify recipients of medical assistance under this chapter or, at the discretion of the department, enrollees in the child health plan under Chapter 62, Health and Safety Code, who are eligible to participate in federally funded disease management research programs operated by research-based disease management providers; and

(2) assist and refer eligible persons identified by the department under Subdivision (1) to participate in the research programs described by Subdivision (1).

SECTION 2. (a) The Health and Human Services Commission shall conduct a study to analyze the potential for state savings through the use of disease management programs for recipients of medical assistance under Section 32.059, Human Resources Code, as added by this Act. The study must identify the diseases and chronic health conditions that:

(1) result in the highest medical assistance expenditures by this state; and

(2) show the greatest potential for state savings on implementation of disease management programs.

(b) The commission shall consider the results of the study when requesting contract proposals under Section 32.059, Human Resources Code, as added by this Act.

(c) The commission may contract with a private entity to conduct a study and produce a report under this section.

(d) Not later than December 31, 2003, the commission shall complete the study required by this section and provide a report of its findings to the governor, the lieutenant governor, the speaker of the house of representatives, and the standing committees of the senate and house of representatives having jurisdiction over health and human services issues.

SECTION 3. 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 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.

Representative Delisi moved to adopt the conference committee report on **HB 727**.

A record vote was requested.

The motion prevailed by (Record 910): 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; 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; 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; West; Wilson; Wise; Wohlgenuth; Wolens; Wong; Woolley; Zedler.

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

Absent — Farrar; Villarreal.

HB 1538 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Chisum submitted the following conference committee report on **HB 1538** :

Austin, Texas, May 31, 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 1538** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Shapleigh
Wentworth
Ratliff

Chisum
Noriega
Hupp
Berman
Christian

On the part of the senate

On the part of the house

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.

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

SECTION 1. Section 651.001, Occupations Code, is amended by adding Subdivision (12-a) to read as follows:

(12-a) "Perpetual care cemetery" means a cemetery regulated under Chapter 712, Health and Safety Code.

SECTION 2. Section 651.002, Occupations Code, is amended to read as follows:

Sec. 651.002. APPLICATION OF SUNSET ACT. The Texas Funeral Service Commission is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the commission is abolished and this chapter expires September 1, 2015 [~~2003~~].

SECTION 3. Section 651.003(a), Occupations Code, is amended to read as follows:

(a) This chapter does not affect the authority of the Texas Department of Banking to enforce Chapter 154, Finance Code, or to regulate perpetual care cemeteries.

SECTION 4. Subchapter A, Chapter 651, Occupations Code, is amended by adding Section 651.004 to read as follows:

Sec. 651.004. REGULATION OF CEMETERY AND CREMATORY SERVICES. (a) The commission shall regulate cemetery and crematory services as provided by this chapter and Chapter 716, Health and Safety Code.

(b) The commission may not regulate cemetery or crematory services that occur after burial or inurnment unless the services relate to the care and treatment of the remains in an urn, casket, or outer enclosure.

SECTION 5. Section 651.057(a), Occupations Code, is amended to read as follows:

(a) The governor shall designate one [~~public~~] member of the commission as the presiding officer of the commission to serve in that capacity for three years [at the pleasure of the governor]. In designating presiding officers, the governor shall alternate between public and nonpublic members.

SECTION 6. Section 651.151(a), Occupations Code, is amended to read as follows:

(a) The commission shall establish proficiency, professionalism, ethics, and qualification standards for individuals issued a license under this chapter [~~funeral directors and embalmers~~].

SECTION 7. Section 651.152, Occupations Code, is amended to read as follows:

Sec. 651.152. RULES; PROCEDURES; FORMS. The commission shall [~~may~~] adopt rules, establish procedures, and prescribe forms necessary to administer and enforce this chapter and Chapters 714 and 715, Health and Safety Code.

SECTION 8. Subchapter D, Chapter 651, Occupations Code, is amended by adding Section 651.1525 to read as follows:

Sec. 651.1525. EARLY PARTICIPATION IN RULEMAKING PROCESS; GUIDELINES. (a) Before publishing a proposed rule for public comment, the commission shall seek advice and opinions from persons who will be most affected by the rule. At a minimum, those persons must include consumer groups and trade associations that represent persons from each group regulated by the commission, including funeral directors and cemetery and crematory operators.

(b) The commission shall develop guidelines to implement this section. The guidelines must establish a method to determine who will be most affected by a proposed rule.

SECTION 9. Section 651.154, Occupations Code, is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

(a) The commission shall set the following fees in amounts reasonable and necessary to administer this chapter:

(1) the funeral director's and embalmer's application fee, license fee, duplicate license fee, and reciprocal license fee; and

(2) the cemetery or funeral establishment license fee, renewal fee, and late renewal penalty.

(c) The commission may not charge a fee to a perpetual care cemetery, including a fee for issuing or renewing a license issued under this chapter.

SECTION 10. Section 651.157, Occupations Code, is amended to read as follows:

Sec. 651.157. INSPECTION OF CEMETERY, CREMATORY, OR FUNERAL ESTABLISHMENT. (a) Except as provided by Subsection (b), a licensed cemetery, crematory, or funeral establishment shall be inspected at least once every two years by an agent of the commission or by an agent of the state or a political subdivision authorized by the commission to make inspections on its behalf.

(b) If the commission finds a violation of this chapter or of Chapter 193, ~~[or]~~ 361, 711, 714, 715, or 716, Health and Safety Code, the commission shall inspect the cemetery, crematory, or funeral establishment annually until the commission determines that the establishment is free of violations.

(c) A report of each inspection made under this section shall be filed with the commission.

(d) The commission by rule shall establish:

(1) procedures for the inspection of a cemetery, crematory, or funeral establishment required by this section; and

(2) criteria, including consideration of the establishment's inspection and complaint history, regarding when the commission should inspect an establishment based on the risk of a violation at an establishment.

(e) A premises on which funeral directing, interment, cremation, or embalming is practiced shall be open at all times to inspection for any violation of this chapter or of Chapter 193, ~~[or]~~ 361, or 716, Health and Safety Code, by:

(1) an agent of the commission;

(2) an authorized agent of the state; or

(3) an authorized agent of the county or municipality in which the premises is located.

(f) Before a commission agent inspects a cemetery, crematory, or funeral establishment, the agent shall review the inspection reports filed with the commission on the establishment. During the inspection, the agent shall determine whether previously identified problems have been corrected and whether a pattern of violations exists. The commission shall consider the information from the inspection reports in determining whether a penalty should be imposed against an establishment.

SECTION 11. Subchapter D, Chapter 651, Occupations Code, is amended by adding Section 651.1571 to read as follows:

Sec. 651.1571. INSPECTION REQUIREMENTS FOR CERTAIN CEMETERIES; EXCEPTION FOR PERPETUAL CARE CEMETERIES. (a) This section and Section 651.157 do not apply to perpetual care cemeteries.

(b) Except as provided by Section 651.157(b):

(1) a cemetery may not be inspected unless:

(A) an interment has occurred in the cemetery within the two years preceding the inspection; or

(B) the commission has received a complaint about the cemetery;
and

(2) the commission shall give lower priority to an inspection of a cemetery than to an inspection of a crematory or funeral establishment.

SECTION 12. Section 651.164, Occupations Code, is amended to read as follows:

Sec. 651.164. LICENSE [~~OR REGISTRATION~~] EXPIRATION. The commission by rule may adopt a system under which licenses [~~or registrations~~] expire on various dates during the year. For the year in which the license [~~or registration~~] expiration date is changed, the commission shall prorate license [~~or registration~~] fees on a monthly basis so that each license holder [~~or registrant~~] pays only that portion of the license [~~or registration~~] fee that is allocable to the number of months during which the license [~~or registration~~] is valid. On renewal of the license [~~or registration~~] on the new expiration date, the total license [~~or registration~~] renewal fee is payable.

SECTION 13. Subchapter D, Chapter 651, Occupations Code, is amended by adding Sections 651.166 and 651.167 to read as follows:

Sec. 651.166. USE OF TECHNOLOGY. The commission shall develop and implement a policy requiring the executive director and commission employees to research and propose appropriate technological solutions to improve the commission's ability to perform its functions. The technological solutions must:

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

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

(A) interact with the commission 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 commission's planning processes.

Sec. 651.167. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE RESOLUTION PROCEDURES. (a) The commission shall develop and implement a policy to encourage the use of:

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

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

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

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

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

(2) serve as a resource for any training needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and

(3) collect data concerning the effectiveness of those procedures, as implemented by the commission.

SECTION 14. Sections 651.202(a) and (b), Occupations Code, are amended to read as follows:

(a) The commission by rule shall establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the commission for the purpose of directing complaints to the commission. The commission may provide for that notice:

(1) on each license [~~or registration~~] form, application, or written contract for services of a person regulated under this chapter;

(2) on a sign prominently displayed in the place of business of each person regulated under this chapter; or

(3) in a bill for service provided by a person regulated under this chapter.

(b) The commission shall adopt rules concerning a complaint filed under this section. The rules adopted under this subsection must:

(1) establish procedures regarding the receipt, investigation, and disposition of complaints;

(2) allow for an informal hearing process;

(3) establish a formal hearing process;

(4) ensure that the person who filed the complaint has an opportunity to explain the allegations made in the complaint;

(5) ensure that the license holder [~~or registrant~~] who is the subject of the complaint has an opportunity to be heard regarding the complaint; and

(6) establish procedures by which a commission employee may dismiss a complaint, subject to approval by the executive director or the executive director's designee, if the investigation does not reveal a violation.

SECTION 15. Section 651.2595(d), Occupations Code, is amended to read as follows:

(d) The commission shall approve or deny a provisional license holder's application for a license not later than the second anniversary of [~~180th day after~~] the date on which the provisional license is issued. The commission may extend the two-year [~~180-day~~] period if the results of an examination have not been received by the commission before the end of that period.

SECTION 16. Section 651.261, Occupations Code, is amended to read as follows:

Sec. 651.261. POSTING OF LICENSE. A license holder shall conspicuously display the holder's license in each place of business at which the license holder practices [~~funeral directing or embalming~~].

SECTION 17. Sections 651.267(a) and (d), Occupations Code, are amended to read as follows:

(a) On application, the commission may reissue a [~~funeral director's or embalmer's~~] license issued under this subchapter to a person whose license has been suspended or revoked. An application to reissue a license may not be made before the first anniversary of the date of the suspension or revocation.

(d) A license that has been revoked or suspended for a period of five years or more may be reinstated only after the applicant passes the applicable [~~written embalming or funeral directing~~] examination.

SECTION 18. Sections 651.302(a) and (b), Occupations Code, are amended to read as follows:

(a) The commission shall issue a provisional license to practice funeral directing to an applicant who:

- (1) is at least 18 years of age;
- (2) has completed the educational requirements of Section 651.253 or is enrolled in an accredited school or college of mortuary science;
- (3) is employed by a funeral director to learn funeral directing or embalming under the instruction and supervision of the funeral director [~~takes the written examination given by the commission~~];

(4) files an application for a provisional license on a form provided by the commission and verified under oath by the applicant; and

(5) pays any required application or license fee.

(b) The commission shall issue a provisional license to practice embalming to an applicant who:

- (1) is at least 18 years of age;
- (2) has completed the educational requirements of Section 651.253 or is enrolled in an accredited school or college of mortuary science;
- (3) [~~takes the written examination given by the commission;~~
- [~~4~~] files an application for a provisional license;
- (4) [~~5~~] pays any required application or license fee; and
- (5) [~~6~~] complies with the requirements of this chapter and of the commission.

SECTION 19. Section 651.303(b), Occupations Code, is amended to read as follows:

(b) The commission by rule shall define the terms of employment of a provisional license holder. The terms of employment:

- (1) must include service by the provisional license holder:
 - (A) of at least 17 hours a week or 73 hours a month; and
 - (B) under actual working conditions and under the personal supervision of a funeral director or embalmer; and
- (2) may not require more than 17 hours a week or 73 hours a month.

SECTION 20. Subchapter G, Chapter 651, Occupations Code, is amended by adding Section 651.3035 to read as follows:

Sec. 651.3035. MORTUARY COLLEGE CREDIT FOR PROVISIONAL LICENSE PROGRAM. (a) A case completed under Section 651.303(d) may serve as credit for both mortuary school or college and the provisional license holder program.

(b) A mortuary school or college may designate a funeral director or embalmer who is supervising a provisional license holder under Section 651.303 as a clinical instructor for the provisional license holder.

SECTION 21. Section 651.304(b), Occupations Code, is amended to read as follows:

(b) A provisional license holder shall report to the commission monthly. The report must:

(1) be made not later than the 10th day after the end of the month;

(2) identify each case that the provisional license holder:

(A) assisted in handling during that month if the provisional license holder is a funeral director applicant; or

(B) handled or assisted in handling during that month if the provisional license holder is an embalmer applicant;

(3) list any credit earned for mortuary school or college under Section 651.3035; and

(4) [(3)] be certified by the funeral director or embalmer under whom the provisional license holder performed the work.

SECTION 22. The heading to Subchapter H, Chapter 651, Occupations Code, is amended to read as follows:

SUBCHAPTER H. LICENSE REQUIREMENTS: CEMETERY, FUNERAL,
~~[ESTABLISHMENTS]~~ AND COMMERCIAL EMBALMER
 ESTABLISHMENTS

SECTION 23. Subchapter H, Chapter 651, Occupations Code, is amended by adding Section 651.353 to read as follows:

Sec. 651.353. CEMETERY ESTABLISHMENT REQUIREMENTS. (a) A cemetery may not conduct a cemetery business unless the facility is licensed by the commission.

(b) This chapter does not require a cemetery to be owned by a person licensed under this chapter.

(c) To obtain an initial cemetery license, an applicant must apply for a license and pay the licensing fee. The commission shall issue an initial cemetery license on determining that the applicant satisfies the requirements of this chapter.

(d) This section does not apply to:

(1) a family, fraternal, or community cemetery that is not larger than 10 acres;

(2) an unincorporated association of plot owners not operated for profit;

(3) a church, a religious society or denomination, or an entity solely administering the temporalities of a church or religious society or denomination;

or

(4) a public cemetery owned by this state, a county, or a municipality.

SECTION 24. Section 651.354, Occupations Code, is amended to read as follows:

Sec. 651.354. RENEWAL OF CEMETERY OR FUNERAL ESTABLISHMENT LICENSE. (a) The commission shall mail written notice to a cemetery or funeral establishment of the impending expiration of the ~~[funeral]~~

establishment's license not later than the 30th day before the expiration date of the license. Except as provided by Subsection (d), the [The] notice must state that:

(1) to renew the license, the cemetery or funeral establishment must pay the renewal fee not later than September 30; and

(2) the license is automatically renewed on receipt of the renewal fee.

(b) A cemetery or funeral establishment that fails to pay the license renewal fee by the due date is subject to a late payment penalty equal to the amount charged for the license renewal fee.

(c) If the license is expired for longer than 30 days, the cemetery or funeral establishment may not renew the license and may not operate as a cemetery or funeral establishment until the establishment is issued a new license in the manner provided for issuing an original license.

(d) To renew a license for a perpetual care cemetery, the cemetery must submit a renewal on a form prescribed by the commission. The license is renewed on receipt of the form by the commission.

SECTION 25. Section 651.4065(c), Occupations Code, is amended to read as follows:

(c) The operator of a [registrant for the] cemetery [or crematory] shall sign a [the] purchase agreement for a cemetery.

SECTION 26. Section 651.455(a), Occupations Code, is amended to read as follows:

(a) A person violates this chapter if the person uses a statement that misleads or deceives the public, including a fraudulent statement or any other type of a false or misleading statement regarding:

(1) a legal, religious, or cemetery requirement for funeral merchandise or funeral, cemetery, or crematory services;

(2) the preservative qualities of funeral merchandise or funeral, cemetery, or crematory services in preventing or substantially delaying natural decomposition of human remains;

(3) the airtight or watertight properties of a casket or outer enclosure; ~~[or]~~

(4) the licenses ~~[or registrations]~~ held by the personnel in the operation of the cemetery, crematory, or funeral establishment; or

(5) an activity regulated under this chapter, including the sale of funeral-related goods or services.

SECTION 27. Section 651.456, Occupations Code, is amended to read as follows:

Sec. 651.456. UNETHICAL CONDUCT REGARDING CUSTODY OF DEAD HUMAN BODY. A person violates this chapter if the person:

(1) takes custody of a dead human body without the permission of:

(A) the person or the agent of the person authorized to make funeral arrangements for the deceased; or

(B) a medical examiner or a justice of the peace who has jurisdiction over the body under Articles 49.02-49.05, Code of Criminal Procedure; ~~[or]~~

(2) refuses to promptly surrender a dead human body to a person or agent authorized to make funeral arrangements for the deceased; or

(3) violates any state law governing the transportation, storage, refrigeration, inurnment, interment, or disinterment of a dead human body.

SECTION 28. Section 651.459(a), Occupations Code, is amended to read as follows:

(a) A person violates this chapter if the person:

(1) wilfully makes a false statement on:

(A) a death certificate, including forgery of a physician's signature;

or

(B) a document required by this chapter or a rule adopted under this chapter;

(2) engages in fraudulent, unprofessional, or deceptive conduct in providing funeral services or merchandise to a customer;

(3) engages in dishonest conduct, wilful conduct, or negligence in the practice of embalming or funeral directing that is likely to or does deceive, defraud, or otherwise injure the public;

(4) causes the execution of a document by the use of fraud, deceit, or misrepresentation;

(5) directly or indirectly employs a person to solicit individuals or institutions by whose influence dead human bodies may be turned over to a particular funeral director, embalmer, or funeral establishment;

(6) misappropriates funds held by a license holder, a funeral establishment, an employee or agent of the funeral establishment, or another depository, that create an obligation to provide a funeral service or merchandise, including retaining for an unreasonable time excess funds paid by or on behalf of the customer for which the customer is entitled to a refund; or

(7) performs acts of funeral directing or embalming that are outside the licensed scope and authority of the license holder, or performs acts of funeral directing or embalming in a capacity other than that of an employee, agent, subcontractor, or assignee of a licensed funeral establishment that has contracted to perform those acts.

SECTION 29. Subchapter K, Chapter 651, Occupations Code, is amended by adding Section 651.5026 to read as follows:

Sec. 651.5026. TEMPORARY LICENSE SUSPENSION OR RESTRICTION; DISCIPLINARY PANEL. (a) The presiding officer of the commission shall appoint a three-member disciplinary panel composed of two funeral industry members and one public member of the commission to determine whether a funeral director's or embalmer's license should be temporarily suspended or restricted.

(b) Chapter 551, Government Code, does not prohibit the disciplinary panel from holding a meeting by telephone conference call if convening the panel at one location is inconvenient for any member of the panel.

(c) The disciplinary panel shall temporarily suspend or restrict the license if the panel determines from the information presented to it with or without a hearing, that the license holder has violated this chapter or a rule adopted under this chapter and would, by the license holder's continued unrestricted activity, constitute a continuing threat to the public welfare.

(d) The suspension or restriction may be without notice or hearing if:

(1) the commission immediately provides notice of the suspension or restriction to the funeral director or embalmer;

(2) proceedings for a hearing under Section 651.506 are initiated simultaneously with the suspension or restriction; and

(3) the hearing is held as required by Chapter 2001, Government Code, and this chapter not later than 48 hours after the suspension or restriction.

(e) If the disciplinary panel affirms the temporary suspension or restriction at a hearing, the commission shall schedule an informal compliance meeting that meets the requirements of Section 2001.054(c), Government Code, and this chapter to be held as soon as practicable unless:

(1) it is evident from the determination of the panel that the funeral director or embalmer would be unable to show compliance at the informal meeting regarding the issues that are the basis for the temporary suspension or restriction; or

(2) an informal meeting has already been held regarding the issues that are the basis for the temporary suspension or restriction.

(f) If the funeral director or embalmer is unable to show compliance at the informal meeting under Subsection (e), the commission shall file a formal complaint under this chapter as soon as practicable.

(g) If the disciplinary panel does not temporarily suspend or restrict the license after considering the information presented to it at a hearing under Subsection (c), the facts that were the basis for the temporary suspension or restriction may not be the sole basis of another proceeding to temporarily suspend or restrict the funeral director's or embalmer's license. The commission may use those same facts in a later investigation to obtain new information that may be the basis for the temporary suspension or restriction of a funeral director's or embalmer's license, including facts presented to the disciplinary panel and facts known to the commission at the time evidence was presented to the disciplinary panel.

SECTION 30. The heading to Subchapter N, Chapter 651, Occupations Code, is amended to read as follows:

SUBCHAPTER N. LICENSING ~~[REGISTRATION]~~ REQUIREMENTS:
~~[CEMETERIES AND]~~ CREMATORIES

SECTION 31. Section 651.652(a), Occupations Code, is amended to read as follows:

(a) This subchapter applies only to a ~~[cemetery or]~~ crematory that sells goods or services related to the burial or final disposition of a body.

SECTION 32. Section 711.004(f), Health and Safety Code, is amended to read as follows:

(f) Except as is authorized for a justice of the peace acting as coroner or medical examiner under Chapter 49, Code of Criminal Procedure, remains may not be removed from a cemetery except on the written order of the state registrar or the state registrar's designee. The cemetery organization shall keep a duplicate copy of the order as part of its records. The Texas Funeral Service Commission [~~Board of Health~~] may adopt rules to implement this subsection.

SECTION 33. Section 711.007(b), Health and Safety Code, is amended to read as follows:

(b) The proceeding may be brought by:

- (1) the attorney general;
- (2) the Banking Commissioner of Texas;
- (3) the governing body of a municipality with a population of more than 25,000, if the cemetery is located in the municipality or not farther than five miles from the municipality;
- (4) the district attorney of the county, if the cemetery is located in an area of the county not described by Subdivision (3);
- (5) the owner of a residence:
 - (A) in or near the municipality in which the cemetery is located; or
 - (B) in the area proscribed for the location of a cemetery by Section

711.008;

(6) the Texas Funeral Service Commission; or

(7) [~~(6)~~] the owner of a plot in the cemetery.

SECTION 34. Subchapter A, Chapter 711, Health and Safety Code, is amended by adding Section 711.012 to read as follows:

Sec. 711.012. RULES. (a) The Finance Commission of Texas may adopt rules to enforce and administer Sections 711.003, 711.008, 711.021-711.024, 711.032-711.035, 711.038, 711.040-711.042, 711.052, 711.061, and 711.062 relating to perpetual care cemeteries.

(b) The Texas Funeral Service Commission may adopt rules, establish procedures, and prescribe forms to enforce and administer Sections 711.003, 711.008, 711.010, 711.011, 711.021-711.035, 711.038, 711.041, 711.042, 711.061, and 711.062 relating to cemeteries that are not perpetual care cemeteries.

SECTION 35. Subchapter D, Chapter 711, Health and Safety Code, is amended by adding Sections 711.053-711.056 to read as follows:

Sec. 711.053. DEFINITION. In this subchapter, "commissioner" means the banking commissioner of Texas.

Sec. 711.054. ENFORCEMENT BY FINANCE COMMISSION OF TEXAS. The Finance Commission of Texas may use remedies available under Chapter 712 to enforce a section listed under Section 711.012(a) relating to perpetual care cemeteries.

Sec. 711.055. ENFORCEMENT BY COMMISSIONER. (a) Chapter 2001, Government Code, applies to a proceeding under this section.

(b) After notice and opportunity for hearing, the commissioner may impose an administrative penalty on a person who:

(1) violates this chapter or a final order of the commissioner or rule of the Finance Commission of Texas and does not correct the violation before the 31st day after the date the person receives written notice of the violation from the Texas Department of Banking; or

(2) engages in a pattern of violations, as determined by the commissioner.

(c) The amount of the penalty for each violation may not exceed \$1,000 for each day the violation occurs.

(d) In determining the amount of the penalty, the commissioner shall consider the seriousness of the violation, the person's history of violations, and the person's good faith in attempting to comply with this chapter. The commissioner may collect the penalty in the same manner that a money judgment is enforced in district court.

(e) In addition to any penalty that may be imposed under Subsection (b), the commissioner may bring a civil action against a person to enjoin a violation described in Subsection (b) that has not been corrected within 30 days after receipt by the person of written notice of the violation from the commissioner. The civil action may be brought in the district court of the county in which the cemetery is operated.

(f) The commissioner may issue an order to cease and desist if a violation described in Subsection (b) has not been corrected within 30 days after receipt by the person of written notice of the violation from the commissioner. Any order proposed under this subsection shall be served on the person, shall state the grounds for the proposed order with reasonable certainty, and shall state the proposed effective date, which may not be less than 15 days after receipt by the person. Unless the person requests a hearing within 15 days after the receipt, the order is effective as proposed.

Sec. 711.056. PATTERN OF WILFUL DISREGARD. (a) If after a hearing conducted as provided by Chapter 2001, Government Code, the trier of fact finds that a violation of this chapter or a rule of the Finance Commission of Texas establishes a pattern of wilful disregard for the requirements of this chapter or rules of the finance commission, the trier of fact shall recommend to the commissioner that the maximum administrative penalty permitted under Section 711.055 be imposed on the person committing the violation or that the commissioner cancel or not renew the person's permit under Chapter 154, Finance Code, if the person holds such a permit.

(b) For the purposes of this section, violations corrected as provided by Section 711.055 may be included in determining whether a pattern of wilful disregard for the requirements of this chapter or rules of the finance commission exists.

SECTION 36. Section 712.002, Health and Safety Code, is amended to read as follows:

Sec. 712.002. EXEMPTIONS FROM CHAPTER. This chapter does not apply to:

(1) a family, fraternal, or community cemetery that is not larger than 10 acres;

- (2) an unincorporated association of plot owners not operated for profit;
- (3) ~~a nonprofit corporation organized by plot owners; or~~
- ~~[(4)]~~ a church, a religious society or denomination, or an entity solely administering the temporalities of a church or religious society or denomination;
- or
- (4) a public cemetery owned by this state, a county, or a municipality.

SECTION 37. Section 712.008, Health and Safety Code, is amended to read as follows:

Sec. 712.008. RULES. (a) The Finance Commission of Texas may adopt rules to enforce and administer this chapter, including rules establishing fees to defray the costs of enforcing and administering this chapter.

(b) The Finance Commission of Texas shall adopt rules establishing reasonable standards for:

(1) timely placement of burial markers or monuments in a perpetual care cemetery; and

(2) timely response to consumer complaints made to a corporation that operates a perpetual care cemetery.

SECTION 38. Section 712.025, Health and Safety Code, is amended to read as follows:

Sec. 712.025. USE OF FUND INCOME. Fund income ~~[may be applied in the manner the directors of a corporation determine to be for the best interest of the corporation's perpetual care cemetery and]~~ may be used only to provide ~~[for]~~ the perpetual care described by the ~~[resolution, bylaw, or other action of]~~ instrument that established the fund, including the general care and maintenance of the property entitled to perpetual care in the perpetual care cemetery.

SECTION 39. Sections 712.028(a) and (c), Health and Safety Code, are amended to read as follows:

(a) A corporation shall deposit in its fund an amount that is at least:

(1) the greater of:

(A) \$1.75 ~~[\$1.50]~~ a square foot of ground area conveyed as perpetual care property; or

(B) 15 ~~[10]~~ percent of the total purchase price of that ground area;

(2) the greater of:

(A) \$105 ~~[\$90]~~ for each crypt interment right for mausoleum interment or lawn crypt interment conveyed as perpetual care property, or \$60 ~~[\$50]~~ for each crypt interment right if that crypt is accessible only through another crypt; or

(B) seven ~~[five]~~ percent of the total purchase price of that crypt interment right; and

(3) the greater of:

(A) \$35 ~~[\$30]~~ for each niche interment right for columbarium interment conveyed; or

(B) 15 ~~[10]~~ percent of the total purchase price of that niche interment right.

(c) If a plot owner exchanges a plot for another plot in a corporation's perpetual care cemetery, the amount to be deposited in the corporation's fund in respect of the plot received by the plot owner in the exchange may be reduced by the amount deposited in the fund in respect of the plot contributed by the plot owner in the exchange. The amount required to be deposited with respect to an exchanged plot is the amount required at the time the plot owner originally contracted to purchase the plot.

SECTION 40. Section 715.003, Health and Safety Code, is amended to read as follows:

Sec. 715.003. PARTIES TO ACTION. An action commenced under this chapter shall be brought by the incorporators of the nonprofit corporation on behalf of the nonprofit corporation. The necessary parties to the action on which citation shall be served under Section 715.006 are:

- (1) the record owners of the real property comprising the historic cemetery;
- (2) the owners of plots in the cemetery, who may be designated as a class in the petition; ~~and~~
- (3) the Texas Historical Commission; and
- (4) the Texas Funeral Service Commission.

SECTION 41. Section 715.006(a), Health and Safety Code, is amended to read as follows:

(a) Before the 31st day after the date an action is commenced by a nonprofit corporation under this chapter, the nonprofit corporation shall cause citation to be issued and served by certified mail, return receipt requested, on:

- (1) the record owners of the real property comprising the cemetery at their last known addresses;
- (2) the owners of plots in the cemetery at their last known addresses;
- (3) the Texas Historical Commission at its office in Austin, Texas;
- (4) the Texas Funeral Service Commission; and
- (5) ~~(4)~~ the county auditor of the county in which the cemetery is located.

SECTION 42. The following laws are repealed:

- (1) Section 651.1575, Occupations Code;
- (2) Section 651.302(c), Occupations Code;
- (3) Section 651.455(b), Occupations Code; and
- (4) Section 651.506(j), Occupations Code.

SECTION 43. On September 1, 2003:

(1) all functions and activities related to Chapter 711, Health and Safety Code, performed by the Texas Department of Health immediately before that date are transferred to the Texas Funeral Service Commission;

(2) a rule or form of the Texas Department of Health related to Chapter 711, Health and Safety Code, is a rule or form of the Texas Funeral Service Commission and remains in effect until amended or replaced by that commission;

(3) a reference in law or an administrative rule to the Texas Department of Health that relates to Chapter 711, Health and Safety Code, means the Texas Funeral Service Commission; and

(4) a complaint, investigation, or other proceeding before the Texas Department of Health that is related to Chapter 711, Health and Safety Code, is transferred without change in status to the Texas Funeral Service Commission, and the Texas Funeral Service Commission assumes, as appropriate and without a change in status, the position of the Texas Department of Health in an action or proceeding to which the Texas Department of Health is a party.

SECTION 44. On March 1, 2004, Sections 651.652(b), 651.653, 651.654, and 651.655, Occupations Code, are repealed.

SECTION 45. A cemetery is not required to hold a license under Chapter 651, Occupations Code, as amended by this Act, until March 1, 2004.

SECTION 46. The change in law made by this Act to Section 712.028, Health and Safety Code, applies only to a contract for the purchase of a plot in a perpetual care cemetery entered into, or the exchange of a plot in a perpetual care cemetery made, on or after the effective date of this Act. A contract for the purchase of a plot in a perpetual care cemetery entered into, or the exchange of a plot in a perpetual care cemetery made, before the effective date of this Act is governed by the law as it existed immediately before that effective date, and that law is continued in effect for that purpose.

SECTION 47. This Act takes effect September 1, 2003.

Representative Chisum moved to adopt the conference committee report on **HB 1538**.

The motion prevailed.

HJR 85 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Homer submitted the following conference committee report on **HJR 85** :

Austin, Texas, May 31, 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 **HJR 85** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Van de Putte
Madla
Lindsay

Homer
Phillips
Truitt
Swinford
R. Cook

On the part of the senate

On the part of the house

HJR 85, A joint resolution proposing a constitutional amendment to allow the legislature to authorize and govern the operation of wineries in this state.

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

SECTION 1. Section 20, Article XVI, Texas Constitution, is amended by adding Subsection (d) to read as follows:

(d) The legislature may enact laws and direct the Alcoholic Beverage Commission or its successor to set policies for all wineries in this state, regardless of whether the winery is located in an area in which the sale of wine has or has not been authorized by local option election, for the manufacturing of wine, including the on-premises selling of wine to the ultimate consumer for consumption on or off the winery premises, the buying of wine from or the selling of wine to any other person authorized under general law to purchase and sell wine in this state, and the dispensing of wine without charge, for tasting purposes, for consumption on the winery premises, and for any purpose to promote the wine industry in this state.

SECTION 2. 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: "A constitutional amendment to allow the legislature to enact laws authorizing and governing the operation of wineries in this state."

Representative Homer moved to adopt the conference committee report on **HJR 85**.

A record vote was requested.

The motion prevailed by (Record 911): 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; 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; 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; Krusee; Kuempel; Laney; Laubenberg; Lewis; Luna; Mabry; Madden; Marchant; Martinez Fischer; McCall; McClendon; McReynolds; Menendez; Mercer; Merritt; Miller; Moreno, J.; Morrison; Mowery; Naishtat; Nixon; Noriega; Oliveira; Olivo; Paxton; Peña; Phillips; Pickett; Pitts; Puente; Quintanilla; Raymond; Reyna; Riddle; Ritter; Rodriguez; Rose; Seaman; Smith, T.; Smith, W.; Smithee; Solis; Solomons; Stick; Swinford; Talton; Taylor; Telford; Thompson; Truitt; Turner; Uresti; Van Arsdale; Villarreal; West; Wilson; Wise; Wohlgemuth; Wolens; Wong; Woolley; Zedler.

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

Absent — Coleman; Eiland; Farrar; Moreno, P.

SB 1835 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Eissler submitted the conference committee report on **SB 1835**.

Representative Eissler moved to adopt the conference committee report on **SB 1835**.

A record vote was requested.

The motion prevailed by (Record 912): 86 Yeas, 53 Nays, 2 Present, not voting.

Yeas — Allen; Baxter; Berman; Bohac; Branch; Brown, B.; Brown, F.; Callegari; Campbell; Casteel; Chisum; Christian; Cook, B.; Corte; Crabb; Crownover; Dawson; Delisi; Denny; Deshotel; Driver; Eiland; Eissler; Elkins; Ellis; Farabee; Flynn; Gallego; Gattis; Goolsby; Griggs; Grusendorf; Gutierrez; Haggerty; Hamilton; Hamric; Hardcastle; Hartnett; Heflin; Hilderbran; Hill; Homer; Hope; Hopson; Hunter; Hupp; Isett; Jones, D.; Jones, E.; Keel; Keffer, B.; Keffer, J.; Krusee; Kuempel; Laney; Laubenberg; Madden; Marchant; McCall; McReynolds; Mercer; Merritt; Miller; Morrison; Mowery; Nixon; Paxton; Peña; Phillips; Pitts; Reyna; Riddle; Rose; Seaman; Smith, W.; Smithee; Stick; Swinford; Taylor; Truitt; Van Arsdale; West; Wohlgemuth; Wong; Woolley; Zedler.

Nays — Alonzo; Bailey; Canales; Capelo; Castro; Chavez; Coleman; Davis, J.; Davis, Y.; Dukes; Dunnam; Dutton; Edwards; Escobar; Farrar; Geren; Giddings; Goodman; Guillen; Harper-Brown; Hochberg; Hodge; Hughes; Jones, J.; King; Lewis; Luna; Mabry; McClendon; Menendez; Moreno, J.; Moreno, P.; Naishtat; Noriega; Oliveira; Olivo; Pickett; Puente; Quintanilla; Raymond; Ritter; Rodriguez; Solis; Solomons; Talton; Telford; Thompson; Turner; Uresti; Villarreal; Wilson; Wise; Wolens.

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

Absent — Bonnen; Burnam; Cook, R.; Flores; Garza; Hegar; Howard; Martinez Fischer; Smith, T.

STATEMENTS OF VOTE

When Record No. 912 was taken, I was in the house but away from my desk. I would have voted yes.

Flores

When Record No. 912 was taken, I was in the house but away from my desk. I would have voted yes.

Hegar

I was shown voting no on Record No. 912. I intended to vote yes.

Hodge

When Record No. 912 was taken, I was in the house but away from my desk. I would have voted no.

Martinez Fischer

I was shown voting no on Record No. 912. I intended to vote yes.

McClendon

When Record No. 912 was taken, I was in the house but away from my desk. I would have voted no.

T. Smith

(Uresti in the chair)

SB 1664 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Hopson submitted the conference committee report on **SB 1664**.

SB 1664 - STATEMENT OF LEGISLATIVE INTENT

REPRESENTATIVE CALLEGARI: Mr. Hopson, do you understand that the Sunset bill for the TDHCA (Texas Department of Housing and Community Affairs) has a provision that changes the private activity bond program from a lottery system to a point system?

REPRESENTATIVE HOPSON: No, that is my understanding.

CALLEGARI: I would like to ask if you also agree that your bill, **SB 1664**, Mr. Hegar's bill actually, **SB 1664**, is not intended to replace any provisions in **SB 264** with regards to the private activity bond program and is not intended to affect the provisions in **SB 264** that replace the lottery system with a point system?

HOPSON: That's my understanding, Mr. Callegari.

CALLEGARI: Thank you very much.

REMARKS ORDERED PRINTED

Representative Callegari moved to print remarks between Representative Callegari and Representative Hopson.

The motion prevailed without objection.

Representative Hopson moved to adopt the conference committee report on **SB 1664**.

The motion prevailed.

HR 1860 - NOTICE OF INTRODUCTION

Pursuant to the provisions of Rule 13, Section 9(f) of the House Rules, the chair announced the introduction of **HR 1860**, suspending the limitations on the conferees for **HB 2424**.

HR 1859 - NOTICE OF INTRODUCTION

Pursuant to the provisions of Rule 13, Section 9(f) of the House Rules, the chair announced the introduction of **HR 1859**, suspending the limitations on the conferees for **HB 3459**.

HB 320 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Grusendorf submitted the following conference committee report on **HB 320** :

Austin, Texas, May 31, 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 320** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Fraser
Duncan
Shapiro
Bivins

Grusendorf
Dutton
Hupp
Howard
B. Brown

On the part of the senate

On the part of the house

HB 320, A bill to be entitled An Act relating to the refusal to administer or consent to the administration of certain psychiatric or psychological treatment to a child.

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

SECTION 1. Chapter 26, Education Code, is amended by adding Section 26.0091 to read as follows:

Sec. 26.0091. REFUSAL OF PSYCHIATRIC OR PSYCHOLOGICAL TREATMENT OF CHILD AS BASIS OF REPORT OF NEGLECT. (a) In this section, "psychotropic drug" has the meaning assigned by Section 261.111, Family Code.

(b) An employee of a school district may not use or threaten to use the refusal of a parent, guardian, or managing or possessory conservator of a child to administer or consent to the administration of a psychotropic drug to the child, or to consent to any other psychiatric or psychological testing or treatment of the child, as the sole basis for making a report of neglect of the child under Subchapter B, Chapter 261, Family Code, unless the employee has cause to believe that the refusal:

(1) presents a substantial risk of death, disfigurement, or bodily injury to the child; or

(2) has resulted in an observable and material impairment to the growth, development, or functioning of the child.

SECTION 2. Subchapter A, Chapter 29, Education Code, is amended by adding Section 29.0041 to read as follows:

Sec. 29.0041. INFORMATION AND CONSENT FOR CERTAIN PSYCHOLOGICAL EXAMINATIONS OR TESTS. (a) On request of a child's parent, before obtaining the parent's consent under 20 U.S.C. Section 1414 for the administration of any psychological examination or test to the child that is included as part of the evaluation of the child's need for special education, a school district shall provide to the child's parent:

(1) the name and type of the examination or test; and

(2) an explanation of how the examination or test will be used to develop an appropriate individualized education program for the child.

(b) If the district determines that an additional examination or test is required for the evaluation of a child's need for special education after obtaining consent from the child's parent under Subsection (a), the district shall provide the information described by Subsections (a)(1) and (2) to the child's parent regarding the additional examination or test and shall obtain additional consent for the examination or test.

(c) The time required for the district to provide information and seek consent under Subsection (b) may not be counted toward the 60 calendar days for completion of an evaluation under Section 29.004. If a parent does not give consent under Subsection (b) within 20 calendar days after the date the district provided to the parent the information required by that subsection, the parent's consent is considered denied.

SECTION 3. Subchapter B, Chapter 261, Family Code, is amended by adding Section 261.111 to read as follows:

Sec. 261.111. REFUSAL OF PSYCHIATRIC OR PSYCHOLOGICAL TREATMENT OF CHILD. (a) In this section, "psychotropic drug" means a substance that is:

(1) used in the diagnosis, treatment, or prevention of a disease or as a component of a medication; and

(2) intended to have an altering effect on perception, emotion, or behavior.

(b) The refusal of a parent, guardian, or managing or possessory conservator of a child to administer or consent to the administration of a psychotropic drug to the child, or to consent to any other psychiatric or psychological treatment of the child, does not by itself constitute neglect of the child unless the refusal to consent:

(1) presents a substantial risk of death, disfigurement, or bodily injury to the child; or

(2) has resulted in an observable and material impairment to the growth, development, or functioning of the child.

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.

Representative Grusendorf moved to adopt the conference committee report on **HB 320**.

A record vote was requested.

The motion prevailed by (Record 913): 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; Casteel; Castro; Chavez; Chisum; Christian; Coleman; Cook, R.; Corte; Crabb; Crownover; Davis, J.; 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, E.; Jones, J.; Keel; Keffer, B.; Keffer, J.; King; Kolkhorst; Kuempel; Laney; Laubenberg; Lewis; Luna; Mabry; Madden; Marchant; McCall; McClendon; McReynolds; Menendez; Mercer; Merritt; Miller; Moreno, J.; Moreno, P.; Morrison; Mowery; Naishtat; Nixon; Noriega; Oliveira; Olivo; Paxton; Peña; Phillips; Pickett; Puente; Quintanilla; Raymond; Reyna; Riddle; Ritter; Rodriguez; Rose; Seaman; Smith, T.; Smith, W.; Smithee; Solis; Solomons; Stick; Swinford; Talton; Taylor; Thompson; Truitt; Turner; Van Arsdale; Villarreal; West; Wilson; Wise; Wohlgemuth; Wolens; Wong; Woolley; Zedler.

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

Absent — Capelo; Cook, B.; Dawson; Jones, D.; Krusee; Martinez Fischer; Pitts; Telford.

STATEMENT OF VOTE

When Record No. 913 was taken, I was in the house but away from my desk. I would have voted yes.

Martinez Fischer

HB 471 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Pickett submitted the following conference committee report on **HB 471** :

Austin, Texas, May 31, 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 471** 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.

Lucio
 Madla
 Wentworth
 Lindsay
 On the part of the senate

Pickett
 Krusee
 Hamric
 Gutierrez
 On the part of the house

HB 471, A bill to be entitled An Act relating to the borrowing of money and the issuance of notes by the Texas Transportation Commission; making an appropriation.

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

SECTION 1. Subchapter C, Chapter 201, Transportation Code, is amended by adding Section 201.115 to read as follows:

Sec. 201.115. BORROWING MONEY. (a) The commission may borrow money from any source to carry out the functions of the department.

(b) A loan under this section may be in the form of an agreement, note, contract, or other form as determined by the commission and may contain any provisions the commission considers appropriate, except:

(1) the term of the loan may not exceed two years;

(2) the amount of the loan, combined with any amounts outstanding on other loans under this section, may not exceed the average monthly revenue deposited to the state highway fund for the 12 months preceding the month of the loan; and

(3) the loan may not create general obligation of the state and is payable only as authorized by legislative appropriation.

(c) If the commission borrows money by the issuance of notes, the notes shall be issued in accordance with the requirements of Subchapter N, except that the maturity limitations in Subsection (b) supersede the maturity limitations in Section 201.963.

(d) Notwithstanding Section 222.001, money in the state highway fund may be used to repay a loan under this section, if appropriated by the legislature for that purpose.

SECTION 2. Chapter 201, Transportation Code, is amended by adding Subchapter N to read as follows:

SUBCHAPTER N. HIGHWAY TAX AND REVENUE ANTICIPATION

NOTES

Sec. 201.961. DEFINITIONS. In this subchapter:

(1) "Committee" means the cash management committee described in Section 404.122, Government Code.

(2) "Credit agreement" has the meaning assigned by Section 1208.001, Government Code.

(3) "Notes" means tax and revenue anticipation notes issued under this subchapter. The term includes any obligation under a credit agreement.

Sec. 201.962. NOTES AUTHORIZED; COMMITTEE APPROVAL. (a) In anticipation of a temporary cash flow shortfall in the state highway fund during any fiscal year, the commission, subject to the approval of the committee, may issue, sell, and deliver tax and revenue anticipation notes on behalf of the state.

(b) Before issuing the notes, the commission shall submit to the committee a state highway fund cash flow shortfall forecast containing a detailed report of estimated revenue and expenditures. Based on the forecast, the committee may approve the issuance of notes in an amount not to exceed the maximum temporary cash flow shortfall forecast.

Sec. 201.963. ISSUANCE OF NOTES. (a) The commission, consistent with the committee's determination under Section 201.962, may issue, sell, and deliver the notes.

(b) Notes issued under this subchapter are not debts of the state and may be used only to make up a temporary shortfall in the state highway fund's cash flow. All notes must mature and be paid in full during the fiscal biennium in which they were issued.

(c) Except as otherwise provided by this subsection, the proceeds of the notes shall be deposited in a special fund in the state treasury known as the highway tax and revenue anticipation note fund. Notwithstanding any other provision of law, depository interest shall be credited to the fund. The department shall transfer the net proceeds from the fund to the state highway fund as necessary to pay authorized expenditures. The comptroller may invest funds in the highway tax and revenue anticipation note fund as authorized under Section 404.024, Government Code. Proceeds of a credit agreement may be deposited as provided by the order authorizing the credit agreement.

(d) The commission may exercise the powers granted to the governing body of an issuer in connection with the issuance of obligations under Chapter 1371, Government Code, to the extent not inconsistent with this subchapter. The notes are not subject to review by the Bond Review Board but are subject to review and approval by the attorney general as provided by Chapter 1371, Government Code. On request, the comptroller may assist the commission with the issuance of notes under this subchapter.

(e) The commission is an authorized issuer under Chapter 1201, Government Code, and that chapter applies to notes authorized by this subchapter.

(f) Amounts in the highway tax and revenue anticipation note fund may be pledged to secure the payment of the notes and performance of obligations under credit agreements relating to the notes and may be used to pay issuance costs and required rebates to the federal government.

Sec. 201.964. FUND TRANSFERS; INTEREST; PAYMENT OF NOTES. (a) The department periodically shall transfer cash received in the state highway fund to the highway tax and revenue anticipation note fund to ensure the timely payment of the notes.

(b) On payment of all outstanding notes, rebates to the federal government, and costs of issuance, the department shall transfer to the state highway fund any amounts remaining in the highway tax and revenue anticipation note fund. If amounts credited to the highway tax and revenue anticipation note fund are insufficient to pay principal, any premium, interest, issuance costs, and any required rebate to the federal government, amounts in the state highway fund are available for appropriation by the legislature to make those payments.

SECTION 3. For the fiscal biennium beginning September 1, 2003, the Texas Department of Transportation is appropriated all money deposited in the highway tax and revenue anticipation note fund for the purposes specified in Subchapter N, Chapter 201, Transportation Code, as added by this Act, during that biennium. To the extent that money deposited into the highway tax and revenue anticipation note fund is insufficient to pay the principal of, any premium or interest on, or costs of issuance relating to the notes, and rebates to the federal government, the department is appropriated from the state highway fund the amounts necessary for the full repayment of all principal of, any premium or interest on, or costs of issuance relating to the notes, and rebates to the federal government.

SECTION 4. (a) Section 1 of this Act takes effect on the date on which the constitutional amendment proposed by the 78th Legislature, Regular Session, 2003, providing for authorization of the borrowing of money on a short-term basis by a state transportation agency for transportation-related projects takes effect. If that amendment is not approved by the voters, Section 1 of this Act has no effect.

(b) Sections 2 and 3 of this Act take effect September 1, 2003.

Representative Pickett moved to adopt the conference committee report on **HB 471**.

The motion prevailed.

The chair stated that **HB 471** was passed subject to the provisions of Article III, Section 49a of the Texas Constitution.

SB 1551 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Hartnett submitted the conference committee report on **SB 1551**.

Representative Hartnett moved to adopt the conference committee report on **SB 1551**.

The motion prevailed.

HB 3578 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Wong submitted the following conference committee report on **HB 3578** :

Austin, Texas, May 31, 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 3578** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Ellis, Rodney
Gallegos
Lindsay

Wong
Talton
Van Arsdale
Hunter

On the part of the senate

On the part of the house

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

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

SECTION 1. The heading to Subchapter E, Chapter 376, Local Government Code, is amended to read as follows:

SUBCHAPTER E. HARRIS COUNTY IMPROVEMENT [~~UPPER KIRBY MANAGEMENT~~] DISTRICT NO. 3

SECTION 2. Section 376.151(a), Local Government Code, is amended to read as follows:

(a) A special district to be known as the "Harris County Improvement [~~Upper Kirby Management~~] District No. 3" exists as a governmental agency, body politic and corporate, and political subdivision of the state.

SECTION 3. Section 376.153(2), Local Government Code, is amended to read as follows:

(2) "District" means the Harris County Improvement [~~Upper Kirby Management~~] District No. 3.

SECTION 4. Section 376.165, Local Government Code, is amended by adding Subsections (g) and (h) to read as follows:

(g) An assessment may be imposed on only a part of the district if only that part will benefit from the service or improvement.

(h) The board may not impose an assessment or finance a service or improvement project under this subchapter unless a written petition requesting the 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 or in the area of the district that will be subject to the assessment as determined by the most recent certified tax appraisal roll for Harris County; or

(2) at least 25 persons who own real property in the district or the area of the district that will be subject to the assessment, if more than 25 persons own real property in the district or area that will be subject to the assessment as determined by the most recent certified tax appraisal roll for Harris County.

SECTION 5. Section 376.170, Local Government Code, is amended to read as follows:

Sec. 376.170. EXEMPTION OF PUBLIC UTILITY FROM FEE OR ASSESSMENT. The district may not impose an impact fee or assessment on the property, equipment, or facilities of an electric utility as defined by Section 31.002, Utilities Code, a gas utility as defined by Section 101.003 or 121.001, Utilities Code, a telecommunications provider as defined by Section 51.002, Utilities Code, or a cable operator as defined by 47 U.S.C. Section 522, as amended.

SECTION 6. Subchapter E, Chapter 376, Local Government Code, is amended by adding Section 376.171 to read as follows:

Sec. 376.171. USE OF ELECTRICAL OR OPTICAL LINES. (a) The district may impose an assessment to pay the cost of:

(1) burying or removing electrical power lines, telephone lines, cable or fiber optic lines, or any other type of electrical or optical line;

(2) removing poles and any elevated lines using the poles; and

(3) reconnecting the lines described by Subdivision (2) to the buildings or other improvements to which the lines were connected.

(b) The district may acquire, operate, or charge fees for the use of the district conduits for:

(1) another person's:

(A) telecommunications network;

(B) fiber-optic cable; or

(C) electronic transmission line; or

(2) any other type of transmission line or supporting facility.

(c) The district may not require a person to use a district conduit.

SECTION 7. Subchapter E, Chapter 376, Local Government Code, is amended by adding Section 376.172 to read as follows:

Sec. 376.172. PUBLIC TRANSIT SYSTEM AND PARKING FACILITIES. (a) The district may acquire, lease as lessor or lessee, construct, develop, own, operate, and maintain a public transit system to serve the area within the boundaries of the district.

(b) Before the district may act under Subsection (a), a petition must be filed with the district requesting the action with regard to a public transit system. The petition must be signed by owners of property representing a majority of either the total assessed value or the area of the real property in the district that abuts the right-of-way in which the public transit system is proposed to be located. The determination of a majority is based on the property owners along the entire right-of-way of the proposed transit project and may not be calculated on a block-by-block basis.

(c) The district may acquire, lease as lessor or lessee, construct, develop, own, operate, and maintain parking facilities, including:

(1) lots, garages, parking terminals, or other structures or accommodations for the parking of motor vehicles; and

(2) equipment, entrances, exits, fencing, and other accessories necessary for safety and convenience in the parking of vehicles.

(d) A parking facility of the district must be either leased to or operated on behalf of the district by a private entity or an entity other than the district. The district's parking facilities are a program authorized by the legislature under Section 52-a, Article III, Texas Constitution, and accomplish a public purpose under that section even if leased or operated by a private entity for a term of years.

(e) The district's public parking facilities and any lease to a private entity are exempt from the payment of ad valorem taxes and state and local sales and use taxes.

(f) The district may use any of its resources, including revenues, assessments, taxes, and grant or contract proceeds, to pay the cost of acquiring and operating a public transit system or public parking facilities.

(g) The district may adopt rules and regulations covering its public transit system or its public parking facilities except that any rules relating to or affecting the use of the public right-of-way or requirements for off-street parking must be subject to all applicable municipal charter, code, or ordinance requirements.

(h) The district may set and impose fees, charges, or tolls for the use of the public transit system or the public parking facilities and may issue bonds or notes to finance the cost of these facilities.

(i) Except as provided by Subsection (b), if the district pays for or finances the cost of acquiring or operating a public transit system or public parking facilities with resources other than assessments, a petition of property owners or a public hearing is not required.

(j) If the district's acquisition of property for a parking facility that is leased to or operated by a private entity results in the removal from a taxing unit's tax rolls of real property otherwise subject to ad valorem taxation, the district shall pay to the taxing unit in which the property is located, on or before January 1 of each year, as a payment in lieu of taxes, an amount equal to the ad valorem taxes that otherwise would have been levied for the preceding tax year on that real property by the taxing unit, without including the value of any improvements constructed on the property.

SECTION 8. (a) The legislature validates and confirms all acts and proceedings of the Harris County Improvement District No. 3 and the district's board of directors that occurred before the effective date of this Act, including changing the district's name from the "Upper Kirby Management District" to "Harris County Improvement District No. 3."

(b) This section 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 with jurisdiction; or

(2) has been held invalid by a court with jurisdiction.

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.

Representative Wong moved to adopt the conference committee report on **HB 3578**.

A record vote was requested.

The motion prevailed by (Record 914): 139 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; Dukes;

Dunnam; Dutton; Edwards; 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; Hughes; Hunter; Hupp; Isett; Jones, D.; Jones, E.; Jones, J.; Keel; Keffer, B.; Keffer, J.; King; Kuempel; Laney; Laubenberg; Lewis; Luna; Mabry; Madden; Marchant; McCall; McClendon; McReynolds; Menendez; Mercer; Merritt; Miller; Moreno, J.; Moreno, P.; Morrison; Mowery; Naishtat; Nixon; Noriega; Oliveira; Paxton; Peña; Phillips; Pickett; Pitts; Puente; Quintanilla; Raymond; Reyna; Riddle; Ritter; Rodriguez; Rose; Smith, T.; Smith, W.; Smithee; Solis; Solomons; Stick; Swinford; Talton; Taylor; Telford; Thompson; Truitt; Turner; Van Arsdale; Villarreal; West; Wilson; Wise; Wohlgemuth; Wolens; Wong; Woolley; Zedler.

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

Absent — Driver; Eiland; Geren; Howard; Kolkhorst; Krusee; Martinez Fischer; Seaman.

STATEMENTS OF VOTE

When Record No. 914 was taken, I was in the house but away from my desk. I would have voted yes.

Krusee

When Record No. 914 was taken, I was in the house but away from my desk. I would have voted yes.

Martinez Fischer

HB 1119 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Goodman submitted the following conference committee report on **HB 1119** :

Austin, Texas, May 31, 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 1119** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Armbrister
Deuell
Janek

Goodman
Branch
Merritt
Hughes

On the part of the senate

On the part of the house

HB 1119, A bill to be entitled An Act relating to the disposition of cruelly treated animals.

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

SECTION 1. Subchapter B, Chapter 821, Health and Safety Code, is amended by adding Section 821.0211 to read as follows:

Sec. 821.0211. ADDITIONAL DEFINITION. In this subchapter, "magistrate" means any officer as defined in Article 2.09, Code of Criminal Procedure, except that the term does not include justices of the supreme court, judges of the court of criminal appeals, or courts of appeals, judges or masters of statutory probate courts, or judges or masters of district courts that give preference to family law matters or family district courts under Subchapter D, Chapter 24, Government Code.

SECTION 2. Sections 821.022-821.025, Health and Safety Code, are amended to read as follows:

Sec. 821.022. SEIZURE OF CRUELLY TREATED ANIMAL. (a) If a ~~peace officer [county sheriff, constable, or deputy constable]~~ or an officer who has responsibility for animal control in a county or municipality has reason to believe that an animal has been or is being cruelly treated, the officer [he] may apply to a justice court or magistrate in the county or to a municipal court in the municipality in which the animal is located for a warrant to seize the animal.

(b) On a showing of probable cause to believe that the animal has been or is being cruelly treated, the court or magistrate shall issue the warrant and set a time within 10 calendar days of the date of issuance for a hearing in the appropriate justice court or municipal court to determine whether the animal has been cruelly treated.

(c) The officer executing the warrant shall cause the animal to be impounded and shall give written notice to the owner of the animal of the time and place of the hearing.

Sec. 821.023. HEARING; ORDER OF DISPOSITION [SALE] OR RETURN OF ANIMAL. (a) A finding in a [county] court of competent jurisdiction that the owner of an animal is guilty of an offense under Section 42.09, Penal Code, involving the animal is prima facie evidence at a hearing authorized by Section 821.022 that the animal has been cruelly treated.

(b) A statement of an owner made at a hearing provided for under this subchapter is not admissible in a trial of the owner for an offense under Section 42.09, Penal Code.

(c) Each interested party is entitled to an opportunity to present evidence at the hearing.

(d) If [Except as provided by Subsection (c), if] the court finds that the animal's owner has cruelly treated the animal, the owner shall be divested of ownership of the animal, and the court shall:

- (1) order a public sale of the animal by auction;
- (2) order the animal given to a nonprofit animal shelter, pound, or society for the protection of animals; or

(3) order the animal humanely destroyed if the court decides that the best interests of the animal or that the public health and safety would be served by doing so.

(e) A [If the] court that finds that an [the] animal's owner has cruelly treated the animal shall order the owner to pay all court costs, including costs of:

(1) investigation;

(2) expert witnesses;

(3) housing and caring for the animal during its impoundment;

(4) conducting any public sale ordered by the court; and

(5) humanely destroying the animal if destruction is ordered by the court [and that the animal is farm livestock, the owner shall be divested of ownership and the court shall order a public sale of the animal by auction, order the animal given to a nonprofit animal shelter, pound, or society for the protection of animals, or order the animal humanely destroyed if the court decides that the best interests of the animal or that the public health and safety would be served by doing so. In this subsection, "farm livestock" means cattle, hogs, sheep, goats, mules, horses, jacks, jennets, or poultry raised or used on a farm or ranch for food or for the production of legal income].

(f) The court may order that an animal disposed of under Subsection (d)(1) or (d)(2) be spayed or neutered at the cost of the receiving party.

(g) The court shall order the animal returned to the owner if the court does not find that the animal's owner has cruelly treated the animal.

Sec. 821.024. SALE OR DISPOSITION OF CRUELLY TREATED ANIMAL. (a) Notice of an auction ordered under this subchapter must be posted on a public bulletin board where other public notices are posted for the county or municipality. At the auction, a bid by the former owner of a cruelly treated animal or the owner's representative may not be accepted.

(b) Proceeds from the sale of the animal shall be applied first to any costs owed by the former owner under Section 821.023(e) [the expenses incurred in caring for the animal during impoundment and in conducting the auction]. The officer conducting the auction shall pay any excess proceeds to the justice or municipal court ordering the auction. The court shall return the excess proceeds to the former owner of the animal.

(c) If the officer is unable to sell the animal at auction, the officer [he] may cause the animal to be humanely destroyed or may give the animal to a nonprofit animal shelter, pound, or society for the protection of animals.

Sec. 821.025. APPEAL. (a) An owner of an animal ordered sold at public auction as provided in this subchapter may appeal the order to a county court or county court at law in the county in which the justice or municipal court is located. As a condition of perfecting an appeal, the owner must file an appeal bond in an amount determined by the justice or municipal court to be adequate to cover the estimated expenses incurred in housing and caring for the impounded animal during the appeal process. The decision of the county court or county court at law may not be further appealed. An owner may not appeal an order:

(1) to give the animal to a nonprofit animal shelter, pound, or society for the protection of animals; or

(2) to humanely destroy the animal.

(b) While an appeal under this section is pending, the animal may not be:

(1) sold[~~,-destroyed,~~] or given away as provided by Sections 821.023 and 821.024; or

(2) destroyed, except under circumstances which would require the humane destruction of the animal to prevent undue pain to or suffering of the animal [821.022-821.024].

SECTION 3. This Act takes effect September 1, 2003.

Representative Goodman moved to adopt the conference committee report on **HB 1119**.

The motion prevailed.

HB 1576 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Gallego submitted the following conference committee report on **HB 1576** :

Austin, Texas, May 29, 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 1576** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Shapleigh

Ratliff

Fraser

On the part of the senate

Gallego

Castro

McCall

On the part of the house

HB 1576, A bill to be entitled An Act relating to the telecommunications planning and oversight council.

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

SECTION 1. Sections 2054.201(a) and (b), Government Code, are amended to read as follows:

(a) The telecommunications planning and oversight council is composed of:

(1) a representative of the comptroller's office, appointed by the comptroller;

(2) the executive director of the Telecommunications Infrastructure Fund Board;

(3) a representative of the Texas Building and Procurement Commission, appointed by the executive director of the commission;

(4) a member representing the interests of state agencies with 1,000 employees or more, appointed by the lieutenant governor;

(5) a member representing the interests of state agencies with fewer than 1,000 employees, appointed by the speaker of the house of representatives;

(6) a member representing the interests of institutions of higher education, appointed by the commissioner of higher education;

(7) a member representing the interests of The University of Texas System, appointed by the chancellor;

(8) a member representing the interests of The Texas A&M University System, appointed by the chancellor;

(9) a member representing the interests of public school districts that are customers of the consolidated telecommunications system, appointed by the governor;

(10) a member representing the interests of local governments that are customers of the consolidated telecommunications system, appointed by the governor; ~~and~~

(11) two public members with telecommunications expertise, appointed by the governor; and

(12) a representative of the Health and Human Services Commission, appointed by the commissioner of health and human services.

(b) Appointed members of the telecommunications planning and oversight council serve staggered two-year terms, with the terms of four or five members expiring August 31 each year, except that:

(1) the representative of the comptroller's office serves at the discretion of the comptroller;

(2) ~~and~~ the representative of the Texas Building and Procurement Commission serves at the discretion of the executive director of the commission; and

(3) the representative of the Health and Human Services Commission serves at the discretion of the commissioner of health and human services.

SECTION 2. Section 2054.206, Government Code, is amended to read as follows:

Sec. 2054.206. ANNUAL REPORT. The telecommunications planning and oversight council shall submit an annual report not later than November 1 to the department and to each entity served by the consolidated telecommunications system or the centralized capitol complex telephone system. The report must include:

(1) information about the accomplishment of service objectives and other performance measures for management of the consolidated telecommunications system and the centralized capitol complex telephone system;

(2) information about the accounting and financial performance of the consolidated telecommunications system and the centralized capitol complex telephone system;

(3) estimates of savings to entities served by the consolidated telecommunications system over standard rates available to state agencies that ~~who~~ acquire telecommunications services directly;

(4) trends in network use, including the number of users, workstations, and locations supported; and

(5) rate information for services provided by the consolidated telecommunications system and the centralized capitol complex telephone system.

SECTION 3. Subchapter H, Chapter 2054, Government Code, is amended by adding Section 2054.2025 to read as follows:

Sec. 2054.2025. LIMITATION OF LIABILITY. A member of the telecommunications planning and oversight council is not liable in a civil action for an act performed in good faith in the performance of the member's functions.

SECTION 4. Section 2054.205(c), Government Code, is repealed.

SECTION 5. (a) When the terms of the members of the telecommunications planning and oversight council first expire after the effective date of this Act:

(1) the lieutenant governor and the speaker of the house of representatives shall each appoint one member, and the governor shall appoint two members, according to Section 2054.201, Government Code, for terms expiring on the first August 31 occurring after the effective date of this Act; and

(2) the commissioner of higher education, the chancellor of The University of Texas System, and the chancellor of The Texas A&M University System shall each appoint one member, and the governor shall appoint two members, according to Section 2054.201, Government Code, for terms expiring on the second August 31 occurring after the effective date of this Act.

(b) Promptly after this Act takes effect, the commissioner of health and human services shall appoint a representative to the telecommunications planning and oversight council.

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.

Representative Gallego moved to adopt the conference committee report on **HB 1576**.

A record vote was requested.

The motion prevailed by (Record 915): 138 Yeas, 0 Nays, 2 Present, not voting.

Yeas — Allen; Alonzo; 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; Escobar; Farabee; 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; Kolkhorst; Krusee; Kuempel; Laney; Laubenberg; Lewis; Luna; Madden; Marchant; Martinez Fischer; McCall; McClendon; McReynolds; Menendez; Mercer; Merritt; Miller; 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; Talton; Taylor; Telford; Thompson; Truitt; Turner; Villarreal; West; Wilson; Wise; Wohlgemuth; Wolens; Wong; Woolley; Zedler.

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

Absent — Bailey; Capelo; Dutton; Farrar; Gattis; Hardcastle; Mabry; Moreno, J.; Smith, W.; Van Arsdale.

(Mabry in the chair)

**HCR 286 - ADOPTED
(by Wise)**

Representative Wise moved to suspend all necessary rules to take up and consider at this time **HCR 286**.

The motion prevailed without objection.

The following resolution was laid before the house:

HCR 286, Honoring U.S. Marine Corporal Manuel Espinoza, Jr., of Weslaco for his bravery during Operation Iraqi Freedom.

HCR 286 was adopted without objection.

HB 638 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Chisum submitted the following conference committee report on **HB 638** :

Austin, Texas, May 31, 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 638** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Armbrister	Chisum
Harris	Capelo
Ogden	Wilson
Jackson	McCall
Averitt	

On the part of the senate

On the part of the house

HB 638, A bill to be entitled An Act relating to emissions reductions incentives and the emissions reductions incentives account.

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

SECTION 1. Sections 382.051865(a), (c), and (d), Health and Safety Code, are amended to read as follows:

(a) The commission by rule shall ~~[may]~~ develop a program for the reduction of emissions of nitrogen oxides from reciprocating internal combustion engines associated with pipelines that are required by this subchapter to reduce the hourly emissions rate of nitrogen oxides, expressed in terms of grams per brake horsepower-hour, by at least 50 percent. In developing a program under this section the commission must cooperate with:

- (1) local governments;
- (2) agencies, departments, and political subdivisions of the state; and
- (3) the United States and its agencies.

(c) The emissions reduction program shall ~~[may]~~ include incentives as developed by the commission for nitrogen oxides emissions reduction projects for reciprocating internal combustion engines described by Subsection (a), including a partial reimbursement for the capital cost of installing technology to reduce the emissions. The incentives may be applied only to expenses of projects to achieve those reductions of a reciprocating internal combustion engine's hourly emissions rate of nitrogen oxides, expressed in terms of grams per brake horsepower-hour, only to the extent the reductions exceed 30 percent and do not exceed 50 percent of the engine's emissions rate before modification.

(d) Rules adopted under this section may not require more stringent emissions reduction ~~[must include]~~ criteria than those specified in this subsection for ~~[the]~~ determining eligibility for an emissions reduction project incentive under the program. To be eligible under the criteria, a facility must:

(1) be subject to the requirement under this subchapter that it reduce its hourly emissions rate of nitrogen oxides, expressed in terms of grams per brake horsepower-hour, by 50 percent;

(2) be reducing its hourly emissions rate of nitrogen oxides, expressed in terms of grams per brake horsepower-hour, by at least 50 percent; and

(3) be located in the East Texas region established by this subchapter for purposes of compliance with permit requirements for facilities affected by Section 382.0518(g).

SECTION 2. Section 78(b), Chapter 1158, Acts of the 77th Legislature, Regular Session, 2001, is transferred to Subchapter C, Chapter 382, Health and Safety Code, redesignated as Section 382.051866 of that subchapter, and amended to read as follows:

Sec. 382.051866. [(b)] EMISSIONS REDUCTIONS INCENTIVES ACCOUNT. (a) In this section, "affiliate" means a person that directly or indirectly controls, is controlled by, or is under common control with another person.

(b) [(b)] The comptroller of public accounts shall establish an account within the clean air account [no. 151] to be known as the emissions reductions incentives account.

(c) [(c)] The emissions reductions incentives account consists of money from:

(1) [(A)] gifts, grants, or donations to the account for a designated or general use; [and]

(2) [(B)] money from any other source the legislature designates; and

(3) the interest earned on money in the emissions reductions incentives account.

(d) Money [~~(3) The commission may use the money~~] in the emissions reductions incentives account may be appropriated only to pay for emissions reduction project incentives under a program developed under Section 382.051865[, ~~Health and Safety Code,~~] and administrative expenses associated with providing the incentives or the incentive program established under that section.

(e) A person or an affiliate of a person who pays or contributes money to the emissions reductions incentives account is ineligible to receive money from the account under a program developed under Section 382.051865.

(f) [~~(4)~~] The emissions reductions incentives account is exempt from the application of Section 403.095, Government Code.

SECTION 3. Section 382.05186, Health and Safety Code, is amended by adding Subsection (j) to read as follows:

(j) A reciprocating internal combustion engine that is subject to this section and to a mass emissions cap as established by commission rule is considered permitted under this section with respect to all air contaminants if the facility is:

(1) located in an area designated nonattainment for an ozone national ambient air quality standard; and

(2) achieving compliance with all state and federal requirements designated for that area.

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.

Representative Chisum moved to adopt the conference committee report on **HB 638**.

A record vote was requested.

The motion prevailed by (Record 916): 148 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; Lewis; Luna; 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.

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

HB 2533 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative B. Brown submitted the following conference committee report on **HB 2533** :

Austin, Texas, May 31, 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 2533** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Staples	B. Brown
Armbrister	Lewis
Duncan	Flynn
Hinojosa	Casteel
On the part of the senate	On the part of the house

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.

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

SECTION 1. CREATION AND NAMING OF DISTRICT; CONTROLLING LAW. (a) The Lake View Management and Development District is created as a special district under Section 59, Article XVI, Texas Constitution.

(b) The board by resolution may change the district's name. The board shall give written notice of the change to the commission.

(c) The district is a unit of government for the purposes of Chapter 101, Civil Practice and Remedies Code, and operations of the district are considered to be essential governmental functions and not proprietary functions for all purposes, including the application of that chapter.

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 Lake View Management and Development District.
- (4) "Improvement project" means a program or project authorized by Section 15 of this Act, inside or outside the boundaries of the district.

SECTION 3. BOUNDARIES. The district includes the land located in Henderson County that is described and defined by metes and bounds, as follows, to-wit:

BEING a 549.0 acre tract of land situated in the G. Martinez Survey, Abstract No. 481, Henderson County, Texas, and being comprised of nine (9) tracts of land as conveyed in six (6) deeds to Long Cove Ranch Company as follows: (1) Parcel 10C and Parcel 10D described as Tracts 10 C, 56.41 acres and 10 D, 54.86 acres in Volume 2158, Page 001, Deed Records, Henderson County, Texas, (2) Parcel 9 described as 140.0 acres in Volume 2143, Page 363, Deed Records, Henderson County, Texas, (3) Parcel 8 described as 100.0 acres in Volume 2030, Page 555, Deed Records, Henderson County, Texas, (4) Parcel 7 described as 40.72 acres in Volume 2030, Page 541, Deed Records, Henderson County, Texas, (5) Parcels 6A, 6B, and 6D described as 11.064 acres, 44.317 acres and 61.686 acres tracts respectively in Volume 1960, Page 595, Deed Records, Henderson County, Texas, and (6) portion of Parcel 4, the easterly 40 acres of the first tract described in Volume 1769, Page 768, Deed Records, Henderson County, Texas, and being more particularly described as follows:

BEGINNING at the intersection of the north line of Parcel 8 with the deeded 325 foot elevation take line of Cedar Creek Lake;

THENCE North 89 degrees 23 minutes 11 seconds East, along the north line of Parcel 8 , called the north line of Martinez Survey and the south line of Thomas Caro Survey, a distance of 654.83 feet to the northeast corner of said Parcel 8 and the northwest corner of Parcel 10C;

THENCE North 89 degrees 46 minutes 07 seconds East, along the north line of Parcel 10C, called the north line of said Martinez Survey, a distance of 1,203.86 feet to the northeast corner of said Parcel 10C;

THENCE South 00 degrees 47 minutes 49 seconds West, along the east line of Parcel 10 C, a distance of 2,418.84 feet to the southeast corner of said Parcel 10C;

THENCE South 88 degrees 14 minutes 18 seconds West, along the south line of Parcel 10 C, a distance of 1,175.96 feet to the southeast corner of Parcel 8;

THENCE South 88 degrees 53 minutes 14 seconds West, along the south line of Parcel 8, a distance of 1,254.61 feet to a point in the east line of Parcel 10D;

THENCE South 00 degrees 06 minutes 04 seconds East, along the east line of Parcel 10 C, a distance of 348.17 feet to the southeast corner of said Parcel 10 C and the northeast corner of Parcel 9;

THENCE South 00 degrees 06 minutes 04 seconds East, along the east line of Parcel 9, a distance of 2,520.78 feet to the southeast corner of said Parcel 9;

THENCE North 89 degrees 49 minutes 16 seconds West, along the south line of Parcel 9, a distance of 2,689.08 feet to the southwest corner of said Parcel 9 in the east line of Parcel 6 D;

THENCE South 00 degrees 33 minutes 24 seconds West, along the east line of Parcel 6 D, a distance of 51.64 feet to an angle point in said east line;

THENCE South 00 degrees 25 minutes 27 seconds East, continuing along the east line of Parcel 6 D, a distance of 1,844.44 feet to the southeast corner of said Parcel 6 D;

THENCE South 88 degrees 23 minutes 18 seconds West, along the south line of Parcel 6 D, a distance of 1,534.22 feet to southwest corner of said Parcel 6 D and the southeast corner of Parcel 4;

THENCE North 00 degrees 02 minutes 41 seconds East, crossing Parcel 4, a distance of 2,918.36 feet to the deeded 325 foot elevation take line of Cedar Creek Lake;

THENCE generally in a northeasterly direction with it's meanders along the deeded 325 foot elevation take line of Cedar Creek Lake to the PLACE OF BEGINNING and containing 549.0 acres of land more or less.

SECTION 4. FINDINGS RELATING TO BOUNDARIES. The boundaries of the district form a closure. A mistake in the name or spelling of a party to a deed or to the page or volume where filed in the deed records of Henderson County, or in the name of a survey or abstract, does not affect:

- (1) the district's organization, existence, or validity;
- (2) the district's right to enter into any type of contract for the purposes for which the district is created;
- (3) the district's right to impose, assess, or collect taxes, fees, or charges; or
- (4) the operation of the board or the district.

SECTION 5. LEGISLATIVE DECLARATIONS AND FINDINGS. (a) The legislature finds that all of the land and other property included in the district will benefit from the improvement projects and services to be accomplished by the district under powers conferred by Sections 52 and 52a, Article III, and Section 59, Article XVI, Texas Constitution, and the other powers granted under this Act, and the creation of the district is essential to accomplish the purposes of those provisions and to accomplish the other public purposes stated in this Act.

(b) The legislature further finds that the creation of the district:

- (1) is essential to the conservation and beneficial use of the water, land, soil, and other natural resources in or adjacent to the district;
- (2) is essential to further the public purposes of the economic development and diversification of the state, the elimination of unemployment and underemployment, and the stimulation and development of transportation and commerce;
- (3) will promote the health, safety, and general welfare of residents, employers, employees, and consumers in the district and in Henderson County and of the public; and
- (4) is in the public interest.

(c) The district's operations and the district's improvement projects will enable the district to preserve, maintain, and enhance the economic health and vitality of the area in the district as a community, residential, recreational, business, and commerce center. The district will further promote the health, safety, welfare, education, convenience, and enjoyment of the public by improving, landscaping, and developing certain areas in and adjacent to the

district and providing public services and facilities in and adjacent to the district that are necessary for the restoration, preservation, enhancement, and enjoyment of scenic beauty.

SECTION 6. CONSTRUCTION OF ACT. (a) This Act shall be liberally construed in conformity with the findings and purposes stated in this Act.

(b) Chapter 311, Government Code, applies to this Act.

SECTION 7. GENERAL POWERS AND DUTIES. (a) The district has all of the powers and duties provided by the following:

(1) the general laws relating to conservation and reclamation districts created under Section 59, Article XVI, Texas Constitution, including Chapters 49 and 54, Water Code, except that the district's bonds and other securities are not subject to the jurisdiction or supervision of the commission under Chapter 49, Water Code, or other law;

(2) the general laws relating to road districts and road utility districts created under Section 52(b), Article III, Texas Constitution, including Chapter 441, Transportation Code;

(3) Chapter 372, Local Government Code, in the same manner as a municipality or a county;

(4) Chapter 375, Local Government Code; and

(5) Section 4B, Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes).

(b) A provision of this Act prevails over a provision of the general law that is in conflict or inconsistent with this Act.

SECTION 8. BOARD OF DIRECTORS; ELIGIBILITY. (a) Except as provided by Subsections (b) and (c) of this section, the district is governed by a board of five directors who serve staggered terms of four years.

(b) The following directors serve until March 1, 2008:

(1) Position One: Murray Holland

(2) Position Two: Scott Griffith

(3) Position Three: Thomas Corcoran

(4) Position Four: David Jaderlund

(5) Position Five: Robert Whitman

(c) The board shall hold an election to elect all directors on the uniform election day in February 2008. Persons elected to Positions One and Two serve terms expiring March 1, 2010. Persons elected to Positions Three, Four, and Five serve terms expiring March 1, 2012.

(d) Starting in 2010, the board shall hold an election on the uniform election day in February of an even-numbered year to elect directors to fill the positions the terms of which expire on March 1 of that year.

(e) Other than a director listed in Subsection (b) of this section, to be qualified to serve as a director a person must be at least 18 years of age and:

(1) reside in the district;

(2) own real property in the district;

(3) own at least 10 percent of the outstanding interest of a corporation or general or limited partnership that owns real property in the district; or

(4) be an agent, employee, officer, or director of a corporation, limited liability company, or partnership that owns real property in the district.

SECTION 9. VACANCY. A vacancy on the board shall be filled by appointment by the remaining members of the board of a person who meets the qualifications under Section 8(e) of this Act.

SECTION 10. 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. The bond must be approved by the board.

(b) Each director shall take the oath of office prescribed by the constitution for public office.

(c) The bond and oath shall be filed with the district and the district shall retain the bond and oath in its records.

(d) The district shall pay the cost of a bond executed under Subsection (a) of this section.

SECTION 11. OFFICERS. The board shall elect a chair, a vice chair, and a secretary from its members.

SECTION 12. COMPENSATION. A director is not entitled to compensation for service on the board but is entitled to be reimbursed for necessary and reasonable expenses incurred in carrying out the duties and responsibilities of a director.

SECTION 13. QUORUM. Three directors are a quorum. A concurrence of a majority of a quorum of the board shall be required for any official action of the district.

SECTION 14. DISTRICT CONFIRMATION ELECTION. (a) As soon as practicable after all initial directors have qualified for office, the initial directors shall hold an organizational meeting and call a confirmation election to be held not later than the second uniform election date occurring after the date of the organizational meeting.

(b) The confirmation election shall be called and held to confirm the establishment of the district in the manner provided by Subchapter D, Chapter 49, Water Code. If a majority of the votes cast at a confirmation election do not favor the creation of the district, the board may call succeeding elections on a uniform election date, but may not call another confirmation election sooner than six months after the date of the previous election.

(c) Before the district is confirmed at an election, the district may carry on any business as the board may determine except that the district may not borrow money or impose or assess a tax or an assessment.

SECTION 15. IMPROVEMENT PROJECTS. The district may provide, or it may enter into contracts with a governmental or private entity to provide, the following types of improvement projects or activities in support of or incidental to those projects:

(1) retail or wholesale water treatment, supply, and distribution facilities and systems to provide potable and nonpotable water to the residents and businesses of the district, including wastewater and sewerage collection and

treatment facilities and systems, provided that treated effluent water resulting from any sewerage treatment facilities operated by or in the district may be used by the district for irrigation in the district;

(2) the provision of septic tank maintenance services inside or outside the district and of solid waste disposal services if the board determines the action to be necessary and appropriate to protect the district;

(3) macadamized, graveled, or paved roads, streets, and turnpikes, inside and outside the district to the extent authorized by Section 52, Article III, Texas Constitution;

(4) the planning, design, construction, improvement, and maintenance of:

(A) landscaping;

(B) highway right-of-way or transit corridor beautification and improvements;

(C) lighting, banners, and signs;

(D) streets or sidewalks;

(E) hiking and cycling paths and trails, pedestrian walkways, skywalks, crosswalks, or tunnels;

(F) parks, lakes, gardens, recreational and sports facilities, open space, scenic areas, and related exhibits and preserves;

(G) fountains, plazas, and pedestrian malls; and

(H) drainage or storm-water detention improvements;

(5) protection and improvement of the quality of storm water that flows through the district;

(6) the planning, design, construction, improvement, maintenance, and operation of:

(A) solid waste, water, sewer, or power facilities or services, including electrical, gas, steam, and chilled water facilities; or

(B) off-street parking facilities and heliports;

(7) the planning and acquisition of:

(A) public art and sculpture and related exhibits and facilities; and

(B) educational and cultural exhibits and facilities;

(8) the planning, design, construction, acquisition, lease, rental, improvement, maintenance, installation, and management of and provision of furnishings for facilities for:

(A) conferences, conventions, or exhibitions;

(B) manufacturer, consumer, or trade shows;

(C) civic, community, or institutional events; and

(D) exhibits, displays, attractions, special events, and seasonal or cultural celebrations and holidays;

(9) the removal, razing, demolition, or clearing of land or improvements in connection with any improvement project;

(10) the acquisition and improvement of land and other property for the mitigation of the environmental effects of any improvement project;

(11) the acquisition of property or an interest in property in connection with an authorized improvement project;

(12) any special or supplemental services for the improvement and promotion of the district or the areas adjacent to the district or for the protection of public health and safety within or adjacent to the district, including advertising, promotion, tourism, health and sanitation, public safety, security, fire protection or emergency medical services, business recruitment, development, elimination of traffic congestion, and recreational, educational, or cultural improvements, enhancements, and services; and

(13) any similar public improvements, facilities, or services.

SECTION 16. POWERS RELATED GENERALLY TO CONTRACTS AND FINANCIAL MATTERS. (a) The district may:

(1) impose an ad valorem tax in accordance with Chapter 375, Local Government Code, on all taxable property in the district;

(2) impose an assessment or impact fee in the manner provided for a municipality or county under Chapter 372, Local Government Code, on all industrial, commercial, and residential property in the district;

(3) impose, assess, and apply the proceeds from a limited sales and use tax, and a hotel occupancy tax, as authorized by this Act;

(4) impose rates, fees, and charges for the use of any improvement project or the consumption of a product resulting from an improvement project;

(5) borrow money for district purposes by issuing or executing bonds, notes, credit agreements, or other obligations of any kind found by the board to be necessary or appropriate for district purposes;

(6) enter into a contract with any person for the accomplishment of any district purpose, including a contract for:

(A) the payment, repayment, or reimbursement of costs incurred by that person on behalf of the district, including all or part of the costs of an improvement project and interest on the reimbursed cost; or

(B) the use, occupancy, lease, rental, operation, maintenance, or management of all or part of a proposed or existing improvement project;

(7) apply for and contract with any person to receive, administer, and perform any duty or obligation of the district under a federal, state, local, or private gift, grant, loan, conveyance, transfer, bequest, donation, or other financial assistance arrangement relating to the investigation, planning, analysis, study, design, acquisition, construction, improvement, completion, implementation, or operation by the district or others of a proposed or existing improvement project;

(8) establish, revise, repeal, enforce, collect, and apply the proceeds from user fees or charges for the enjoyment, sale, rental, or other use of the district's facilities, services, properties, or improvement projects;

(9) provide or secure the payment or repayment of the costs and expenses of the establishment, administration, and operation of the district and the district's costs or share of the costs of an improvement project or district contractual obligation or indebtedness by or through a lease, installment purchase contract, or other agreement with any person, or the imposition of taxes, user fees, concessions, rentals, or other revenues or resources of the district;

(10) establish user charges related to the operation of various public services, including public water supply services, for the collection and treatment of wastewater, and for the operation of storm-water facilities, including the regulation of storm water for the protection of water quality in the district, and for the provision of septic tank maintenance services inside and outside the district;

(11) undertake separately or jointly with other persons all or part of the cost of an improvement project, including an improvement project:

(A) for improving, enhancing, and supporting public safety and security, fire protection and emergency medical services, and law enforcement in and adjacent to the district; or

(B) that confers a general benefit on the entire district or a special benefit on a definable part of the district; and

(12) enter into tax abatement agreements in accordance with the general laws of the state authorizing and applicable to tax abatement agreements by municipalities.

(b) A contract the district enters into to carry out a purpose of this Act may be on any terms and for any period as the board may determine.

(c) A state agency, a municipality, Henderson County, any other political subdivision, a corporation, an individual, or any other entity may contract with the district to carry out the purposes of this Act without any further statutory or other authorization.

SECTION 17. RULES. The district may adopt rules:

(1) to administer or operate the district;

(2) for the use, enjoyment, availability, protection, security, and maintenance of the district's properties and facilities; or

(3) to provide for public safety and security in the district.

SECTION 18. ADDITION OR REMOVAL OF TERRITORY. The board may add, delete, or exclude territory in the manner provided by Subchapter J, Chapter 49, Water Code, as limited by Section 54.016, Water Code, except that:

(1) for purposes of this section, a reference in Subchapter J, Chapter 49, Water Code, or Section 54.016, Water Code, to a tax means an ad valorem tax;

(2) Section 54.016, Water Code, and Section 42.042, Local Government Code, do not apply to the district's annexation of land restricted primarily to commercial or business use;

(3) land may not be added or annexed to the district without the consent of the owners of the land; and

(4) land may not be removed or disannexed from the district at any time during which any bonds or other obligations of the district that are payable, in whole or in part, from ad valorem taxes are outstanding.

SECTION 19. EMINENT DOMAIN. (a) Within the boundaries of the district, the district may exercise the power of eminent domain for all public purposes.

(b) Outside the boundaries of the district, the district may exercise the power of eminent domain only for the purpose of constructing, acquiring, operating, repairing, or maintaining water supply lines or sanitary sewer lines.

(c) The district's power of eminent domain is exercised in the same manner as required for a county.

SECTION 20. NONPROFIT CORPORATION. (a) The district, by board resolution, may authorize the incorporation of a nonprofit corporation to assist and act for the district in implementing an improvement project or providing services 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, for the same term as, and on the same conditions as a board of directors of a local government corporation created under Subchapter D, Chapter 431, Transportation Code.

(c) A nonprofit corporation created under this section:

(1) has each power of and is considered for purposes of this Act to be a local government corporation created under Subchapter D, Chapter 431, Transportation Code; and

(2) may implement an improvement project and provide a service authorized by this Act and approved by the board.

SECTION 21. ECONOMIC DEVELOPMENT. The district may create economic development programs and exercise the economic development powers and authority that Chapter 380, Local Government Code, provides to a municipality with a population of more than 100,000, and Chapter 1509, Government Code, provides to any municipality.

SECTION 22. TERMS OF EMPLOYMENT; COMPENSATION. The board may employ and establish the terms of employment and compensation of an executive director or general manager and any other employees of the district the board considers necessary.

SECTION 23. USE OF ROADWAYS, PARKS, OTHER PUBLIC AREAS OF THE DISTRICT. (a) The board by rule may regulate the private use of public roadways, open spaces, parks, sidewalks, and similar public areas in the district. To the extent the rules of the district conflict with a rule, order, or regulation of Henderson County or the Tarrant Regional Water District, the rule, order, or regulation of the county or Tarrant Regional Water District controls. The rules may provide for the safe and orderly use of public roadways, open spaces, parks, sidewalks, and similar public areas or facilities.

(b) The board may require a permit for a parade, demonstration, celebration, entertainment event, or a similar nongovernmental activity in or on the public roadways, open spaces, parks, sidewalks, and similar public areas or facilities. The board may charge a fee for the permit application and for public safety or security services in an amount the board considers necessary.

(c) The board may require a permit or franchise agreement with a vendor, concessionaire, exhibitor, or similar private or commercial person or organization for the limited use of the area or facilities on terms and on payment of a permit or franchise fee the board may impose.

SECTION 24. ZONING BY COUNTY. (a) If requested by the district to exercise zoning powers, Henderson County may exercise, solely in the boundaries of the district, the zoning powers granted to counties in Subchapter E, Chapter 231, Local Government Code, without holding the election required by Section 231.075.

(b) If the county exercises zoning powers, the board shall exercise and perform the powers, duties, and functions of a lake planning commission under Section 231.077, Local Government Code.

(c) This section does not apply to land or facilities owned by the Tarrant Regional Water District.

SECTION 25. IMPACT FEES AND ASSESSMENTS. (a) The district may only impose impact fees and assessments in the manner provided by Chapter 372, Local Government Code, for a municipality, county, or public improvement district, according to benefits received by the property, including an impact fee or assessment on residential property.

(b) An impact fee for residential property must be for the limited purposes of providing capital funding for public water and wastewater facilities, for drainage and storm-water facilities, and for streets and alleys.

(c) The district may not impose an impact fee or assessment on the property, equipment, or facilities of a public utility provider or a cable operator as defined by 47 U.S.C. Section 522, as amended.

SECTION 26. OPERATION AND MAINTENANCE TAX; ELECTION.

(a) The district may impose a tax for operation and maintenance purposes, including for funds for planning, constructing, acquiring, maintaining, repairing, and operating all necessary land, plants, works, facilities, improvements, appliances, and equipment of the district and for paying costs of services, engineering and legal fees, and organization and administrative expenses.

(b) An operation and maintenance tax may not be imposed until it is approved by the qualified voters in the district voting at an election held for that purpose. If a majority of the votes cast at the election approve the imposition of the tax, the board may impose the tax and have it assessed and collected in the same manner as other district taxes.

(c) An operation and maintenance tax election may be held at the same time and in conjunction with any other district election. The election may be called by a separate election order or as part of any other election order.

(d) The proposition in an operation and maintenance tax election may be for a specific maximum rate or for an unlimited rate.

(e) If the district has surplus operation or maintenance tax funds that are not needed for the purposes for which they were collected, the funds may be used for any authorized purpose.

(f) Sections 26.04, 26.05, and 26.07, Tax Code, do not apply to a tax levied and collected under this section or an ad valorem tax levied and collected for the payment of the interest on and principal of bonds issued by the district.

SECTION 27. TAX LEVY FOR BONDS AND OTHER OBLIGATIONS.

(a) At the time bonds or other obligations payable in whole or in part from ad valorem taxes are issued:

(1) the board shall impose a continuing direct annual ad valorem tax, without limit as to rate or amount, for each year while all or part of the bonds are outstanding; and

(2) the district shall annually assess and collect an ad valorem tax on all taxable property in the district in an amount sufficient to:

(A) pay the interest on the bonds or other obligations as it becomes due;

(B) create a sinking fund for the payment of the principal of the bonds or other obligations when due or the redemption price at any earlier required redemption date; and

(C) pay the expenses of assessing and collecting the taxes.

(b) Bonds or other obligations that are secured by and payable from ad valorem taxes may not be issued unless the bonds and the imposition of the taxes are approved by a majority of the voters in the district voting at an election held for that purpose.

(c) The district shall conduct an election required by this section in the manner provided by Subchapter L, Chapter 375, Local Government Code.

SECTION 28. 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.

(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 of two percent, or the maximum rate at which the combined tax rate of all local sales and use taxes in any location in the district does not exceed two percent, 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.

(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) If all or part of the territory of the district is annexed by a municipality that has adopted and is imposing a sales and use tax, the sales and use tax imposed by the district in the annexed territory shall be reduced, if required, in even multiples of one-eighth percent, and without the necessity for an election, so that the combined rate of all sales and use taxes imposed by Henderson County, the annexing municipality, and all other political subdivisions within the annexed territory of the district will not exceed two percent.

(i) If the sales and use tax of Henderson County, an annexing municipality, or another political subdivision is required to be reduced under Subsection (h) of this section, the county, municipality, or other political subdivision is subject to Sections 321.102(e), (f), and (g), Tax Code.

(j) A tax imposed under this section or the reduction or repeal 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 notice required by Section 323.405(b), Tax Code.

(k) Not later than the 10th day after the date of the annexation or exclusion of territory by the district or the annexation of all or part of the territory of the district by a municipality requiring a reduction of the district's sales and use tax as provided by Subsection (h) of this section, the board shall send to the comptroller, by certified or registered mail, certified copies of all resolutions, orders, or ordinances pertaining to the annexation or exclusion of the territory by a district or municipality.

(l) 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 29. HOTEL OCCUPANCY TAX. (a) In this section, "hotel" has the meaning assigned by Section 156.001, Tax Code.

(b) The board by order may impose, repeal, or increase or decrease the rate of a tax on a person who, under a lease, concession, permit, right of access, license, contract, or agreement, pays for the use or possession or for the right to

use or possess a room that is in a hotel located in the boundaries of the district, costs \$2 or more each day, and is ordinarily used for sleeping. The amount of the tax may not exceed seven percent of the price paid for a room in a hotel.

(c) Except as inconsistent with this section, Subchapter A, Chapter 352, Tax Code, governs a hotel occupancy tax authorized under this section, including the collection of the tax, subject to the limitations prescribed by Sections 352.002(b) and (c), Tax Code.

(d) The district may examine and receive information related to the imposition, assessment, and collection of hotel occupancy taxes to the same extent as if the district were a municipality.

(e) For purposes of this section, a reference in Subchapter A, Chapter 352, Tax Code, to a county is a reference to the district and a reference in Subchapter A, Chapter 352, Tax Code, to the county's officers or governing body is a reference to the board.

SECTION 30. USE OF HOTEL OCCUPANCY TAX. (a) The district shall apply the proceeds from a hotel occupancy tax imposed under this Act for any of the district's purposes and for the purposes described by Section 352.1015, Tax Code, to the extent considered appropriate by the board.

(b) During each interval of three calendar years following the date on which a hotel occupancy tax imposed under this section is initially collected, the board may not apply an annual average of more than 10 percent of the amount of tax collected under Section 29 of this Act, excluding any interest earnings or investment profits and after a deduction for the costs of imposing and collecting the taxes, for the administrative expenses of the district or a district purpose other than:

(1) the costs of advertising and promoting tourism; or

(2) the costs of business development and commerce, including the costs of planning, designing, constructing, acquiring, leasing, financing, owning, operating, maintaining, managing, improving, repairing, rehabilitating, or reconstructing improvement projects for conferences, conventions, and exhibitions, manufacturer, consumer, or trade shows, and civic, community, or institutional events.

(c) For purposes of this section, a reference in Subchapter B, Chapter 352, Tax Code, to a county is a reference to the district and a reference in Subchapter B, Chapter 352, Tax Code, to the county's officers or governing body is a reference to the board.

SECTION 31. BONDS AND OTHER OBLIGATIONS. (a) The district may issue bonds in the manner provided by Subchapter J, Chapter 375, Local Government Code, except that Sections 375.207 and 375.208 do not apply to bonds issued under this Act.

(b) 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 the sales and use tax and the hotel occupancy tax authorized by this Act and from any other district revenues.

SECTION 32. DISSOLUTION. (a) Except as provided by Subsection (b) and the terms of a joint development and operating agreement, the board:

- (1) may dissolve the district by majority vote; and
- (2) shall dissolve the district on receipt of a written petition requesting dissolution signed by the owners of 75 percent of the acreage of real property in the district.

(b) The board may not dissolve the district until the district's outstanding indebtedness or contractual obligations have been repaid or discharged.

(c) After the board dissolves the district, the board shall transfer ownership of all property and assets of the district to Henderson County.

SECTION 33. 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;

(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 February 15, 2004.

Representative B. Brown moved to adopt the conference committee report on **HB 2533**.

The motion prevailed.

HB 2593 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Homer submitted the following conference committee report on **HB 2593** :

Austin, Texas, May 31, 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 2593** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Van de Putte
Madla
Lindsay

Homer
Phillips
Truitt
Swinford
R. Cook

On the part of the senate

On the part of the house

HB 2593, A bill to be entitled An Act relating to winery permits.

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

SECTION 1. Sections 16.01(a) and (c), Alcoholic Beverage Code, are amended to read as follows:

(a) Except as provided by Section 16.011, the [The] holder of a winery permit may:

(1) manufacture, bottle, label, and package wine containing not more than 24 percent alcohol by volume;

(2) manufacture and import grape brandy for fortifying purposes only and to be used only on his licensed premises;

(3) sell wine in this state to or buy wine from permit holders authorized to purchase and sell wine, including holders of wholesaler's permits, winery permits, and wine bottler's permits;

(4) sell wine to ultimate consumers;

(A) for consumption on the winery premises; or

(B) in unbroken packages for off-premises consumption in an amount not to exceed 35,000 [25,000] gallons annually;

(5) sell the wine outside this state to qualified persons;

(6) blend wines; and

(7) dispense free wine for consumption on the winery premises.

(c) The holder of a winery permit may conduct wine samplings, including wine tastings at a retailer's premises. A winery employee may open, touch, or pour wine, make a presentation, or answer questions at a wine sampling. ~~[A wine sampling may not be held in a location where a wine sampling is otherwise prohibited by law.]~~

SECTION 2. Chapter 16, Alcoholic Beverage Code, is amended by adding Section 16.011 to read as follows:

Sec. 16.011. PREMISES IN DRY AREA. A winery permit may be issued for premises in an area in which the sale of wine has not been authorized by a local option election. A holder of a permit under this section may engage in any activity authorized under Section 16.01 except that the permit holder may sell or dispense wine under that section only if the wine is:

(1) manufactured in this state; and

(2) at least 75 percent by volume fermented juice of grapes or other fruit grown in this state.

SECTION 3. Sections 16.01(d) and 16.05, Alcoholic Beverage Code, are repealed.

SECTION 4. This Act takes effect on the date on which the constitutional amendment proposed by the 78th Legislature, Regular Session, 2003, authorizing the legislature to authorize and govern the operation of wineries in this state takes effect. If that amendment is not approved by the voters, this Act has no effect.

Representative Homer moved to adopt the conference committee report on **HB 2593**.

The motion prevailed.

HJR 28 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Pickett submitted the following conference committee report on **HJR 28** :

Austin, Texas, May 31, 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 **HJR 28** 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.

Lucio	Pickett
Madla	Krusee
Ogden	Hamric
Armbrister	Gutierrez
On the part of the senate	On the part of the house

HJR 28, A joint resolution proposing a constitutional amendment providing for authorization of the borrowing of money on a short-term basis by a state transportation agency for transportation-related projects, and the issuance of bonds and other public securities secured by the state highway fund.

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

SECTION 1. Article III, Texas Constitution, is amended by adding Sections 49-m and 49-n to read as follows:

Sec. 49-m. (a) The legislature, by law, may authorize the Texas Transportation Commission or its successor to authorize the Texas Department of Transportation or its successor to issue notes or borrow money from any source to carry out the functions of the department.

(b) Notes issued or a loan obtained under this section may not have a term of more than two years. The legislature may appropriate money dedicated by Sections 7-a and 7-b, Article VIII, of this constitution for the purpose of paying a debt created by the notes or loan.

Sec. 49-n. (a) To fund highway improvement projects, the legislature may authorize the Texas Transportation Commission or its successor to issue bonds and other public securities and enter into bond enhancement agreements that are payable from revenue deposited to the credit of the state highway fund.

(b) In each fiscal year in which amounts become due under the bonds, other public securities, or agreements authorized by this section, there is appropriated from the revenue deposited to the credit of the state highway fund in that fiscal year an amount that is sufficient to pay:

(1) the principal of and interest on the bonds or other public securities that mature or become due during the fiscal year; and

(2) any cost related to the bonds and other public securities, including payments under bond enhancement agreements, that becomes due during that fiscal year.

(c) Any dedication or appropriation of revenue to the credit of the state highway fund may not be modified so as to impair any outstanding bonds or other public securities secured by a pledge of that revenue unless provisions have been made for a full discharge of those securities.

SECTION 2. 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 providing for authorization of the issuing of notes or the borrowing of money on a short-term basis by a state transportation agency for transportation-related projects, and the issuance of bonds and other public securities secured by the state highway fund."

Representative Pickett moved to adopt the conference committee report on **HJR 28**.

A record vote was requested.

The motion prevailed by (Record 917): 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; Flores; Flynn; Gallego; Garza; Gattis; Geren; Giddings; Goodman; Goolsby; Griggs; Guillen; Gutierrez; 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; Madden; Martinez Fischer; McCall; McClendon; McReynolds; Menendez; Mercer; Merritt; Miller; 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.

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

Absent — Farrar; Grusendorf; Hochberg; Marchant; Moreno, J.

SB 287 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Chisum submitted the conference committee report on **SB 287**.

Representative Chisum moved to adopt the conference committee report on **SB 287**.

A record vote was requested.

The motion prevailed by (Record 918): 142 Yeas, 0 Nays, 3 Present, not voting.

Yeas — Allen; Alonzo; Bailey; Baxter; Berman; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; 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; 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; 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; Peña; Phillips; Pickett; Pitts; Puente; Quintanilla; Raymond; Reyna; 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.

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

Absent — Burnam; Farrar; Grusendorf; Marchant; Moreno, J.

SB 631 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Talton submitted the conference committee report on **SB 631**.

Representative Talton moved to adopt the conference committee report on **SB 631**.

The motion prevailed.

**HB 645 - HOUSE DISCHARGES CONFEREES
HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS**

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 to discharge the conferees and concur in the senate amendments to **HB 645**.

The motion prevailed.

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

Amend SECTION 1 of **HB 645**, House Engrossment, on page 3, line 11, to strike "10,000" and replace with "4,000".

Senate Amendment No. 2 (Senate Floor Amendment No. 1)

Amend **HB 645** in SECTION 1 of the bill, in Section 202.007, Property Code, by striking Subsection (a) (page 1, lines 17-32, senate committee printing) and substituting the following:

(a) A property owners' association may not include or enforce a provision in a dedicatory instrument that prohibits or restricts a property owner from:

(1) implementing measures promoting solid-waste composting of vegetation, including grass clippings, leaves, or brush, or leaving grass clippings uncollected on grass;

(2) installing rain barrels or a rainwater harvesting system; or

(3) implementing efficient irrigation systems, including underground drip or other drip systems.

SB 474 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Capelo submitted the conference committee report on **SB 474**.

Representative Capelo moved to adopt the conference committee report on **SB 474**.

The motion prevailed.

SB 610 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Capelo submitted the conference committee report on **SB 610**.

Representative Capelo moved to adopt the conference committee report on **SB 610**.

The motion prevailed.

SB 585 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative D. Jones submitted the conference committee report on **SB 585**.

Representative D. Jones moved to adopt the conference committee report on **SB 585**.

The motion prevailed.

HR 1862 - NOTICE OF INTRODUCTION

Pursuant to the provisions of Rule 13, Section 9(f) of the House Rules, the chair announced the introduction of **HR 1862**, suspending the limitations on the conferees for **HB 7**.

HR 1861 - NOTICE OF INTRODUCTION

Pursuant to the provisions of Rule 13, Section 9(f) of the House Rules, the chair announced the introduction of **HR 1861**, suspending the limitations on the conferees for **HB 1**.

SB 970 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Puente submitted the conference committee report on **SB 970**.

Representative Puente moved to adopt the conference committee report on **SB 970**.

The motion prevailed. (B. Cook recorded voting no)

SB 1059 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Marchant submitted the conference committee report on **SB 1059**.

Representative Marchant moved to adopt the conference committee report on **SB 1059**.

The motion prevailed.

SB 1782 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Hamric submitted the conference committee report on **SB 1782**.

Representative Hamric moved to adopt the conference committee report on **SB 1782**.

A record vote was requested.

The motion prevailed by (Record 919): 147 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; Lewis; Luna; 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.; Solis; Solomons; Stick; Swinford; Talton; Taylor; Telford; Thompson; Truitt; Turner; Uresti; Van Arsdale; Villarreal; West; Wilson; Wise; Wohlgemuth; Wolens; Wong; Woolley; Zedler.

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

Absent — Smithee.

(Wise in the chair)

SB 755 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Chisum submitted the conference committee report on **SB 755**.

Representative Chisum moved to adopt the conference committee report on **SB 755**.

A record vote was requested.

The motion prevailed by (Record 920): 144 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; 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, J.; Keel; Keffer, B.; Keffer, J.; King; Kolkhorst; Krusee; Kuempel; Laney; Laubenberg; Lewis; Luna; Mabry; 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; Wohlgemuth; Wolens; Wong; Woolley; Zedler.

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

Absent — Brown, B.; Davis, J.; Jones, E.; Madden.

SB 76 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Grusendorf submitted the conference committee report on **SB 76**.

Representative Grusendorf moved to adopt the conference committee report on **SB 76**.

The motion prevailed.

HR 1804 - ADOPTED
(by Coleman)

The following privileged resolution was laid before the house:

HR 1804

BE IT RESOLVED by the House of Representatives of the State of Texas, 78th Legislature, Regular Session, 2003, That House Rule 13, Section 9(a), be suspended in part as provided by House Rule 13, Section 9(f), to enable the conference committee appointed to resolve the differences on **SB 1936**, relating to the creation of the Buffalo Bayou Management District; providing the authority to impose taxes and issue bonds, to consider and take action on the following matters:

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

SECTION 4. BOUNDARIES. The district includes all the territory contained in the following described area:

POINT OF BEGINNING at the intersection of the west boundary line of the Houston Downtown Management District and the north boundary of Memorial Drive right-of-way, then west along the north boundary of Memorial Drive right-of-way to the north boundary of Memorial Drive's Heights North exit ramp, then northwest along the north boundary of Memorial Drive's Heights North exit ramp to the east boundary of Heights boulevard right-of-way, then west across Heights Boulevard from the east boundary of Heights Boulevard right-of-way to the west boundary of the Heights Boulevard right-of-way, then south along the west boundary of Heights boulevard right-of-way to the north boundary of Memorial Drive's Memorial West entrance ramp, then southwest along the north boundary of Memorial Drive's Memorial West entrance ramp to the northern boundary line of Memorial Drive right-of-way, then west along the northern boundary line of Memorial Drive right-of-way to the west boundary line of Shepherd Drive right-of-way, then south along the west boundary line of Shepherd Drive right-of-way to the centerline of West Dallas, then east along the centerline of West Dallas to the intersection of the west boundary of Montrose Boulevard right-of-way and the centerline of West Dallas, then south along the west boundary line of Montrose Boulevard right-of-way to the south boundary line of U.S. Highway 59 and the west boundary line of Montrose Boulevard right-of-way, then in an easterly direction from said intersection along the south boundary line of U.S. Highway 59 to the intersection of the west boundary line of the Main Street right-of-way and then proceeding from said intersection in a northwesterly direction along the boundary line of the west Main Street

right-of-way paralleling the boundary line of the Greater Southeast Management District to the intersection of the boundary line of the south Portland Street right-of-way and the boundary line of the west Main Street right-of-way, being the southern boundary line of the Midtown Management District, then proceeding from said intersection in generally a northeasterly direction the boundary line parallels the Midtown Management District boundary line to the intersection of the west boundary line of the US Hwy 45 right-of-way and the north boundary line of the Cleveland Street right-of-way, being the western boundary line of the Houston Downtown Management District, then north from said intersection along the western boundary line of the Houston Downtown Management District to the POINT OF BEGINNING.

Explanation: The new description of the area of the district is necessary to reflect a change in the area to be included in the district.

(2) House Rule 13, Section 9(a)(1), is suspended to permit the committee to change text in SECTION 9 of the bill so that SECTION 9 reads as follows:

SECTION 9. BOARD OF DIRECTORS IN GENERAL. (a) The district is governed by a board of 31 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 15 directors' terms expiring June 1 of an odd-numbered year and 16 directors' terms expiring June 1 of the following odd-numbered year.

(c) The board may 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 five directors.

Explanation: The changed text is necessary to accommodate a larger board of directors for the district and to stagger terms accordingly.

(3) House Rule 13, Section 9(a)(1), is suspended to permit the committee to change text in SECTION 11(b) of the bill so that Subsection (b) reads as follows:

(b) If a department described by Subsection (a) of this section is consolidated, renamed, or changed, the board may appoint a director of the consolidated, renamed, or changed department as a nonvoting director. If a department described by Subsection (a) of this section is abolished, the board may appoint a representative of another department that performs duties comparable to those performed by the abolished department.

Explanation: The change is necessary to clarify to which section the reference to "Subsection (a)" applies.

(4) House Rule 13, Section 9(a)(1), is suspended to permit the committee to change text in SECTION 19(a) of the bill so that Subsection (a) reads as follows:

(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:

(1) maintenance and operation of the district and the improvements constructed or acquired by the district; or

(2) provision of a service.

Explanation: The change is necessary to clarify that the Section 18 referred to is from this Act.

(5) House Rule 13, Section 9(a)(1), is suspended to permit the committee to change text in SECTIONS 31(a), (b), and (c) of the bill so that Subsections (a), (b), and (c) read as follows:

(a) The initial board consists of the following persons:

Pos. No.	Name of Director
1	Kay Crooker
2	Mike Garver
3	Jackie Martin
4	Mark Lee
5	John Chase, Jr.
6	Adrian Collins
7	Max Schuette
8	June Deadrick
9	Don Cutrer
10	Raju Adwaney
11	Mike Mark
12	Sia Ravari
13	Cherry Walker
14	John Hansen
15	John Dao
16	William Taylor
17	Karen Domino
18	Kevin Hoffman
19	Jeff Andrews
20	William Paul Thomas
21	Theola Petteway
22	Keith Wade
23	Chrysisse Wilson
24	Sadie Rucker
25	Julie McClure
26	Angie Gomez
27	Tom Fricke
28	James Robert McDermaid
29	Kathy Hubbard
30	Marsha Johnson
31	Craig Jackson

(b) Of the initial directors, the terms of directors appointed for positions 1 through 15 expire June 1, 2005, and the terms of directors appointed for positions 16 through 31 expire June 1, 2007.

(c) Section 10 of this Act does not apply to this section.

Explanation: The changed text is necessary to add the complete number of initial directors authorized to serve on the board and to adjust their terms accordingly.

HR 1804 was adopted.

SB 1936 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Coleman submitted the conference committee report on **SB 1936**.

Representative Coleman moved to adopt the conference committee report on **SB 1936**.

A record vote was requested.

The motion prevailed by (Record 921): 145 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.; 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; 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; 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(C); Wohlgemuth; Wolens; Wong; Woolley; Zedler.

Present, not voting — Mr. Speaker.

Absent — Corte; Driver; Heflin; Krusee.

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).

SB 1708 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Baxter submitted the conference committee report on **SB 1708**.

Representative Baxter moved to adopt the conference committee report on **SB 1708**.

The motion prevailed.

HB 1082 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Talton submitted the following conference committee report on **HB 1082** :

Austin, Texas, May 31, 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 1082** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Staples
 Brimer
 Harris

Talton
 Reyna
 Christian
 Hegar
 Ellis

On the part of the senate

On the part of the house

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

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

SECTION 1. (a) Section 6.025, Tax Code, is amended by adding Subsection (d) to read as follows:

(d) If on May 1 all the chief appraisers of the appraisal districts described by Subsection (a) in which a parcel or item of property is located are not in agreement as to the appraised or market value of the property, on that date each of the chief appraisers shall enter as the appraised or market value of the property on the appraisal records of the appropriate appraisal district the lowest appraised or market value of the property as determined by any of the chief appraisers. If as a result of a protest, appeal, or other action the appraised or market value of the property is subsequently reduced in any of the appraisal districts, the chief appraiser shall notify each of the appraisal districts of the reduced appraised or market value. The chief appraiser of each appraisal district shall enter that reduced appraised or market value on the appraisal records as the appraised or market value of the property. If the appraised or market value is reduced in more than one appraisal district, each chief appraiser shall enter the lowest of those values on the appraisal records.

(b) This section takes effect January 1, 2004, and applies only to the appraisal for ad valorem tax purposes of property for a tax year that begins on or after that date.

SECTION 2. Sections 41.43(a) and (b), Tax Code, are amended to read as follows:

(a) In a protest authorized by Section 41.41(a)(1) or (2) [41.41(1) or (2)], the appraisal district has the burden of establishing the value of the property by a preponderance of the evidence presented at the hearing. If the appraisal district fails to meet that standard, the protest shall be determined in favor of the property owner.

(b) A protest on the ground of unequal appraisal of property shall be determined in favor of the protesting party unless the appraisal district establishes that:

(1) the appraisal ratio of the property is equal to or less [~~not greater~~] than the median level of appraisal of

~~(4)~~ a reasonable and representative sample of other properties in the appraisal district;

(2) the appraisal ratio of the property is equal to or less than the median level of appraisal of a sample of properties in the appraisal district consisting of a reasonable number of other properties similarly situated to, or of the same general kind or character as, the property subject to the protest; or

(3) the appraised value of the property is equal to or less than the median appraised value of a reasonable number of comparable properties appropriately adjusted.

SECTION 3. Section 42.221, Tax Code, is amended to read as follows:

Sec. 42.221. CONSOLIDATED APPEALS FOR MULTICOUNTY PROPERTY [~~PIPELINE OR ELECTRIC LINE~~]. (a) The owner of property of a telecommunications provider, as defined by Section 51.002, Utilities Code, or the owner of property regulated by the Railroad Commission of Texas, the federal Surface Transportation Board, or the Federal Energy Regulatory Commission [~~an oil or gas pipeline or electric transmission or distribution line~~] that runs through or operates in more than one county and is appraised by more than one appraisal district may appeal an order of an appraisal review board relating to the property running through or operating in more than one county [~~pipeline or electric line, to property attached to or connected with the pipeline or electric line, or to an easement or other real property on which the pipeline or electric line is located~~] to the district court of any county in which a portion of the property [~~pipeline or electric line~~] is located or operated if the order relating to that portion of the property [~~pipeline or electric line~~] is appealed.

(b) A petition for review of each appraisal review board order under this section must be filed with the court as provided by Section 42.21. The fee for filing each additional petition for review under this section [~~relating to a pipeline or electric line~~] after the first petition for review relating to the same property [~~pipeline or electric line~~] is filed for a tax year is \$5.

(c) If only one appeal by the owner of property subject to this section [~~an oil or gas pipeline or electric line~~] is pending before the court in an appeal from the decision of an appraisal review board of a district other than the appraisal district for that county, any party to the suit may, not earlier than the 30th day before and not later than the 10th day before the date set for the hearing, make a motion to transfer the suit to a district court of the county in which the appraisal review board from which the appeal is taken is located. In the absence of a showing that further appeals under this section will be filed, the court shall transfer the suit.

(d) When the owner files the first petition for review under this section for a [~~pipeline or electric line for a~~] tax year, the owner shall include with the petition a list of each appraisal district in which the property [~~pipeline or electric line~~] is appraised for taxation in that tax year.

(e) The court shall consolidate all the appeals for a tax year relating to a single property subject to this section [~~pipeline or electric line~~] for which a petition for review is filed with the court and may consolidate other appeals relating to other property subject to this section [~~pipelines or electric lines~~] of the same owner if the property is [~~pipelines or electric lines are~~] located in one or more of the counties on the list required by Subsection (d). Except as provided by this subsection, on the motion of the [~~pipeline or electric line~~] owner of a property subject to this section the court shall grant a continuance to provide the owner with an opportunity to include in the proceeding appeals of appraisal review board orders from additional appraisal districts. The court may not grant a continuance to include an appeal of an appraisal review board order that relates to a property subject to this section [~~the pipeline or electric line~~] in that tax year after the time for filing a petition for review of that order has expired.

(f) This section does not affect the property owner's right to file a petition for review of an individual appraisal district's order relating to a property subject to this section [~~pipeline or electric line~~] in the district court in the county in which the appraisal review board is located.

(g) On a joint motion or the separate motions of at least 60 percent of the appraisal districts that are defendants in a consolidated suit filed before the 45th day after the date on which the property owner's petitions for review of the appraisal review board orders relating to a property subject to this section [~~pipeline or electric line~~] for that tax year must be filed, the court shall transfer the suit to a district court of the county named in the motion or motions if that county is one in which one of the appraisal review boards from which an appeal was taken is located.

SECTION 4. Sections 42.26(a), (b), and (d), Tax Code, are amended to read as follows:

(a) The district court shall grant relief on the ground that a property is appraised unequally if:

(1) the appraisal ratio of the property exceeds by at least 10 percent the median level of appraisal of±

~~[(1)] a reasonable and representative sample of other properties in the appraisal district; ~~or~~~~

(2) the appraisal ratio of the property exceeds by at least 10 percent the median level of appraisal of a sample of properties in the appraisal district consisting of a reasonable number of other properties similarly situated to, or of the same general kind or character as, the property subject to the appeal; or

(3) the appraised value of the property exceeds the median appraised value of a reasonable number of comparable properties appropriately adjusted.

(b) If a property owner is entitled to relief under Subsection (a)(1), the court shall order the property's appraised value changed to the value as calculated on the basis of the median level of appraisal according to Subsection (a)(1). If a property owner is entitled to relief under Subsection (a)(2), the court shall order the property's appraised value changed to the value calculated on the basis of the median level of appraisal according to Subsection (a)(2). If a property owner is entitled to relief under Subsection (a)(3), the court shall order the property's

appraised value changed to the value calculated on the basis of the median appraised value according to Subsection (a)(3). If a property owner is entitled to relief under more than one subdivision of Subsection (a) [~~both Subsection (a)(1) and Subsection (a)(2)~~], the court shall order the property's appraised value changed to the value [~~calculated on the basis of the median level of appraisal~~] that results in the lowest [~~lower~~] appraised value. The court shall determine each applicable median level of appraisal or median appraised value according to law, and is not required to adopt the median level of appraisal or median appraised value proposed by a party to the appeal. The court may not limit or deny relief to the property owner entitled to relief under a subdivision of Subsection (a) because the appraised value determined according to another [~~the other~~] subdivision of Subsection (a) results in a higher appraised value.

(d) For purposes of this section, the value of the property subject to the suit and the value of a comparable property or sample property that is used for comparison must be the market value determined by the appraisal district when the property is a residence homestead subject to the limitation on appraised value imposed by Section 23.23. [~~The district court shall grant relief on the ground that a property is appraised unequally if the appraised value of the property exceeds the median appraised value of a reasonable number of comparable properties appropriately adjusted.~~]

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

(b) The change in law made by this Act applies only to review of an appraisal of property that was initiated by the filing of a notice of protest with an appraisal review board on or after the effective date of this Act. Review of an appraisal of property that was initiated by the filing of a notice of protest with an appraisal review board before the effective date of this Act is governed by the law in effect on the date the notice of protest was filed, and the former law is continued in effect for that purpose.

Representative Talton moved to adopt the conference committee report on **HB 1082**.

The motion prevailed.

HB 1817 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Ritter submitted the following conference committee report on **HB 1817** :

Austin, Texas, May 31, 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 1817** 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.

Averitt
 Madla
 Shapiro
 Duncan
 On the part of the senate

Ritter
 Deshotel
 Kolkhorst
 Morrison
 On the part of the house

HB 1817, A bill to be entitled An Act relating to student fees at institutions in the Texas State University System.

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

SECTION 1. Section 54.5089, Education Code, is amended by amending Subsection (a) and adding Subsection (e) to read as follows:

(a) The board of regents of the Texas State University System may charge each student registered at a component institution of the Texas State University System a medical services fee not to exceed \$100 [~~\$55~~] for each semester of the regular term or [~~+2-week~~] summer session of 12 weeks or longer and not to exceed \$50 [~~\$25~~] for each [~~six-week or shorter term of the~~] summer session of less than 12 weeks.

(e) Not more than once in an academic year, the board may increase the fee authorized by this section. Any increase in the fee of more than 10 percent must be approved by a majority vote of those students participating in a general student election called for that purpose.

SECTION 2. The heading to Section 54.511, Education Code, is amended to read as follows:

Sec. 54.511. STUDENT FEES FOR BUS SERVICE; TEXAS STATE UNIVERSITY SYSTEM [~~SOUTHWEST TEXAS STATE UNIVERSITY~~].

SECTION 3. Section 54.511(b), Education Code, is amended to read as follows:

(b) Not more than once in an academic year, the board may increase the fee authorized in Subsection (a) of this section for the purpose of covering increased operating costs of the bus service. Any increase in the fee must be approved by a majority vote of those students participating in a general election called for that purpose. However, the total fee may not exceed \$100 [~~\$46~~] per semester or \$50 [~~\$23~~] per [~~six-week~~] summer term of six weeks or less.

SECTION 4. Section 54.523(a), Education Code, is amended to read as follows:

(a) To the extent approved by the students under Subsection (b) of this section, the board of regents of the Texas State University System may charge each student enrolled in a university or educational center under its authority a student center fee not to exceed \$100 [~~\$70~~] per semester or \$50 [~~\$35~~] per [~~six-week~~] summer term of six weeks or less to be used to construct, operate, maintain, improve, and program a student center at the university or educational center at which the student is enrolled.

SECTION 5. Section 54.538(a), Education Code, is amended to read as follows:

(a) If approved by student vote at a system institution, the Board of Regents, Texas State University System, may charge each student enrolled at such institution a recreational sports fee not to exceed \$100 [~~\$50~~] per semester or

~~[10-week]~~ summer session of 10 weeks or longer or \$50 ~~[\$25]~~ per ~~[five-week]~~ summer session of less than 10 weeks. The fee may be used to purchase equipment for and to construct, operate, and maintain recreational sports facilities and programs at the designated institution.

SECTION 6. This Act applies beginning with the 2003 fall semester.

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.

Representative Ritter moved to adopt the conference committee report on **HB 1817**.

A record vote was requested.

The motion prevailed by (Record 922): 145 Yeas, 0 Nays, 2 Present, not voting.

Yeas — Allen; Alonzo; Bailey; Baxter; Berman; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; 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; Farabee; Farrar; Flores; Flynn; Gallego; Garza; Gattis; Geren; Giddings; Goodman; Goolsby; Griggs; Grossendorf; 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.; 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; Wohlgemuth; Wolens; Wong; Woolley; Zedler.

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

Absent — Burnam; Escobar; Moreno, P.

HB 3546 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Hamric submitted the following conference committee report on **HB 3546** :

Austin, Texas, May 31, 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 3546** 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.

Lucio
Madla
Staples
Brimer

Hamric
Luna
Talton
Mowery
Y. Davis

On the part of the senate

On the part of the house

HB 3546, A bill to be entitled An Act relating to the exemption from ad valorem taxation of certain property used to provide low-income or moderate-income housing.

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

SECTION 1. The heading to Section 11.182, Tax Code, is amended to read as follows:

Sec. 11.182. COMMUNITY HOUSING DEVELOPMENT ORGANIZATIONS IMPROVING PROPERTY FOR LOW-INCOME AND MODERATE-INCOME HOUSING: PROPERTY PREVIOUSLY EXEMPT.

SECTION 2. Section 11.182, Tax Code, is amended by adding Subsection (j) to read as follows:

(j) An organization may not receive an exemption under Subsection (b) or under Subsection (f), as added by Chapter 1191, Acts of the 77th Legislature, Regular Session, 2001, for property for a tax year beginning on or after January 1, 2004, unless the organization received an exemption under that subsection for that property for any part of the 2003 tax year.

SECTION 3. Subchapter B, Chapter 11, Tax Code, is amended by adding Sections 11.1825 and 11.1826 to read as follows:

Sec. 11.1825. ORGANIZATIONS CONSTRUCTING OR REHABILITATING LOW-INCOME HOUSING: PROPERTY NOT PREVIOUSLY EXEMPT. (a) An organization is entitled to an exemption from taxation of real property owned by the organization that the organization constructs or rehabilitates and uses to provide housing to individuals or families meeting the income eligibility requirements of this section.

(b) To receive an exemption under this section, an organization must meet the following requirements:

(1) for at least the preceding three years, the organization:

(A) has been exempt from federal income taxation under Section 501(a), Internal Revenue Code of 1986, as amended, by being listed as an exempt entity under Section 501(c)(3) of that code;

(B) has met the requirements of a charitable organization provided by Sections 11.18(e) and (f); and

(C) has had as one of its purposes providing low-income housing;

(2) a majority of the members of the board of directors of the organization have their principal place of residence in this state;

(3) at least two of the positions on the board of directors of the organization must be reserved for and held by:

(A) an individual of low income as defined by Section 2306.004, Government Code, whose principal place of residence is located in this state;

(B) an individual whose residence is located in an economically disadvantaged census tract as defined by Section 783.009(b), Government Code, in this state; or

(C) a representative appointed by a neighborhood organization in this state that represents low-income households; and

(4) the organization must have a formal policy containing procedures for giving notice to and receiving advice from low-income households residing in the county in which a housing project is located regarding the design, siting, development, and management of affordable housing projects.

(c) Notwithstanding Subsection (b), an owner of real property that is not an organization described by that subsection is entitled to an exemption from taxation of property under this section if the property otherwise qualifies for the exemption and the owner is:

(1) a limited partnership of which an organization that meets the requirements of Subsection (b) controls 100 percent of the general partner interest; or

(2) an entity the parent of which is an organization that meets the requirements of Subsection (b).

(d) If the owner of the property is an entity described by Subsection (c), the entity must:

(1) be organized under the laws of this state; and

(2) have its principal place of business in this state.

(e) A reference in this section to an organization includes an entity described by Subsection (c).

(f) For property to be exempt under this section, the organization must own the property for the purpose of constructing or rehabilitating a housing project on the property and:

(1) renting the housing to individuals or families whose median income is not more than 60 percent of the greater of:

(A) the area median family income for the household's place of residence, as adjusted for family size and as established by the United States Department of Housing and Urban Development; or

(B) the statewide area median family income, as adjusted for family size and as established by the United States Department of Housing and Urban Development; or

(2) selling single-family dwellings to individuals or families whose median income is not more than the greater of:

(A) the area median family income for the household's place of residence, as adjusted for family size and as established by the United States Department of Housing and Urban Development; or

(B) the statewide area median family income, as adjusted for family size and as established by the United States Department of Housing and Urban Development.

(g) Property may not receive an exemption under this section unless at least 50 percent of the total square footage of the dwelling units in the housing project is reserved for individuals or families described by Subsection (f).

(h) The annual total of the monthly rent charged or to be charged for each dwelling unit in the project reserved for an individual or family described by Subsection (f) may not exceed 30 percent of the area median family income for the household's place of residence, as adjusted for family size and as established by the United States Department of Housing and Urban Development.

(i) Property owned for the purpose of constructing a housing project on the property is exempt under this section only if:

(1) the property is used to provide housing to individuals or families described by Subsection (f); or

(2) the housing project is under active construction or other physical preparation.

(j) For purposes of Subsection (i)(2), a housing project is under physical preparation if the organization has engaged in architectural or engineering work, soil testing, land clearing activities, or site improvement work necessary for the construction of the project or has conducted an environmental or land use study relating to the construction of the project.

(k) An organization may not receive an exemption for a housing project constructed by the organization if the construction of the project was completed before January 1, 2004.

(l) If the property is owned for the purpose of rehabilitating a housing project on the property:

(1) the original construction of the housing project must have been completed at least 10 years before the date the organization began actual rehabilitation of the project;

(2) the person from whom the organization acquired the project must have owned the project for at least five years, if the organization is not the original owner of the project;

(3) the organization must provide to the chief appraiser and, if the project was financed with bonds, the issuer of the bonds a written statement prepared by a certified public accountant stating that the organization has spent on rehabilitation costs at least the greater of \$5,000 or the amount required by the financial lender for each dwelling unit in the project; and

(4) the organization must maintain a reserve fund for replacements:

(A) in the amount required by the financial lender; or

(B) if the financial lender does not require a reserve fund for replacements, in an amount equal to \$300 per unit per year.

(m) Beginning with the 2005 tax year, the amount of the reserve required by Subsection (l)(4)(B) is increased by an annual cost-of-living adjustment determined in the manner provided by Section 1(f)(3), Internal Revenue Code of 1986, as amended, substituting "calendar year 2004" for the calendar year specified in Section 1(f)(3)(B) of that code.

(n) A reserve must be established for each dwelling unit in the property, regardless of whether the unit is reserved for an individual or family described by Subsection (f). The reserve must be maintained on a continuing basis, with withdrawals permitted:

(1) only as authorized by the financial lender; or

(2) if the financial lender does not require a reserve fund for replacements, only to pay the cost of capital improvements needed for the property to maintain habitability under the Minimum Property Standards of the United States Department of Housing and Urban Development or the code of a municipality or county applicable to the property, whichever is more restrictive.

(o) For purposes of Subsection (n)(2), "capital improvement" means a property improvement that has a depreciable life of at least five years under generally accepted accounting principles, excluding typical "make ready" expenses such as expenses for plasterboard repair, interior painting, or floor coverings.

(p) If the organization acquires the property for the purpose of constructing or rehabilitating a housing project on the property, the organization must be renting or offering to rent the applicable square footage of dwelling units in the property to individuals or families described by Subsection (f) not later than the third anniversary of the date the organization acquires the property.

(q) If property qualifies for an exemption under this section, the chief appraiser shall use the income method of appraisal as provided by Section 23.012 to determine the appraised value of the property. In appraising the property, the chief appraiser shall:

(1) consider the restrictions provided by this section on the income of the individuals or families to whom the dwelling units of the housing project may be rented and the amount of rent that may be charged for purposes of computing the actual rental income from the property or projecting future rental income; and

(2) use the same capitalization rate that the chief appraiser uses to appraise other rent-restricted properties.

(r) Not later than January 31 of each year, the appraisal district shall give public notice in the manner determined by the district, including posting on the district's website if applicable, of the capitalization rate to be used in that year to appraise property receiving an exemption under this section.

(s) Unless otherwise provided by the governing body of a taxing unit any part of which is located in a county with a population of at least 1.4 million under Subsection (x), the amount of the exemption under this section from taxation is 50 percent of the appraised value of the property.

(t) Notwithstanding Section 11.43(c), an exemption under this section does not terminate because of a change in ownership of the property if:

(1) the property is foreclosed on for any reason and, not later than the 30th day after the date of the foreclosure sale, the owner of the property submits to the chief appraiser evidence that the property is owned by:

(A) an organization that meets the requirements of Subsection (b);

or

(B) an entity that meets the requirements of Subsections (c) and (d); or

(2) in the case of property owned by an entity described by Subsections (c) and (d), the organization meeting the requirements of Subsection (b) that controls the general partner interest of or is the parent of the entity as described by Subsection (c) ceases to serve in that capacity and, not later than the 30th day after the date the cessation occurs, the owner of the property submits evidence to the chief appraiser that the organization has been succeeded in that capacity by another organization that meets the requirements of Subsection (b).

(u) The chief appraiser may extend the deadline provided by Subsection (t)(1) or (2), as applicable, for good cause shown.

(v) Notwithstanding any other provision of this section, an organization may not receive an exemption from taxation by a taxing unit any part of which is located in a county with a population of at least 1.4 million unless the exemption is approved by the governing body of the taxing unit in the manner provided by law for official action.

(w) To receive an exemption under this section from taxation by a taxing unit for which the approval of the governing body of the taxing unit is required by Subsection (v), an organization must submit to the governing body of the taxing unit a written request for approval of the exemption from taxation of the property described in the request.

(x) Not later than the 60th day after the date the governing body of the taxing unit receives a written request under Subsection (w) for an exemption under this section, the governing body shall:

(1) approve the exemption in the amount provided by Subsection (s);

(2) approve the exemption in a reasonable amount other than the amount provided by Subsection (s); or

(3) deny the exemption if the governing body determines that:

(A) the taxing unit cannot afford the loss of ad valorem tax revenue that would result from approving the exemption; or

(B) additional housing for individuals or families meeting the income eligibility requirements of this section is not needed in the territory of the taxing unit.

(y) Not later than the fifth day after the date the governing body of the taxing unit takes action under Subsection (x), the taxing unit shall issue a letter to the organization stating the governing body's action and, if the governing body denied the exemption, stating whether the denial was based on a determination under Subsection (x)(3)(A) or (B) and the basis for the determination. The taxing unit shall send a copy of the letter by regular mail to the chief appraiser of each appraisal district that appraises the property for the taxing unit. The governing body may charge the organization a fee not to exceed the administrative costs of

processing the request of the organization, approving or denying the exemption, and issuing the letter required by this subsection. If the chief appraiser determines that the property qualifies for an exemption under this section and the governing body of the taxing unit approves the exemption, the chief appraiser shall grant the exemption in the amount approved by the governing body.

Sec. 11.1826. MONITORING OF COMPLIANCE WITH LOW-INCOME AND MODERATE-INCOME HOUSING EXEMPTIONS. (a) In this section, "department" means the Texas Department of Housing and Community Affairs.

(b) Property may not be exempted under Section 11.1825 for a tax year unless the organization owning or controlling the owner of the property has an audit prepared by an independent auditor covering the organization's most recent fiscal year. The audit must be conducted in accordance with generally accepted accounting principles. The audit must include an opinion on whether:

(1) the financial statements of the organization present fairly, in all material respects and in conformity with generally accepted accounting principles, the financial position, changes in net assets, and cash flows of the organization; and

(2) the organization has complied with all of the terms and conditions of the exemption under Section 11.1825.

(c) Not later than the 180th day after the last day of the organization's most recent fiscal year, the organization must deliver a copy of the audit to the department and the chief appraiser of the appraisal district in which the property is located.

(d) Notwithstanding any other provision of this section, if the property contains not more than 36 dwelling units, the organization may deliver to the department and the chief appraiser a detailed report and certification as an alternative to an audit.

(e) Property may not be exempted under Section 11.182 for a tax year unless the organization owning or controlling the owner of the property complies with this section, except that the audit required by this section must address compliance with the requirements of Section 11.182.

(f) All information submitted to the department or the chief appraiser under this section is subject to required disclosure, is excepted from required disclosure, or is confidential in accordance with Chapter 552, Government Code, or other law.

SECTION 4. Sections 11.436(a) and (c), Tax Code, are amended to read as follows:

(a) An organization that acquires property that qualifies for an exemption under Section 11.181(a) or 11.1825 [~~11.182(a)~~] may apply for the exemption for the year of acquisition not later than the 30th day after the date the organization acquires the property, and the deadline provided by Section 11.43(d) does not apply to the application for that year.

(c) To facilitate the financing associated with the acquisition of a property, an organization, before acquiring the property, may request from the chief appraiser of the appraisal district established for the county in which the property is located a preliminary determination of whether the property would qualify for

an exemption under Section 11.1825 [~~11.182~~] if acquired by the organization. The request must include the information that would be included in an application for an exemption for the property under Section 11.1825 [~~11.182~~]. Not later than the 45th [~~21st~~] day after the date a request is submitted under this subsection, the chief appraiser shall issue a written preliminary determination for the property included in the request. A preliminary determination does not affect the granting of an exemption under Section 11.1825 [~~11.182~~].

SECTION 5. Subchapter B, Chapter 23, Tax Code, is amended by adding Section 23.215 to read as follows:

Sec. 23.215. APPRAISAL OF CERTAIN NONEXEMPT PROPERTY USED FOR LOW-INCOME OR MODERATE-INCOME HOUSING. (a) This section applies only to real property owned by an organization:

(1) that on the effective date of this section was rented to a low-income or moderate-income individual or family satisfying the organization's income eligibility requirements and that continues to be used for that purpose;

(2) that was financed under the low income housing tax credit program under Subchapter DD, Chapter 2306, Government Code;

(3) that does not receive an exemption under Section 11.182 or 11.1825; and

(4) the owner of which has not entered into an agreement with any taxing unit to make payments to the taxing unit instead of taxes on the property.

(b) The chief appraiser shall appraise the property in the manner provided by Section 11.1825(q).

SECTION 6. This Act takes effect January 1, 2004.

Representative Hamric moved to adopt the conference committee report on **HB 3546**.

The motion prevailed.

SB 1272 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Callegari submitted the conference committee report on **SB 1272**.

Representative Callegari moved to adopt the conference committee report on **SB 1272**.

The motion prevailed.

SB 1303 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Chisum submitted the conference committee report on **SB 1303**.

Representative Chisum moved to adopt the conference committee report on **SB 1303**.

A record vote was requested.

The motion prevailed by (Record 923): 147 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; 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; Wohlgemuth; Wolens; Wong; Woolley; Zedler.

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

Absent — Farrar.

STATEMENT OF VOTE

I was shown voting yes on Record No. 923. I intended to vote no.

Reyna

HB 2044 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative McReynolds submitted the following conference committee report on **HB 2044** :

Austin, Texas, May 31, 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 2044** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Staples
Estes
Fraser

McReynolds
Howard
Hochberg
Dawson
Hilderbran

On the part of the senate

On the part of the house

HB 2044, A bill to be entitled An Act relating to the powers and duties of the General Land Office and the accounting and disposition of state-owned real property.

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

SECTION 1. Section 31.001, Natural Resources Code, is amended to read as follows:

Sec. 31.001. DEFINITIONS. In this chapter:

(1) "Appraiser" means a state-certified or state-licensed real estate appraiser who:

(A) is employed by or contracts with the land office; and

(B) performs professional valuation services completely and in a manner that is independent, impartial, and objective [~~"State" means the State of Texas~~].

(2) "Board" means the School Land Board.

(3) "Commissioner" means the Commissioner of the General Land Office.

(4) "Division" means the asset management division of the General Land Office or any other division delegated the duties of the asset management division by the commissioner.

(5) "Evaluation report" means the annual report prepared by the commissioner as provided by Subchapter E.

(6) "Exchange" means an exchange of equal value or an exchange of real property accompanied by consideration.

(7) "Governor's report" means the report prepared by the commissioner as provided by Section 31.157.

(8) "Institution of higher education" means the Texas State Technical College System, the Southwest Collegiate Institute for the Deaf, or an institution of higher education, excluding a public junior college, as defined by Section 61.003, Education Code.

(9) [~~(8)~~] "Land office" means the General Land Office.

(10) "Market value" means the value of real property determined by an appraisal of the real property performed by an appraiser.

(11) "Political subdivision" means a municipality, county, public school district, levee improvement district, municipal utility district, or any other special purpose district authorized by state law.

(12) "Real estate transaction" means a sale, lease, trade, exchange, gift, grant, or other conveyance of a real property interest.

(13) "Real property owned by the state" means any interest in real property in the possession of the state or a state agency, including real property held in trust by a state agency.

(14) "State" means the State of Texas.

(15) "State agency" means a board, commission, department, institution, office, or other agency of state government, including an institution of higher education but excluding a special purpose district or authority.

SECTION 2. Section 31.013(b), Natural Resources Code, is amended to read as follows:

(b) Any bonds required by law to be executed by employees of the land office shall be executed and approved in the manner provided for the commissioner in Subsection (a) of this section. The land office shall pay the expenses necessary and incidental to the execution of the bonds.

SECTION 3. Sections 31.016 and 31.017, Natural Resources Code, are amended to read as follows:

Sec. 31.016. ABSTRACT CLERK. The commissioner shall designate one of his clerks as the abstract clerk and shall assign to him the special duty to correct the abstracts of patented, titled, and surveyed real property [~~land~~] required to be kept in the land office to reflect errors, changes caused by cancellation of patents and in county lines, and the creation of new counties and to add new patented surveys on the date they are patented.

Sec. 31.017. RECEIVER [~~RECEIVING CLERK~~]. (a) With the consent of the governor, the commissioner shall appoint a suitable person to serve as receiver [~~receiving clerk~~] for the land office.

(b) The receiver [~~receiving clerk~~] shall execute a bond for \$25,000.

SECTION 4. Section 31.018(c), Natural Resources Code, is amended to read as follows:

(c) The translator shall translate into English [~~and record in a book~~] any laws and public contracts relating to titles to real property [~~land~~] and any original titles or papers which are written in the Spanish language and which are filed in the land office.

SECTION 5. Section 31.019, Natural Resources Code, is amended to read as follows:

Sec. 31.019. SURVEYORS [~~DRAFTSMEN~~]. (a) The commissioner shall appoint a chief surveyor [~~draftsman~~] and as many assistant surveyors [~~draftsmen~~] as authorized by law.

(b) The chief surveyor [~~draftsman~~] and the chief surveyor's [~~his~~] assistant surveyors [~~draftsmen~~] shall draw and complete county maps.

(c) The chief surveyor [~~draftsman~~] and the chief surveyor's [~~his~~] assistant surveyors [~~draftsmen~~] shall perform drafting and other duties required by the commissioner for the benefit of the state or individuals.

SECTION 6. Section 31.051, Natural Resources Code, is amended to read as follows:

Sec. 31.051. GENERAL DUTIES. The commissioner shall:

(1) superintend, control, and direct the official conduct of subordinate officers of the land office;

(2) execute and perform all acts and other things relating to public real property [~~land~~] of the state or rights of individuals in public real property [~~land~~] which is required by law;

(3) make and enforce suitable rules consistent with the law; and

(4) give information when required to the governor and the legislature relating to public real property [~~land~~] and the land office.

SECTION 7. Section 31.052(a), Natural Resources Code, is amended to read as follows:

(a) Books, accounts, records, papers, maps, and original documents relating to real property ~~[land]~~ titles which are termed archives by law shall be the books and papers of the land office under the control and custody of the commissioner.

SECTION 8. Sections 31.054, 31.055, 31.056, 31.057, 31.058, 31.059, and 31.060, Natural Resources Code, are amended to read as follows:

Sec. 31.054. PUBLIC ACCESS TO AND REMOVAL OF PAPERS. (a) Any person who desires to examine any paper, record, or file must make a written request on a form and according to procedures prescribed by the commissioner. The commissioner may establish procedures as reasonably necessary to maintain the integrity of the records. ~~[obtain the written consent of the commissioner or the chief clerk and an order for the detail of a clerk to be present and superintend the examination.]~~

(b) ~~[After the examination, the clerk shall carefully examine the papers of the file and make sure that they are all in place.~~

~~[Sec. 31.055. REMOVING PAPERS. (a)]~~ No transfer or deed which may be a link in any chain of title to any certificate on file in the land office may be removed by any person, but the commissioner shall deliver to the interested person on demand certified copies which shall have the same force and effect as the originals.

(c) ~~[(b)]~~ If the genuineness of any original paper is questioned in a suit, the commissioner, on order of the court in which the suit is pending, shall deliver the original paper to the proper person and shall retain a certified copy of the paper which will have the same force and effect as the original if the original is lost.

~~[(e) If the commissioner has good reason to doubt the genuineness of any transfer, power of attorney, or other paper on file in his office, he shall not permit any person to obtain an official copy of the paper until the doubts have been removed.]~~

Sec. 31.056. REVISION, ~~[AND]~~ COMPILATION, AND PRINTING OF ABSTRACTS. (a) The commissioner shall prepare a revision and compilation of the various volumes of the abstracts of patented, titled, and surveyed real property ~~[land]~~ which were previously made by the land office.

(b) The various counties of the state shall be apportioned into one of not more than eight districts for the purpose of revising and compiling the abstracts and the abstracts of each of the districts shall be compiled in a separate volume.

(c) The commissioner may distribute to the officers of the state who require its use but have not previously received a set, one complete set of the abstracts, as supplemented, of patented, titled, and surveyed real property. The commissioner may distribute to officers of counties who are required to use abstracts copies of supplementary abstracts ~~[land and may sell the surplus volumes to any persons who apply for them at a price that is not less than the cost to the state].~~

(d) The commissioner may provide the abstracts and supplementary abstracts electronically ~~[Any money received from the sale of surplus volumes shall be deposited in the general revenue fund].~~

(e) The commissioner may make available ~~[have]~~ a sufficient number of volumes and supplementary abstracts of patented, titled, and surveyed real property ~~[printed]~~ to meet the demand.

(f) The land office shall pay the cost of the abstracts and the supplementary abstracts from its appropriated funds. [~~Printing and binding shall be done exclusively in the State of Texas.~~]

(g) Copies of the abstracts and supplementary abstracts [~~None of the provisions of this section affect the provisions of Section 31.057 of this code.~~]

[~~Sec. 31.057. PRINTING SUPPLEMENTARY ABSTRACTS. (a) The commissioner may have not more than 1,500 copies of the supplementary abstracts of patented, titled, and surveyed land printed and bound annually for distribution to the officers of the state and counties whose duties require them to use it, and surplus copies~~] may be sold at a reasonable price to any person who applies for a copy.

[~~(b) The cost incurred in printing the copies shall be paid from the land office appropriation for printing.~~]

[~~(c) The commissioner shall deposit any money received from the sale of surplus volumes and supplementary abstracts~~ the copies of the State Treasury] to the credit of the General Revenue Fund.

Sec. 31.058. RECEIVING FUNDS. (a) The receiver [~~receiving clerk~~] shall receive funds required by law to be paid to the commissioner and on request shall give to each person who deposits money a receipt [~~certificate of deposit~~] stating the amount, the name of the person, and a description of the purpose of the remittance [~~the type of claim on which the deposit was made~~].

(b) If funds are received which are of a general character in advance of fees and dues, it shall be stated.

(c) The receiver [~~clerk~~] shall be responsible to the state or individual for the funds.

Sec. 31.059. RECEIVER'S [~~RECEIVING CLERK'S~~] BOOKS. (a) The receiver [~~receiving clerk~~] shall keep books in which the following [~~he~~] shall be entered [~~enter~~]:

(1) each deposit separately; and

(2) the name of the person[~~;~~ and

[~~(3) the number of the claim and the location of the land to be perfected~~].

(b) The receiver [~~He~~] shall keep letters and other vouchers filed in neat and regular order and number corresponding with the [~~his~~] books of the office.

(c) The receiver [~~receiving clerk~~] shall report to the comptroller and pay in kind [~~on the last day of each month~~] funds in the receiver's [~~his~~] possession which are due to the state in accordance with the Government Code [~~and shall receive a receipt in his own name~~].

(d) In the [~~his~~] books of the office, the receiver [~~receiving clerk~~] shall keep separate columns indicating the amount of [~~specie or the amount of currency or other~~] funds paid [~~to him~~].

(e) On removal from office or resignation, the receiver [~~receiving clerk~~] shall turn over the [~~his~~] books of the office, accounts, and money to the appointed [~~his~~] successor [~~if he has qualified~~] or to the commissioner and shall receive a receipt for them.

Sec. 31.060. FINANCIAL REPORT. On or before the meeting of the legislature, the commissioner [~~receiving clerk~~] shall prepare and furnish to the governor [~~through the commissioner~~] a correct report of the condition of the [~~his~~] office, including the amount of money received, the type of claim, the amount of money paid out, and the type of payment.

SECTION 9. Section 31.064, Natural Resources Code, is amended to read as follows:

Sec. 31.064. SETTING AND COLLECTING FEES. The commissioner shall set and collect, for the use of the state, reasonable fees in amounts [~~determined by the commissioner~~] for filing fees, preparation of certificates of fact, certified copies, maps, reproduction of maps and sketches, Spanish translations, patents and deeds of acquittance, and for other miscellaneous services, including but not limited to shipping in a mailing tube and typed transcriptions or taped copies of tapes or other sound recordings, and any other provided services and products.

SECTION 10. Section 31.065(c), Natural Resources Code, is amended to read as follows:

(c) If the commissioner determines that the real property acquired by the state by gift, devise, or bequest is not suitable for the purpose for which the gift, devise, or bequest was originally made, the commissioner together with the agency, board, commission, department, or other state entity designated to possess, administer, or use the real property may exchange the real property for real property that is suitable for such purpose.

SECTION 11. Section 31.066(b), Natural Resources Code, is amended to read as follows:

(b) Following state assumption of ownership, the Texas Commission on Environmental Quality [~~Natural Resource Conservation Commission~~] shall provide for maintenance of the real property, including necessary environmental monitoring, consistent with terms of contracts and cooperative agreements with the federal government entered in accordance with the Water Code and Chapter 361, Health and Safety Code.

SECTION 12. Section 31.067, Natural Resources Code, is amended to read as follows:

Sec. 31.067. AUTHORITY TO SELL CERTAIN AGENCY REAL PROPERTY [~~LANDS~~]. The [~~asset management~~] division [~~of the General Land Office~~] is authorized to sell any real property acquired on behalf of the state pursuant to Section 402.025, Government Code. Sale of such real property shall be conducted in accordance with the provisions of Section 31.158 of this code unless otherwise provided by law. Proceeds of sale shall be deposited in the General Revenue Fund as specified in Section 402.025, Government Code.

SECTION 13. Subchapter C, Chapter 31, Natural Resources Code, is amended by adding Sections 31.0671 and 31.0672 to read as follows:

Sec. 31.0671. AGENCY AUTHORITY TO SELL OR EXCHANGE REAL PROPERTY. Any state agency or political subdivision may directly sell or exchange real property to which it holds title with the School Land Board for the benefit of the permanent school fund if the sale or exchange is for market value.

Section 272.001, Local Government Code, does not apply to an exchange under this section. A political subdivision must provide the governor with advance notice of a proposed sale or exchange under this section, which notice must be sent to the governor at least 30 days before the transaction may be effected. In addition, the governor may disapprove any sale or exchange of real property by a state agency under this section prior to the sale or exchange. The state agency contemplating a sale or exchange under this section shall submit to the governor a formal request for approval. The state agency may conduct the sale or exchange unless the governor gives the state agency written notice disapproving the sale or exchange. The governor must provide written notice of disapproval under this section not later than the 30th day after the date the governor receives the written request for approval.

Sec. 31.0672. AUTHORITY TO CONDUCT CERTAIN REAL PROPERTY TRANSACTIONS. (a) The division may directly sell to a political subdivision any real property owned by the state that the legislature has authorized or the governor has approved for sale under Subchapter E if the commissioner determines the sale is in the best interest of the state.

(b) The governor must approve any sale of real property under this section. Failure of the governor to approve the sale constitutes a veto of the transaction.

(c) A sale of real property under this chapter must be for market value and under other terms and conditions the commissioner determines to be in the best interest of the state.

SECTION 14. Section 31.068(a), Natural Resources Code, is amended to read as follows:

(a) The commissioner and the attorney general have standing to enforce a:

- (1) restrictive covenant affecting real property owned by the permanent school fund or a state agency;
- (2) restriction expressed in a transfer document or legislative act conveying real property then owned by the state; or
- (3) statutory restriction on the sale or lease of real property [~~land~~] patented or leased by the state to a navigation district, including a restriction provided by Section 61.116 or 61.117, Water Code.

SECTION 15. Sections 31.153, 31.154, 31.155, 31.156, 31.157, and 31.1571, Natural Resources Code, are amended to read as follows:

Sec. 31.153. REAL PROPERTY ACCOUNTING AND RECORDS. (a) All real property owned by the state shall be accounted for by the state agency that possesses the real property.

(b) Each state agency shall maintain a record of each item of real property it possesses. The record must include the following information and [~~on the request of the division,~~] shall be furnished to the division:

- (1) a description of each item of real property by reference to a volume number, and page or image number or numbers of the official public records of real property in a particular county, or if not applicable, by a legal description;
- (2) the date of purchase of the real property, if applicable;
- (3) the purchase price of the real property, if applicable;

(4) the name of the state agency holding title to the real property for the state;

(5) a description of the current uses of the real property and of the projected future uses of the real property [~~during the next 15 years~~]; and

(6) a description of each building or other improvement located on the real property.

(c) If the description of real property required under [~~by~~] this section is excessively voluminous, [~~as in the case of parkland,~~] the division may direct the agency in possession of the real property to furnish the description only in summary form, as agreed to by the division and the state agency involved.

(d) Each state agency, annually at the time set by the division, shall furnish the Texas Historical Commission with a photograph and information that specifies and identifies the age of each building:

(1) that was acquired by the agency after the date of the preceding annual submission and that is at least 45 years old on the date of the current submission; or

(2) that is possessed by the agency and has become 45 years old since the date the information was previously submitted.

(e) On request, each state agency shall provide the division with any photographs and information furnished to the Texas Historical Commission under this section.

Sec. 31.154. REAL PROPERTY INVENTORY. The division shall review and keep inventory records of all real property owned by the state. The division shall compile the inventory records from the information submitted [~~to the division~~] under Sections 31.153 and 31.155 of this subchapter.

Sec. 31.155. SPECIAL STATUS OF CERTAIN AGENCIES. (a) The division is not responsible for maintaining the inventory records, as provided by Section 31.154, of the real property administered by the Texas Department of Transportation, [~~the Texas National Research Laboratory Commission,~~] an institution of higher education, the Employees Retirement System of Texas, or the Teacher Retirement System of Texas. The agencies administering the real property shall maintain those records.

(b) The Texas Department of Transportation, [~~or the Texas National Research Laboratory Commission,~~] on the request of the division, shall submit its real property inventory records to the division. The real property inventory records of an institution of higher education, the Employees Retirement System of Texas, and the Teacher Retirement System of Texas, on the request of the division, but not more than semiannually, shall be submitted to the division for information purposes only. The division shall maintain the inventory records of the former Texas National Research Laboratory Commission, to the extent possible, and is responsible for the disposal of any real property interests held by the former commission as provided by Subchapter G.

(c) The division may [~~shall~~] review and verify the department's records [~~or the commission's records~~] and make recommendations regarding the department's real property [~~or the commission's real property~~], and the

commissioner shall prepare a report involving the department's real property to the same extent that the division and commissioner perform these functions with regard to the records and real property of other state agencies.

(d) The duty under this subchapter of the division to review and verify real property records and to make recommendations regarding real property and of the commissioner to prepare a report involving real property does not apply to:

- (1) the real property of an institution of higher education;
- (2) the real property that is part of a fund created or specifically authorized by the constitution of this state and that is administered by or with the assistance of the land office;
- (3) the real property of the Employees Retirement System of Texas; and
- [~~or~~]
- (4) the real property of the Teacher Retirement System of Texas.

(e) The duties of the division to make recommendations regarding real property and of the commissioner to prepare a report involving real property under this subchapter do not apply to:

- (1) the real property of the Texas Historical Commission;
- (2) the real property comprising the Alamo;
- (3) the real property comprising the French Legation;
- (4) the real property comprising the Governor's Mansion;
- (5) the real property comprising the Texas State Cemetery, more specifically described as 17.376 acres located at 801 Comal, Lot 5, Division B, City of Austin, Travis County, Texas;
- (6) the real property administered by the State Preservation Board; and
- (7) highway rights-of-way owned by the Texas Department of Transportation.

Sec. 31.156. REAL PROPERTY REVIEW. (a) The division shall review the real property inventory of each state agency not less than every four years, and a review shall be made during the calendar year before the agency is scheduled for abolition under the Texas Sunset Act (Chapter 325, Government Code). The division may verify the accuracy of inventory records provided by an agency.

(b) The division shall:

- (1) identify real property owned or controlled by the state that is not being used or is being substantially underused; and[-

~~[(c) The division shall provide a list and an appraisal of properties described by Subsection (b) to the Texas Department of Housing and Community Affairs. Not later than the 60th day after the date of receipt of the list and appraisal, the department shall make recommendations to the division regarding the suitability of those properties for affordable and accessible housing.~~

~~[(d) For each property identified as not being used or as being substantially underused under Subsection (b), the division shall]~~

- (2) make recommendations to the commissioner regarding the use of the real property or ~~[regarding]~~ a real estate transaction involving the real property.

~~(c) [(e) If the Texas Department of Housing and Community Affairs designates a property as suitable for affordable and accessible housing, the division's recommendations must include a recommendation that title to the property be transferred to an appropriate political subdivision for use as affordable and accessible housing.~~

~~[(f)] The division's recommendations must include an analysis of the highest and best use to which the real property may legally be placed ~~and~~ ~~[(f)]~~ shall also include ~~[recommendations for]~~ alternative uses of the real property addressing potential for commercial or agricultural lease of the real property or any other real estate transaction or use that the division may deem to be in the best interest of the state ~~[(f)]~~. ~~The division shall solicit proposals and shall accept any unsolicited proposals about real estate transactions involving the property that would be of significant benefit to the state.~~~~

~~(d) [(g)] The division shall ~~[on completion of a review,]~~ submit to the commissioner any information pertinent to the evaluation of a real estate transaction involving the real property, including the ~~[current]~~ market value of the real property, current market conditions, and ~~[including]~~ an evaluation of any proposals received from private parties that would be of significant benefit to the state ~~[(g)]~~. ~~If the division submits an evaluation of a sale of property, it must also submit an evaluation of the lease potential of the property.~~~~

~~(e) [(h)] In any year that the division will evaluate real property under the management and control of the adjutant general's department or the Texas Military Facilities Commission, the division ~~[Texas National Guard Armory Board, the division]~~ shall notify the ~~[adjutant general's]~~ department and the commission before the division begins the evaluation.~~

Sec. 31.157. EVALUATION REPORT. (a) The commissioner shall prepare a draft evaluation report, which shall include ~~[of a proposed real estate transaction involving the real property incorporating]~~ the results and findings of the evaluation of the real property owned by the state required under Section 31.156.

(b) The draft report shall be submitted to the Texas Building and Procurement ~~[State Purchasing and General Services]~~ Commission, which shall further evaluate the potential use of the real property by another state agency ~~[or department]~~. The land office shall submit a draft report ~~[shall also be submitted, at the same time as it is furnished to the commission,]~~ to each agency that owns or holds in trust property that is the subject of the draft report. The Texas Building and Procurement Commission ~~[commission may comment on any findings or recommendations made by the commissioner and]~~ may make additional recommendations regarding the use of the real property. The state agency that owns or controls real property named in the report may comment on any findings or recommendations made by the commissioner. The Texas Building and Procurement Commission and any state agency that owns or controls real property named in the report ~~[commission]~~ shall complete a ~~[the]~~ review of the draft report within 60 days of the receipt of the report and forward all recommendations and ~~[the]~~ comments to the commissioner.

(c) The commissioner shall prepare and issue a final evaluation report that~~[-~~

~~[(1)] incorporates any recommendations of the Texas Building and Procurement Commission regarding the potential use of the real property by another state agency ~~[division regarding the transfer of title to the property to a political subdivision for use as affordable and accessible housing;]~~ and any comments from any state agency that owns or controls property named in the report~~

~~[(2) incorporates any recommendations of the commission regarding the use of the property and addresses any comments received from the commission].~~

(d) If under the adjutant general's report submitted as provided by Section 431.030, Government Code, the adjutant general determines that real property under the management and control of the adjutant general's department or the Texas Military Facilities Commission ~~[National Guard Armory Board]~~ is used for military purposes, the commissioner may not recommend a real estate transaction involving that real property in the final report submitted as provided by Subsection (e).

(e) The final report shall be submitted to the governor, the presiding officers of both houses of the legislature, the Legislative Budget Board, and the governor's budget office not later than September 1 of each year.

(f) Properties reported as not being used or being substantially underused under this section may not be annexed by a political subdivision of the state without prior written approval of the commissioner.

(g) A ~~[If the report contains an evaluation of a sale of property, it must also contain an evaluation of the lease potential of the property.~~

~~[Sec. 31.1571. DISPOSAL OF UNUSED OR UNDERUSED PROPERTY.~~

~~(a) Notwithstanding any other law, after the division has reported a property unused or underused and the commissioner has made a recommendation to the governor for a real estate transaction involving the property, the] state agency that owns or controls real property identified in the evaluation report as not being used or being substantially underused shall notify the land office 30 days before any planned development, acquisition, disposition, lease, or exchange of the real property, including any planned construction of new improvements or a major modification to an existing improvement.~~

(h) Each state agency owning real property identified in the evaluation report as unused or substantially underused shall provide to the land office, within 30 days of the land office's request, information on the status of those properties. The report shall include a list of:

(1) the individual properties recommended for an alternative use or a real estate transaction by the land office;

(2) the status of those individual properties; and

(3) any plans the agency owning the real property has to convert the use of or dispose of each real property.

(i) The division may solicit proposals and shall accept unsolicited proposals regarding real estate transactions involving real property that would be of significant benefit to the state.

Sec. 31.1571. GOVERNOR'S REPORT. (a) At any time, the commissioner may make a report to the governor recommending real estate transactions or other actions involving any real property included in the most recent evaluation report and identified as not used or substantially underused.

(b) After the commissioner recommends a real estate transaction to the governor under this section, the commissioner shall notify the state agency that owns or controls the real property and the Texas Department of Housing and Community Affairs. Not later than the 60th day after the date the written recommendation is received, the state agency and the Texas Department of Housing and Community Affairs may file with the governor their comments on or objections to the recommendation.

(c) If the commissioner recommends a real estate transaction to the governor involving real property identified as not used or substantially underused and the division's analysis of the highest and best use for the real property is determined to be residential, the Texas Department of Housing and Community Affairs shall evaluate the property and identify any property suitable for affordable housing. The Texas Department of Housing and Community Affairs shall submit comments concerning any property suitable for affordable housing and any documents supporting the comments to the governor not later than the 60th day after the date it receives the report prepared under this section.

(d) Notwithstanding any other law, real property that the commissioner has reported as unused or substantially underused and recommended for a real estate transaction may not be developed, sold, or otherwise disposed of by the state agency that owns or controls [the property may not develop, sell, or otherwise dispose of] the real property before the earlier of:

(1) the date the governor rejects a recommended real estate transaction involving the real property [pursuant to Subchapter I]; or

(2) two years from the date the recommendation is approved, unless extended by the governor [by operation of law under Subchapter I].

(e) [(b)] If a state agency that owns or controls real property [that the division has] reported as unused or substantially underused intends to dispose of or change the use of the real property prior to the time provided by Subsection (d), the governor may require [(a), the state agency shall submit to the governor] a general development plan for future use of the real property or any other information. At any time, the governor may request that the state agency provide its general development plan or any other information to the land office for evaluation and may consult with the commissioner. The plan shall be submitted no later than 30 days prior to the time that the real estate transaction would be approved by operation of law if not disapproved by the governor [pursuant to Subchapter I]. The governor may take such plan into consideration in determining whether to reject the commissioner's recommendation.

(f) The commissioner may conduct the transaction unless the governor gives the commissioner written notice disapproving the recommendation. The governor must provide written notice of disapproval under this subsection not later than the 90th day after the date the governor receives the commissioner's written recommendation.

SECTION 16. Subchapter E, Chapter 31, Natural Resources Code, is amended by adding Sections 31.1572 and 31.1573 to read as follows:

Sec. 31.1572. MINERAL CONVEYANCE REQUIRED FOR CERTAIN SALES. If the Texas Parks and Wildlife Department enters into a contract to sell real property it owns or is under its control to a private entity, the Texas Parks and Wildlife Department shall convey the mineral rights to the property by an appropriate instrument of transfer to the permanent school fund before transferring title to the property to the private entity.

Sec. 31.1573. REAL ESTATE TRANSACTIONS AUTHORIZED BY GOVERNOR. (a) The land office shall take charge and control of real property as necessary to conduct and close a real estate transaction authorized by the governor.

(b) The expenses incurred by the land office in conducting a real estate transaction, including the payment of reasonable brokerage fees, may be deducted from the proceeds of the transaction before the proceeds are deposited. The land office may adopt rules relating to the payment of reasonable brokerage fees.

(c) Unless otherwise dedicated by the Texas Constitution, the proceeds of the transaction shall be deposited:

(1) to the credit of the Texas capital trust fund if the agency is eligible under Chapter 2201, Government Code, to participate in that fund;

(2) in the state treasury to the credit of the affected agency if the agency is not eligible under Chapter 2201, Government Code, to participate in the Texas capital trust fund; or

(3) notwithstanding Subdivisions (1) and (2), as otherwise directed under the procedures of Chapter 317, Government Code.

(d) The grant of an interest in real property owned by the state under this section must:

(1) comply with the requirements of Section 31.158 to the extent the requirements do not conflict with a recommendation in the governor's report under Section 31.1571; and

(2) be conveyed by an instrument signed by the commissioner and, if the governor's approval is required, by the governor.

SECTION 17. Subchapter E, Chapter 31, Natural Resources Code, is amended by amending Section 31.158 and adding Section 31.1581 to read as follows:

Sec. 31.158. REAL ESTATE TRANSACTIONS [TRANSACTION] AUTHORIZED BY LEGISLATURE. (a) If the legislature authorizes a real estate transaction involving real property owned [~~or held in trust~~] by the state, the division shall take possession and control of the real property and shall negotiate and close such real estate transaction on behalf of the state. In performing such duties, the division shall act on behalf of the state agency which owns or controls the subject state real property [~~land~~]. Proceeds from the real estate transaction shall be deposited in the Texas capital trust fund unless the proceeds are dedicated by the constitution of this state to another fund or unless the enabling legislation ordering the real estate transaction provides otherwise.

(b) The division may not take possession and control under this section of real property administered by a state agency that, under Chapter 2201, Government Code, is ineligible to benefit from the Texas capital trust fund.

(c) Unless the enabling legislation or general law authorizing the real estate transaction specifies a different procedure, the division shall transact the sale or lease of state real property [land] in the following manner:

(1) The sale or lease shall be by sealed bid, by ~~or~~ public auction, or as provided by Subsection (d); provided, however, [prior to the bid sale or auction,] the School Land Board shall have the first option to purchase such real property pursuant to Section 31.159 of this code. Subdivisions (2)-(7) apply only to a sale or lease by sealed bid or public auction.

(2) Notice of the sale or lease shall be published at least 30 days prior to the date of sale or lease in at least three issues of four daily newspapers in the state. One of the papers must be of general circulation in the county where the real property [land] is located.

(3) The notice shall state that real property is to be offered for sale or lease on a certain date and that lists describing the real property and terms of sale or lease can be obtained from the division.

(4) No bid [bids] may be accepted that does ~~do~~ not meet the minimum value established by the commissioner, which shall not be less than market value [for the real property by an appraisal conducted by an appraiser employed by the General Land Office].

(5) The division may reject any and all bids, but if the division elects not to reject any and all bids, it is required to accept the best bid submitted.

(6) If the award of a bid does not result in a final transaction with the bidder, the land office may solicit proposals, negotiate, and sell, exchange, or lease the real property, provided that the sales price may not be less than market value.

(7) If, after proper notice has been posted, no bids meeting the minimum requirements are received at the appointed time and place for the sale or lease, the division may solicit proposals and negotiate the sale, exchange, or lease of the real property to any person, provided that the sales price may not be less than the market [appraised] value of the real property [land]. The governor must approve any [the] sale or lease of [any] real property negotiated under this section [through a negotiated transaction]. Failure of the governor to approve the sale or lease constitutes a veto of the transaction.

(8) [~~(7)~~] Each grant of an interest in real property made pursuant to this section shall be made by an instrument signed by the commissioner [of the General Land Office] and, if the governor's approval is required, by the governor.

(9) [~~(8)~~] The expenses incurred by the division in conducting the sale, exchange, or lease, including the payment of reasonable brokerage fees, may be deducted from the proceeds of the sale prior to deposit in the Texas capital trust fund or other appropriate depository account. The division may promulgate rules relating to the payment of reasonable brokerage fees.

(10) [(9)] These procedures will not apply to sales or leases of real property [~~land~~] that are possessed by an agency that under Chapter 2201, Government Code, is ineligible to use the Texas capital trust fund or real property [~~land~~] which belongs to the permanent school fund.

(11) [(10)] Prior to the actual sale or lease, the state representative and state senator in the district where the subject real property is located shall be notified of all efforts to sell or lease the real property and shall be provided with copies of all brokerage contacts relating to the sale or lease.

(d) The division may contract for the services of a real estate broker or a private brokerage or real estate firm in the course of a real estate transaction under this section if the commissioner determines contracting for those services is in the best interest of the state.

Sec. 31.1581. TRANSFER OF REAL PROPERTY FOR USE AS AFFORDABLE HOUSING. (a) If the legislature authorizes or the governor approves the transfer of title to real property to an entity [a political subdivision] for use as affordable [and accessible] housing, the division shall take possession and control of the real property and shall conduct the transaction as provided by the policy adopted under Subsection (b) [(e)].

(b) [(e)] The division shall adopt a policy regarding the method of transferring title to real property designated as suitable for affordable [and accessible] housing to an entity [a political subdivision] for use as affordable [and accessible] housing. The policy must include monitoring and enforcement provisions to ensure that the real property is used for affordable [and accessible] housing.

SECTION 18. Subchapter E, Chapter 31, Natural Resources Code, is amended by adding Section 31.1585 to read as follows:

Sec. 31.1585. CERTAIN PROCEEDS. Notwithstanding any other law, proceeds from the sale of real property purchased with general revenue funds that was recommended for sale by the division and not disapproved for sale by the governor during the calendar years 1995 through 2002 shall be deposited in the unobligated portion of the general revenue fund and may only be appropriated to the state agency that possessed the property at the time of the sale for use by the state agency in performing its duties.

SECTION 19. Section 31.159, Natural Resources Code, is amended to read as follows:

Sec. 31.159. FIRST OPTION TO PURCHASE. (a) The School Land Board has a first option to purchase real property authorized for sale by the legislature or the governor. The board may exercise its option by tendering cash for market value as mutually agreed on by the board and the state agency that owns the real property, but the purchase price may not be less than market value. For purposes of this section, the division may request more than one appraisal to determine market value. If the parties cannot agree on a value, the board and the state agency that owns the real property shall follow the procedures provided by Subsections (d) and (e). The board may not pay more than market value.

(b) The division shall inform the School Land Board of the proposed sale and its first option to purchase state agency real property. If the board decides to exercise its option under this section, the division shall appoint an appraiser not later than the 30th day after the date the board notifies the division of its decision.

(c) The School Land Board must complete the cash purchase not later than the 120th day after the date the board exercises its first option to purchase. If the School Land Board fails to complete the purchase within the time permitted, the division may extend the time for completing the purchase or disposing of the real property as authorized by the legislature or approved by the governor.

(d) If the state agency that owns the real property disputes the market value, the School Land Board shall request a second appraisal. If the School Land Board fails to request a second appraisal, the division shall appoint a second appraiser not later than the 21st day after the date the state agency notifies the School Land Board that it disputes the market value. On completion of the second appraisal, the two appraisers shall meet promptly and attempt to reach agreement on the market value. If the two appraisers fail to reach agreement within 10 days of the meeting, the land office shall request a third appraiser to reconcile the two previous appraisals. The determination of value by the third appraiser may not be less than the lower or more than the higher of the first two appraisals. The market value determined by the third appraiser is final and binding on all parties.

(e) The division may appoint an appraiser employed by the land office for the performance of any one of the required appraisals. Any other appraiser employed under this section must be selected in accordance with Subchapter A, Chapter 2254, Government Code. The party requesting the appraisal shall award the appraisal services contract to the provider of professional services after considering the factors identified in Chapter 2254, Government Code. The division shall pay the expenses of appraisal. ~~[(a) If the real estate transaction authorized by the legislature is a sale of real property, the School Land Board has a first option to purchase the real property by cash purchase at current fair market value as determined by an independent appraisal.~~

~~[(b) After the legislature authorizes the sale of real property, the division must give to the School Land Board a written notice of the proposed sale. To exercise the option, the School Land Board, not later than the 30th day after the date the notice can first be considered by the board at a regular meeting, must give written notice to the division stating that the board has decided to exercise the option. If the School Land Board decides to exercise its option under this section, the division shall appoint an appraiser after complying with Subdivision (2) of Subsection (d) of this section. The School Land Board must complete the cash purchase not later than the 120th day after the date the division receives the notice from the board.~~

~~[(c) If the School Land Board fails to complete the purchase within the time permitted, the division may extend the time for completing the purchase or dispose of the real property as authorized by the legislature.~~

~~[(d)(1) Current fair market value shall be determined in accordance with the procedure prescribed by this subsection. Within 21 days after the day the School Land Board receives the notice given to the board under Subsection (b) of this~~

~~section, the School Land Board shall appoint a second appraiser. If the School Land Board fails to appoint the second appraiser, the division shall appoint a second appraiser within 21 days after the expiration of said 21 day period in which the board could have appointed an appraiser. The two appraisers shall meet promptly and shall attempt to reach agreement on the current fair market value. If the two appraisers so selected do not reach agreement within 10 days of such meeting, a third appraiser shall be appointed by the division to reconcile the two previous appraisals. The determination of value by the third appraiser may not be less than the lower or more than the higher of the first two appraisals. The value determined by the third appraisal shall be final and binding on all parties.~~

~~(2) Each appraiser shall be qualified and disinterested and shall have M.A.I. or other comparable professional designation. The division may appoint an appraiser employed by the General Land Office for any one of the required appraisals. The appointment of any other appraiser shall be made by the appointing party following receipt of at least three competitive bids, and if the cost of the appraisal is reasonably expected to exceed \$10,000, the appointing party shall utilize the notification procedure set out in Subchapter B, Chapter 2254, Government Code, and all time periods described in this Act shall be extended for the number of days necessary to comply with said notification procedure. The appointing party shall award the appraisal services contract to the bidder submitting the lowest and best bid, and in determining who has submitted the lowest and best bid, the appointing party shall consider the factors set out in Sections 2156.007(d)(1) (9), Government Code. Expense of the appraisal shall be paid by the division.]~~

SECTION 20. Section 31.161, Natural Resources Code, is amended to read as follows:

Sec. 31.161. DEVELOPMENT PLAN. (a) If the state intends to conduct a ~~[legislature authorizes the]~~ sale or lease for nongovernmental purposes of real property [land] belonging to the state, to the permanent school fund, or to any of the dedicated funds of the state, other than the permanent university fund, or any other real property [lands] subject to the administration and control of the board of regents of The University of Texas System, ~~[the governing board or chief executive officer of the agency or institution possessing the land may request]~~ the ~~[asset management]~~ division may ~~[of the General Land Office to]~~ promulgate a development plan on the real property [land before it is offered for sale or lease].

(b) The purpose of a development plan is to conserve and enhance the value of real property [land] belonging to the state, taking into consideration the preservation of the health, safety, and general welfare of the communities in which the real property [land] is situated.

(c) The plan shall address local land use planning ordinances, which may include the following ~~[such provisions as are necessary to implement the purposes of this section, including provisions for]:~~

(1) allocation and location of specific uses of the real property [land], including residential, commercial, industrial, recreational, or other appropriate uses;

(2) densities and intensities of designated land uses;

(3) the timing and rate of development;

(4) timely delivery of adequate facilities and services, including water, wastewater collection and treatment systems, parks and public recreational facilities, drainage facilities, school sites, and roads and transportation facilities; or ~~[and]~~

(5) needed zoning and other land use regulations.

(d) The plan shall comply with existing rules, regulations, orders, or ordinances for real property ~~[land]~~ development to the extent such rules, regulations, orders, or ordinances are not detrimental to the interests of the state as determined by the special board of review.

SECTION 21. Sections 31.161(a), (b), and (d), Natural Resources Code, are amended to read as follows:

(a) If the division is requested to prepare a development plan under Section 31.161, the division shall notify the local government to which the plan will be submitted under Section 31.162 of the division's intent to prepare a development plan. The division shall provide the local government with information relating to:

(1) the location of the real property to be offered for sale or lease;

(2) the highest and best use of ~~[to which]~~ the real property ~~[may legally be placed]~~ as provided in the division's report under Section 31.157; and

(3) the process for preparing the development plan under Section 31.161 and the process provided under Sections 31.165 and 31.166 for the special board of review.

(b) Not later than the 30th day after the date the local government receives the notice provided under Subsection (a), the local government may request the division to hold a public hearing to solicit public comment. If requested by the local government, the division shall hold a public hearing. The local government shall provide notice of the hearing to real property owners in at least the same manner that notice is provided for adopting zoning regulations or subdivision requirements in the local government's jurisdiction. The division shall set the agenda for the hearing, which must be completed no ~~[and must complete the hearing not]~~ later than the 120th day after the date ~~[the]~~ notice is provided under Subsection (a).

(d) A public hearing under this section may include:

(1) a presentation by the division relating to the division's classification of the real property as unused or substantially underused ~~[or unused]~~ and the division's recommendation of the highest and best use to which the real property may legally be placed;

(2) a presentation by the local government relating to relevant local plans, development principles, and ordinances that may affect the development of the real property; and

(3) oral comments and presentations of information by and written comments received from other persons relating to the development of the real property.

SECTION 22. Sections 31.162(a), (b), (e), and (f), Natural Resources Code, are amended to read as follows:

(a) The plan shall be submitted to any local government having jurisdiction over the real property [land] in question for consideration.

(b) The local government shall evaluate the plan and either accept or reject the plan no later than the 120th day [six months] after the date [the submission of the plan by] the [asset management] division submits the plan.

(c) If the plan is rejected by the affected local government, the [asset management] division may modify the plan to conform to the ordinances specifically identified by the local government and resubmit the plan for approval, or the commissioner [it] may apply for necessary rezoning or variances from the local ordinances.

(f) Failure by the local government to act within the 120-day period prescribed by Subsection (b) [six months] will be deemed an acceptance by the local government of the plan.

SECTION 23. Section 31.163, Natural Resources Code, is amended to read as follows:

Sec. 31.163. REZONING. (a) If the plan would require zoning inconsistent with any existing zoning or other land use regulation, the [asset management] division or its designated representative may at any time submit a request for rezoning to the local government with jurisdiction over the real property [lands] in question.

(b) The rezoning or variance request shall be submitted in the same manner as any such request is submitted to the affected local government; provided, however, the local government must take final action on the request no later than the 120th day [six months] after the date the request for rezoning or variance is submitted.

(c) Failure by the local government to act within the 120-day [six month] period prescribed by Subsection (b) will be deemed an approval of the rezoning request by the local government.

SECTION 24. Section 31.165, Natural Resources Code, is amended to read as follows:

Sec. 31.165. SPECIAL BOARD OF REVIEW. (a) If the local government denies the rezoning request, the matter may be appealed to a special board of review consisting of the following members:

- (1) the members of the School Land Board;
- (2) the chairman of the governing board of the agency or institution possessing the real property or his or her designated representative; ~~[and]~~
- (3) the mayor of the city or town within whose corporate boundaries or extraterritorial jurisdiction the real property [land] is located; and
- (4) the county judge of the county within which the real property [land] is located.

(b) The commissioner [Commissioner of the General Land Office] shall serve as chairman of the special board of review.

(c) If the plan involves real property [land] belonging to the permanent school fund, the special board of review shall consist of the members of the School Land Board and the local officials, with the commissioner [Commissioner of the General Land Office] serving as chairman.

(d) If the real property [land] is not located within the corporate boundaries or the extraterritorial jurisdiction of a city or town, the board shall consist of the members of the School Land Board, the agency chairman, and the county judge, with the commissioner serving as chairman.

SECTION 25. Sections 31.166(b), (c), (d), (e), (f), and (g), Natural Resources Code, are amended to read as follows:

(b) Hearings shall be conducted in accordance with rules promulgated by the land office [General Land Office] for conduct of such special review.

(c) If real property [land] is located in more than one city or town, the hearings on any single tract of real property [land] may be combined.

(d) Any political subdivision in which the tract in question is located and the appropriate central appraisal district shall receive written notice of board hearings at least 14 days prior to the hearing.

(e) At least one hearing shall be conducted in the county where the real property [land] is located.

(f) If after the hearings, the special board of review determines that local zoning requirements are detrimental to the best interest of the state, it shall issue an order establishing a development plan to govern the use of the real property [land] as provided in this section.

(g) Development of the real property [land] shall be in accordance with the plan and must comply with all local rules, regulations, orders, or ordinances except as specifically identified in an order of the special board of review issued pursuant to Subsection (f) of this section. In the event that substantial progress is not made toward development of the tract within five years of the date of adoption by the special board of review, local development policies and procedures shall become applicable to development of the tract, unless the special board of review promulgates a new plan.

SECTION 26. Sections 31.167(a) and (c), Natural Resources Code, are amended to read as follows:

(a) Except as provided by this subsection, a development plan promulgated by the special board of review and any plan accepted by a local government shall be final and binding on the state, its lessees, successors in interest and assigns, and affected local governments or political subdivisions unless revised by the special board of review. If the division does not receive a bid or auction solicitation for the real property subject to the development plan, the division, at the direction of the commissioner, may revise the development plan to conserve and enhance the value and marketability of the real property.

(c) The special board of review must file a copy of the development plan in the deed records of the county in which the real property [land] is located.

SECTION 27. Section 31.307, Natural Resources Code, is amended to read as follows:

Sec. 31.307. DEDICATION OF ROADS. The commissioner may dedicate roads located on the real property [land] used as the site for the superconducting super collider research facility to the county in which the roads are located if the commissioner believes that the dedication will enhance the value of remaining state real property [land].

SECTION 28. Sections 31.308(b) and (c), Natural Resources Code, are amended to read as follows:

(b) The commissioner shall convey the state's interest in the subsurface estate underlying the surface estate of real property [~~land~~] used as the site for the superconducting super collider research facility if the owner of the surface estate pays a sum equal to the [~~fair~~] market value of the subsurface estate as determined by the commissioner. After the state conveys its interest in the subsurface estate as provided by this subsection, title to the subsurface estate is reunited with the title to the surface estate.

(c) Unless the instrument of conveyance provides otherwise, a conveyance of the surface estate of real property [~~land~~] by the state under this subchapter includes the conveyance of the subsurface estate to the extent of the state's interest in the subsurface estate.

SECTION 29. Section 31.309, Natural Resources Code, is amended to read as follows:

Sec. 31.309. PREFERENCE RIGHT TO PURCHASE CERTAIN REAL PROPERTY [~~LAND~~]. (a) A person or the person's heirs who conveyed real property [~~land~~] to the state for use by the superconducting super collider research facility has a preference right to purchase the same tract of real property [~~land~~] previously conveyed before the tract is offered for sale by the state to any other person.

(b) A person who has a preference right under this section must pay at least the [~~fair~~] market value for the real property [~~land~~] as determined by an appraisal conducted by the land office.

(c) This section does not apply to a subsurface estate as defined by Section 31.308.

(d) The commissioner may adopt rules necessary to implement this section.

SECTION 30. Subchapter B, Chapter 11, Natural Resources Code, is amended by adding Section 11.0111 to read as follows:

Sec. 11.0111. LOCATION OF COASTAL BOUNDARIES. (a) The commissioner shall:

(1) have the area between the coastline of the Gulf of Mexico and the Three Marine League line compiled and platted; and

(2) locate and set the boundary lines between the coastal counties from the coastline to the Three Marine League line.

(b) The commissioner shall locate and set the boundary lines between the counties from the coastline to the Three Marine League line in accordance with established engineering practice.

(c) The legal description of the boundary lines set between the counties from the coastline to the continental shelf shall be filed and recorded in the office of the county clerk of the affected county.

SECTION 31. Chapter 51, Natural Resources Code, is amended by adding Subchapter J to read as follows:

SUBCHAPTER J. GRANTS

Sec. 51.501. APPLICATION FOR GRANT. A lessee of real property owned by the permanent school fund and used for grazing or agricultural purposes may apply to the commissioner for a grant to construct a permanent improvement on the leased property.

Sec. 51.502. SOURCE OF GRANT MONEY. A grant under this subchapter shall be made from money collected for surface damages under Sections 52.297 and 53.155.

Sec. 51.503. APPRAISAL REQUIRED. (a) Before a grant is made under Section 51.501, an appraiser employed by the land office must appraise the effect of the improvement for which a grant is sought on the value of the permanent school fund property.

(b) If the appraiser finds that the improvement will increase the value of the real property in an amount at least equal to the amount the improvement will cost, the commissioner may authorize the disbursement of money to construct the improvement.

Sec. 51.504. EVIDENCE OF EXPENDITURE REQUIRED. The commissioner shall require each lessee who receives a grant to provide copies of receipts, vouchers, or other evidence of expenditures for the improvement.

Sec. 51.505. IMPROVEMENTS: REAL PROPERTY OF PERMANENT SCHOOL FUND. Any improvement constructed with money disbursed under this subchapter is the real property of the permanent school fund.

Sec. 51.506. MAINTENANCE. As a condition for a grant under this subchapter, the commissioner shall require the grantee to agree in writing to maintain the improvement in a manner that will protect the best interest of the permanent school fund.

Sec. 51.507. RULES. The commissioner shall adopt rules as necessary to administer this subchapter, including rules establishing a procedure for applying for a grant under Section 51.501 and for monitoring the maintenance of the improvement.

SECTION 32. Subchapter F, Chapter 53, Natural Resources Code, is amended by adding Section 53.1631 to read as follows:

Sec. 53.1631. GROUNDWATER. (a) Unless otherwise expressly provided by statute, deed, patent, or other grant from the State of Texas, groundwater shall not be considered a mineral in any past or future reservation of title or rights to minerals by the State of Texas.

(b) Notwithstanding Subsection (a), the State of Texas shall retain any and all rights to reasonable use of the surface and groundwater for mineral development and production purposes.

SECTION 33. The following laws are repealed:

- (1) Sections 31.061, 31.062, 31.063, 31.151, 31.152, 31.160, 31.301, 31.302, 31.303, 31.304, 31.305, and 31.306, Natural Resources Code;
- (2) Subchapter F, Chapter 31, Natural Resources Code; and
- (3) Subchapter I, Chapter 31, Natural Resources Code.

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.

Representative McReynolds moved to adopt the conference committee report on **HB 2044**.

A record vote was requested.

The motion prevailed by (Record 924): 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; Eiland; 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; 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; Wohlgenuth; Wolens; Wong; Woolley; Zedler.

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

Absent — Edwards; Farrar.

HB 3042 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative R. Cook submitted the following conference committee report on **HB 3042** :

Austin, Texas, May 31, 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 3042** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Ellis, Rodney

R. Cook

Armbrister
 Bivins
 Brimer
 Wentworth

Chisum
 Solomons
 Casteel

On the part of the senate

On the part of the house

HB 3042, A bill to be entitled An Act relating to the administration and functions of the Texas Building and Procurement Commission and related matters.

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

ARTICLE 1. GENERAL ADMINISTRATION

SECTION 1.01. Section 2152.058(b), Government Code, is amended to read as follows:

(b) The commission shall meet at least quarterly [~~once each month~~]. The commission may meet at other times at the call of the presiding officer or as provided by the commission's rules.

SECTION 1.02. Subchapter B, Chapter 2152, Government Code, is amended by adding Section 2152.065 to read as follows:

Sec. 2152.065. REPRESENTATION ON BOARD OR COMMITTEE. If the commission must be represented on a board or committee, the executive director or the executive director's designee shall serve as the commission's representative on the board or committee unless the presiding officer of the commission elects to personally serve as the commission's representative or appoints a specific person to serve as the commission's representative on the board or committee.

SECTION 1.03. Section 2152.104(a), Government Code, is amended to read as follows:

(a) The commission shall have an appropriate number of [~~three~~] associate deputy directors.

ARTICLE 2. FACILITIES MANAGEMENT SERVICES

SECTION 2.01. Subchapter A, Chapter 2165, Government Code, is amended by adding Section 2165.007 to read as follows:

Sec. 2165.007. FACILITIES MANAGEMENT SERVICES. (a) In this section, "facilities management services" means any state agency facilities management service that is not unique to carrying out a program of the agency. The term includes services related to facilities construction, facilities management, general building and grounds maintenance, cabling, and facility reconfiguration.

(b) Notwithstanding any other law, the commission shall provide facilities management services in relation to all state agency facilities in Travis County or a county adjacent to Travis County. The commission's duty does not apply to:

- (1) a facility owned or operated by an institution of higher education;
- (2) military facilities;
- (3) facilities owned or operated by the Texas Department of Criminal

Justice;

- (4) facilities owned or operated by the Texas Youth Commission;

(5) facilities owned or operated by the Texas Department of Transportation;

(6) the Capitol, including the Capitol Extension, the General Land Office building, the Bob Bullock Texas State History Museum, and any museum located on the Capitol grounds;

(7) a facility determined by the commission to be completely residential;

(8) a regional or field office of a state agency; or

(9) a facility located within or on state park property.

SECTION 2.02. Subchapter B, Chapter 2165, Government Code, is amended by adding Section 2165.057 to read as follows:

Sec. 2165.057. MANAGEMENT OF FACILITIES. (a) The commission shall develop and implement policies that clearly define the responsibilities of the commission and the commission's staff that relate to conducting facilities management services for state agency facilities under Section 2165.007.

(b) The state energy conservation office shall provide utility management services for state agency facilities for which the commission provides facilities management services under Section 2165.007.

SECTION 2.03. On September 1, 2003:

(1) all powers and duties of a state agency that relate to the facilities management services treated by Section 2165.007(b), Government Code, as added by this article, are transferred to the Texas Building and Procurement Commission or the state energy conservation office, as appropriate;

(2) all obligations and contracts of a state agency that relate to the transferred services are transferred to the Texas Building and Procurement Commission or the state energy conservation office, as appropriate;

(3) all records and other property in the custody of a state agency that relate to the transferred services and all funds appropriated by the legislature to a state agency that relate to the transferred services are transferred to the Texas Building and Procurement Commission or the state energy conservation office, as appropriate;

(4) all complaints and investigations that are pending before a state agency that relate to the transferred services are transferred without change in status to the Texas Building and Procurement Commission or the state energy conservation office, as appropriate; and

(5) a rule or form adopted by a state agency that relates to the transferred services is considered to be a rule or form of the Texas Building and Procurement Commission and remains in effect until altered by the commission or the state energy conservation office, as appropriate.

ARTICLE 3. LEASE OF SPACE IN STATE-OWNED PARKING LOTS AND GARAGES

SECTION 3.01. Subchapter E, Chapter 2165, Government Code, is amended by adding Section 2165.2035 to read as follows:

Sec. 2165.2035. LEASE OF SPACE IN STATE-OWNED PARKING LOTS AND GARAGES. (a) In this section, "lease" includes a management agreement.

(b) The commission shall develop private, commercial uses for state-owned parking lots and garages located in the city of Austin at locations the commission determines are appropriate for commercial uses outside of regular business hours.

(c) The commission may contract with a private vendor to manage the commercial use of state-owned parking lots and garages.

(d) Money received from a lease under this program shall be deposited to the credit of the general revenue fund.

(e) On or before December 1 of each even-numbered year, the commission shall submit a report to the legislature and the Legislative Budget Board describing the effectiveness of the program under this section.

(f) The limitation on the amount of space allocated to private tenants prescribed by Section 2165.205(b) does not apply to the lease of a state-owned parking lot or garage under this section.

(g) Any lease of a state-owned parking lot or garage under this section must contain a provision that allows state employees who work hours other than regular working hours under Section 658.005 to retain their parking privileges in a state-owned parking lot or garage.

(h) Nonprofit, charitable, and other community organizations may apply to use state parking lots and garages located in the city of Austin in the area bordered by West Fourth Street, Lavaca Street, West Third Street, and Nueces Street free of charge or at a reduced rate. The executive director of the commission shall develop a form to be used to make such applications. The form shall require information related to:

(1) the dates and times of the free use requested;

(2) the nature of the applicant's activities associated with the proposed use of state parking lots and garages; and

(3) any other information determined by the executive director of the commission to be necessary to evaluate an application.

(i) To be considered timely, an application must be submitted at least one month before the proposed use, unless this provision is waived by the executive director of the commission.

(j) The executive director of the commission may approve or reject an application made under Subsection (h).

ARTICLE 4. LEASE OF SPACE FOR STATE AGENCIES

SECTION 4.01. Section 2167.001, Government Code, is amended to read as follows:

Sec. 2167.001. APPLICABILITY. (a) This chapter applies to:

(1) office space;

(2) warehouse space;

(3) laboratory space;

(4) storage space exceeding 1,000 gross square feet; ~~and~~

(5) boat storage space;

(6) aircraft hangar space other than hangar space and adjacent space leased by the State Aircraft Pooling Board at Austin-Bergstrom International Airport and operated for the purpose of providing air transportation services for the State of Texas;

- (7) vehicle parking space; and
 (8) a combination of those kinds of space.
- (b) This chapter does not apply to:
- (1) ~~aircraft hangar space;~~
~~(2) radio antenna space;~~
 (2) ~~(3) boat storage space;~~
~~(4) vehicle parking space;~~
~~(5) residential space for a Texas Department of Mental Health and Mental Retardation program;~~
 (3) ~~(6) residential space for a Texas Youth Commission program;~~
 (4) ~~(7) space to be used for less than one month for meetings, conferences, conventions, seminars, displays, examinations, auctions, or similar purposes;~~
 (5) ~~(8) district office space for members of the legislature;~~
 (6) ~~(9) space used by the Texas Workforce ~~[Employment]~~ Commission;~~
 (7) ~~(10) residential property acquired by the Texas Department of Housing and Community Affairs or the Texas State Affordable Housing Corporation that is offered for sale or rental to individuals and families of low or very low income or families of moderate income; or~~
 (8) ~~(11) except as provided by Section 2167.007, classroom and instructional space for an institution of higher education.~~

SECTION 4.02. Section 2167.005, Government Code, is amended by adding Subsection (d) to read as follows:

(d) The commission may revoke a delegation of authority made under this section.

SECTION 4.03. Section 2167.007(c), Government Code, is amended to read as follows:

(c) The commission may ~~shall~~ establish a system of charges and billings to assure the recovery of the cost of providing services under Subsection (a) and may ~~shall~~ submit, after the close of each month, a purchase voucher or journal voucher to an agency for which services were provided.

SECTION 4.04. Section 2167.054(d), Government Code, is amended to read as follows:

(d) As provided in a request for proposals and under rules adopted by the commission, the commission may discuss acceptable or potentially acceptable proposals with offerors to assess an offeror's ability to meet the solicitation requirements and to obtain the most advantageous lease contract for the state. The commission may ~~shall~~ invite a leasing state agency to participate in discussions and negotiations conducted under this section. After receiving a proposal but before making an award, the commission may permit the offeror to revise the proposal to obtain the best final proposal.

SECTION 4.05. Sections 2167.055(d) and (f), Government Code, are amended to read as follows:

(d) A lease contract that does not contain an option to renew may, on agreement of the parties, be renewed under terms to which all parties to the contract agree [~~once under the provisions of the original contract for a term that does not exceed one year~~].

(f) The obligation of the lessor to provide lease space and of the commission to accept the space is binding on the execution of the lease [~~award of the~~] contract.

SECTION 4.06. Section 2167.101, Government Code, is amended to read as follows:

Sec. 2167.101. CERTIFICATION OF AVAILABLE MONEY. A state agency occupying space leased under this chapter shall certify to the commission, at least 60 days before the beginning of each fiscal biennium during the lease term, that money is available to pay for the lease until the end of the next fiscal biennium.

SECTION 4.07. The following laws are repealed:

- (1) Section 2167.003(c), Government Code;
- (2) Section 2167.004(b), Government Code; and
- (3) Section 2167.106, Government Code.

SECTION 4.08. A lease contract entered into by the Texas Building and Procurement Commission before September 1, 2003, under Chapter 2167, Government Code, is governed during the remaining term of the lease by Chapter 2167, Government Code, as it existed immediately before September 1, 2003, and the prior law is continued in effect for this purpose. Chapter 2167, Government Code, as amended by this article, applies to the renewal of a lease described by this section.

ARTICLE 5. ALLOCATION OF OFFICE SPACE TO STATE AGENCIES

SECTION 5.01. Section 2165.104(c), Government Code, is amended to read as follows:

(c) 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 135 [~~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 there are so few employees that it is not practical to apply this subsection to that site, as determined by the commission [~~fewer than 16 employees are located~~]; and

(2) an agency site at which it is not practical to apply this subsection because of the site's type of space or use of space, as determined by the commission [~~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 to that space].~~

SECTION 5.02. This article 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 article.

ARTICLE 6. WRITTEN COMMENTS BY THE GENERAL LAND OFFICE ON TEXAS BUILDING AND PROCUREMENT COMMISSION LEASES

SECTION 6.01. The following sections are repealed:

- (1) Section 2165.154, Government Code; and
- (2) Section 2165.204, Government Code.

ARTICLE 7. GENERAL STATE PROCUREMENT

SECTION 7.01. Section 2171.101(a), Government Code, is amended to read as follows:

(a) The office of vehicle fleet management shall establish a vehicle reporting system to assist each state agency in the management of its vehicle fleet. A state agency shall be required to submit the reports on a monthly basis ~~[not more often than semiannually].~~

SECTION 7.02. Sections 2171.102(a) and (b), Government Code, are amended to read as follows:

(a) The office of vehicle fleet management may, for a fee, ~~[shall]~~ provide routine periodic maintenance service to state agencies located in Travis County. ~~[The office shall charge a fee for the service.]~~

(b) The office may ~~[shall]~~ negotiate contracts for major overhauls and other extensive mechanical work.

SECTION 7.03. Sections 2171.104(c) and (d), Government Code, are amended to read as follows:

(c) The management plan must address:

(1) opportunities for consolidating and privatizing the operation and management of vehicle fleets in areas where there is a concentration of state agencies, including the Capitol Complex and the Health and Human Services Complex in Austin;

(2) the number and type of vehicles owned by each agency and the purpose each vehicle serves;

(3) procedures to increase vehicle use and improve the efficiency of the state vehicle fleet;

(4) procedures to reduce the cost of maintaining state vehicles;

(5) procedures to handle surplus or salvage ~~[the sale of excess]~~ state vehicles; and

- (6) lower-cost alternatives to using state-owned vehicles, including:
- (A) using rental cars; and
 - (B) reimbursing employees for using personal vehicles.

(d) The commission shall require a state agency to transfer surplus or salvage vehicles identified by the management plan to the commission and shall sell or dispose of the [excess] vehicles in accordance with the provisions of Chapter 2175 that provide for disposition of surplus or salvage property by the commission [identified by the management plan and deposit the proceeds from the sale into the account that the agency used to purchase the vehicles].

SECTION 7.04. Chapter 2151, Government Code, is amended by adding Section 2151.005 to read as follows:

Sec. 2151.005. EXEMPTIONS RELATED TO LEGAL SERVICES. This subtitle does not apply to:

- (1) obtaining outside legal counsel services;
- (2) obtaining expert witnesses; or
- (3) procuring litigation-related goods and services for which competitive procurement is not feasible under the circumstances.

SECTION 7.05. Section 2155.078(k), Government Code, is amended to read as follows:

(k) The commission shall require a reasonable number of [24] hours of continuing education [each year] to maintain a certification level. The commission may allow attendance at equivalent certification training recognized by the commission to count toward the required number of [up to 16] hours [of the continuing education requirement]. Maintenance of the certification level may be by yearly renewal or another reasonable renewal period comparable to nationally recognized certification requirements.

SECTION 7.06. Section 2155.141, Government Code, is amended to read as follows:

Sec. 2155.141. [CERTAIN OTHER] PURCHASES FOR AUXILIARY ENTERPRISE NOT WITHIN COMMISSION'S PURCHASING AUTHORITY. The commission's authority does not extend to a purchase of goods and services[;

- [1) for resale;
- [2) for an auxiliary enterprise[; or
- [3) for an organized activity relating to an instructional department of an institution of higher learning or a similar activity of another state agency].

SECTION 7.07. Section 2155.144, Government Code, is amended by adding Subsection (b-1) to read as follows:

(b-1) An agency to which this section applies is not delegated the authority to procure common commodities or services:

- (1) including goods and services acquired for direct consumption or use by the agency in the day-to-day support of the agency's administrative operations, such as office supplies and equipment, building maintenance and cleaning services, or temporary employment services; and

(2) not including consulting services, professional services, health care services, information resources technology, goods or services acquired for the benefit or on behalf of clients of programs operated by the agency, procurements specifically authorized or delegated to the agency by statute, or the contracting out of agency purchasing functions or other administrative or program functions.

SECTION 7.08. Subchapter C, Chapter 2155, Government Code, is amended by adding Section 2155.148 to read as follows:

Sec. 2155.148. CERTAIN PURCHASES FOR TEXAS STATEWIDE EMERGENCY SERVICES PERSONNEL RETIREMENT FUND. (a) The fire fighters' pension commissioner is delegated all purchasing functions relating to the purchase of goods or services from funds other than general revenue funds for a purpose the state board of trustees of the Texas statewide emergency services personnel retirement fund determines relates to the fiduciary duties of the retirement fund.

(b) The fire fighters' pension commissioner shall acquire goods or services by any procurement method approved by the state board of trustees of the Texas statewide emergency services personnel retirement fund that provides the best value to the retirement fund. The fire fighters' pension commissioner shall consider the best value standards provided by Section 2155.074.

(c) The commission shall procure goods or services for the fire fighters' pension commissioner at the request of the pension commissioner, and the pension commissioner may use the services of the commission in procuring goods or services.

SECTION 7.09. Subchapter I, Chapter 2155, Government Code, is amended by adding Section 2155.510 to read as follows:

Sec. 2155.510. REBATES. (a) The commission may collect a rebate from a vendor under a contract listed on a schedule developed under this subchapter.

(b) If a purchase resulting in a rebate under this section is made in whole or in part with federal funds, the commission shall ensure that, to the extent the purchase was made with federal funds, the appropriate portion of the rebate is reported to the purchasing agency for reporting and reconciliation purposes with the appropriate federal funding agency.

SECTION 7.10. The heading to Subchapter B, Chapter 2157, Government Code, is amended to read as follows:

SUBCHAPTER B. CATALOG [~~CATALOGUE~~] PURCHASE METHOD

SECTION 7.11. Section 2157.061, Government Code, is amended to read as follows:

Sec. 2157.061. USE OF CATALOG [~~CATALOGUE~~] PURCHASE METHOD REQUIRED UNLESS BEST VALUE AVAILABLE ELSEWHERE. The commission or a state agency shall purchase an automated information system through the catalog [~~catalogue~~] procedure provided by this subchapter unless the commission or state agency determines that the best value may be obtained from another purchase method authorized by this subtitle.

SECTION 7.12. Section 2157.0611, Government Code, is amended to read as follows:

Sec. 2157.0611. REQUIREMENT TO EVALUATE THREE OFFERS [~~PROPOSALS~~] WHEN POSSIBLE. A catalog [~~catalogue~~] purchase or lease that exceeds \$2,000 or a greater amount prescribed by commission rule shall, when possible, be based on an evaluation of at least three catalog offers [~~catalogue proposals~~] made to the commission or other state agency by catalog [~~qualified~~] information systems vendors. If at least three catalog offers [~~catalogue proposals~~] are not evaluated by the commission or other state agency before a purchase or lease that exceeds the threshold amount is made, the commission or other agency shall document the reasons for that fact before making the purchase or lease under Section 2157.063.

SECTION 7.13. Section 2157.062, Government Code, is amended to read as follows:

Sec. 2157.062. BASIC REQUIREMENTS FOR CATALOG [~~APPLICATION PROCESS FOR QUALIFICATION AS~~] VENDOR. [~~(a) To sell or lease an automated information system under this subchapter to a state agency, a vendor must apply to the commission for designation as a qualified information systems vendor. The commission shall prescribe the application process. The commission may allow or require a vendor to apply on-line.~~

[~~(b)~~] At a minimum, a catalog information systems vendor must [~~the commission shall require an applicant to submit~~]:

(1) maintain an Internet catalog [~~a catalogue~~] containing each product and service eligible for purchase by a state agency, including for each product or service:

- (A) a description;
- (B) the list price; and
- (C) the price to a state agency;

(2) maintain a maintenance, repair, and support plan for each eligible product or service;

(3) provide on request proof of the applicant's financial resources and ability to perform; and

(4) provide a guarantee that the vendor will make available equivalent replacement parts for a product sold to the state until at least the third anniversary of the date the product is discontinued.

SECTION 7.14. Section 2157.063(a), Government Code, is amended to read as follows:

(a) If a purchase or lease is the best value available and is in the state's best interest, a state agency may under this subchapter purchase or lease an automated information system directly from a catalog [~~qualified~~] information systems vendor and may negotiate price and additional terms and conditions to be included in a contract relating to the purchase or lease.

SECTION 7.15. Section 2157.066, Government Code, is amended by amending Subsections (a), (b), and (f) and adding Subsection (g) to read as follows:

(a) A catalog [~~vendor designated by the commission as a qualified~~] information systems vendor shall publish and maintain a catalog [~~catalogue~~] described by Section 2157.062(1) [~~2157.062(b)(1)~~] in the manner required by the commission.

(b) The vendor shall revise the catalog [~~catalogue~~] as necessary in the manner required by the commission.

(f) The commission may audit a catalog [~~qualified~~] information systems vendor's catalog [~~approved catalogue~~] for compliance with rules adopted under Subsection (g) [~~(e)~~].

(g) The commission shall adopt rules that specify the requirements for a catalog information systems vendor's maintenance of Internet catalogs, including:

(1) availability;

(2) format; and

(3) other relevant requirements.

SECTION 7.16. Section 2157.067(a), Government Code, is amended to read as follows:

(a) The commission shall make the catalog [~~catalogue~~] purchasing procedure available to a local government that qualifies for cooperative purchasing under Sections 271.082 and 271.083, Local Government Code.

SECTION 7.17. Section 2157.068(b), Government Code, is amended to read as follows:

(b) The department shall negotiate with catalog [~~qualified~~] information systems vendors to attempt to obtain a favorable price for all of state government on licenses for commodity software items, based on the aggregate volume of purchases expected to be made by the state. The terms and conditions of a license agreement between a vendor and the department under this section may not be less favorable to the state than the terms of similar license agreements between the vendor and retail distributors.

SECTION 7.18. Chapter 2254, Government Code, is amended by adding Subchapter D to read as follows:

SUBCHAPTER D. OUTSIDE LEGAL SERVICES

Sec. 2254.151. DEFINITION. In this subchapter, "state agency" means a department, commission, board, authority, office, or other agency in the executive branch of state government created by the state constitution or a state statute.

Sec. 2254.152. APPLICABILITY. This subchapter does not apply to a contingent fee contract for legal services.

Sec. 2254.153. CONTRACTS FOR LEGAL SERVICES AUTHORIZED. Subject to Section 402.0212, a state agency may contract for outside legal services.

Sec. 2254.154. ATTORNEY GENERAL; COMPETITIVE PROCUREMENT. The attorney general may require state agencies to obtain outside legal services through a competitive procurement process, under conditions prescribed by the attorney general.

SECTION 7.19. Section 2262.001, Government Code, is amended by adding Subdivision (1-a) to read as follows:

(1-a) "Commission" means the Texas Building and Procurement Commission.

SECTION 7.20. Sections 2262.051(a) and (b), Government Code, are amended to read as follows:

(a) In consultation with the attorney general [~~Texas Building and Procurement Commission~~], the Department of Information Resources, the comptroller, and the state auditor, the commission [~~attorney general~~] shall develop or [~~and~~] periodically update a contract management guide for use by state agencies.

(b) The commission [~~attorney general~~] may adopt rules necessary to develop or update the guide.

SECTION 7.21. Section 2262.052(b), Government Code, is amended to read as follows:

(b) The state auditor shall:

(1) periodically monitor compliance with this section;

(2) report any noncompliance to:

(A) the governor;

(B) the lieutenant governor;

(C) the speaker of the house of representatives; and

(D) the team; and

(3) assist, in coordination with the commission [~~attorney general~~] and the comptroller, a noncomplying state agency to comply with this section.

SECTION 7.22. Section 2262.053(a), Government Code, is amended to read as follows:

(a) In coordination with the [~~Texas Building and Procurement Commission, the~~] comptroller, [~~and the~~] Department of Information Resources, and [~~the~~] state auditor, the commission shall develop or administer a training program for contract managers.

SECTION 7.23. Section 2262.054, Government Code, is amended to read as follows:

Sec. 2262.054. PUBLIC COMMENT. The commission [~~attorney general~~] by rule may establish procedures by which each state agency is required to invite public comment by publishing the proposed technical specifications for major contracts on the Internet through the information service known as the Texas Marketplace or through a suitable successor information service. The guide must define "technical specifications."

SECTION 7.24. Section 2262.101, Government Code, is amended to read as follows:

Sec. 2262.101. CREATION; DUTIES. The Contract Advisory Team is created to assist state agencies in improving contract management practices by:

(1) reviewing the solicitation of major contracts by state agencies;

(2) reviewing any findings or recommendations made by the state auditor, including those made under Section 2262.052(b), regarding a state agency's compliance with the contract management guide; and

(3) providing recommendations to the commission regarding:

(A) ~~[the attorney general regarding]~~ the development of the contract management guide; and

(B) ~~[the state auditor regarding]~~ the training under Section 2262.053.

SECTION 7.25. Sections 2155.142, 2157.001(2), 2157.064, 2157.065, 2157.066(c) and (d), and 2261.001(e), Government Code, are repealed.

SECTION 7.26. The changes in law made by this article to Section 2155.141, Government Code, apply only to a purchase made on or after the effective date of this article. A purchase made before the effective date of this article is covered by the law in effect when the purchase was made, and the former law is continued in effect for that purpose.

SECTION 7.27. (a) In this section, "commission" means the Texas Building and Procurement Commission.

(b) Not later than February 1, 2004:

(1) the attorney general and state auditor shall complete the transfer of powers and duties to the commission under Chapter 2262, Government Code, as amended by this article;

(2) a rule or form adopted by the attorney general or state auditor under Chapter 2262, Government Code, is a rule or form of the commission and remains in effect until changed by the commission;

(3) the commission assumes, without a change in status, the position of the attorney general or state auditor with respect to any matter regarding which the duties of the attorney general or state auditor under Chapter 2262, Government Code, have been transferred to the commission;

(4) all property, including records, and rights and obligations of the attorney general and state auditor related to those entities' express duties under Chapter 2262, Government Code, are transferred to the commission; and

(5) all funds appropriated by the legislature to the attorney general and state auditor related to those entities' express powers and duties under Chapter 2262, Government Code, are transferred to the commission.

SECTION 7.28. Section 2175.061, Government Code, is amended by adding Subsection (c) to read as follows:

(c) The commission may by rule determine the best method of disposal for surplus and salvage property of the state under this chapter.

SECTION 7.29. Section 2175.134, Government Code, is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

(a) Proceeds from the sale of surplus or salvage property, less the cost of advertising the sale, the cost of selling the surplus or salvage property, including the cost of auctioneer services, and the amount of the fee collected under Section 2175.131, shall be deposited to the credit of the general revenue fund of the state treasury ~~[appropriate appropriation item of the state agency for which the sale was made]~~.

(c) Proceeds from the sale of surplus and salvage property of the State Aircraft Pooling Board shall be deposited to the credit of the board.

SECTION 7.30. Section 2175.182(a), Government Code, is amended to read as follows:

(a) The commission is responsible for the disposal of surplus or salvage property under this subchapter. The commission may take physical possession of the property. ~~[A state agency maintains ownership of property throughout the disposal process.]~~

SECTION 7.31. Section 2175.185(b), Government Code, is amended to read as follows:

(b) On receiving notice under this section, the comptroller shall, if necessary, [+

~~(1) debit and credit the proper appropriations; and~~

~~(2)]~~ adjust state property accounting records.

SECTION 7.32. Section 2175.191, Government Code, is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

(a) Proceeds from the sale of surplus or salvage property, less the cost of advertising the sale, the cost of selling the surplus or salvage property, including the cost of auctioneer services, and the amount of the fee collected under Section 2175.188, shall be deposited to the credit of the general revenue fund of the state treasury ~~[appropriate appropriation item of the state agency for which the sale was made].~~

(c) Proceeds from the sale of surplus and salvage property of the State Aircraft Pooling Board shall be deposited to the credit of the board.

SECTION 7.33. Section 2175.361, Government Code, is amended to read as follows:

Sec. 2175.361. DEFINITIONS. In this subchapter:

(1) "Federal act" means the Federal Property and Administrative Services Act of 1949 (40 U.S.C. Section 541 et seq. [484]), as amended, or any other federal law providing for the disposal of federal surplus property.

(2) "Federal property" means federal surplus property acquired;

(A) by the commission or under the commission's jurisdiction under this subchapter; and

(B) under 40 U.S.C. Section 483c, 549, or 550, or under any other federal law providing for the disposal ~~[Section 484(j) or (k)]~~ of ~~[the]~~ federal surplus property ~~[act]~~. ~~[The term includes federal real property acquired under Section 484(k) of the federal act.]~~

SECTION 7.34. Section 2175.362(a), Government Code, is amended to read as follows:

(a) The commission is the designated state agency under 40 U.S.C. Section 549 and any other federal law providing for the disposal [484(j)] of ~~[the]~~ federal surplus property ~~[act]~~.

SECTION 7.35. Section 2175.364, Government Code, is amended to read as follows:

Sec. 2175.364. COMMISSION ASSISTANCE IN PROCUREMENT AND USE OF PROPERTY. The commission may:

(1) disseminate information and assist a potential applicant regarding the availability of federal real property;

(2) assist in the processing of an application for acquisition of federal real property and related personal property under 40 U.S.C. Section 550 or any other federal law providing for the disposal [~~484(k)~~] of [~~the~~] federal surplus property [~~act~~];

(3) act as an information clearinghouse for an entity that may be eligible to acquire federal property and, as necessary, assist the entity to obtain federal property;

(4) assist in assuring use of the property; and

(5) engage in an activity relating to the use of federal property by another state agency, institution, or organization engaging in or receiving assistance under a federal program.

SECTION 7.36. Section 2175.367, Government Code, is amended to read as follows:

Sec. 2175.367. CONTRACTS. The commission may enter into an agreement, including:

(1) a cooperative agreement with a federal agency under 40 U.S.C. Section 549 or any other federal law providing for the disposal [~~484(n)~~] of [~~the~~] federal surplus property [~~act~~];

(2) an agreement with a state agency for surplus property of a state agency that will promote the administration of the commission's functions under this subchapter; or

(3) an agreement with a group or association of state agencies for surplus property that will promote the administration of the commission's functions under this subchapter.

SECTION 7.37. Sections 2175.134(b) and 2175.191(b), Government Code, are repealed.

SECTION 7.38. The changes in law made by this article to Chapter 2175, Government Code, apply only to surplus and salvage property of the state sold on or after September 1, 2003.

SECTION 7.39. Section 2166.001(8), Government Code, is amended to read as follows:

(8) "Small construction project" means a project that:

(A) has an estimated value of less than \$100,000 [~~\$25,000~~]; and

(B) requires advance preparation of working plans or drawings.

SECTION 7.40. Section 2166.2531(d), Government Code, is amended to read as follows:

(d) The commission shall prepare a request for qualifications that includes general information on the project site, project scope, [~~budget,~~] special systems, selection criteria, and other information that may assist potential design-build firms in submitting proposals for the project. The commission shall also prepare a design criteria package that includes more detailed information on the project. If the preparation of the design criteria package requires engineering or architectural services that constitute the practice of engineering within the meaning of The Texas Engineering Practice Act (Article 3271a, Vernon's Texas Civil Statutes) or

the practice of architecture within the meaning of Chapter 478, Acts of the 45th Legislature, Regular Session, 1937 (Article 249a, Vernon's Texas Civil Statutes), those services shall be provided in accordance with the applicable law.

SECTION 7.41. Sections 2166.2532(e) and (g), Government Code, are amended to read as follows:

(e) The commission shall select the construction manager-at-risk in either a one-step or two-step process. The commission shall prepare a request for proposals, in the case of a one-step process, or a request for qualifications, in the case of a two-step process, that includes general information on the project site, project scope, schedule, selection criteria, ~~estimated budget,~~ and the time and place for receipt of proposals or qualifications, as applicable; a statement as to whether the selection process is a one-step or two-step process; and other information that may assist the commission in its selection of a construction manager-at-risk. The commission shall state the selection criteria in the request for proposals or qualifications, as applicable. The selection criteria may include the offeror's experience, past performance, safety record, proposed personnel and methodology, and other appropriate factors that demonstrate the capability of the construction manager-at-risk. If a one-step process is used, the commission may request, as part of the offeror's proposal, proposed fees and prices for fulfilling the general conditions. If a two-step process is used, the commission may not request fees or prices in step one. In step two, the commission may request that five or fewer offerors, selected solely on the basis of qualifications, provide additional information, including the construction manager-at-risk's proposed fee and its price for fulfilling the general conditions.

(g) At each step, the commission shall receive, publicly open, and read aloud the names of the offerors. ~~[At the appropriate step, the commission shall also read aloud the fees and prices, if any, stated in each proposal as the proposal is opened.]~~ Within 45 days after the date of opening the proposals, the commission or its representative shall evaluate and rank each proposal submitted in relation to the criteria set forth in the request for proposals.

SECTION 7.42. Sections 2166.2533(d) and (f), Government Code, are amended to read as follows:

(d) The commission shall prepare a request for competitive sealed proposals that includes construction documents, selection criteria, ~~estimated budget,~~ project scope, schedule, and other information that contractors may require to respond to the request. The commission shall state in the request for proposals all of the selection criteria that will be used in selecting the successful offeror.

(f) The commission shall receive, publicly open, and read aloud the names of the offerors ~~[and, if any are required to be stated, all prices stated in each proposal]~~. Within 45 days after the date of opening the proposals, the commission shall evaluate and rank each proposal submitted in relation to the published selection criteria.

SECTION 7.43. Subchapter F, Chapter 2166, Government Code, is amended by adding Section 2166.260 to read as follows:

Sec. 2166.260. APPROVAL OF CERTAIN EXPENDITURES REQUIRED. A state agency may not spend more than the amount authorized for the cost of a project unless the governor and the Legislative Budget Board approve the expenditure. Once the cost of a project reaches the amount authorized for the project, each change to approved project plans must be approved by the governor and the Legislative Budget Board.

SECTION 7.44. Section 2166.302, Government Code, is amended to read as follows:

Sec. 2166.302. ADOPTION OF CONDITIONS. (a) Except as provided by Subsection (b), the ~~[The]~~ commission shall adopt uniform general conditions to be incorporated into all building construction contracts made by the state, including a contract for a project excluded from this chapter by Section 2166.003, but not including a contract for a project excluded from this chapter by Section 2166.004.

(b) The commission is not required to adopt uniform general conditions for small construction projects, as defined by Section 2166.001.

SECTION 7.45. Section 2166.305(b), Government Code, is amended to read as follows:

(b) A committee appointed by the commission shall perform the review. The committee consists of:

(1) the director of facilities construction and space management appointed under Section 2152.104, who serves ~~[ex officio]~~ as the presiding officer of the committee ~~[and who votes only in case of a tie];~~

(2) seven individuals appointed by the commission, one each from the lists of nominees submitted respectively by the:

(A) president of the Texas Society of Architects;

(B) president of the Texas Society of Professional Engineers;

(C) presiding officer of the Executive Council of the Texas Associated General Contractors Chapters;

(D) executive secretary of the Mechanical Contractors Associations of Texas, Incorporated;

(E) executive secretary of the Texas Building and Construction Trades Council;

(F) president of the Associated Builders and Contractors of Texas; and

(G) executive director of the National Association of Minority Contractors, with the list composed of persons who reside in this state;

(3) one individual appointed by the commission representing an institution of higher education, as defined by Section 61.003, Education Code;

(4) one individual appointed by the commission representing a state agency that has a substantial ongoing construction program; ~~[and]~~

(5) one individual appointed by the commission representing the attorney general's office; and

(6) one individual appointed by the commission representing the interests of historically underutilized businesses.

SECTION 7.46. Section 2166.201, Government Code, is repealed.

SECTION 7.47. The changes in law made by this article to Sections 2166.2531, 2166.2532, and 2166.2533, Government Code, apply only in relation to a Texas Building and Procurement Commission request for qualifications or proposals made on or after September 1, 2003.

SECTION 7.48. CARLOS F. TRUAN NATURAL RESOURCES CENTER. (a) The natural resources center located at Texas A&M University at Corpus Christi that was dedicated on August 6, 1996, shall be known as the Carlos F. Truan Natural Resources Center.

(b) The Texas Building and Procurement Commission shall take appropriate action to ensure that the center is identified as provided by this section.

ARTICLE 8. TRAVEL SERVICES CONTRACTS

SECTION 8.01. Sections 2171.052(b) and (c), Government Code, are amended to read as follows:

(b) The central travel office may ~~[shall]~~ negotiate contracts with private travel agents, with travel and transportation providers, and with credit card companies that provide travel services and other benefits to the state. The central travel office may ~~[shall]~~ negotiate with commercial lodging establishments to obtain the most cost-effective rates possible for state employees traveling on state business.

(c) The commission may ~~[shall]~~ make contracts with travel agents that meet certain reasonable requirements prescribed by the central travel office, ~~[allowing contracts to provide travel services by as many private travel agents as possible]~~ with preference given to resident entities of this state.

SECTION 8.02. Section 2171.052(e), Government Code, is repealed.

ARTICLE 9. SCHOOL BUS SAFETY STANDARDS

SECTION 9.01. Section 34.002(a), Education Code, is amended to read as follows:

(a) The Department of Public Safety, with the advice of the ~~[General Services Commission and the]~~ Texas Education Agency, shall establish safety standards for school buses used to transport students in accordance with Section 34.003 ~~[34.002, Education Code]~~.

SECTION 9.02. Sections 547.7015(a) and (b), Transportation Code, are amended to read as follows:

(a) The department ~~[General Services Commission, with the advice of the department,]~~ shall adopt and enforce rules governing the design, color, lighting and other equipment, construction, and operation of a school bus for the transportation of schoolchildren that is:

- (1) owned and operated by a school district in this state; or
- (2) privately owned and operated under a contract with a school district in this state.

(b) In adopting rules under this section, the department ~~[General Services Commission]~~ shall emphasize:

- (1) safety features; and
- (2) long-range, maintenance-free factors.

SECTION 9.03. Rules that were adopted under Section 547.7015, Transportation Code, before the effective date of this article and that are in effect on the effective date of this article are continued in effect as rules of the Department of Public Safety until the rules are amended, repealed, or superseded by an action of the department.

ARTICLE 10. CENTRAL SUPPLY STORE; REPAIR FACILITY

SECTION 10.01. Section 2172.001(a), Government Code, is amended to read as follows:

~~(a)~~ The commission may ~~[shall]~~ operate a central supply store at which only state agencies, the legislature, and legislative agencies may obtain small supply items. If the commission operates a central supply store, the commission shall devise an appropriate method of billing a using entity for the supplies.

SECTION 10.02. Section 2172.002(a), Government Code, is amended to read as follows:

(a) The commission may ~~[shall]~~ maintain a facility for repairing office machines and may ~~[shall]~~ offer repair services to the following entities located in Austin:

- (1) state agencies;
- (2) the legislature; and
- (3) legislative agencies.

SECTION 10.03. Section 2172.001(b), Government Code, is repealed.

ARTICLE 11. EFFECTIVE DATE

SECTION 11.01. 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 R. Cook moved to adopt the conference committee report on **HB 3042**.

A record vote was requested.

The motion prevailed by (Record 925): 147 Yeas, 0 Nays, 2 Present, not voting.

Yeas — Allen; Alonzo; Bailey; Baxter; Berman; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; 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; Wohlgemuth; Wolens; Wong; Woolley; Zedler.

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

Absent — Burnam.

SB 1131 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Capelo submitted the conference committee report on **SB 1131**.

Representative Capelo moved to adopt the conference committee report on **SB 1131**.

The motion prevailed.

HB 1314 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Pitts submitted the following conference committee report on **HB 1314** :

Austin, Texas, May 31, 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 1314** 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.

Averitt	Pitts
West, Royce	West
Van de Putte	Dawson
Shapiro	
On the part of the senate	On the part of the house

HB 1314, A bill to be entitled An Act relating to public school student discipline.

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

SECTION 1. Subchapter D, Chapter 12, Education Code, is amended by adding Section 12.131 to read as follows:

Sec. 12.131. REMOVAL OF STUDENTS TO DISCIPLINARY ALTERNATIVE EDUCATION PROGRAM; EXPULSION OF STUDENTS.
(a) The governing body of an open-enrollment charter school shall adopt a code of conduct for its district or for each campus. In addition to establishing standards for behavior, the code of conduct shall outline generally the types of prohibited behaviors and their possible consequences. The code of conduct shall also outline the school's due process procedures with respect to expulsion.

Notwithstanding any other provision of law, a final decision of the governing body of an open-enrollment charter school with respect to actions taken under the code of conduct may not be appealed.

(b) An open-enrollment charter school may not elect to expel a student for a reason that is not authorized by Section 37.007 or specified in the school's code of conduct as conduct that may result in expulsion.

(c) Notwithstanding any other provision, Section 37.002 and its provisions, wherever referenced, are not applicable to an open-enrollment charter school unless the governing body of the school so determines.

SECTION 2. Section 25.001(d), Education Code, is amended to read as follows:

(d) For a person under the age of 18 years to establish a residence for the purpose of attending the public schools separate and apart from the person's parent, guardian, or other person having lawful control of the person under a court order, it must be established that the person's presence in the school district is not for the primary purpose of participation in extracurricular activities. The board of trustees shall determine whether an applicant for admission is a resident of the school district for purposes of attending the public schools and may adopt reasonable guidelines for making a determination as necessary to protect the best interests of students. The board of trustees is not required to admit a person under this subsection if the person:

(1) has engaged in conduct or misbehavior within the preceding year that has resulted in:

- (A) removal to a disciplinary ~~[an]~~ alternative education program; or
- (B) expulsion;

(2) has engaged in delinquent conduct or conduct in need of supervision and is on probation or other conditional release for that conduct; or

(3) has been convicted of a criminal offense and is on probation or other conditional release.

SECTION 3. Section 25.085(d), Education Code, is amended to read as follows:

(d) Unless specifically exempted by Section 25.086, a student enrolled in a school district must attend:

(1) an extended-year program for which the student is eligible that is provided by the district for students identified as likely not to be promoted to the next grade level or tutorial classes required by the district under Section 29.084;

(2) an accelerated reading instruction program to which the student is assigned under Section 28.006(g);

(3) an accelerated instruction program to which the student is assigned under Section 28.0211; ~~[or]~~

(4) a basic skills program to which the student is assigned under Section 29.086; or

(5) a summer program provided under Section 37.008(l) or Section 37.021.

SECTION 4. Section 37.001, Education Code, is amended by amending Subsection (a) and adding Subsection (d) to read as follows:

(a) The board of trustees of an independent school district shall, with the advice of its district-level committee established under Subchapter F, Chapter 11 [Section 11.251], adopt a student code of conduct for the district. The student code of conduct must be posted and prominently displayed at each school campus or made available for review at the office of the campus principal. In addition to establishing standards for student conduct, the student code of conduct must:

(1) specify the circumstances, in accordance with this subchapter, under which a student may be removed from a classroom, campus, or disciplinary alternative education program;

(2) specify conditions that authorize or require a principal or other appropriate administrator to transfer a student to a disciplinary [and] alternative education program; [and]

(3) outline conditions under which a student may be suspended as provided by Section 37.005 or expelled as provided by Section 37.007;

(4) specify whether consideration is given to self-defense as a factor in a decision to order suspension, removal to a disciplinary alternative education program, or expulsion;

(5) provide guidelines for setting the length of a term of:

(A) a removal under Section 37.006; and

(B) an expulsion under Section 37.007; and

(6) address the notification of a student's parent or guardian of a violation of the student code of conduct committed by the student that results in suspension, removal to a disciplinary alternative education program, or expulsion.

(d) Each school year, a school district shall provide parents notice of and information regarding the student code of conduct.

SECTION 5. Sections 37.002(c) and (d), Education Code, are amended to read as follows:

(c) If a teacher removes a student from class under Subsection (b), the principal may place the student into another appropriate classroom, into in-school suspension, or into a disciplinary [and] alternative education program as provided by Section 37.008. The principal may not return the student to that teacher's class without the teacher's consent unless the committee established under Section 37.003 determines that such placement is the best or only alternative available. The terms of the removal may prohibit the student from attending or participating in school-sponsored or school-related activity.

(d) A teacher shall remove from class and send to the principal for placement in a disciplinary [and] alternative education program or for expulsion, as appropriate, a student who engages in conduct described under Section 37.006 or 37.007. The student may not be returned to that teacher's class without the teacher's consent unless the committee established under Section 37.003 determines that such placement is the best or only alternative available.

SECTION 6. Section 37.0021, Education Code, is amended by amending Subsections (a) through (d) and adding Subsection (g) to read as follows:

(a) It is the policy of this state to treat with dignity and respect all students, including students with disabilities who receive special education services under Subchapter A, Chapter 29 [~~with dignity and respect~~]. A student with a disability who receives special education services under Subchapter A, Chapter 29, may not be confined in a locked box, locked closet, or other specially designed locked space as either a discipline management practice or a behavior management technique.

(b) In this section:

(1) "Restraint" means the use of physical force or a mechanical device to significantly restrict the free movement of all or a portion of a student's body.

(2) "Seclusion" means a behavior management technique in which a student is confined in a locked box, locked closet, or locked room that:

(A) is designed solely to seclude a person; and

(B) contains less than 50 square feet of space.

(3) "Time-out" means a behavior management technique in which, to provide a student with an opportunity to regain self-control, the student is separated from other students for a limited period in a setting:

(A) that is not locked; and

(B) from which the exit [~~student~~] is not physically blocked by furniture, a closed door held shut from the outside, or another inanimate object [~~prevented from leaving~~].

(c) A school district employee or volunteer or an independent contractor of a district may not place a student in seclusion. This subsection does not apply to the use of seclusion in a court-ordered placement, other than a placement in an educational program of a school district, or in a placement or facility to which the following law, rules, or regulations apply:

(1) the Children's Health Act of 2000, Pub. L. No. 106-310, any subsequent amendments to that Act, any regulations adopted under that Act, or any subsequent amendments to those regulations;

(2) 40 T.A.C. Sections 720.1001-720.1013; or

(3) 25 T.A.C. Section 412.308(e).

(d) The commissioner by rule shall adopt procedures for the use of restraint and time-out by a school district employee or volunteer or an independent contractor of a district in the case of a student with a disability receiving special education services under Subchapter A, Chapter 29. A procedure adopted under this subsection must:

(1) be consistent with:

(A) professionally accepted practices and standards of student discipline and techniques for behavior management; and

(B) relevant health and safety standards; and

(2) identify any discipline management practice or behavior management technique that requires a district employee or volunteer or an independent contractor of a district to be trained before using that practice or technique.

(g) This section and any rules or procedures adopted under this section do not apply to:

(1) a peace officer while performing law enforcement duties;
(2) juvenile probation, detention, or corrections personnel; or
(3) an educational services provider with whom a student is placed by a
judicial authority, unless the services are provided in an educational program of a
school district.

SECTION 7. Section 37.003, Education Code, is amended by adding Subsection (c) to read as follows:

(c) The committee's placement determination regarding a student with a disability who receives special education services under Subchapter A, Chapter 29, is subject to the requirements of the Individuals with Disabilities Education Act (20 U.S.C. Section 1400 et seq.) and federal regulations, state statutes, and agency requirements necessary to carry out federal law or regulations or state law relating to special education.

SECTION 8. Section 37.005(a), Education Code, is amended to read as follows:

(a) The principal or other appropriate administrator may suspend a student who engages in conduct identified in the student code of conduct adopted under Section 37.001 as conduct for which a student may be suspended [~~for which the student may be placed in an alternative education program under this subchapter~~].

SECTION 9. Section 37.006, Education Code, is amended by amending Subsections (a), (b), (c), (d), (f), (h), and (l) and adding Subsections (m) and (n) to read as follows:

(a) A [~~Except as provided by Section 37.007(a)(3) or (b), a~~] student shall be removed from class and placed in a disciplinary [~~an~~] alternative education program as provided by Section 37.008 if the student:

(1) engages in conduct involving a public school that contains the elements of the offense of false alarm or report under Section 42.06, Penal Code, or terroristic threat under Section 22.07, Penal Code; or

(2) commits the following on or within 300 feet of school property, as measured from any point on the school's real property boundary line, or while attending a school-sponsored or school-related activity on or off of school property:

(A) engages in conduct punishable as a felony;

(B) engages in conduct that contains the elements of the offense of assault under Section 22.01(a)(1), Penal Code;

(C) sells, gives, or delivers to another person or possesses or uses or is under the influence of:

(i) marihuana or a controlled substance, as defined by Chapter 481, Health and Safety Code, or by 21 U.S.C. Section 801 et seq.; or

(ii) a dangerous drug, as defined by Chapter 483, Health and Safety Code;

(D) sells, gives, or delivers to another person an alcoholic beverage, as defined by Section 1.04, Alcoholic Beverage Code, commits a serious act or offense while under the influence of alcohol, or possesses, uses, or is under the influence of an alcoholic beverage;

(E) engages in conduct that contains the elements of an offense relating to an abusable volatile chemical [~~glue or aerosol paint~~] under Sections 485.031 through 485.034 [~~485.035~~], Health and Safety Code [~~— or relating to volatile chemicals under Chapter 484, Health and Safety Code~~]; or

(F) engages in conduct that contains the elements of the offense of public lewdness under Section 21.07, Penal Code, or indecent exposure under Section 21.08, Penal Code.

(b) Except as provided by Section 37.007(d), a student shall be removed from class and placed in a disciplinary [~~an~~] alternative education program under Section 37.008 if the student engages in conduct on or off of school property that contains the elements of the offense of retaliation under Section 36.06, Penal Code, against any school employee.

(c) In addition to Subsections [~~Subsection~~] (a) and (b), a student shall be removed from class and placed in a disciplinary [~~an~~] alternative education program under Section 37.008 based on conduct occurring off campus and while the student is not in attendance at a school-sponsored or school-related activity if:

(1) the student receives deferred prosecution under Section 53.03, Family Code, for conduct defined as a felony offense in Title 5, Penal Code;

(2) a court or jury finds that the student has engaged in delinquent conduct under Section 54.03, Family Code, for conduct defined as a felony offense in Title 5, Penal Code; or

(3) the superintendent or the superintendent's designee has a reasonable belief that the student has engaged in a conduct defined as a felony offense in Title 5, Penal Code.

(d) In addition to Subsections [~~Subsection~~] (a), (b), and (c), a student may be removed from class and placed in a disciplinary [~~an~~] alternative education program under Section 37.008 based on conduct occurring off campus and while the student is not in attendance at a school-sponsored or school-related activity if:

(1) the superintendent or the superintendent's designee has a reasonable belief that the student has engaged in conduct defined as a felony offense other than those defined in Title 5, Penal Code; and

(2) the continued presence of the student in the regular classroom threatens the safety of other students or teachers or will be detrimental to the educational process.

(f) Subject to Section 37.007(e), a student who is younger than 10 years of age shall be removed from class and placed in a disciplinary [~~an~~] alternative education program under Section 37.008 if the student engages in conduct described by Section 37.007. An elementary school student may not be placed in a disciplinary [~~an~~] alternative education program with any other student who is not an elementary school student.

(h) On receipt of notice under Article 15.27(g), Code of Criminal Procedure, the superintendent or the superintendent's designee shall review the student's placement in the disciplinary alternative education program. The student may not be returned to the regular classroom pending the review. The superintendent or the superintendent's designee shall schedule a review of the student's placement with the student's parent or guardian not later than the third

class day after the superintendent or superintendent's designee receives notice from the office or official designated by the court. After reviewing the notice and receiving information from the student's parent or guardian, the superintendent or the superintendent's designee may continue the student's placement in the disciplinary alternative education program if there is reason to believe that the presence of the student in the regular classroom threatens the safety of other students or teachers.

(l) Notwithstanding any other provision of this code, other than Section 37.007(e)(2), a student who is younger than six years of age may not be removed from class and placed in a disciplinary ~~[am]~~ alternative education program.

(m) Removal to a disciplinary alternative education program under Subsection (a) is not required if the student is expelled under Section 37.007 for the same conduct for which removal would be required.

(n) A principal or other appropriate administrator may but is not required to remove a student to a disciplinary alternative education program for off-campus conduct for which removal is required under this section if the principal or other appropriate administrator does not have knowledge of the conduct before the first anniversary of the date the conduct occurred.

SECTION 10. Sections 37.007(a), (b), (e), and (g), Education Code, are amended to read as follows:

(a) A student shall be expelled from a school if the student, on school property or while attending a school-sponsored or school-related activity on or off of school property:

(1) uses, exhibits, or possesses:

(A) a firearm as defined by Section 46.01(3), Penal Code;

(B) an illegal knife as defined by Section 46.01(6), Penal Code, or by local policy;

(C) a club as defined by Section 46.01(1), Penal Code; or

(D) a weapon listed as a prohibited weapon under Section 46.05, Penal Code;

(2) engages in conduct that contains the elements of the offense of:

(A) aggravated assault under Section 22.02, Penal Code, sexual assault under Section 22.011, Penal Code, or aggravated sexual assault under Section 22.021, Penal Code;

(B) arson under Section 28.02, Penal Code;

(C) murder under Section 19.02, Penal Code, capital murder under Section 19.03, Penal Code, or criminal attempt, under Section 15.01, Penal Code, to commit murder or capital murder;

(D) indecency with a child under Section 21.11, Penal Code; ~~[or]~~

(E) aggravated kidnapping under Section 20.04, Penal Code;

(F) aggravated robbery under Section 29.03, Penal Code;

(G) manslaughter under Section 19.04, Penal Code; or

(H) criminally negligent homicide under Section 19.05, Penal Code; or

(3) engages in conduct specified by Section 37.006(a)(2)(C) or (D), if the conduct is punishable as a felony.

(b) A student may be expelled if the student:

(1) engages in conduct involving a public school that contains the elements of the offense of false alarm or report under Section 42.06, Penal Code, or terroristic threat under Section 22.07, Penal Code; ~~or~~

(2) while on or within 300 feet of school property, as measured from any point on the school's real property boundary line, or while attending a school-sponsored or school-related activity on or off of school property:

(A) sells, gives, or delivers to another person or possesses, uses, or is under the influence of any amount of:

(i) marihuana or a controlled substance, as defined by Chapter 481, Health and Safety Code, or by 21 U.S.C. Section 801 et seq.;

(ii) a dangerous drug, as defined by Chapter 483, Health and Safety Code; or

(iii) an alcoholic beverage, as defined by Section 1.04, Alcoholic Beverage Code;

(B) engages in conduct that contains the elements of an offense relating to an abusable volatile chemical ~~[glue or aerosol paint]~~ under Sections 485.031 through 485.034 ~~[485.035]~~, Health and Safety Code~~[-, or relating to volatile chemicals under Chapter 484, Health and Safety Code];~~ ~~or~~

(C) engages in conduct that contains the elements of an offense under Section 22.01(a)(1), Penal Code, against a school district employee or a volunteer as defined by Section 22.053; or

(D) engages in conduct that contains the elements of the offense of deadly conduct under Section 22.05, Penal Code; or

(3) subject to Subsection (d), while within 300 feet of school property, as measured from any point on the school's real property boundary line:

(A) engages in conduct specified by Subsection (a); or

(B) possesses a firearm, as defined by 18 U.S.C. Section 921.

(e) In accordance with 20 U.S.C. Section 7151 ~~[federal law]~~, a local educational agency, including a school district, home-rule school district, or open-enrollment charter school, shall expel a student who brings a firearm, as defined by 18 U.S.C. Section 921, to school. The student must be expelled from the student's regular campus for a period of at least one year, except that:

(1) the superintendent or other chief administrative officer of the school district or of the other local educational agency, as defined by 20 U.S.C. Section 7801 ~~[2891]~~, may modify the length of the expulsion in the case of an individual student;

(2) the district or other local educational agency shall provide educational services to an expelled student in a disciplinary ~~[an]~~ alternative education program as provided by Section 37.008 if the student is younger than 10 years of age on the date of expulsion; and

(3) the district or other local educational agency may provide educational services to an expelled student who is ~~[older than]~~ 10 years of age or older in a disciplinary ~~[an]~~ alternative education program as provided in Section 37.008.

(g) A school district shall inform each teacher who has regular contact with a student through a classroom assignment of the conduct of a student who has engaged in any violation listed in this section. A teacher shall keep the information received in this subsection confidential. The State Board for Educator Certification may revoke or suspend the certification of a teacher who intentionally violates this subsection.

SECTION 11. Section 37.008, Education Code, is amended to read as follows:

Sec. 37.008. DISCIPLINARY ALTERNATIVE EDUCATION PROGRAMS. (a) Each school district shall provide a disciplinary ~~[am]~~ alternative education program that:

(1) is provided in a setting other than a student's regular classroom;

(2) is located on or off of a regular school campus;

(3) provides for the students who are assigned to the disciplinary alternative education program to be separated from students who are not assigned to the program;

(4) focuses on English language arts, mathematics, science, history, and self-discipline;

(5) provides for students' educational and behavioral needs; ~~[and]~~

(6) provides supervision and counseling;

(7) requires that to teach in an off-campus disciplinary alternative education program, each teacher meet all certification requirements established under Subchapter B, Chapter 21; and

(8) notwithstanding Subdivision (7), requires that to teach in a disciplinary alternative education program of any kind, each teacher employed by a school district during the 2003-2004 school year or an earlier school year meet, not later than the beginning of the 2005-2006 school year, all certification requirements established under Subchapter B, Chapter 21.

(b) A disciplinary ~~[Am]~~ alternative education program may provide for a student's transfer to:

(1) a different campus;

(2) a school-community guidance center; or

(3) a community-based alternative school.

(c) An off-campus disciplinary alternative education program is not subject to a requirement imposed by this title, other than a limitation on liability, a reporting requirement, or a requirement imposed by this chapter or by Chapter 39.

(d) A school district may provide a disciplinary ~~[am]~~ alternative education program jointly with one or more other districts.

(e) Each school district shall cooperate with government agencies and community organizations that provide services in the district to students placed in a disciplinary ~~[am]~~ alternative education program.

(f) A student removed to a disciplinary ~~[am]~~ alternative education program is counted in computing the average daily attendance of students in the district for the student's time in actual attendance in the program.

(g) A school district shall allocate to a disciplinary [am] alternative education program the same expenditure per student attending the disciplinary alternative education program, including federal, state, and local funds, that would be allocated to the student's school if the student were attending the student's regularly assigned education program, including a special education program.

(h) A school district may not place a student, other than a student suspended as provided under Section 37.005 or expelled as provided under Section 37.007, in an unsupervised setting as a result of conduct for which a student may be placed in a disciplinary [am] alternative education program.

(i) On request of a school district, a regional education service center may provide to the district information on developing a disciplinary [am] alternative education program that takes into consideration the district's size, wealth, and existing facilities in determining the program best suited to the district.

(j) If a student placed in a disciplinary [am] alternative education program enrolls in another school district before the expiration of the period of placement, the board of trustees of the district requiring the placement shall provide to the district in which the student enrolls, at the same time other records of the student are provided, a copy of the placement order. The district in which the student enrolls may continue the disciplinary alternative education program placement under the terms of the order or may allow the student to attend regular classes without completing the period of placement. A district may take any action permitted by this subsection if:

(1) the student was placed in a disciplinary alternative education program by an open-enrollment charter school under Section 12.131 and the charter school provides to the district a copy of the placement order; or

(2) the student was placed in a disciplinary alternative education program by a school district in another state and:

(A) the out-of-state district provides to the district a copy of the placement order; and

(B) the grounds for the placement by the out-of-state district are grounds for placement in the district in which the student is enrolling.

(j-1) If a student was placed in a disciplinary alternative education program by a school district in another state for a period that exceeds one year and a school district in this state in which the student enrolls continues the placement under Subsection (j), the district shall reduce the period of the placement so that the aggregate period does not exceed one year unless, after a review, the district determines that:

(1) the student is a threat to the safety of other students or to district employees; or

(2) extended placement is in the best interest of the student.

(k) A program of educational and support services may be provided to a student and the student's parents when the offense involves drugs or alcohol as specified under Section 37.006 or 37.007. A disciplinary [Am] alternative education program that provides chemical dependency treatment services must be licensed under Chapter 464, Health and Safety Code.

(l) A school district is ~~not~~ required to provide in the district's disciplinary alternative education program a course necessary to fulfill a student's high school graduation requirements only as provided by this subsection. A school district shall offer a student removed to a disciplinary alternative education program an opportunity to complete coursework before the beginning of the next school year. The school district may provide the student an opportunity to complete coursework through any method available, including a correspondence course, distance learning, or summer school. The district may not charge the student for a course provided under this subsection ~~[other than a course specified by Subsection (a)].~~

(m) The commissioner shall adopt rules necessary to evaluate annually the performance of each district's disciplinary alternative education program established under this subchapter. The evaluation required by this section shall be based on indicators defined by the commissioner, but must include student performance on assessment instruments required under Sections 39.023(a) and (c). Academically, the mission of disciplinary alternative education programs shall be to enable students to perform at grade level.

(m-1) The commissioner shall develop a process for evaluating a school district disciplinary alternative education program electronically. The commissioner shall also develop a system and standards for review of the evaluation or use systems already available at the agency. The system must be designed to identify districts that are at high risk of having inaccurate disciplinary alternative education program data or of failing to comply with disciplinary alternative education program requirements. The commissioner shall notify the board of trustees of a district of any objection the commissioner has to the district's disciplinary alternative education program data or of a violation of a law or rule revealed by the data, including any violation of disciplinary alternative education program requirements, or of any recommendation by the commissioner concerning the data. If the data reflect that a penal law has been violated, the commissioner shall notify the county attorney, district attorney, or criminal district attorney, as appropriate, and the attorney general. The commissioner is entitled to access to all district records the commissioner considers necessary or appropriate for the review, analysis, or approval of disciplinary alternative education program data.

SECTION 12. Subchapter A, Chapter 37, Education Code, is amended by adding Section 37.0081 to read as follows:

Sec. 37.0081. PLACEMENT OF CERTAIN STUDENTS IN DISCIPLINARY ALTERNATIVE EDUCATION PROGRAMS. (a) Notwithstanding any other provision of this subchapter, the board of trustees of a school district, or the board's designee, after an opportunity for a hearing may elect to place a student in a disciplinary alternative education program under Section 37.008 if:

(1) the student:

(A) has received deferred prosecution under Section 53.03, Family Code, for conduct defined as a felony offense in Title 5, Penal Code; or

(B) has been found by a court or jury to have engaged in delinquent conduct under Section 54.03, Family Code, for conduct defined as a felony offense in Title 5, Penal Code; and

(2) the board or the board's designee determines that the student's presence in the regular classroom:

(A) threatens the safety of other students or teachers;

(B) will be detrimental to the educational process; or

(C) is not in the best interests of the district's students.

(b) Any decision of the board of trustees or the board's designee under this section is final and may not be appealed.

(c) The board of trustees or the board's designee may order placement in accordance with this section regardless of:

(1) the date on which the student's conduct occurred;

(2) the location at which the conduct occurred;

(3) whether the conduct occurred while the student was enrolled in the district; or

(4) whether the student has successfully completed any court disposition requirements imposed in connection with the conduct.

(d) Notwithstanding Section 37.009(c) or any other provision of this subchapter, the board of trustees or the board's designee may order placement in accordance with this section for any period considered necessary by the board or the board's designee in connection with the determination made under Subsection (a)(2). A student placed in a disciplinary alternative education program in accordance with this section is entitled to the periodic review prescribed by Section 37.009(e).

SECTION 13. Section 37.009, Education Code, is amended by amending Subsections (a)-(e), (g), and (h) and adding Subsections (i) and (j) to read as follows:

(a) Not later than the third class day after the day on which a student is removed from class by the teacher under Section 37.002(b) or (d) or by the school principal or other appropriate administrator under Section 37.001(a)(2) or 37.006, the principal or other appropriate administrator shall schedule a conference among the principal or other appropriate administrator, a parent or guardian of the student, the teacher removing the student from class, if any, and the student. At the conference, the student is entitled to written or oral notice of the reasons for the removal, an explanation of the basis for the removal, and an opportunity to respond to the reasons for the removal. The student may not be returned to the regular classroom pending the conference. Following the conference, and whether or not each requested person is in attendance after valid attempts to require the person's attendance, the principal shall order the placement of the student [~~as provided by Section 37.002 or 37.006, as applicable,~~] for a period consistent with the student code of conduct. If school district policy allows a student to appeal to the board of trustees or the board's designee a decision of the principal or other appropriate administrator, other than an expulsion under Section 37.007, the decision of the board or the board's designee is final and may not be appealed. If the period of the placement is

inconsistent with the guidelines included in the student code of conduct under Section 37.001(a)(5), the order must give notice of the inconsistency. The period of the placement may not exceed one year unless, after a review, the district determines that:

(1) the student is a threat to the safety of other students or to district employees; or

(2) extended placement is in the best interest of the student.

(b) If a student's placement in a disciplinary ~~[am]~~ alternative education program is to extend beyond 60 days or the end of the next grading period, whichever is earlier, a student's parent or guardian is entitled to notice of and an opportunity to participate in a proceeding before the board of trustees of the school district or the board's designee, as provided by policy of the board of trustees of the district. Any decision of the board or the board's designee under this subsection is final and may not be appealed.

(c) Before it may place a student in a disciplinary ~~[am]~~ alternative education program for a period that extends beyond the end of the school year, the board or the board's designee must determine that:

(1) the student's presence in the regular classroom program or at the student's regular campus presents a danger of physical harm to the student or to another individual; or

(2) the student has engaged in serious or persistent misbehavior that violates the district's student code of conduct.

(d) The board or the board's designee shall set a term for a student's placement in a disciplinary ~~[am]~~ alternative education program. If the period of the placement is inconsistent with the guidelines included in the student code of conduct under Section 37.001(a)(5), the order must give notice of the inconsistency. The period of the placement may not exceed one year unless, after a review, the district determines that:

(1) the student is a threat to the safety of other students or to district employees; or

(2) extended placement is in the best interest of the student ~~[under Section 37.002 or 37.006].~~

(e) A student placed in a disciplinary ~~[am]~~ alternative education program ~~[under Section 37.002 or 37.006]~~ shall be provided a review of the student's status, including a review of the student's academic status, by the board's designee at intervals not to exceed 120 days. In the case of a high school student, the board's designee, with the student's parent or guardian, shall review the student's progress towards meeting high school graduation requirements and shall establish a specific graduation plan for the student. The district is not required under this subsection to provide a course in the district's disciplinary alternative education program except as required by Section 37.008(1) ~~[a course not specified under Section 37.008(a)].~~ At the review, the student or the student's parent or guardian must be given the opportunity to present arguments for the student's return to the regular classroom or campus. The student may not be returned to the classroom of the teacher who removed the student without that teacher's consent. The teacher may not be coerced to consent.

(g) The board or the board's designee shall deliver to the student and the student's parent or guardian a copy of the order placing the student in a disciplinary [***] alternative education program under Section 37.001, 37.002, or 37.006 or expelling the student under Section 37.007.

(h) If the period of an expulsion is inconsistent with the guidelines included in the student code of conduct under Section 37.001 (a)(5), the order must give notice of the inconsistency. The period of an expulsion may not exceed one year unless, after a review, the district determines that:

(1) the student is a threat to the safety of other students or to district employees; or

(2) extended placement is in the best interest of the student. After a school district notifies the parents or guardians of a student that the student has been expelled, the parent or guardian shall provide adequate supervision of the student during the period of expulsion.

(i) If a student withdraws from the district before an order for placement in a disciplinary alternative education program or expulsion is entered under this section, the principal or board, as appropriate, may complete the proceedings and enter an order. If the student subsequently enrolls in the district during the same or subsequent school year, the district may enforce the order at that time except for any period of the placement or expulsion that has been served by the student on enrollment in another district that honored the order. If the principal or board fails to enter an order after the student withdraws, the next district in which the student enrolls may complete the proceedings and enter an order.

(j) If, during the term of a placement or expulsion ordered under this section, a student engages in additional conduct for which placement in a disciplinary alternative education program or expulsion is required or permitted, additional proceedings may be conducted under this section regarding that conduct and the principal or board, as appropriate, may enter an additional order as a result of those proceedings.

SECTION 14. Subchapter A, Chapter 37, Education Code, is amended by adding Section 37.0091 to read as follows:

Sec. 37.0091. NOTICE TO NONCUSTODIAL PARENT. (a) A noncustodial parent may request in writing that a school district or school, for the remainder of the school year in which the request is received, provide that parent with a copy of any written notification relating to student misconduct under Section 37.006 or 37.007 that is generally provided by the district or school to a student's parent or guardian.

(b) A school district or school may not unreasonably deny a request authorized by Subsection (a).

(c) Notwithstanding any other provision of this section, a school district or school shall comply with any applicable court order of which the district or school has knowledge.

SECTION 15. Section 37.010, Education Code, is amended by amending Subsections (a) and (c)-(g) and adding Subsection (g-1) to read as follows:

(a) Not later than the second business day after the date a hearing is held under Section 37.009, the board of trustees of a school district or the board's designee shall deliver a copy of the order placing a student in a disciplinary ~~(an)~~ alternative education program under Section 37.006 or expelling a student under Section 37.007 and any information required under Section 52.04, Family Code, to the authorized officer of the juvenile court in the county in which the student resides. In a county that operates a program under Section 37.011, an expelled student shall to the extent provided by law or by the memorandum of understanding immediately attend the educational program from the date of expulsion, ~~except[- provided, however,]~~ that in a county with a population greater than 125,000, every expelled student who is not detained or receiving treatment under an order of the juvenile court must be enrolled in an educational program.

(c) Unless the juvenile board for the county in which the district's central administrative office is located has entered into a memorandum of understanding with the district's board of trustees concerning the juvenile probation department's role in supervising and providing other support services for students in disciplinary alternative education programs, a court may not order a student expelled under Section 37.007 to attend a regular classroom, a regular campus, or a school district disciplinary alternative education program as a condition of probation.

(d) Unless the juvenile board for the county in which the district's central administrative office is located has entered into a memorandum of understanding as described by Subsection (c), if a court orders a student to attend a disciplinary ~~(an)~~ alternative education program as a condition of probation once during a school year and the student is referred to juvenile court again during that school year, the juvenile court may not order the student to attend a disciplinary ~~(an)~~ alternative education program in a district without the district's consent until the student has successfully completed any sentencing requirements the court imposes.

(e) Any placement in a disciplinary ~~(an)~~ alternative education program by a court under this section must prohibit the student from attending or participating in school-sponsored or school-related activities.

(f) If a student is expelled under Section 37.007, on the recommendation of the committee established under Section 37.003 or on its own initiative, a district may readmit the student while the student is completing any court disposition requirements the court imposes. After the student has successfully completed any court disposition requirements the court imposes, including conditions of a deferred prosecution ordered by the court, or such conditions required by the prosecutor or probation department, if the student meets the requirements for admission into the public schools established by this title, a district may not refuse to admit the student, but the district may place the student in the disciplinary alternative education program. Notwithstanding Section 37.002(d), the student may not be returned to the classroom of the teacher under whose supervision the offense occurred without that teacher's consent. The teacher may not be coerced to consent.

(g) If an expelled student enrolls in another school district, the board of trustees of the district that expelled the student shall provide to the district in which the student enrolls, at the same time other records of the student are provided, a copy of the expulsion order and the referral to the authorized officer of the juvenile court. The district in which the student enrolls may continue the expulsion under the terms of the order, may place the student in a disciplinary [am] alternative education program for the period specified by the expulsion order, or may allow the student to attend regular classes without completing the period of expulsion. A district may take any action permitted by this subsection if the student was expelled by a school district in another state if:

(1) the out-of-state district provides to the district a copy of the expulsion order; and

(2) the grounds for the expulsion are also grounds for expulsion in the district in which the student is enrolling.

(g-1) If a student was expelled by a school district in another state for a period that exceeds one year and a school district in this state continues the expulsion or places the student in a disciplinary alternative education program under Subsection (g), the district shall reduce the period of the expulsion or placement so that the aggregate period does not exceed one year unless, after a review, the district determines that:

(1) the student is a threat to the safety of other students or to district employees; or

(2) extended placement is in the best interest of the student.

SECTION 16. Section 37.011, Education Code, is amended by amending Subsections (a), (b), (h), and (k) and adding Subsection (b-1) to read as follows:

(a) The juvenile board of a county with a population greater than 125,000 shall develop a juvenile justice alternative education program, subject to the approval of the Texas Juvenile Probation Commission. The juvenile board of a county with a population of 125,000 or less may develop a juvenile justice alternative education program. For the purposes of this subchapter, only a disciplinary alternative education program operated under the authority of a juvenile board of a county is considered a juvenile justice alternative education program. A juvenile justice alternative education program in a county with a population of 125,000 or less:

(1) is not required to be approved by the Texas Juvenile Probation Commission; and

(2) is not subject to Subsection (c), (d), (f), or (g).

(b) If a student admitted into the public schools of a school district under Section 25.001(b) is expelled from school for conduct for which expulsion is required under Section 37.007(a), (d), or (e), the juvenile court, the juvenile board, or the juvenile board's designee, as appropriate, shall:

(1) if the student is placed on probation under Section 54.04, Family Code, order the student to attend the juvenile justice alternative education program in the county in which the student resides from the date of disposition as a condition of probation, unless the child is placed in a post-adjudication treatment facility;

(2) if the student is placed on deferred prosecution under Section 53.03, Family Code, by the court, prosecutor, or probation department, require the student to immediately attend the juvenile justice alternative education program in the county in which the student resides for a period not to exceed six months as a condition of the deferred prosecution; ~~and~~

(3) in determining the conditions of the deferred prosecution or court-ordered probation, consider the length of the school district's expulsion order for the student; and

(4) provide timely educational services to the student in the juvenile justice alternative education program in the county in which the student resides, regardless of the student's age or whether the juvenile court has jurisdiction over the student.

(b-1) Subsection (b)(4) does not require that educational services be provided to a student who is not entitled to admission into the public schools of a school district under Section 25.001(b).

(h) Academically, the mission of juvenile justice alternative education programs shall be to enable students to perform at grade level. For purposes of accountability under Chapter 39, a student enrolled in a juvenile justice alternative education program is reported as if the student were enrolled at the student's assigned campus in the student's regularly assigned education program, including a special education program. Annually the Texas Juvenile Probation Commission, with the agreement of the commissioner, shall develop and implement a system of accountability consistent with Chapter 39, where appropriate, to assure that students make progress toward grade level while attending a juvenile justice alternative education program. The Texas Juvenile Probation Commission shall adopt rules for the distribution of funds appropriated under this section to juvenile boards in counties required to establish juvenile justice alternative education programs. Except as determined by the commissioner, a student served by a juvenile justice alternative education program on the basis of an expulsion required under Section 37.007(a), (d), or (e) is not eligible for Foundation School Program funding under Chapter 42 or 31 if the juvenile justice alternative education program receives funding from the Texas Juvenile Probation Commission under this subchapter.

(k) Each school district in a county with a population greater than 125,000 and the county juvenile board shall annually enter into a joint memorandum of understanding that:

(1) outlines the responsibilities of the juvenile board concerning the establishment and operation of a juvenile justice alternative education program under this section;

(2) defines the amount and conditions on payments from the school district to the juvenile board for students of the school district served in the juvenile justice alternative education program whose placement was not made on the basis of an expulsion required under Section 37.007(a), (d), or (e);

(3) identifies those categories of conduct that the school district has defined in its student code of conduct as constituting serious or persistent misbehavior for which a student may be placed in the juvenile justice alternative education program;

(4) identifies and requires a timely placement and specifies a term of placement for expelled students for whom the school district has received a notice under Section 52.041(d), Family Code;

(5) establishes services for the transitioning of expelled students to the school district prior to the completion of the student's placement in the juvenile justice alternative education program;

(6) establishes a plan that provides transportation services for students placed in the juvenile justice alternative education program;

(7) establishes the circumstances and conditions under which a juvenile may be allowed to remain in the juvenile justice alternative education program setting once the juvenile is no longer under juvenile court jurisdiction; and

(8) establishes a plan to address special education services required by law.

SECTION 17. Section 37.012, Education Code, is amended by amending Subsection (a) and adding Subsection (d) to read as follows:

(a) Subject to Section 37.011(n), the school district in which a student is enrolled on the date the student is expelled for conduct for which expulsion is permitted but not required under Section 37.007 [~~on a basis other than Section 37.007(a), (d), or (e)~~] shall, if the student is served by the juvenile justice alternative education program, provide funding to the juvenile board for the portion of the school year for which the juvenile justice alternative education program provides educational services in an amount determined by the memorandum of understanding under Section 37.011(k)(2).

(d) A school district is not required to provide funding to a juvenile board for a student who is assigned by a court to a juvenile justice alternative education program but who has not been expelled.

SECTION 18. Section 37.013, Education Code, is amended to read as follows:

Sec. 37.013. COORDINATION BETWEEN SCHOOL DISTRICTS AND JUVENILE BOARDS. The board of trustees of the school district or the board's designee shall at the call of the president of the board of trustees regularly meet with the juvenile board for the county in which the district's central administrative office is located or the juvenile board's designee concerning supervision and rehabilitative services appropriate for expelled students and students assigned to disciplinary alternative education programs. Matters for discussion shall include service by probation officers at the disciplinary alternative education program site, recruitment of volunteers to serve as mentors and provide tutoring services, and coordination with other social service agencies.

SECTION 19. Section 37.015(a), Education Code, is amended to read as follows:

(a) The principal of a public or private primary or secondary school, or a person designated by the principal under Subsection (d), shall notify any school district police department and the police department of the municipality in which the school is located or, if the school is not in a municipality, the sheriff of the county in which the school is located if the principal has reasonable grounds to believe that any of the following activities occur in school, on school property, or at a school-sponsored or school-related activity on or off school property, whether or not the activity is investigated by school security officers:

(1) conduct that may constitute an offense listed under Section 508.149, Government Code;

(2) deadly conduct under Section 22.05, Penal Code;

(3) a terroristic threat under Section 22.07, Penal Code;

(4) the use, sale, or possession of a controlled substance, drug paraphernalia, or marihuana under Chapter 481, Health and Safety Code;

(5) the possession of any of the weapons or devices listed under Sections 46.01(1)-(14) or Section 46.01(16), Penal Code; ~~or~~

(6) conduct that may constitute a criminal offense under Section 71.02, Penal Code; or

(7) conduct that may constitute a criminal offense for which a student may be expelled under Section 37.007(a), (d), or (e).

SECTION 20. Sections 37.019(a) and (c), Education Code, are amended to read as follows:

(a) This subchapter does not prevent the principal or the principal's designee from ordering the immediate placement of a student in a disciplinary ~~the~~ alternative education program if the principal or the principal's designee reasonably believes the student's behavior is so unruly, disruptive, or abusive that it seriously interferes with a teacher's ability to communicate effectively with the students in a class, with the ability of the student's classmates to learn, or with the operation of school or a school-sponsored activity.

(c) At the time of an emergency placement or expulsion, the student shall be given oral notice of the reason for the action. The reason must be a reason for which placement in a disciplinary alternative education program or expulsion may be made on a nonemergency basis. Within a reasonable time after the emergency placement or expulsion, but not later than the 10th day after the date of the placement or expulsion, the student shall be accorded the appropriate due process as required under Section 37.009. If the student subject to the emergency placement or expulsion is a student with disabilities who receives special education services, the ~~term of the student's~~ emergency placement or expulsion is subject to federal law and regulations and must be consistent with the consequences that would apply under this subchapter to a student without a disability ~~the requirements of 20 U.S.C. Section 1415(j) and (k).~~

SECTION 21. Section 37.020, Education Code, is amended to read as follows:

Sec. 37.020. REPORTS RELATING TO EXPULSIONS AND DISCIPLINARY ALTERNATIVE EDUCATION PROGRAM PLACEMENTS.

(a) In the manner required by the commissioner, each school district shall annually report to the commissioner the information required by this section.

(b) For~~+~~:

~~(1) for~~ each placement in a disciplinary ~~[and]~~ alternative education program established under Section 37.008, the district shall report:

(1) ~~[(A)]~~ information identifying the student, including the student's race, sex, and date of birth, that will enable the agency to compare placement data with information collected through other reports;

(2) ~~[(B)]~~ information indicating whether the placement was based on:

(A) ~~[(+)]~~ conduct violating the student code of conduct adopted under Section 37.001;

(B) ~~[(+)]~~ conduct for which a student may be removed from class under Section 37.002(b);

(C) ~~[(+)]~~ conduct for which placement in a disciplinary ~~[and]~~ alternative education program is required by Section 37.006; or

(D) ~~[(+)]~~ conduct occurring while a student was enrolled in another district and for which placement in a disciplinary ~~[and]~~ alternative education program is permitted by Section 37.008(j); ~~[and]~~

(3) ~~[(C)]~~ the number of full or partial days the student was assigned to the program and the number of full or partial days the student attended the program; and

(4) the number of placements that were inconsistent with the guidelines included in the student code of conduct under Section 37.001(a)(5).

(c) For ~~[(2) for]~~ each expulsion under Section 37.007, the district shall report:

(1) ~~[(A)]~~ information identifying the student, including the student's race, sex, and date of birth, that will enable the agency to compare placement data with information collected through other reports;

(2) ~~[(B)]~~ information indicating whether the expulsion was based on:

(A) ~~[(+)]~~ conduct for which expulsion is required under Section 37.007, including information specifically indicating whether a student was expelled on the basis of Section 37.007(e); or

(B) ~~[(+)]~~ conduct~~[-, other than conduct described by Subparagraph (iii);]~~ for which expulsion is permitted under Section 37.007; ~~[or~~

~~[(iii) serious or persistent misbehavior occurring while the student was placed in an alternative education program;]~~

(3) ~~[(C)]~~ the number of full or partial days the student was expelled; ~~[and]~~

(4) ~~[(D)]~~ information indicating whether:

(A) ~~[(+)]~~ the student was placed in a juvenile justice alternative education program under Section 37.011;

(B) ~~[(+)]~~ the student was placed in a disciplinary ~~[and]~~ alternative education program; or

(C) [(iii)] the student was not placed in a juvenile justice or other disciplinary alternative education program; and

(5) the number of expulsions that were inconsistent with the guidelines included in the student code of conduct under Section 37.001(a)(5).

SECTION 22. Subchapter A, Chapter 37, is amended by adding Section 37.021 to read as follows:

Sec. 37.021. OPPORTUNITY TO COMPLETE COURSES DURING IN-SCHOOL AND CERTAIN OTHER PLACEMENTS. (a) If a school district removes a student from the regular classroom and places the student in in-school suspension or another setting other than a disciplinary alternative education program, the district shall offer the student the opportunity to complete before the beginning of the next school year each course in which the student was enrolled at the time of the removal.

(b) The district may provide the opportunity to complete courses by any method available, including a correspondence course, distance learning, or summer school.

SECTION 23. Section 37.121(b), Education Code, is amended to read as follows:

(b) A school district board of trustees or an educator shall recommend placing in a disciplinary ~~[an]~~ alternative education program any student under the person's control who violates Subsection (a).

SECTION 24. Section 39.053(e), Education Code, is amended to read as follows:

(e) The report may include the following information:

(1) student information, including total enrollment, enrollment by ethnicity, socioeconomic status, and grade groupings and retention rates;

(2) financial information, including revenues and expenditures;

(3) staff information, including number and type of staff by gender, ethnicity, years of experience, and highest degree held, teacher and administrator salaries, and teacher turnover;

(4) program information, including student enrollment by program, teachers by program, and instructional operating expenditures by program; and

(5) the number of students placed in a disciplinary ~~[an]~~ alternative education program under Chapter 37.

SECTION 25. Article 15.27(b), Code of Criminal Procedure, is amended to read as follows:

(b) On conviction, deferred prosecution, or deferred adjudication or ~~[an]~~ an adjudication of delinquent conduct of an individual enrolled as a student in a public primary or secondary school, for an offense or for any conduct listed in Subsection (h) of this article, the office of the prosecuting attorney acting in the case shall orally notify the superintendent or a person designated by the superintendent in the school district in which the student is enrolled of the conviction or adjudication. Oral notification must be given within 24 hours of the time of the order ~~[determination of guilt,]~~ or on the next school day. The superintendent shall promptly notify all instructional and support personnel who have regular contact with the student. Within seven days after the date the oral

notice is given, the office of the prosecuting attorney shall mail written notice, which must contain a statement of the offense of which the individual is convicted or on which the adjudication, deferred adjudication, or deferred prosecution is grounded.

SECTION 26. Article 15.27(e)(2), Code of Criminal Procedure, is amended to read as follows:

(2) On conviction, deferred prosecution, or deferred adjudication or an adjudication of delinquent conduct of an individual enrolled as a student in a private primary or secondary school, the office of prosecuting attorney shall make the oral and written notifications described by Subsection (b) of this article to the principal or a school employee designated by the principal of the school in which the student is enrolled.

SECTION 27. Article 15.27(g), Code of Criminal Procedure, is amended to read as follows:

(g) The office of the prosecuting attorney or the office or official designated by the juvenile board shall, within two working days, notify the school district that removed a student to a disciplinary ~~[an]~~ alternative education program under Section 37.006, Education Code, if:

(1) prosecution of the student's case was refused for lack of prosecutorial merit or insufficient evidence and no formal proceedings, deferred adjudication, or deferred prosecution will be initiated; or

(2) the court or jury found the student not guilty or made a finding the child did not engage in delinquent conduct or conduct indicating a need for supervision and the case was dismissed with prejudice.

SECTION 28. Section 164.006, Health and Safety Code, is amended to read as follows:

Sec. 164.006. SOLICITING AND CONTRACTING WITH CERTAIN REFERRAL SOURCES. A treatment facility or a person employed or under contract with a treatment facility, if acting on behalf of the treatment facility, may not:

(1) contact a referral source or potential client for the purpose of soliciting, directly or indirectly, a referral of a patient to the treatment facility without disclosing its soliciting agent's, employee's, or contractor's affiliation with the treatment facility;

(2) offer to provide or provide mental health or chemical dependency services to a public or private school in this state, on a part-time or full-time basis, the services of any of its employees or agents who make, or are in a position to make, a referral, if the services are provided on an individual basis to individual students or their families. Nothing herein prohibits a treatment facility from:

(A) offering or providing educational programs in group settings to public schools in this state if the affiliation between the educational program and the treatment facility is disclosed;

(B) providing counseling services to a public school in this state in an emergency or crisis situation if the services are provided in response to a specific request by a school; provided that, under no circumstances may a student be referred to the treatment facility offering the services; or

(C) entering into a contract under Section 464.020 with the board of trustees of a school district with a disciplinary ~~[an]~~ alternative education program ~~[under Section 464.020]~~, or with the board's designee, for the provision of chemical dependency treatment services;

(3) provide to an entity of state or local government, on a part-time or full-time basis, the mental health or chemical dependency services of any of its employees, agents, or contractors who make or are in a position to make referrals unless:

(A) the treatment facility discloses to the governing authority of the entity:

(i) the employee's, agent's, or contractor's relationship to the facility; and

(ii) the fact that the employee, agent, or contractor might make a referral, if permitted, to the facility; and

(B) the employee, agent, or contractor makes a referral only if:

(i) the treatment facility obtains the governing authority's authorization in writing for the employee, agent, or contractor to make the referrals; and

(ii) the employee, agent, or contractor discloses to the prospective patient the employee's, agent's, or contractor's relationship to the facility at initial contact; or

(4) in relation to intervention and assessment services, contract with, offer to remunerate, or remunerate a person who operates an intervention and assessment service that makes referrals to a treatment facility for inpatient treatment of mental illness or chemical dependency unless the intervention and assessment service is:

(A) operated by a community mental health and mental retardation center funded by the Texas Department of Mental Health and Mental Retardation;

(B) operated by a county or regional medical society;

(C) a qualified mental health referral service as defined by Section 164.007; or

(D) owned and operated by a nonprofit or not-for-profit organization offering counseling concerning family violence, help for runaway children, or rape.

SECTION 29. Section 464.020, Health and Safety Code, is amended to read as follows:

Sec. 464.020. ADDITIONAL REQUIREMENTS FOR DISCIPLINARY ALTERNATIVE EDUCATION TREATMENT PROGRAMS. (a) A disciplinary ~~[An]~~ alternative education program under Section 37.008, Education Code, may apply for a license under this chapter to offer chemical dependency treatment services.

(b) The board of trustees of a school district with a disciplinary ~~[an]~~ alternative education program, or the board's designee, shall employ a mental health professional, as defined by Section 164.003, to provide the services authorized by a license issued under this chapter to the disciplinary alternative education program.

(c) The commission may not issue a license that authorizes a disciplinary ~~[an]~~ alternative education program to provide detoxification or residential services.

(d) The board of trustees of a school district with a disciplinary ~~[an]~~ alternative education program, or the board's designee, may contract with a private treatment facility or a person employed by or under contract with a private treatment facility to provide chemical dependency treatment services. The contract may not permit the services to be provided at a site that offers detoxification or residential services. Section 164.006 applies to a contract made under this section.

SECTION 30. Section 37.001(b), Education Code, is repealed.

SECTION 31. (a) This Act applies beginning with the 2003-2004 school year, except that Section 37.008(a)(8), Education Code, as added by this Act, applies beginning with the 2004-2005 school year.

(b) Except as provided by Subsection (c) of this section, the changes in law made by this Act relating to conduct for which a student may be removed to a disciplinary alternative education program or expelled apply to conduct that occurs on or after the effective date of this Act.

(c) Section 37.0081, Education Code, as added by this Act, applies to any student who attends school on or after the effective date of this Act and who engaged in conduct described by that section, regardless of the date on which the conduct occurred.

SECTION 32. 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 Pitts moved to adopt the conference committee report on **HB 1314**.

A record vote was requested.

The motion prevailed by (Record 926): 136 Yeas, 6 Nays, 2 Present, not voting.

Yeas — Alonzo; Bailey; Baxter; Berman; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Callegari; Campbell; Canales; Capelo; 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; Flores; Flynn; Gallego; Garza; Gattis; Geren; Giddings; Goodman; Goolsby; Guillen; Gutierrez; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Heflin; Hegar; Hilderbran; Hill; Hochberg; Hodge; Homer; Hope; 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; McClendon; McReynolds; Menendez; Mercer; Merritt; Miller; Moreno, J.; Moreno, P.; Morrison; Mowery; Naishtat; Nixon; Noriega; Oliveira; Olivo; Peña; Phillips; Pickett; Pitts; Puente; Quintanilla; Raymond; Reyna;

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

Nays — Burnam; Casteel; Griggs; Jones, D.; McCall; Telford.

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

Absent — Allen; Farrar; Grusendorf; Marchant; Paxton; Smithee.

STATEMENTS OF VOTE

When Record No. 926 was taken, I was temporarily out of the house chamber. I would have voted no.

- Allen
- I was shown voting yes on Record No. 926. I intended to vote no.
- Berman
- I was shown voting yes on Record No. 926. I intended to vote no.
- B. Cook
- I was shown voting yes on Record No. 926. I intended to vote no.
- J. Davis
- I was shown voting yes on Record No. 926. I intended to vote no.
- Driver
- I was shown voting yes on Record No. 926. I intended to vote no.
- Flynn
- I was shown voting yes on Record No. 926. I intended to vote no.
- Hegar
- I was shown voting yes on Record No. 926. I intended to vote no.
- Hodge
- I was shown voting yes on Record No. 926. I intended to vote no.
- Hupp
- I was shown voting yes on Record No. 926. I intended to vote no.
- Isett
- I was shown voting yes on Record No. 926. I intended to vote no.
- Kuempel
- I was shown voting yes on Record No. 926. I intended to vote no.
- McClendon
- I was shown voting yes on Record No. 926. I intended to vote no.
- Merritt

I was shown voting yes on Record No. 926. I intended to vote no.

Quintanilla

I was shown voting yes on Record No. 926. I intended to vote no.

Rodriguez

I was shown voting yes on Record No. 926. I intended to vote no.

T. Smith

I was shown voting yes on Record No. 926. I intended to vote no.

Solomons

I was shown voting yes on Record No. 926. I intended to vote no.

Truitt

I was shown voting yes on Record No. 926. I intended to vote no.

Zedler

(B. Keffer in the chair)

MESSAGE FROM THE SENATE

A message from the senate was received at this time (see the addendum to the daily journal, Messages from the Senate, Message No. 4).

HR 1858 - ADOPTED (by Chisum)

The following privileged resolution was laid before the house:

HR 1858

BE IT RESOLVED by the House of Representatives of the State of Texas, 78th Legislature, Regular Session, 2003, That House Rule 13, Section 9(a), be suspended in part as provided by House Rule 13, Section 9(f), to enable the conference committee appointed to resolve the differences on **HB 2455**, relating to the governmental entities subject to, and the confidentiality of records under, the sunset review process, to consider and take action on the following matter:

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

SECTION 1.03. TEXAS LOTTERY COMMISSION AND LOTTERY DIVISION. (a) Section 467.002, Government Code, is amended to read as follows:

Sec. 467.002. APPLICATION OF SUNSET ACT. The commission is subject to Chapter 325 (Texas Sunset Act). Unless continued in existence as provided by that chapter, the commission is abolished and this Act expires September 1, 2005 [~~2003~~]. In the review of the commission by the Sunset Advisory Commission, as required by this section, the sunset commission shall limit its review to the appropriateness of recommendations made by the sunset commission to the 78th Legislature. In the Sunset Advisory Commission's report to the 79th Legislature, the sunset commission may include any recommendations it considers appropriate.

(b) Section 466.003(a), Government Code, is amended to read as follows:

(a) The lottery division is subject to Chapter 325 (Texas Sunset Act). Unless continued in existence as provided by that chapter, the division is abolished and this chapter expires September 1, 2005 [~~2003~~]. In the review of the lottery division by the Sunset Advisory Commission, as required by this section, the sunset commission shall limit its review to the appropriateness of recommendations made by the sunset commission to the 78th Legislature. In the Sunset Advisory Commission's report to the 79th Legislature, the sunset commission may include any recommendations it considers appropriate.

(c) This section takes effect only if the 78th Legislature, Regular Session, 2003, does not enact other legislation that becomes law and that amends Section 467.002, Government Code, to extend the sunset date of the Texas Lottery Commission. If the 78th Legislature, Regular Session, 2003, enacts legislation of that kind, this section has no effect.

SECTION 1.04. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS. (a) Section 2306.022, Government Code, is amended to read as follows:

Sec. 2306.022. APPLICATION OF SUNSET ACT. The Texas Department of Housing and Community Affairs is subject to Chapter 325 (Texas Sunset Act). Unless continued in existence as provided by that chapter, the department is abolished and this chapter expires September 1, 2005 [~~2003~~]. In the review of the department by the Sunset Advisory Commission, as required by this section, the sunset commission shall limit its review to the appropriateness of recommendations made by the sunset commission to the 78th Legislature and the extent to which the department has implemented laws enacted by the 77th Legislature in continuing the department. In the Sunset Advisory Commission's report to the 79th Legislature, the sunset commission may include any recommendations it considers appropriate.

(b) This section takes effect only if the 78th Legislature, Regular Session, 2003, does not enact other legislation that becomes law and that amends Section 2306.022, Government Code, to extend the sunset date of the Texas Department of Housing and Community Affairs. If the 78th Legislature, Regular Session, 2003, enacts legislation of that kind, this section has no effect.

SECTION 1.05. TEXAS AFFORDABLE HOUSING CORPORATION. (a) Section 2306.5521, Government Code, is amended to read as follows:

Sec. 2306.5521. SUNSET PROVISION. The Texas State Affordable Housing Corporation is subject to Chapter 325 (Texas Sunset Act). Unless continued in existence as provided by that chapter, the corporation is abolished and this subchapter expires September 1, 2005 [~~2003~~]. In the review of the corporation by the Sunset Advisory Commission, as required by this section, the sunset commission shall limit its review to the appropriateness of recommendations made by the sunset commission to the 78th Legislature. In the Sunset Advisory Commission's report to the 79th Legislature, the sunset commission may include any recommendations it considers appropriate.

(b) This section takes effect only if the 78th Legislature, Regular Session, 2003, does not enact other legislation that becomes law and that amends Section 2306.5521, Government Code, to extend the sunset date of the Texas State Affordable Housing Corporation. If the 78th Legislature, Regular Session, 2003, enacts legislation of that kind, this section has no effect.

SECTION 1.06. TEXAS HIGHER EDUCATION COORDINATING BOARD. (a) Section 61.0211, Education Code, is amended to read as follows:

Sec. 61.0211. SUNSET PROVISION. The Texas Higher Education Coordinating Board is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished and this chapter expires September 1, 2005 [~~2003~~]. In the review of the board by the sunset commission, as required by this section, the commission shall limit its review to the appropriateness of recommendations made by the commission to the 78th Legislature. In the commissions report to the 79th Legislature, the commission may include any recommendations it considers appropriate.

(b) This section only takes effect if the 78th Legislature, Regular Session, 2003, does not enact other legislation that becomes law and that amends Section 61.0211, education Code, to extend the sunset date of the Texas Higher Education Coordinating Board. If the 78th Legislature, Regular Session, 2003, enacts legislation of that kind, this section has no effect.

SECTION 2.06. REGIONAL EDUCATION SERVICE CENTERS. If the 78th Legislature, Regular Session, 2003, enacts legislation that becomes law and that makes regional education service centers subject to Chapter 325, Government Code (Texas Sunset Act), the comptroller of public accounts shall assist the Sunset Advisory Commission in its review. The comptroller shall conduct a review of the regional education service centers and report the results of the review to the Sunset Advisory Commission before March 1, 2004. The comptroller shall consult the Sunset Advisory Commission regarding the scope of the review. The report shall also be transmitted to the presiding officers of the standing committee in the senate and the house of representatives responsible for public education.

Explanation: These additions are needed to ensure that the Texas Lottery Commission, the lottery division, the Texas Department of Housing and Community Affairs, the Texas Affordable Housing Corporation, the Texas Higher Education Coordinating Board, and regional education service centers are continued in existence but are reviewed without unnecessary delay by the Sunset Advisory Commission.

HR 1858 was adopted.

HB 2455 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Chisum submitted the following conference committee report on **HB 2455** :

Austin, Texas, May 31, 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 2455** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Nelson
 Armbrister
 Jackson
 Ellis, Rodney

Chisum
 Hupp
 Solomons
 McCall
 Berman

On the part of the senate

On the part of the house

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

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

ARTICLE 1. ENTITIES GIVEN 2005 SUNSET DATE

SECTION 1.01. STATE BOARD FOR EDUCATOR CERTIFICATION.

Section 21.035, Education Code, is amended to read as follows:

Sec. 21.035. APPLICATION OF SUNSET ACT. (a) The board is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished and this subchapter expires September 1, 2005 [~~2003~~].

(b) The board and the Texas Education Agency shall enter into a memorandum of understanding to consolidate administrative functions and services.

(c) The sunset commission shall focus its review of the board on the appropriateness of recommendations made by the sunset commission to the 78th Legislature and compliance with the MOU to consolidate functions.

SECTION 1.02. WINDHAM SCHOOL DISTRICT WITHIN TEXAS DEPARTMENT OF CRIMINAL JUSTICE. Chapter 19, Education Code, is amended by adding Section 19.0021 to read as follows:

Sec. 19.0021. SPECIAL PURPOSE REVIEW. (a) As part of its review of the Texas Education Agency for the 79th Legislature, the Sunset Advisory Commission shall conduct a special purpose review of the Windham School District.

(b) To assist the Sunset Advisory Commission in its review, the Texas Education Agency shall:

(1) conduct a limited scope review of the structure, management, and operations of the Windham School District; and

(2) report the results of the review to the commission before March 1, 2004.

(c) The Texas Education Agency shall consult the Sunset Advisory Commission regarding the scope of the review to minimize the cost of the review.

(d) After considering the report of the Texas Education Agency, the Sunset Advisory Commission shall include in the commission's report to the 79th Legislature, Regular Session, 2005, any recommendations relating to the Windham School District that the commission considers appropriate.

(e) This section expires September 1, 2005.

SECTION 1.03. TEXAS LOTTERY COMMISSION AND LOTTERY DIVISION. (a) Section 467.002, Government Code, is amended to read as follows:

Sec. 467.002. APPLICATION OF SUNSET ACT. The commission is subject to Chapter 325 (Texas Sunset Act). Unless continued in existence as provided by that chapter, the commission is abolished and this Act expires September 1, 2005 [~~2003~~]. In the review of the commission by the Sunset Advisory Commission, as required by this section, the sunset commission shall limit its review to the appropriateness of recommendations made by the sunset commission to the 78th Legislature. In the Sunset Advisory Commission's report to the 79th Legislature, the sunset commission may include any recommendations it considers appropriate.

(b) Section 466.003(a), Government Code, is amended to read as follows:

(a) The lottery division is subject to Chapter 325 (Texas Sunset Act). Unless continued in existence as provided by that chapter, the division is abolished and this chapter expires September 1, 2005 [~~2003~~]. In the review of the lottery division by the Sunset Advisory Commission, as required by this section, the sunset commission shall limit its review to the appropriateness of recommendations made by the sunset commission to the 78th Legislature. In the Sunset Advisory Commission's report to the 79th Legislature, the sunset commission may include any recommendations it considers appropriate.

(c) This section takes effect only if the 78th Legislature, Regular Session, 2003, does not enact other legislation that becomes law and that amends Section 467.002, Government Code, to extend the sunset date of the Texas Lottery Commission. If the 78th Legislature, Regular Session, 2003, enacts legislation of that kind, this section has no effect.

SECTION 1.04. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS. (a) Section 2306.022, Government Code, is amended to read as follows:

Sec. 2306.022. APPLICATION OF SUNSET ACT. The Texas Department of Housing and Community Affairs is subject to Chapter 325 (Texas Sunset Act). Unless continued in existence as provided by that chapter, the department is abolished and this chapter expires September 1, 2005 [~~2003~~]. In the review of the department by the Sunset Advisory Commission, as required by this section, the sunset commission shall limit its review to the appropriateness of recommendations made by the sunset commission to the 78th Legislature and the extent to which the department has implemented laws enacted by the 77th

Legislature in continuing the department. In the Sunset Advisory Commission's report to the 79th Legislature, the sunset commission may include any recommendations it considers appropriate.

(b) This section takes effect only if the 78th Legislature, Regular Session, 2003, does not enact other legislation that becomes law and that amends Section 2306.022, Government Code, to extend the sunset date of the Texas Department of Housing and Community Affairs. If the 78th Legislature, Regular Session, 2003, enacts legislation of that kind, this section has no effect.

SECTION 1.05. TEXAS AFFORDABLE HOUSING CORPORATION. (a) Section 2306.5521, Government Code, is amended to read as follows:

Sec. 2306.5521. SUNSET PROVISION. The Texas State Affordable Housing Corporation is subject to Chapter 325 (Texas Sunset Act). Unless continued in existence as provided by that chapter, the corporation is abolished and this subchapter expires September 1, 2005 [~~2003~~]. In the review of the corporation by the Sunset Advisory Commission, as required by this section, the sunset commission shall limit its review to the appropriateness of recommendations made by the sunset commission to the 78th Legislature. In the Sunset Advisory Commission's report to the 79th Legislature, the sunset commission may include any recommendations it considers appropriate.

(b) This section takes effect only if the 78th Legislature, Regular Session, 2003, does not enact other legislation that becomes law and that amends Section 2306.5521, Government Code, to extend the sunset date of the Texas State Affordable Housing Corporation. If the 78th Legislature, Regular Session, 2003, enacts legislation of that kind, this section has no effect.

SECTION 1.06. TEXAS HIGHER EDUCATION COORDINATING BOARD. (a) Section 61.0211, Education Code, is amended to read as follows:

Sec. 61.0211. SUNSET PROVISION. The Texas Higher Education Coordinating Board is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished and this chapter expires September 1, 2005 [~~2003~~]. In the review of the board by the sunset commission, as required by this section, the commission shall limit its review to the appropriateness of recommendations made by the commission to the 78th Legislature. In the commission's report to the 79th Legislature, the commission may include any recommendations it considers appropriate.

(b) This section takes effect only if the 78th Legislature, Regular Session, 2003, does not enact other legislation that becomes law and that amends Section 61.0211, Education Code, to extend the sunset date of the Texas Higher Education Coordinating Board. If the 78th Legislature, Regular Session, 2003, enacts legislation of that kind, this section has no effect.

ARTICLE 2. ENTITIES GIVEN 2007 SUNSET DATE

SECTION 2.01. TEXAS VETERANS COMMISSION. Section 434.002(a), Government Code, is amended to read as follows:

(a) The Texas Veterans Commission is subject to Chapter 325 (Texas Sunset Act). Unless continued in existence as provided by that chapter, the commission is abolished September 1, 2007 [~~2005~~].

SECTION 2.02. TEXAS DEPARTMENT OF INSURANCE. Section 31.004, Insurance Code, is amended to read as follows:

Sec. 31.004. SUNSET PROVISION. The Texas Department of Insurance is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the department is abolished September 1, 2007 [~~2005~~].

SECTION 2.03. OFFICE OF PUBLIC INSURANCE COUNSEL. Section 7, Article 1.35A, Insurance Code, is amended to read as follows:

Sec. 7. APPLICABILITY OF SUNSET ACT. The office of public insurance counsel is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the office is abolished September 1, 2007 [~~2005~~].

SECTION 2.04. PRESCRIBED BURNING BOARD. Section 153.044, Natural Resources Code, is amended to read as follows:

Sec. 153.044. SUNSET PROVISION. The Prescribed Burning Board is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished and this chapter expires September 1, 2007 [~~2009~~].

SECTION 2.05. VETERANS' LAND BOARD. Section 161.0111, Natural Resources Code, is amended to read as follows:

Sec. 161.0111. SUNSET PROVISION. The Veterans' Land Board is subject to review under Chapter 325, Government Code (Texas Sunset Act), but is not abolished under that chapter. The board shall be reviewed during the period in which state agencies abolished in 2007 [~~2005~~] and every 12th year after 2007 [~~2005~~] are reviewed.

SECTION 2.06. REGIONAL EDUCATION SERVICE CENTERS. If the 78th Legislature, Regular Session, 2003, enacts legislation that becomes law and that makes regional education service centers subject to Chapter 325, Government Code (Texas Sunset Act), the comptroller of public accounts shall assist the Sunset Advisory Commission in its review. The comptroller shall conduct a review of the regional education service centers and report the results of the review to the Sunset Advisory Commission before March 1, 2004. The comptroller shall consult the Sunset Advisory Commission regarding the scope of the review. The report shall also be transmitted to the presiding officers of the standing committee in the senate and the house of representatives responsible for public education.

ARTICLE 3. ENTITIES GIVEN 2009 SUNSET DATE

SECTION 3.01. EQUINE RESEARCH ACCOUNT ADVISORY COMMITTEE. Section 88.524(b), Education Code, is amended to read as follows:

(b) The Equine Research Account Advisory Committee is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the advisory committee is abolished and this subchapter expires September 1, 2009 [~~2005~~].

SECTION 3.02. TEXAS ONLINE DIVISION OF THE DEPARTMENT OF INFORMATION RESOURCES. Section 2054.2645, Government Code, is amended to read as follows:

Sec. 2054.2645. SUNSET PROVISION. The division is subject to Chapter 325 (Texas Sunset Act). Unless continued in existence as provided by that chapter, the division is abolished September 1, 2009 [~~2005~~].

SECTION 3.03. ELECTRONIC GOVERNMENT PROGRAM MANAGEMENT OFFICE OF THE DEPARTMENT OF INFORMATION RESOURCES. Section 2055.003, Government Code, is amended to read as follows:

Sec. 2055.003. SUNSET PROVISION. The office is subject to Chapter 325 (Texas Sunset Act). Unless continued in existence as provided by that chapter, the office is abolished September 1, 2009 [~~2005~~].

SECTION 3.04. STATE BOARD OF EXAMINERS FOR SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY. Section 401.002, Occupations Code, is amended to read as follows:

Sec. 401.002. APPLICATION OF SUNSET ACT. The State Board of Examiners for Speech-Language Pathology and Audiology is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished and this chapter expires September 1, 2009 [~~2005~~].

SECTION 3.05. STATE COMMITTEE OF EXAMINERS IN THE FITTING AND DISPENSING OF HEARING INSTRUMENTS. Section 402.002, Occupations Code, is amended to read as follows:

Sec. 402.002. APPLICATION OF SUNSET ACT. The State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the committee is abolished and this chapter expires September 1, 2009 [~~2005~~].

SECTION 3.06. EXECUTIVE COUNCIL OF PHYSICAL THERAPY AND OCCUPATIONAL THERAPY EXAMINERS. Section 452.002, Occupations Code, is amended to read as follows:

Sec. 452.002. APPLICATION OF SUNSET ACT. The Executive Council of Physical Therapy and Occupational Therapy Examiners is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the executive council is abolished and the following laws expire September 1, 2009 [~~2005~~]:

- (1) this chapter;
- (2) Chapter 453; and
- (3) Chapter 454.

SECTION 3.07. TEXAS BOARD OF PHYSICAL THERAPY EXAMINERS. Section 453.002, Occupations Code, is amended to read as follows:

Sec. 453.002. APPLICATION OF SUNSET ACT. The Texas Board of Physical Therapy Examiners is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished and this chapter expires September 1, 2009 [~~2005~~].

SECTION 3.08. TEXAS BOARD OF OCCUPATIONAL THERAPY EXAMINERS. Section 454.003, Occupations Code, is amended to read as follows:

Sec. 454.003. APPLICATION OF SUNSET ACT. The Texas Board of Occupational Therapy Examiners is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished and this chapter expires September 1, 2009 [~~2005~~].

SECTION 3.09. TEXAS RACING COMMISSION. Section 18.01(a), Texas Racing Act (Article 179e, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) The Texas Racing Commission is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, and except as provided by Subsections (b) and (c) of this section, the commission is abolished and this Act expires September 1, 2009 [~~2005~~].

ARTICLE 4. ENTITIES GIVEN 2011 SUNSET DATE

SECTION 4.01. CORRECTIONAL MANAGED HEALTH CARE COMMITTEE. Section 501.132, Government Code, is amended to read as follows:

Sec. 501.132. APPLICATION OF SUNSET ACT. The Correctional Managed Health Care Committee is subject to Chapter 325 (Texas Sunset Act). Unless continued in existence as provided by that chapter, the committee is abolished and this subchapter expires September 1, 2011 [~~2005~~].

ARTICLE 5. ENTITIES GIVEN 2013 SUNSET DATE

SECTION 5.01. ON-SITE WASTEWATER TREATMENT RESEARCH COUNCIL. Section 367.003(a), Health and Safety Code, is amended to read as follows:

(a) The council is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the council is abolished and this chapter expires September 1, 2013 [~~2005~~].

ARTICLE 6. ENTITIES REMOVED FROM SPECIFIC SUNSET REVIEW

SECTION 6.01. REPEALER. The following laws are repealed:

(1) Section 50A.003, Agriculture Code (Texas Food for Health Advisory Council);

(2) Section 262.057, Occupations Code (Dental Hygiene Advisory Committee);

(3) Section 8, Chapter 105, Acts of the 76th Legislature, Regular Session, 1999 (Article 2654-3g, Vernon's Texas Civil Statutes) (Texas Environmental Education Partnership Fund); and

(4) Section 1.12, Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993 (Edwards Aquifer Authority).

ARTICLE 7. CONFIDENTIALITY OF SUNSET RECORDS

SECTION 7.01. CONFIDENTIALITY. Chapter 325, Government Code, is amended by adding Section 325.0195 to read as follows:

Sec. 325.0195. RECORDS PROTECTED FROM DISCLOSURE. (a) A working paper, including all documentary or other information, prepared or maintained by the commission staff in performing its duties under this chapter or other law to conduct an evaluation and prepare a report is excepted from the public disclosure requirements of Section 552.021.

(b) A record held by another entity that is considered to be confidential by law and that the commission receives in connection with the performance of the commission's functions under this chapter or another law remains confidential and is excepted from the public disclosure requirements of Section 552.021.

ARTICLE 8. EFFECTIVE DATE

SECTION 8.01. EFFECTIVE DATE. This Act takes effect September 1, 2003.

Representative Chisum moved to adopt the conference committee report on **HB 2455**.

The motion prevailed.

HR 1864 - NOTICE OF INTRODUCTION

Pursuant to the provisions of Rule 13, Section 9(f) of the House Rules, the chair announced the introduction of **HR 1864**, suspending the limitations on the conferees for **SB 1370**.

HB 1541 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Callegari submitted the following conference committee report on **HB 1541** :

Austin, Texas, May 31, 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 1541** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Lindsay
Shapiro
Averitt
Barrientos
Armbrister

Callegari
Escobar
Puente
King
Hardcastle

On the part of the senate

On the part of the house

HB 1541, A bill to be An Act relating to the general powers and authority of water districts.

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

SECTION 1. Section 388.005(a), Health and Safety Code, is amended to read as follows:

(a) In this section, "political subdivision" means:

- (1) an affected county; or
- (2) any political subdivision in a nonattainment area or in an affected county other than:

(A) a school district; or

(B) a district as defined by Section 36.001 or 49.001, Water Code, that had a total annual electricity expense of less than \$200,000 in the previous fiscal year of the district [in a nonattainment area or in an affected county].

SECTION 2. Section 43.0751(a)(3), Local Government Code, is amended to read as follows:

(3) "Strategic partnership agreement" means a written agreement described by this section between a municipality and a district ~~[that provides terms and conditions under which services will be provided and funded by the parties to the agreement and under which the district will continue to exist for an extended period of time if the land within the district is annexed for limited or full purposes by the municipality].~~

SECTION 3. Section 43.0751, Local Government Code, is amended by amending Subsections (d), (f), and (i) and adding Subsection (q) to read as follows:

(d) Before the governing body of a municipality or a district adopts a strategic partnership agreement, it shall conduct two public hearings at which members of the public who wish to present testimony or evidence regarding the proposed agreement shall be given the opportunity to do so. Notice of public hearings conducted by the governing body of a municipality under this subsection shall be published in a newspaper of general circulation in the municipality and in the district. The notice must be in the format prescribed by Section 43.123(b) and must be published at least once on or after the 20th day before each date. Notice of public hearings conducted by the governing body of a district under this subsection shall be given in accordance with the district's notification procedures for other matters of public importance. Any notice of a public hearing conducted under this subsection shall contain a statement of the purpose of the hearing, the date, time, and place of the hearing, and the location where copies of the proposed agreement may be obtained prior to the hearing. The governing bodies of a municipality and a district may conduct joint public hearings under this subsection, provided that at least one public hearing is conducted within the district. ~~[A municipality may combine the public hearings and notices required by this subsection with the public hearings and notices required by Section 43.124.]~~

(f) A strategic partnership agreement may provide for the following:

- (1) limited-purpose annexation of the district on terms acceptable to the municipality and the district ~~[under the provisions of Subchapter F]~~ provided that the district shall continue in existence during the period of limited-purpose annexation;

(2) limited-purpose annexation of a district located in a county with a population of more than 3.3 million:

(A) only if the municipality does not require services, permits, or inspections or impose fees for services, permits, or inspections within the district; and

(B) provided that this subsection does not prevent the municipality from providing services within the district if:

(i) the provision of services is specified and agreed to in [such amendments to the timing requirements of Sections 43.123(d)(2) and 43.127(b) as may be necessary or convenient to effectuate the purposes of] the agreement;

(ii) the provision of services is not solely the result of a regulatory plan adopted by the municipality in connection with the limited-purpose annexation of the district; and

(iii) the district has obtained the authorization of the governmental entity currently providing the service;

(3) payments by the municipality to the district for services provided by the district;

(4) annexation of any commercial property in a district for full purposes by the municipality, notwithstanding any other provision of this code or the Water Code, except for the obligation of the municipality to provide, directly or through agreement with other units of government, full provision of municipal services to annexed territory, in lieu of any annexation of residential property or payment of any fee on residential property in lieu of annexation of residential property in the district authorized by this subsection;

(5) a full-purpose annexation provision on terms acceptable to the municipality and the district [that specifies one of the following:

~~[(A) the date on which the land included within the district's boundaries shall be converted from the municipality's limited purpose jurisdiction to its full purpose jurisdiction, provided that such date shall not be later than 10 years after the effective date of the strategic partnership agreement; or~~

~~[(B)(i) terms for payment of an annual fee to the municipality by the district in lieu of full purpose annexation, the form in which each such payment must be tendered, a method of calculating the fee, and the date by which each such payment must be made; failure by a district to timely make an annual payment in lieu of full purpose annexation in the amount and form required by a strategic partnership agreement shall be the only ground for termination of the agreement with respect to annexation at the option of the municipality;~~

~~[(ii) to determine a reasonable fee to be derived from residential property in a district, the municipality or the district may request a cost of service study by an independent third party agreeable to both parties if cost of service data prepared by the municipality is not acceptable. Both parties shall be equally responsible for the cost of the study, which shall include an evaluation of the estimated annual cost of providing municipal services to the residential portion of the district over the next 10 years and the estimated annual amount of ad valorem taxes from residential property the municipality would~~

~~receive on full purpose annexation of the district over the next 10 years. The fee shall not exceed the estimated annual amount of residential ad valorem taxes that would be derived by full purpose annexation of the district, less the estimated annual amount required to provide municipal services to the residential property in the district if annexed for full purposes. A fee determined through this methodology is subject to renegotiation every 10 years at the request of either party to the agreement following the same procedure used to set the fee in the original agreement. This methodology does not apply to fees from commercial property];~~

(6) conversion of the district to a limited district including some or all of the land included within the boundaries of the district, which conversion shall be effective on the full-purpose annexation conversion date established under Subdivision (5) ~~[(5)(A)]~~;

(7) agreements existing between districts and governmental bodies and private providers of municipal services in existence on the date a municipality evidences its intention by adopting a resolution to negotiate for a strategic partnership agreement with the district shall be continued and provision made for modifications to such existing agreements; and

(8) such other lawful terms that the parties consider appropriate.

(i) A ~~[district that is negotiating for or that has adopted a]~~ strategic partnership agreement may provide that the district shall not incur additional debt, liabilities, or obligations, to construct additional utility facilities, or sell or otherwise transfer property without prior approval of the municipality~~[- which approval shall not be unreasonably withheld or delayed. An action taken in violation of this subsection is void].~~

(q) Subchapter F does not apply to a limited-purpose annexation under a strategic partnership agreement.

SECTION 4. Section 43.123, Local Government Code, is amended by adding Subsection (e) to read as follows:

(e) The deadline imposed by Subsection (d)(2) does not apply to an area that:

(1) is owned by the United States, this state, or a political subdivision of this state;

(2) is located outside the boundaries of a water control and improvement district or a municipal utility district; and

(3) is annexed for limited purposes in connection with a strategic partnership agreement under Section 43.0751.

SECTION 5. Section 43.127(a), Local Government Code, is amended to read as follows:

(a) Except as provided by Section 43.123(e), on [On] or before the date prescribed by the regulatory plan under Section 43.123(d)(2), the municipality must annex the area for full purposes. This requirement may be waived and the date for full-purpose annexation postponed by written agreement between the municipality and a majority of the affected landowners. A written agreement to waive the municipality's obligation to annex the area for full purposes binds all future owners of land annexed for limited purposes pursuant to that waiver.

SECTION 6. Section 49.052, Water Code, is amended by adding Subsections (h) and (i) to read as follows:

(h) This subsection applies only to a district that is located wholly within the boundaries of a municipality with a population of more than 1.5 million, that is governed by Chapter 375, Local Government Code, and that is governed by an appointed board consisting of nine or more members. Notwithstanding Subsection (f) or (g), a person is considered to have resigned from serving as a member of the board if the person fails to attend three consecutive meetings of the board. The remaining board members by majority vote may waive the resignation under this subsection if fairness requires that the absences be excused on the basis of illness or other good cause.

(i) Notwithstanding any other law, a director is eligible to serve on the board of a district governed by Chapter 375, Local Government Code, regardless of the municipality in which the director resides, if:

(1) the district is located within the boundaries of a municipality with a population of more than 1.8 million; and

(2) all or a part of the district is located more than five miles from the downtown city hall of that municipality.

SECTION 7. Section 49.067, Water Code, is amended to read as follows:

Sec. 49.067. CONTRACTS. (a) A district shall contract, and be contracted with, in the name of the district.

(b) Notwithstanding any other law, a contract for technical, scientific, legal, fiscal, or other professional services must be approved by the board unless specifically delegated by board action. The terms and conditions of such a contract, including the terms for payment, are subject to the decision of the board unless specifically delegated by board action. The board through such action cannot abrogate its fiscal responsibility.

SECTION 8. Section 49.068, Water Code, is amended to read as follows:

Sec. 49.068. CONTRACTS WITH GOVERNMENTAL AGENCIES. (a) The provisions of this chapter pertaining to bids and the Local Government Code notwithstanding, a district may purchase property from any governmental entity by negotiated contract without the necessity of securing appraisals or advertising for bids.

(b) The provisions of other law or a home-rule municipal charter notwithstanding, a municipality may contract with a district. The term of a contract under this subsection may be of unlimited duration.

SECTION 9. Section 49.103, Water Code, is amended by adding Subsection (h) to read as follows:

(h) If authorized by the board in the proceedings calling a director election, the secretary of the board or the secretary's designee, on receipt of the certification required by Section 2.052(b), Election Code, shall post notice that the election is not to be held. The notice must be posted, on or before the commencement of early voting, at each polling place that would have been used in the election. If the notice is timely posted:

(1) the board or the board's designee is not required to:

(A) post or publish notice of the election;

(B) prepare or print ballots and election materials; or

(C) hold early and regular voting; and

(2) the board shall meet at the earliest practicable time to declare each unopposed candidate elected to office.

SECTION 10. Section 49.106(a), Water Code, is amended to read as follows:

(a) Before an election is held to authorize the issuance of bonds, other than refunding bonds, there shall be filed in the office of the district and open to inspection by the public an engineer's report covering the land, improvements, facilities, plants, equipment, and appliances to be purchased or constructed and their estimated cost, together with maps, plats, profiles, and data fully showing and explaining the report. The engineer's report is not:

(1) part of the proposition or propositions to be voted on; or

(2) a contract with the voters.

SECTION 11. Sections 49.153(a) and (e), Water Code, are amended to read as follows:

(a) The board, without the necessity of an election, may borrow money on negotiable or nonnegotiable notes of the district to be paid solely from the revenues derived from the ownership of all or any designated part of the district's works, plants, improvements, facilities, or equipment after deduction of the reasonable cost of maintaining and operating the facilities.

(e) Subsection (c) does not apply to:

(1) a note issued to and approved by the:

(A) Farmers Home Administration;

(B) United States Department of Agriculture; ~~or~~

(C) Texas Water Development Board; or

(D) North American Development Bank; or

(2) a district described by Section 49.181(h).

SECTION 12. Section 49.181(a), Water Code, is amended to read as follows:

(a) A district may not issue bonds unless the commission determines that the project to be financed by the bonds is feasible and issues an order approving the issuance of the bonds. This section does not apply to:

(1) refunding bonds if the commission issued an order approving the issuance of the bonds or notes that originally financed the project;

(2) refunding bonds that are issued by a district under an agreement between the district and a municipality allowing the issuance of the district's bonds to refund bonds issued by the municipality to pay the cost of financing facilities; or

(3) bonds issued to and approved by the Farmers Home Administration, the United States Department of Agriculture, the North American Development Bank, or the Texas Water Development Board.

SECTION 13. Sections 49.183(a) and (b), Water Code, are amended to read as follows:

(a) Except for refunding bonds, or bonds sold to a state or federal agency or to the North American Development Bank, bonds issued by a district shall be sold after advertising for and receiving competitive sealed bids and shall be awarded to the bidder whose bid produces the lowest net effective interest rate to the district.

(b) Except for refunding bonds, or bonds sold to a state or federal agency or to the North American Development Bank, before any bonds are sold by a district, the board shall publish an appropriate notice of the sale:

(1) at least one time not less than 10 days before the date of sale in a newspaper of general circulation in the county or counties in which the district is located; and

(2) at least one time in one or more recognized financial publications of general circulation in the state as approved by the state attorney general.

SECTION 14. Section 49.194, Water Code, is amended by adding Subsection (g) to read as follows:

(g) A submission to the executive director required by this section may be made electronically.

SECTION 15. Subchapter H, Chapter 49, Water Code, is amended by adding Section 49.2125 to read as follows:

Sec. 49.2125. FEES AND OTHER CHARGES OF CERTAIN REGIONAL WATER AUTHORITIES AFTER ANNEXATION. (a) This section applies to a regional water authority that:

(1) was established after January 1, 1999;

(2) is located entirely within a county with a population greater than 3.4 million according to the 2000 federal decennial census; and

(3) has a population greater than 375,000 according to the 2000 federal decennial census.

(b) Notwithstanding any other law, except to the extent an authority to which this section applies agrees in writing, a municipality's annexation of territory within the authority has no effect on the authority's ability to assess and collect inside the territory annexed by the municipality the types of fees, rates, charges, or special assessments that the authority was assessing and collecting at the time the municipality initiated the annexation; provided, however, that the authority's ability to assess and collect such fees, rates, charges, or special assessments shall terminate on the later to occur of (i) the date of final payment or defeasance of any bonds or other indebtedness, including any refunding bonds, that are secured by such fees, rates, charges, or special assessments or (ii) the date that the authority no longer provides services inside the annexed territory. An authority to which this section applies shall continue to provide services to the annexed territory in accordance with contracts in effect at the time of the annexation unless a written agreement between the governing body of the authority and the governing body of the municipality provides otherwise.

SECTION 16. Sections 49.226(a), (c), and (d), Water Code, are amended to read as follows:

(a) Any personal property valued at more than \$300 or any land or interest in land owned by the district which is found by the board to be surplus and is not needed by the district may be sold under order of the board either by public or private sale, or the land, interest in land, or personal property may be exchanged for other land, interest in land, or personal property needed by the district. Except as provided in Subsection (b), land, interest in land, or personal property must be exchanged for like fair market value, which value may be determined by the district. In connection with the sale of surplus land, the board, at its discretion, may impose restrictions on the development and use of the land.

(c) Before ~~either~~ a public ~~or a private~~ sale of real property, the district shall give notice of the intent to sell by publishing notice once a week for two consecutive weeks in one or more newspapers with general circulation in the district.

(d) If the district has outstanding bonds secured by a pledge of tax revenues, the proceeds of the sale of property originally acquired with bond proceeds shall be:

- (1) applied to retire outstanding bonds of the district; or
- (2) held and treated as surplus bond proceeds and spent only as provided by the rules of the commission relating to surplus bond proceeds.

SECTION 17. Section 49.234(a), Water Code, as added by Section 15, Chapter 1423, Acts of the 77th Legislature, Regular Session, 2001, is amended to read as follows:

(a) A district or water supply corporation that operates a wastewater collection system to serve land within its boundaries by rule may prohibit the installation of private on-site wastewater holding or treatment facilities on land within the district that is not served by the district's or corporation's wastewater collection system. A district or corporation that has not received funding under Subchapter K, Chapter 17, may not require a property owner who has ~~already~~ installed an on-site wastewater holding or treatment facility before the adoption of the rule to connect to the district's or corporation's wastewater collection system.

SECTION 18. Subchapter H, Chapter 49, Water Code, is amended by adding Section 49.236 to read as follows:

Sec. 49.236. NOTICE OF TAX HEARING. (a) Before the board adopts an ad valorem tax rate for the district for debt service, operation and maintenance purposes, or contract purposes, the board shall give notice of each meeting of the board at which the adoption of a tax rate will be considered. The notice must:

- (1) contain a statement in substantially the following form:

"NOTICE OF PUBLIC HEARING ON TAX RATE

"The (name of the district) will hold a public hearing on a proposed tax rate for the tax year (year of tax levy) on (date and time) at (meeting place). Your individual taxes may increase or decrease, depending on the change in the taxable value of your property in relation to the change in taxable value of all other property and the tax rate that is adopted."; and

- (2) contain the following information:

(A) the district's total adopted tax rate for the preceding year and the proposed tax rate, expressed as an amount per \$100;

(B) the difference, expressed as an amount per \$100 and as a percent increase or decrease, as applicable, in the proposed tax rate compared to the adopted tax rate for the preceding year;

(C) the average appraised value of a residence homestead in the district in the preceding year and in the current year; the district's total homestead exemption, other than an exemption available only to disabled persons or persons 65 years of age or older, applicable to that appraised value in each of those years; and the average taxable value of a residence homestead in the district in each of those years, disregarding any homestead exemption available only to disabled persons or persons 65 years of age or older;

(D) the amount of tax that would have been imposed by the district in the preceding year on a residence homestead appraised at the average appraised value of a residence homestead in that year, disregarding any homestead exemption available only to disabled persons or persons 65 years of age or older;

(E) the amount of tax that would be imposed by the district in the current year on a residence homestead appraised at the average appraised value of a residence homestead in that year, disregarding any homestead exemption available only to disabled persons or persons 65 years of age or older, if the proposed tax rate is adopted; and

(F) the difference between the amounts of tax calculated under Paragraphs (D) and (E), expressed in dollars and cents and described as the annual increase or decrease, as applicable, in the tax to be imposed by the district on the average residence homestead in the district in the current year if the proposed tax rate is adopted.

(b) Notice of the hearing shall be:

(1) published at least once in a newspaper having general circulation in the district at least seven days before the date of the hearing; or

(2) mailed to each owner of taxable property in the district, at the address for notice shown on the most recently certified tax roll of the district, at least 10 days before the date of the hearing.

SECTION 19. Section 49.271, Water Code, is amended by adding Subsection (e) to read as follows:

(e) A district contract for construction work may include economic incentives for early completion of the work or economic disincentives for late completion of the work.

SECTION 20. Section 49.273, Water Code, is amended by adding Subsection (l) to read as follows:

(l) The board is not required to advertise or seek competitive bids for security or surveillance systems or components of or additions to district facilities relating to security or surveillance, including systems used for the prevention of terrorist or criminal acts and incidents or acts of war, if the board finds that doing so would compromise the safety and security of district facilities or residents.

SECTION 21. Section 49.278(a), Water Code, is amended to read as follows:

(a) This subchapter does not apply to:

(1) equipment, materials, or machinery purchased by the district at an auction that is open to the public;

(2) contracts for personal or professional services or for a utility service operator;

(3) contracts made by a district engaged in the distribution and sale of electric energy to the public;

(4) contracts for services or property for which there is only one source or for which it is otherwise impracticable to obtain competition; ~~or~~

(5) high technology procurements; or

(6) contracts for the purchase of electricity for use by the district.

SECTION 22. Section 49.303, Water Code, is amended to read as follows:

Sec. 49.303. EXCLUDING LAND OR OTHER PROPERTY FROM DISTRICT. (a) A district may exclude land or other property from the district under this subchapter if the district has no outstanding bonds payable in whole or in part from taxes.

(b) If a district has no outstanding ~~[Before a district orders an election for the authorization of]~~ bonds payable in whole or in part from taxes, the board may, on its own motion, call a hearing on the question of the exclusion of land or other property from the district under the provisions of this subchapter ~~[section and Sections 49.304 through 49.307]~~, if the exclusions are practicable, just, or desirable.

~~[(b) The board must call a hearing on the exclusion of land or other property from the district on the written petition of any landowner or property owner in the district filed with the secretary of the board before the first election on the question of whether bonds should be issued payable in whole or in part from taxes is ordered.]~~

(c) If a district has no outstanding bonds payable in whole or in part from taxes, the ~~[The]~~ board may hold a hearing on the exclusion of land or other property from the district ~~[if the district has not issued bonds payable in whole or in part from taxes, and]~~ if a landowner or property owner submits a signed petition to the secretary of the board evidencing the consent of the owners of a majority of the acreage proposed to be excluded and a majority of the taxable property in the district, as reflected by the most recent certified tax roll of the district.

(d) A district that has previously held an election at which approval was given for the issuance of bonds payable in whole or in part from taxes may not rely on that election for the issuance of the bonds if after the bond election, but before the bonds are issued, land or other property is excluded from the district as provided by this subchapter. The board must call and hold another bond election and receive voter approval ~~[as provided by this subchapter]~~ before issuing those bonds.

(e) A district may not exclude land or other property from the district under this section if the district has issued bonds payable in whole or in part from taxes and those bonds are outstanding.

SECTION 23. Section 49.304(a), Water Code, is amended to read as follows:

(a) If the board determines that an exclusion hearing should be held as provided by Section 49.303~~[(a) or (e), or if a written petition requesting an exclusion hearing is filed with the secretary of the board as provided by Section 49.303(b)]~~, the board shall give notice of the time and place of a hearing to announce its own conclusions relating to land or other property to be excluded and to receive petitions for exclusion of land or other property.

SECTION 24. Sections 49.351(a), (k), and (l), Water Code, are amended to read as follows:

(a) A district providing potable water or sewer service to household users may establish, operate, and maintain a fire department to perform all fire-fighting services ~~[activities]~~ within the district as provided in this subchapter and may issue bonds or impose a mandatory fee, with voter approval, for financing a plan approved in accordance with this section, including the construction and purchase of necessary buildings, facilities, land, and equipment and the provision of an adequate water supply.

(k) In this section, "fire-fighting services ~~[activities]~~" means all of the customary and usual services ~~[activities]~~ of a fire department, including fire suppression, fire prevention, training, safety education, maintenance, communications, medical emergency services, photography, and administration.

(l) Notwithstanding the requirements of Subsections (a)-(j), a district providing potable water or sewer service to household users may as part of its billing process collect from its customers a voluntary contribution on behalf of organizations providing fire-fighting services ~~[activities]~~ to the district. A district that chooses to collect a voluntary contribution under this subsection must give reasonable notice to its customers that the contribution is voluntary. Water and sewer service may not be terminated as a result of failure to pay the voluntary contribution.

SECTION 25. Section 49.455(d), Water Code, is amended to read as follows:

(d) The information form required by this section shall be filed with the county clerk ~~[within 48 hours after the effective date of this section or]~~ within 48 hours after the district is officially created~~[, whichever time comes first]~~. For purposes of this section, the words "officially created" mean the date and hour in which the results of the election to confirm the creation of the district are declared.

SECTION 26. Section 53.029, Water Code, is amended by adding Subsection (e) to read as follows:

(e) A district that has adopted the rights, authority, privileges, and functions of a road district in the manner provided by Subsection (c) may, following approval of a construction contract by the district's governing body, reimburse expenditures as provided by Sections 257.003(a) and (b), Transportation Code, without any additional approval under Section 257.003, Transportation Code.

SECTION 27. Section 54.201(b), Water Code, is amended to read as follows:

(b) A district is authorized to purchase, construct, acquire, own, operate, maintain, repair, improve, or extend inside and outside its boundaries any and all works, improvements, facilities, plants, equipment, and appliances necessary to accomplish the purposes of the district authorized by the constitution, this code, or other law [its creation], including all works, improvements, facilities, plants, equipment, and appliances incident, helpful, or necessary to:

(1) supply water for municipal uses, domestic uses, power, and commercial purposes and all other beneficial uses or controls;

(2) collect, transport, process, dispose of, and control all domestic, industrial, or communal wastes whether in fluid, solid, or composite state;

(3) gather, conduct, divert, and control local storm water or other local harmful excesses of water in a district;

(4) irrigate the land in a district;

(5) alter land elevation in a district where it is needed;

(6) navigate coastal and inland waters of the district; and

(7) provide parks and recreational facilities for the inhabitants in the district, subject to the provisions of Chapter 49 [Subchapter I of this chapter].

SECTION 28. Subchapter D, Chapter 54, Water Code, is amended by adding Section 54.2052 to read as follows:

Sec. 54.2052. PLUMBING CODE. Notwithstanding any other law, a district is not required to adopt a plumbing code. A district may adopt and enforce one or more plumbing codes meeting the standards and requirements of the rules and laws of this state and may amend any code adopted to conform to local concerns if the amendment does not substantially vary from rules or laws of this state. If a municipal regulation conflicts with a district regulation, the municipal regulation prevails.

SECTION 29. Section 54.234, Water Code, is amended to read as follows:

Sec. 54.234. ACQUIRING ROAD UTILITY DISTRICT POWERS. Any district, which has the power to levy taxes, may~~[- with the approval of the commission,]~~ petition the commission [Texas Transportation Commission] to acquire the powers granted to road utility districts operating pursuant to Chapter 441, Transportation Code, under the authority of Article III, Section 52, Texas Constitution. As soon as practicable after such petition has been filed with the commission [Texas Transportation Commission], the commission [Texas Transportation Commission shall conduct a hearing in accordance with Chapter 441, Transportation Code, and] shall issue an order [in accordance with Chapter 441, Transportation Code,] either approving or denying such petition. ~~[Any district so petitioning the Texas Transportation Commission shall conform to the rules applicable to the creation and administration of such districts as provided by~~

~~Chapter 441, Transportation Code.~~ In the event of any conflict between the provisions of the Water Code and the general laws of this state applicable to the district and the provisions of Chapter 441, Transportation Code, the provisions of the Water Code and the general laws of this state applicable to the district shall prevail.

SECTION 30. Section 54.503, Water Code, is amended to read as follows:

Sec. 54.503. MANNER OF REPAYMENT OF BONDS. The board may provide for the payment of principal of and interest and redemption price on the bonds in any one of the following manners:

(1) from the levy and collection of ad valorem taxes on all taxable property within the district;

(2) by pledging all or any part of the designated revenues to result from the ownership or operation of the district's works, improvements, facilities, plants, equipment, and appliances or under specific contracts for the period of time the board determines;

(3) by pledging all or part of any funds or revenues available to the district; or

(4) a combination of the sources set forth in Subdivisions (1), ~~and~~ (2), and (3) of this section.

SECTION 31. Section 54.505, Water Code, is amended to read as follows:

Sec. 54.505. ELECTION ON TAX BONDS. Bonds payable solely from revenues may be issued by resolution or order of the board without an election, but no bonds, except refunding bonds, payable wholly or partially from ad valorem taxes shall be issued until authorized by a majority vote of the resident electors of the district voting in an election called and held for that purpose. An election is not required to pledge revenues to the payment of bonds.

SECTION 32. Sections 54.739 and 54.744, Water Code, are amended to read as follows:

Sec. 54.739. SUBSTITUTING LAND OF EQUAL ~~[ACREAGE AND]~~ VALUE. After the district is organized and acquires facilities with which to function for the purposes for which it was organized, and votes, issues and sells bonds for such purposes, land within the district boundaries subject to taxation that does not need or utilize the services of the district may be excluded and other land not within the boundaries of the district may be included within the boundaries of the district without impairment of the security for payment of the bonds or invalidation of any prior bond election, as provided by ~~[the provisions of]~~ this section and Sections 54.740 [54.744] through 54.747 [54.748 subject to commission approval].

Sec. 54.744. IMPAIRMENT OF SECURITY. For purposes of the board's consideration of the applications, the lands proposed for inclusion shall be deemed to be sufficient to avoid an impairment of the security for payment of obligations of the district if:

(1) according to the most recent [county] tax roll of the district or the most recently certified estimates of taxable value from the chief appraiser of the appropriate appraisal district [rolls], the taxable value of such included lands equals or exceeds the taxable value of the excluded lands;

(2) either the estimated costs of providing district facilities and services to such included lands is equal to or less than the estimated costs of providing district facilities and services to the excluded lands or any increased estimated costs of providing district facilities and services to the included land, as determined by the district's engineer, can be amortized at prevailing bond interest rates and maturity schedules and the prevailing debt service tax rate of the district, as determined by the district's professional financial advisor, when applied to the increase in taxable value of the included land over the taxable value of the excluded land; and

(3) the district's outstanding bonds or contract obligations are payable in whole or in part by a pledge of net revenues from the ownership or operation of the district's facilities, and the projected net revenues to be derived from the lands to be included during the succeeding 12-month period, as determined by the district's engineer, equals or exceeds the projected net revenues that would otherwise have been derived from the lands to be excluded during the same period.

SECTION 33. Subchapter H, Chapter 54, Water Code, is amended by adding Sections 54.748 and 54.749 to read as follows:

Sec. 54.748. EXCLUSION OF LAND FOR FAILURE TO PROVIDE SUFFICIENT SERVICES; BONDS OUTSTANDING. (a) This section applies only to a district that has a total area of more than 5,000 acres.

(b) The board shall call a hearing on the exclusion of land from the district on a written petition filed with the secretary of the board by a landowner whose land has been included in and taxable by the district for more than 28 years if any bonds issued by the district payable in whole or in part from taxes of the district are outstanding and the petition:

(1) includes a signed petition evidencing the consent of the owners of a majority of the acreage proposed to be excluded, as reflected by the most recent certified tax roll of the district;

(2) includes a claim that the district has not provided the land with utility services;

(3) describes the property to be excluded;

(4) provides, at the petitioner's expense, facts necessary for the board to make the findings required by Subsection (c); and

(5) is filed before August 31, 2005.

(c) The board may exclude land under this section only on finding that:

(1) the district has never provided utility services to the land described by the petition;

(2) the district has imposed a tax on the land for more than 28 years;

(3) all taxes the district has levied and assessed against the land and all fees and assessments the district has imposed against the land or the owner that are due and payable on or before the date of the petition are fully paid; and

(4) the executive director has reviewed the economic impact of the proposed exclusion of land and does not oppose the exclusion.

(d) If evidence presented at the hearing conclusively demonstrates that the requirements and grounds for exclusion described by Subsections (b) and (c) have been met, the board may enter an order excluding the land from the district. If the board enters an order excluding the land, the board shall redefine in the order the boundaries of the district to embrace all land not excluded.

(e) A copy of an order excluding land and redefining the boundaries of the district shall be filed in the deed records of the county in which the district is located.

(f) The exclusion of land under this section does not impair the rights of holders of any outstanding bonds, warrants, or other certificates of indebtedness of the district.

(g) After any land is excluded under this section, the district may issue any unissued additional debt approved by the voters of the district before exclusion of the land under this section without holding a new election. Additional debt issued after land is excluded from the district may not be payable from and does not create a lien against the taxable value of the excluded land.

(h) For purposes of this section and Section 54.749, "land" includes any improvements to the land, and when used in the context of property taxes, "land" has the meaning assigned to "real property" by Section 1.04, Tax Code.

Sec. 54.749. TAX LIABILITY OF EXCLUDED LAND; BONDS OUTSTANDING. (a) Land excluded from the district under Section 54.748 that is pledged as security for any outstanding debt of the district remains pledged for its pro rata share of the debt until final payment is made. The district shall continue to levy and collect taxes on the excluded land at the same rate levied on land remaining in the district until the amount of taxes collected from the excluded land equals the land's pro rata share of the district's debt outstanding at the time the land was excluded from the district.

(b) The district shall apply the taxes collected on the excluded land only to the payment of the excluded land's pro rata share of the debt.

SECTION 34. Section 57.015(b), Water Code, is amended to read as follows:

(b) The notice shall be posted at the courthouse door and at a place ~~[four different places]~~ inside the proposed district. If the district is located in more than one county, the person posting the notice shall post a copy at the courthouse door in each county in which any portion of the proposed district is located and at a place ~~[four separate places]~~ inside the boundaries of that portion of the district located in each county. The notice shall be posted for at least 10 days before the date of the hearing.

SECTION 35. Section 57.092(a), Water Code, is amended to read as follows:

(a) The district may enter into all necessary and proper contracts and employ all persons and means necessary to purchase, acquire, build, construct, complete, carry out, maintain, protect, and, in case of necessity, add to and rebuild all works and improvements necessary or proper to fully accomplish the purposes of the district, including the reclamation of land within the district ~~[a reclamation plan lawfully adopted for the district].~~

SECTION 36. Section 57.104, Water Code, is amended to read as follows:

Sec. 57.104. CONSTRUCTION OF ~~[DUTY TO CONSTRUCT APPROVED]~~ IMPROVEMENTS. The district may may ~~[shall]~~ construct all improvements necessary or convenient to accomplish the purposes of the district ~~[included in the plan of reclamation approved by the commission].~~

SECTION 37. Section 57.108(b), Water Code, is amended to read as follows:

(b) Contracts may be awarded or entered in sections for the purpose of the purchase, acquisition, construction, and improvement of pumping equipment, reservoirs, culverts, bridges, and drainage improvements as these may become necessary~~[, but as funds are available, the district shall comply with Section 57.104].~~

SECTION 38. The heading to Section 57.116, Water Code, is amended to read as follows:

Sec. 57.116. ENGINEER'S CONSTRUCTION REPORT.

SECTION 39. Section 57.116(a), Water Code, is amended to read as follows:

(a) As ~~[the]~~ work ~~[on the plan of reclamation]~~ progresses on the district's improvements, the engineer shall make a report to the board, showing in detail whether or not the contract is being fulfilled.

SECTION 40. Section 57.117(b), Water Code, is amended to read as follows:

(b) If the executive director finds that the work has not been done in strict accordance with the contract, he shall officially certify this fact, and in the certificate he shall state where the contractor has failed to comply with the contract ~~[approved plan of reclamation].~~

SECTION 41. Section 57.118, Water Code, is amended to read as follows:

Sec. 57.118. COMPLIANCE WITH CONTRACT. After the board receives a report that the contractor has failed to comply with the contract, it shall demand that the contractor comply with the requirements of the contract ~~[approved plan of reclamation]~~ at his own expense, and no further accounts, claims, or vouchers submitted by the contractor shall be approved or paid until the contractor complies with the requirements of the executive director by constructing the improvement in accordance with the contract ~~[plan of reclamation].~~

SECTION 42. The heading to Subchapter E, Chapter 57, Water Code, is amended to read as follows:

SUBCHAPTER E. ENGINEER'S REPORT ~~[PLAN OF RECLAMATION]~~

SECTION 43. Sections 57.177(a) and (c), Water Code, are amended to read as follows:

(a) If the district wants to carry out its purposes ~~[plan of reclamation]~~ without issuing bonds, the board may arrange for contributions from landowners or other sources to provide the funds required to complete the improvements.

(c) If the district creates an indebtedness under this section, the indebtedness may not be more than:

(1) the cost of construction of the improvements included in the engineer's report ~~[plan of reclamation]~~;

(2) the cost [~~as approved by the commission~~] of maintaining the improvements for two years; and

(3) an additional amount equal to 10 percent to meet emergencies, modifications, and changes lawfully made, plus damages awarded against the district.

SECTION 44. Section 57.208(b), Water Code, is amended to read as follows:

(b) The bonds shall be known as "Levee Improvement Bonds" [~~and shall state on their face the purpose for which they are issued~~].

SECTION 45. Section 57.216, Water Code, is amended to read as follows:

Sec. 57.216. PROVIDING FOR ADDITIONAL FUNDS. (a) If the improvements in the engineer's report [~~plan of reclamation adopted for the district~~] are insufficient to reclaim all of the land and other property inside the district, extensive repairs or additions to the improvements are necessary, or additional funds are needed to complete improvements, the board may provide additional funds for the district by following the provisions of this chapter for raising funds [~~for the original plan of reclamation~~].

(b) If the board creates additional indebtedness or issues additional bonds, the indebtedness or bonds are subject to the provisions of this chapter relating to the issuance of bonds. [~~The new or amended plan of reclamation must be approved by the commission.~~]

SECTION 46. Section 57.260(a), Water Code, is amended to read as follows:

(a) If a district levies taxes on the benefit basis, the commissioners court of each county in which any portion of that district is located shall levy and have assessed and collected taxes on all taxable property inside the district, based on the net benefits which the commissioners of appraisal find will accrue to each piece of property from the improvements described in the engineer's report [~~completion of the plan of reclamation~~] or other authorized improvements [~~improvement~~].

SECTION 47. Section 57.261, Water Code, is amended to read as follows:

Sec. 57.261. APPOINTMENT OF COMMISSIONERS OF APPRAISEMENT. The [~~After the plan of reclamation is approved and adopted, the~~] commissioners court of the county of jurisdiction in a district levying taxes on the benefit basis shall appoint three disinterested commissioners, known as "commissioners of appraisal."

SECTION 48. Sections 57.265(c) and (d), Water Code, are amended to read as follows:

(c) The commissioners of appraisal shall view:

(1) the land inside the district;

(2) other land which will be affected by the engineer's report [~~plan of reclamation~~] if carried out;

(3) all public roads, railroads, rights-of-way, and other property or improvements located on the land; and

(4) land inside or outside the district which may be acquired under the provisions of this chapter for any purpose connected with or incident to carrying out the engineer's report [~~plan of reclamation~~].

(d) The commissioners of appraisalment shall assess the amounts of benefits and all damages that will accrue to any tract of land inside the district or any land outside the district which may be affected by the engineer's report [~~plan of reclamation~~], or any public highway, railroad, right-of-way, roadway, or other property.

SECTION 49. Section 57.266(a), Water Code, is amended to read as follows:

(a) The commissioners of appraisalment shall prepare a report of their findings. The report shall include:

(1) the name of the owner of each piece of property examined and assessed;

(2) a description which will identify each piece of property; and

(3) the value of all property to be taken or acquired for rights-of-way or any other purposes connected with carrying out the engineer's report [~~plan of reclamation as finally approved by the commission~~].

SECTION 50. Sections 57.267(b), (c), and (d), Water Code, are amended to read as follows:

(b) The notice shall be published in a newspaper published in each county in which any part of the district is located, or in which any land lies that will be in any way affected by the proposed engineer's report [~~plan of reclamation~~]. The notice shall be published once a week for two consecutive weeks before the date of the hearing.

(c) The notice shall be in substantially the following form:

To the owners and all other persons having any interest in land lying in _____ County, take notice, that a copy of the engineer's report [~~plan of reclamation~~] of the _____ Levee Improvement District has been filed in the district's office [~~with the county clerk of this county~~] and that the commissioners of appraisalment have been appointed to assess benefits and damages accruing to land or other property inside or outside the levee improvement district which will be benefited, taken, damaged, or affected in some way by the carrying out of the engineer's report [~~plan of reclamation~~]. The report of the commissioners of appraisalment has been filed in my office at _____, and all interested persons may examine the report and make an objection to all or any part of the report. A person who claims damage to his land and to whose land no damages have been assessed in the report must file a claim for damage in my office on or before _____, [~~19~~]____. A person who fails to make an objection or to file a claim for damages is deemed to have waived his right to object or claim damages. The commissioners of appraisalment will meet on _____, [~~19~~]____, to hear and act on objections to their report and claims for damages.

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(d) The secretary shall mail written notice to each person whose property is listed in the report of the commissioners of appraisalment, if the office address is known. This notice shall state in substance:

(1) that the report of the commissioners of appraisalment assessing benefits and damages accruing to land and other property because of the engineer's report [~~plan of reclamation~~] for the district has been filed in the district's [~~secretary's~~] office;

(2) that all persons interested may examine the report and make objections to it in whole or in part; and

(3) that the commissioners of appraisalment will meet on the day and at the place named to hear and act on objections to the report.

SECTION 51. Sections 57.269(a) and (b), Water Code, are amended to read as follows:

(a) An owner of land or other property affected by the report of the commissioners of appraisalment or by the engineer's report [~~plan of reclamation~~] may file an objection to any or all parts of the report of the commissioners of appraisalment at or before the hearing on the report.

(b) A person on whose land no damages have been assessed and who believes that his land will be damaged by prosecution of the engineer's report [~~plan of reclamation~~] may file with the secretary of the board a claim for damages.

SECTION 52. Sections 57.270(e), (j), and (k), Water Code, are amended to read as follows:

(e) The secretary in not less than five days after the appeal is filed shall send to the district clerk:

(1) the engineer's report [~~plan of reclamation~~] or a certified copy of it;

(2) a transcript of that part of the commissioners of appraisalment's report affecting the lands concerned in the appeal;

(3) a transcript of the claim for damages; and

(4) a transcript of the action of the commissioners of appraisalment on the claim.

(j) No appeal may delay carrying out the engineer's report [~~plan of reclamation~~], and if the board pays to the district clerk the amount of damages awarded by the commissioners of appraisalment to a claimant who is appealing their decree, and if the board makes bond to pay to the claimant any additional amount that he may be awarded on his appeal, title to the condemned property that is the subject of the appeal vests in the district, and the district is entitled to immediate possession.

(k) No person may claim damages against the district, its board, officers, or agents because of the prosecution of the engineer's report [~~plan of reclamation~~] if he owns or has an interest in land in a county in which [~~a copy of the plan of reclamation has been filed and in which~~] notice has been published of the hearing before the commissioners of appraisalment, and he has failed to file a claim for damages or an objection to the damages assessed by the commissioners of appraisalment against his land, or if he has filed a claim or objection but has failed to appeal from an adverse ruling on his claim or objection.

SECTION 53. Section 57.273(b), Water Code, is amended to read as follows:

(b) If the engineer's report [~~plan of reclamation~~] is changed or modified, or if extensive repairs or additions to the engineer's report [~~plan of reclamation~~] are desired, the board shall file a petition with the commissioners court describing the changes, modifications, repairs, or additions.

SECTION 54. Section 57.274(b), Water Code, is amended to read as follows:

(b) The commissioners court shall order a reassessment of benefits if it finds that the aggregate amount of assessed benefits as shown by the previous final judgment and decree is insufficient to carry out the original engineer's report [~~plan of reclamation~~] or changes, repairs, or additions to the report [~~plan~~] or there has been a material change in the relative value of the benefits conferred on the property in the district, or for some reason the assessment of benefits is inadequate or inequitable.

SECTION 55. Section 57.275(d), Water Code, is amended to read as follows:

(d) If the engineer's report [~~plan of reclamation~~] is modified, or if extensive repairs or additions are made, the provisions of this section apply to districts that levy taxes on the ad valorem basis, but the commissioners of appraisal shall assess only the damages which will accrue to the property inside or outside the district as a result of the changes in the report [~~plan~~].

SECTION 56. Section 67.010(d), Water Code, is amended to read as follows:

(d) A political subdivision may contract with a corporation under Section 402.014, Local Government Code, to carry out this chapter. If a corporation issues bonds secured by a contract entered into under Section 402.014, Local Government Code, the corporation is considered to be acting for or on behalf of that political subdivision for the purposes of Section 1201.002(1), Government Code. A political subdivision is authorized to approve by ordinance, resolution, or order the articles of incorporation and the bylaws of a corporation that is created for the purpose of constructing facilities under a contract as provided by Section 402.014, Local Government Code.

SECTION 57. The following provisions are repealed:

(1) Sections 54.0163(e), 54.508, 57.094, 57.108(a), 57.154(b), and 57.156, Water Code;

(2) Section 402.908, Local Government Code; and

(3) Subchapter C, Chapter 441, Transportation Code.

SECTION 58. (a) Except as provided by this section, a provision of a strategic partnership agreement entered into before December 31, 2003, that does not comply with Section 43.0751(f)(2), Local Government Code, as amended by this Act, is not enforceable after December 31, 2003, to the extent of the noncompliance.

(b) A permit issued before December 31, 2003, by a municipality with a population of 1.9 million or more remains valid until its expiration and shall be recognized by the county.

(c) A municipality with a population of 1.9 million or more may not enforce, under a strategic partnership agreement, a code provision that would otherwise require a building permit from the municipality after the effective date of this Act.

(d) This section does not affect the validity or enforceability of a provision of a strategic partnership agreement that requires services or imposes fees if the services or fees relate to emergency services that were specifically requested by the board of a municipal utility district or if the services or fees have been approved by a state agency or a political subdivision that is not a party to the strategic partnership agreement.

SECTION 59. (a) Section 43.127(a), Local Government Code, as amended by this Act, applies to an area described by Section 43.123(e), Local Government Code, as added by this Act, that is annexed for limited purposes in connection with a strategic partnership agreement before, on, or after September 1, 2003.

(b) For the 2003 tax year, the change in law made by Section 49.236, Water Code, applies only to a conservation and reclamation district created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution, and governed by Chapter 49, Water Code, that adopts its tax rate on or after September 1, 2003. For the 2003 tax year, a district that adopts its tax rate before September 1, 2003, is governed by the law as it existed prior to the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 60. 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 Callegari moved to adopt the conference committee report on **HB 1541**.

A record vote was requested.

The motion prevailed by (Record 927): 148 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, 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.

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

SB 127 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Seaman submitted the conference committee report on **SB 127**.

Representative Seaman moved to adopt the conference committee report on **SB 127**.

A record vote was requested.

The motion prevailed by (Record 928): 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; Hodge; Homer; Hope; Hopson; Howard; Hughes; Hunter; Hupp; Isett; Jones, D.; Jones, E.; Jones, J.; Keel; Keffer, J.; King; Kolkhorst; Kruse; Kuempel; Laney; Laubenberg; Lewis; Luna; Mabry; Madden; Marchant; Martinez Fischer; McCall; McClendon; McReynolds; Menendez; Mercer; 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.

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

Absent — Hochberg; Merritt.

SB 1108 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Grusendorf submitted the conference committee report on **SB 1108**.

SB 1108 - STATEMENT OF LEGISLATIVE INTENT

REPRESENTATIVE HOCHBERG: Chairman Grusendorf, is there anything, to your knowledge, in **SB 1108** that would allow the commissioner of education in coordination with an accredited senior college or university to establish a pilot program that permits a public school to use technology, including the Internet, to deliver a significant portion of the school's instruction outside of a central campus to students statewide?

REPRESENTATIVE GRUSENDORF: No, there is not.

REMARKS ORDERED PRINTED

Representative Hochberg moved to print remarks between Representative Hochberg and Representative Grusendorf.

The motion prevailed without objection.

Representative Grusendorf moved to adopt the conference committee report on **SB 1108**.

A record vote was requested.

The motion prevailed by (Record 929): 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; 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, E.; Jones, J.; Keel; 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.

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

Absent — Geren; Jones, D.

STATEMENT OF VOTE

When Record No. 929 was taken, my vote failed to register. I would have voted no.

D. Jones

**HCR 285 - ADOPTED
(by Grusendorf)**

The following privileged resolution was laid before the house:

HCR 285

WHEREAS, the conference committee report for **SB 1108** has been adopted by the senate and the house of representatives and is being prepared for enrollment; and

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

RESOLVED by the 78th Legislature of the State of Texas, That the enrolling clerk of the senate be instructed to correct **SB 1108** by striking Section 7 of the bill and renumbering the sections of the bill appropriately. The text of the section to be stricken reads:

SECTION 7. Section 25.081, Education Code, is amended by adding Subsection (c) to read as follows:

(c) A school may not operate on the Memorial Day holiday.

HCR 285 was adopted.

HB 425 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Christian submitted the following conference committee report on **HB 425** :

Austin, Texas, May 31, 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 425** 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.

West, Royce

Armbrister

Ratliff

Harris

On the part of the senate

Christian

J. Keffer

Bonnen

Eissler

On the part of the house

HB 425, A bill to be entitled An Act relating to procedures to help ensure that certain state agency actions are consistent with the meaning and intent of applicable legislative enactments.

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

SECTION 1. Chapter 322, Government Code, is amended by adding Section 322.015 to read as follows:

Sec. 322.015. LETTERS OF LEGISLATIVE INTENT. (a) The board may issue a letter to a state governmental entity clarifying or explaining meaning or legislative intent on matters relating to:

(1) the General Appropriations Act; or

(2) another legislative enactment that makes an appropriation or qualifies, details, limits, or restricts an appropriation.

(b) A state governmental entity, in interpreting a provision of law described by Subsection (a), may rely on a letter of legislative intent issued by the board under this section.

SECTION 2. Section 2001.032, Government Code, is amended to read as follows:

Sec. 2001.032. LEGISLATIVE REVIEW AND NOTIFICATION. (a) In the process of developing new rules and before a state agency gives notice of its intention of adopting a rule under Sections 2001.023 and 2001.024, the agency shall research the legislative history of the law and prepare a legislative history document on the bill or amendment that authorizes a state agency to adopt the rule. To effectively research and prepare a legislative history document, the state agency must:

(1) confirm the names of the primary author and sponsor of the legislation or amendment that authorizes the state agency to adopt the rule with the chief clerk of the house of representatives, the secretary of the senate, or an automated information system operated by the Texas Legislative Council or some other reliable information service;

(2) determine whether a statement or discussion of legislative intent was entered into the journals of the senate or house of representatives in connection with legislation that became law and that added, amended, or clearly affected the law under which the rule would be adopted;

(3) verify the standing of each legislative author or sponsor identified in Subdivision (1) as to their current membership in the legislature; and

(4) assemble the information gathered under Subdivisions (1), (2), and (3) into a legislative history document to be used by the state agency during the deliberative process of developing new rules.

(b) In this section, a reference to the law under which a rule is or would be adopted includes a reference to the law that authorizes a state agency to adopt the rule and to the law that the rule would implement or enforce.

(c) Before a state agency gives notice of its intention to adopt a rule under Sections 2001.023 and 2001.024, the agency shall establish an internal review process to ensure that the proposed rule is consistent with the legislative history in enacting or otherwise affecting the law under which the rule would be adopted.

(d) Before a state agency gives notice of its intention to adopt a rule under Sections 2001.023 and 2001.024, the agency shall inform the primary author and sponsor of legislation that became law and that added, amended, or clearly affected the law under which the rule would be adopted, if the primary author or sponsor is still a member of the legislature, that the adoption of a rule related to the member's legislation is being considered.

(e) Concurrently with the state agency's filing of the notice with the secretary of state, the agency shall deliver a copy of the notice of the proposed rule required by Sections 2001.023 and 2001.024 to the primary author and sponsor as described in the legislative history if the primary author or sponsor is still a member of the legislature.

(f) Not later than the seventh day before the date the state agency considers the rule for final adoption, the agency shall deliver to the primary author and sponsor a copy of the rule as proposed for final adoption if the text of the rule differs from the text of the proposed rule published under Section 2001.024 and if the author or sponsor is still a member of the legislature. The state agency also shall notify the primary author and sponsor in a timely manner of the time and place of a public hearing held in connection with the contemplated rulemaking if the primary author or sponsor is still a member of the legislature.

(g) The state agency shall deliver a copy of an emergency rule adopted under Section 2001.034 and the written reasons for its adoption to the primary author and sponsor as determined by the legislative history with respect to the law under which the emergency rule was adopted concurrently with the agency's filing of the rule and the reasons for its adoption with the secretary of state. If the state agency gives an abbreviated notice or conducts a hearing in connection with the adoption of the emergency rule, the agency shall also promptly furnish the primary author and sponsor with a copy of the notice and shall timely inform the primary author and sponsor of the time and place of the hearing.

~~(h) Failure to provide notice under this section does not invalidate an action taken or rule adopted. [Each house of the legislature by rule shall establish a process under which the presiding officer of each house refers each proposed state agency rule to the appropriate standing committee for review before the rule is adopted.~~

~~(b) A state agency shall deliver to the lieutenant governor and the speaker of the house of representatives a copy of the notice of a proposed rule when the agency files notice with the secretary of state under Section 2001.023.~~

~~(e) On the vote of a majority of its members, a standing committee may send to a state agency a statement supporting or opposing adoption of a proposed rule.]~~

SECTION 3. Section 2001.024(a), Government Code, is amended to read as follows:

(a) The notice of a proposed rule must include:

(1) a brief explanation of the proposed rule;

(2) the text of the proposed rule, except any portion omitted under Section 2002.014, prepared in a manner to indicate any words to be added or deleted from the current text;

(3) a statement of the statutory or other authority under which the rule is proposed to be adopted, including:

(A) a concise explanation of the particular statutory or other provisions under which the rule is proposed;

(B) the section or article of the code affected; ~~and~~

(C) a certification that the proposed rule has been reviewed by legal counsel and found to be within the state agency's authority to adopt; and

(D) a copy of the legislative history developed and used by the agency during the proposal process;

(4) a fiscal note showing the name and title of the officer or employee responsible for preparing or approving the note and stating for each year of the first five years that the rule will be in effect:

(A) the additional estimated cost to the state and to local governments expected as a result of enforcing or administering the rule;

(B) the estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule;

(C) the estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering the rule; and

(D) if applicable, that enforcing or administering the rule does not have foreseeable implications relating to cost or revenues of the state or local governments;

(5) a note about public benefits and costs showing the name and title of the officer or employee responsible for preparing or approving the note and stating for each year of the first five years that the rule will be in effect:

(A) the public benefits expected as a result of adoption of the proposed rule; and

(B) the probable economic cost to persons required to comply with the rule;

(6) the local employment impact statement prepared under Section 2001.022, if required;

(7) a request for comments on the proposed rule from any interested person; and

(8) any other statement required by law.

SECTION 4. Section 2001.033, Government Code, is amended to read as follows:

Sec. 2001.033. STATE AGENCY ORDER ADOPTING RULE. (a) A state agency order finally adopting a rule must include:

(1) a reasoned justification for the rule as adopted consisting solely of:

(A) a summary of comments received from parties and of any written comments received from members of the legislature interested in the rule that shows the names of interested groups or associations offering comment on the rule and of members of the legislature offering written comment on the rule and whether they were for or against its adoption;

(B) a summary of the factual basis for the rule as adopted which demonstrates a rational connection between the factual basis for the rule and the rule as adopted; and

(C) the reasons why the agency disagrees with party submissions and proposals and with any written comments or proposals offered by a member of the legislature;

(2) a concise restatement of the particular statutory provisions under which the rule is adopted and of how the agency interprets the provisions as authorizing or requiring the rule; and

(3) a certification that the rule, as adopted, has been reviewed by legal counsel and found to be:

(A) a valid exercise of the agency's legal authority; and

(B) consistent with the intent of the legislature in enacting or otherwise affecting the law under which the rule is adopted, as described by Section 2001.032(a).

(b) Nothing in this section shall be construed to require additional analysis of alternatives not adopted by an agency beyond that required by Subsection (a)(1)(C) [Subdivision (1)(C)] or to require the reasoned justification to be stated separately from the statements required in Subsection (a)(1) [Subdivision (1)].

SECTION 5. The changes in law made by this Act relating to the process of state agency rulemaking apply only in relation to:

(1) a state agency rule for which notice of the rule as proposed is first published in the Texas Register under Sections 2001.023 and 2001.024, Government Code, on or after October 1, 2003; or

(2) an emergency rule adopted on or after September 15, 2003.

SECTION 6. This Act takes effect September 1, 2003.

Representative Christian moved to adopt the conference committee report on **HB 425**.

The motion prevailed.

SB 1387 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Homer submitted the conference committee report on **SB 1387**.

Representative Homer moved to adopt the conference committee report on **SB 1387**.

The motion prevailed.

HR 1852 - ADOPTED (by Bonnen)

The following privileged resolution was laid before the house:

HR 1852

BE IT RESOLVED by the House of Representatives of the State of Texas, 78th Legislature, Regular Session, 2003, That House Rule 13, Section 9(a), be suspended in part as provided by House Rule 13, Section 9(f), to enable the conference committee appointed to resolve the differences on **HB 1365**, relating to the Texas emissions reduction plan, to consider and take action on the following matter:

(1) House Rule 13, Section (9)(a)(2), is suspended in order to allow the committee to omit text from Section 151.0515(a), Tax Code, as amended by both houses, so that the section reads as follows:

(a) In this section, "equipment" includes all off-road, heavy-duty diesel equipment [~~classified as construction equipment~~], other than implements of husbandry used solely for agricultural purposes, including:

- (1) pavers;
- (2) tampers/rammers;
- (3) plate compactors;
- (4) concrete pavers;

- (5) rollers;
- (6) scrapers;
- (7) paving equipment;
- (8) surface equipment;
- (9) signal boards/light plants;
- (10) trenchers;
- (11) bore/drill rigs;
- (12) excavators;
- (13) concrete/industrial saws;
- (14) cement and mortar mixers;
- (15) cranes;
- (16) graders;
- (17) off-highway trucks;
- (18) crushing/processing equipment;
- (19) rough terrain forklifts;
- (20) rubber tire loaders;
- (21) rubber tire tractors/dozers;
- (22) tractors/loaders/backhoes;
- (23) crawler tractors/dozers;
- (24) skid steer loaders;
- (25) off-highway tractors; ~~and~~
- (26) Dumpsters/tenders; and
- (27) mining equipment.

Explanation: This change is necessary to provide that only mining equipment but not certain drilling equipment is added to the kinds of equipment subject to the sale, lease, or rental surcharge on new or used equipment.

(2) House Rule 13, Sections (9)(a)(3) and (4), are suspended to allow the committee to add the following text to Section 27 of the bill to read as follows:

(c) The change in law made by Section 25 of this Act does not affect speed limits that have been approved by the Texas Transportation Commission before the effective date of this Act.

Explanation: This change is necessary to make clear that a speed limit approved by the Texas Transportation Commission before the effective date of the Act is not affected by the change in law made by Section 25 of the Act.

HR 1852 was adopted.

HB 1365 - 24 HOUR LAYOUT RULE SUSPENDED

Representative Bonnen moved to suspend Rule 13, Section 10 of the house rules to consider the conference committee report on **HB 1365** which was ineligible for consideration at this time.

The motion prevailed.

HB 1365 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Bonnen submitted the following conference committee report on **HB 1365** :

Austin, Texas, May 31, 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 1365** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Harris	Bonnen
Averitt	Capelo
Armbrister	Chisum
Jackson	McCall
Ogden	Wilson
On the part of the senate	On the part of the house

HB 1365, A bill to be entitled An Act relating to the Texas emissions reduction plan.

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

SECTION 1. Section 386.001(2), Health and Safety Code, is amended to read as follows:

(2) "Affected county" includes:

- (A) Bastrop County;
- (B) Bexar County;
- (C) Caldwell County;
- (D) Comal County;
- (E) Ellis County;
- (F) Gregg County;
- (G) Guadalupe County;
- (H) Harrison County;
- (I) Hays County;
- (J) Henderson County;
- (K) Hood County;
- (L) Hunt County;
- (M) Johnson County;
- (N) [~~(K)~~] Kaufman County;
- (O) [~~(L)~~] Nueces County;
- (P) [~~(M)~~] Parker County;
- (Q) [~~(N)~~] Rockwall County;
- (R) [~~(O)~~] Rusk County;
- (S) [~~(P)~~] San Patricio County;
- (T) [~~(Q)~~] Smith County;
- (U) [~~(R)~~] Travis County;
- (V) [~~(S)~~] Upshur County;
- (W) [~~(T)~~] Victoria County;
- (X) [~~(U)~~] Williamson County; ~~and~~
- (Y) [~~(V)~~] Wilson County; and

(Z) any other county designated as an affected county by commission rule because of deteriorating air quality.

SECTION 2. Section 386.053(d), Health and Safety Code, is amended to read as follows:

(d) The commission may propose revisions to the guidelines and criteria adopted under this section as necessary to improve the ability of the plan to achieve its goals. Revisions may include, among other changes, adding additional pollutants, adding stationary engines or engines used in stationary applications, adding vehicles and equipment that use fuels other than diesel, or adjusting eligible program categories, as appropriate, to ensure that incentives established under this chapter achieve the maximum possible emissions reductions. The commission shall make a proposed revision available to the public before the 45th day preceding the date of final adoption of the revision and shall hold at least one public meeting to consider public comments on the proposed revision before final adoption.

SECTION 3. Sections 386.101(6) and (9), Health and Safety Code, are amended to read as follows:

(6) "On-road diesel" means an on-road diesel-powered motor vehicle that has a gross vehicle weight rating of 8,500 [~~10,000~~] pounds or more.

(9) "Repower" means to replace an old engine powering an on-road or non-road diesel with a new engine, a used engine, a remanufactured engine, or electric motors, drives, or fuel cells[-

~~](A) a new engine that emits at least 30 percent less than the oxides of nitrogen emissions standard required by federal regulation for the current model year for that engine;~~

~~](B) an engine manufactured later than 1987 that emits at least 30 percent less than the oxides of nitrogen emissions standard emitted by a new engine certified to the baseline oxides of nitrogen emissions standard for that engine;~~

~~](C) an engine manufactured before 1988 that emits not more than 50 percent of the oxides of nitrogen emissions standard emitted by a new engine certified to the baseline oxides of nitrogen emissions standard for that engine; or~~

~~](D) electric motors, drives, or fuel cells].~~

SECTION 4. Section 386.102(b), Health and Safety Code, is amended to read as follows:

(b) Projects that may be considered for a grant under the program include:

(1) purchase or lease of on-road or non-road diesels;
(2) emissions-reducing retrofit projects for on-road or non-road diesels;
(3) emissions-reducing repower projects for on-road or non-road diesels;

(4) purchase and use of emissions-reducing add-on equipment for on-road or non-road diesels;

(5) development and demonstration of practical, low-emissions retrofit technologies, repower options, and advanced technologies for on-road or non-road diesels with lower emissions of oxides of nitrogen;

(6) use of qualifying fuel; [~~and~~]

(7) implementation of infrastructure projects; and

(8) replacement of on-road or non-road diesels with newer on-road or non-road diesels.

SECTION 5. Section 386.103(a), Health and Safety Code, is amended to read as follows:

(a) Any person as defined by Section 382.003 that owns one or more on-road or non-road diesels that operate primarily within a nonattainment area or affected county of this state or that otherwise contributes to the state inventory of emissions of oxides of nitrogen may apply for a grant under the program. The commission may adopt guidelines to allow a person other than the owner to apply for and receive a grant in order to improve the ability of the program to achieve its goals.

SECTION 6. Section 386.104(f), Health and Safety Code, is amended to read as follows:

(f) A proposed retrofit, repower, replacement, or add-on equipment project must document, in a manner acceptable to the commission, a reduction in emissions of oxides of nitrogen of at least 30 percent compared with the baseline emissions adopted by the commission for the relevant engine year and application. After study of available emissions reduction technologies, after public notice and comment, and after consultation with the advisory board, the commission may revise the minimum percentage reduction in emissions of oxides of nitrogen required by this subsection to improve the ability of the program to achieve its goals.

SECTION 7. Section 386.105, Health and Safety Code, is amended by adding Subsection (e) to read as follows:

(e) The commission may allow for the apportionment of credits associated with a project between the plan and another program or entity if the part of the credit assigned to the program that is part of the plan still meets any applicable cost-effectiveness criteria.

SECTION 8. Section 386.106(a), Health and Safety Code, is amended to read as follows:

(a) Except as provided by Section 386.107 and except for infrastructure projects and infrastructure purchases that are part of a broader retrofit, repower, replacement, or add-on equipment project, the commission may not award a grant for a proposed project the cost-effectiveness of which, calculated in accordance with Section 386.105 and criteria developed under that section, exceeds \$13,000 per ton of oxides of nitrogen emissions reduced in the nonattainment area or affected county for which the project is proposed. This subsection does not restrict commission authority under other law to require emissions reductions with a cost-effectiveness that exceeds \$13,000 per ton.

SECTION 9. Section 386.112(b), Health and Safety Code, is amended to read as follows:

(b) The program shall authorize statewide incentives for the reimbursement of incremental costs for the purchase or lease, according to the schedule provided by Section 386.113, of new on-road diesels that are certified by the United States Environmental Protection Agency or the California Air Resources Board to an

emissions standard provided by Section 386.113 if the purchaser or lessee of the on-road diesel agrees to register the vehicle in this state and to operate the on-road diesel in this state for not less than 75 percent of the on-road diesel's annual mileage.

SECTION 10. Subchapter C, Chapter 386, Health and Safety Code, is amended by adding Sections 386.115 and 386.116 to read as follows:

Sec. 386.115. MODIFICATION OF VEHICLE ELIGIBILITY. After evaluating the availability of vehicles meeting the emissions standards and after public notice and comment, the commission, in consultation with the advisory board, may expand the program to include other on-road vehicles, regardless of fuel type used, that meet the emissions standards, have a gross vehicle weight rating of greater than 8,500 pounds, and are purchased or leased in lieu of a new on-road diesel.

Sec. 386.116. SMALL BUSINESS INCENTIVES. (a) In this section, "small business" means a business owned by a person who:

(1) owns and operates not more than two vehicles, one of which is:

(A) an on-road diesel with a pre-1994 engine model; or

(B) a non-road diesel with an engine with uncontrolled emissions;

and

(2) has owned the vehicle described by Subdivision (1)(A) or (B) for more than one year.

(b) The commission by rule shall develop a method of providing fast and simple access to grants under this subchapter for a small business.

(c) The commission shall publicize and promote the availability of grants under this section to encourage the use of vehicles that produce fewer emissions.

(d) On or before December 1 of each even-numbered year, the commission shall report commission actions and results under this section to the governor, lieutenant governor, and speaker of the house of representatives.

SECTION 11. Section 386.202(b), Health and Safety Code, is amended to read as follows:

(b) Programs approved under this subchapter and other energy efficiency programs administered by the utility commission must include energy conservation programs for the retirement of materials and appliances that contribute to energy consumption or peak energy demand to ensure the reduction of energy consumption, energy demand, or peak loads, and associated emissions of air contaminants.

SECTION 12. Section 386.252, Health and Safety Code, is amended to read as follows:

Sec. 386.252. USE OF FUND. (a) Money in the fund may be used only to implement and administer programs established under the plan and shall be allocated as follows:

(1) for the diesel emissions reduction incentive program, 87.5 [72] percent of the money in the fund, of which not more than [three percent may be used for infrastructure projects and not more than] 10 percent may be used for on-road diesel purchase or lease incentives;

(2) ~~[for the motor vehicle purchase or lease incentive program, 15 percent of the money in the fund;~~

~~[(3) for the energy efficiency grant program, 7.5 percent of the money in the fund;~~

~~[(4) for the new technology research and development program, 9.5 [7.5] percent of the money in the fund, of which up to \$250,000 is allocated for administration, up to \$200,000 is allocated for a health effects study, [and] \$500,000 is to be deposited in the state treasury to the credit of the clean air account created under Section 382.0622 to supplement funding for air quality planning activities in affected counties, and not less than 20 percent is to be allocated each year to support research related to air quality for the Houston-Galveston-Brazoria and Dallas-Fort Worth nonattainment areas by a nonprofit organization based in Houston; [and]~~

~~(3) [(5)] for administrative costs incurred by [the utility commission,] the commission[, the comptroller,] and the laboratory, three percent.~~

(b) Up to 25 ~~[15]~~ percent of the money allocated under Subsection (a) to a particular program and not expended under that program by January ~~[March]~~ 1 of the second fiscal year of a fiscal biennium may be used for another program under the plan as determined by the commission in consultation with the advisory board.

SECTION 13. Section 387.003(b), Health and Safety Code, is amended to read as follows:

(b) Under the program, the Texas Council on Environmental Technology shall provide grants to be used to support development of emissions-reducing technologies that may be used for projects eligible for awards under Chapter 386 and other new technologies that show promise for commercialization. The primary objective of this chapter is to promote the development of commercialization technologies that will support projects that may be funded under Chapter 386 and this chapter, including advanced technologies such as fuel cells, catalysts, and fuel additives.

SECTION 14. Section 387.006(a), Health and Safety Code, is amended to read as follows:

(a) An application for a technology grant under this chapter must show clear and compelling evidence that:

(1) the proposed technology project has a strong commercialization plan and organization; and

(2) the technology proposed for funding:

(A) is likely to be offered for commercial sale in this state as soon as practicable but no later than ~~[within]~~ five years after the date of the application for funding; and

(B) once commercialized, will offer opportunities for projects eligible for funding under Chapter 386.

SECTION 15. Section 388.003, Health and Safety Code, is amended by adding Subsection (i) to read as follows:

(i) A building certified by a national, state, or local accredited energy efficiency program and determined by the laboratory to be in compliance with the energy efficiency requirements of this section may, at the option of the municipality, be considered in compliance. The United States Environmental Protection Agency's Energy Star Program certification of energy code equivalency shall be considered in compliance.

SECTION 16. Section 388.004, Health and Safety Code, is amended to read as follows:

Sec. 388.004. ENFORCEMENT OF ENERGY STANDARDS OUTSIDE OF MUNICIPALITY. (a) For construction outside of the local jurisdiction of a municipality:

(1) a building certified by a national, state, or local accredited energy efficiency program shall be considered in compliance;

(2) a building with inspections from private code-certified inspectors using the energy efficiency chapter of the International Residential Code or International Energy Conservation Code shall be considered in compliance; and

(3) a builder who does not have access to either of the above methods for a building shall certify compliance using a form provided by the laboratory, enumerating the code-compliance features of the building.

(b) A builder shall retain until the third anniversary of the date on which compliance is achieved the original copy of any documentation that establishes compliance under this section. The builder on receipt of any compliance documentation shall provide a copy to the owner of the building.

(c) A single-family residence built in the unincorporated area of a county the construction of which was completed on or after September 1, 2001, but not later than August 31, 2002, shall be considered in compliance.

SECTION 17. Chapter 388, Health and Safety Code, is amended by adding Sections 388.009 and 388.010 to read as follows:

Sec. 388.009. ENERGY-EFFICIENT BUILDING PROGRAM. (a) In this section, "National Housing Act" means Section 203(b), (i), or (k) of the National Housing Act (12 U.S.C. Sections 1709(b), (i), and (k)), as amended.

(b) The General Land Office, in consultation with the laboratory, the commission, and an advisory committee appointed by the General Land Office, may develop an energy-efficient building accreditation program for buildings that exceed the building energy performance standards under Section 388.003 by 15 percent or more.

(c) If the General Land Office adopts a program under this section, the General Land Office, in consultation with the laboratory, shall update the program on or before December 1 of each even-numbered year using the best available energy-efficient building practices.

(d) If the General Land Office adopts a program under this section, the program shall use a checklist system to produce an energy-efficient building scorecard to help:

(1) home buyers compare potential homes and, by providing a copy of the completed scorecard to a mortgage lender, qualify for energy-efficient mortgages under the National Housing Act; and

(2) communities qualify for emissions reduction credits by adopting codes that meet or exceed the energy-efficient building or energy performance standards established under this chapter.

(e) The General Land Office may establish a public information program to inform homeowners, sellers, buyers, and others regarding energy-efficient building ratings.

(f) If the General Land Office adopts a program under this section, the laboratory shall establish a system to measure the reduction in energy and emissions produced under the energy-efficient building program and report those savings to the commission.

Sec. 388.010. OUTREACH TO NEAR-NONATTAINMENT AREAS. The commission shall conduct outreach to near-nonattainment areas and affected counties on the benefits of implementing energy efficiency initiatives, including the promotion of energy-efficient building programs and urban heat island mitigation techniques, as a way to meet air quality attainment goals under the federal Clean Air Act (42 U.S.C. Section 7401 et seq.), as amended.

SECTION 18. Chapter 389, Health and Safety Code, is amended by adding Section 389.003 to read as follows:

Sec. 389.003. COMPUTING ENERGY EFFICIENCY EMISSIONS REDUCTIONS. The commission shall develop a method to use in computing emissions reductions obtained through energy efficiency initiatives.

SECTION 19. Subchapter H, Chapter 2155, Government Code, is amended by adding Section 2155.451 to read as follows:

Sec. 2155.451. VENDORS THAT MEET OR EXCEED AIR QUALITY STANDARDS. (a) This section applies only to a contract to be performed, wholly or partly, in an affected county, as that term is defined by Section 386.001, Health and Safety Code.

(b) The commission and state agencies procuring goods or services may:

(1) give preference to goods or services of a vendor that demonstrates that the vendor meets or exceeds any state or federal environmental standards, including voluntary standards, relating to air quality; or

(2) require that a vendor demonstrate that the vendor meets or exceeds any state or federal environmental standards, including voluntary standards, relating to air quality.

(c) The preference may be given only if the cost to the state for the goods or services would not exceed 105 percent of the cost of the goods or services provided by a vendor who does not meet the standards.

SECTION 20. Subchapter Z, Chapter 271, Local Government Code, is amended by adding Section 271.907 to read as follows:

Sec. 271.907. VENDORS THAT MEET OR EXCEED AIR QUALITY STANDARDS. (a) In this section, "governmental agency" has the meaning assigned by Section 271.003.

(b) This section applies only to a contract to be performed, wholly or partly, in an affected county, as that term is defined by Section 386.001, Health and Safety Code.

(c) A governmental agency procuring goods or services may:

(1) give preference to goods or services of a vendor that demonstrates that the vendor meets or exceeds any state or federal environmental standards, including voluntary standards, relating to air quality; or

(2) require that a vendor demonstrate that the vendor meets or exceeds any state or federal environmental standards, including voluntary standards, relating to air quality.

(d) The preference may be given only if the cost to the governmental agency for the goods or services would not exceed 105 percent of the cost of the goods or services provided by a vendor who does not meet the standards.

SECTION 21. Section 151.0515, Tax Code, is amended by amending Subsections (a), (b), and (c) and adding Subsection (b-1) to read as follows:

(a) In this section, "equipment" includes all off-road, heavy-duty diesel equipment [~~classified as construction equipment~~], other than implements of husbandry used solely for agricultural purposes, including:

- (1) pavers;
- (2) tampers/rammers;
- (3) plate compactors;
- (4) concrete pavers;
- (5) rollers;
- (6) scrapers;
- (7) paving equipment;
- (8) surface equipment;
- (9) signal boards/light plants;
- (10) trenchers;
- (11) bore/drill rigs;
- (12) excavators;
- (13) concrete/industrial saws;
- (14) cement and mortar mixers;
- (15) cranes;
- (16) graders;
- (17) off-highway trucks;
- (18) crushing/processing equipment;
- (19) rough terrain forklifts;
- (20) rubber tire loaders;
- (21) rubber tire tractors/dozers;
- (22) tractors/loaders/backhoes;
- (23) crawler tractors/dozers;
- (24) skid steer loaders;
- (25) off-highway tractors; ~~and~~
- (26) Dumpsters/tenders; and
- (27) mining equipment.

(b) In each county in this state, a surcharge is imposed on the retail sale, lease, or rental of new or used equipment in an amount equal to two [~~one~~] percent of the sale price or the lease or rental amount.

(b-1) In each county in this state, a surcharge is imposed on the storage, use, or other consumption in this state of new or used equipment. The surcharge is at the same percentage rate as is provided by Subsection (b) on the sales price or the lease or rental amount of the equipment.

(c) The surcharge shall be collected at the same time and in the same manner and shall be administered and enforced in the same manner as the tax imposed under this ~~chapter~~ ~~[subchapter]~~. The comptroller shall adopt any additional procedures needed for the collection, administration, and enforcement of the surcharge authorized by this section and shall deposit all remitted surcharges to the credit of the Texas emissions reduction plan fund.

SECTION 22. Section 152.0215(a), Tax Code, is amended to read as follows:

(a) A surcharge is imposed on every retail sale, ~~[or]~~ lease, or use of every on-road diesel motor vehicle that is over 14,000 pounds ~~[and is of a model year 1996 or earlier]~~ and that is sold, ~~[or]~~ leased, or used in this state. The amount of the surcharge for a vehicle of a model year 1996 or earlier is 2.5 percent of the total consideration and for a vehicle of a model year 1997 or later, one percent of the total consideration.

SECTION 23. Section 224.153, Transportation Code, is amended by adding Subsection (d) to read as follows:

(d) The department may not authorize vehicles addressed in Subsection (c) to use a high occupancy vehicle lane if such use would violate federal transit or highway funding restrictions.

SECTION 24. Sections 501.138(a) and (b), Transportation Code, are amended to read as follows:

(a) An applicant for a certificate of title, other than the state or a political subdivision of the state, must pay the county assessor-collector a fee of:

(1) \$33 if the applicant's residence is a county located within a nonattainment area as defined under Section 107(d) of the federal Clean Air Act (42 U.S.C. Section 7407), as amended, or is an affected county, as defined by Section 386.001, Health and Safety Code;

(2) \$28 if the applicant's residence is any other county; or

(3) on or after September 1, 2008, \$28 regardless of the county in which the applicant resides ~~[\$13].~~

(b) The county assessor-collector shall send:

(1) \$5 of the fee to the county treasurer for deposit in the officers' salary fund; ~~[and]~~

(2) \$8 of the fee to the department:

(A) together with the application within the time prescribed by Section 501.023; or

(B) if the fee is deposited in an interest-bearing account or certificate in the county depository or invested in an investment authorized by Subchapter A, Chapter 2256, Government Code, not later than the 35th day after the date on which the fee is received; and

(3) the following amount to the comptroller at the time and in the manner prescribed by the comptroller:

(A) \$20 of the fee if the applicant's residence is a county located within a nonattainment area as defined under Section 107(d) of the federal Clean Air Act (42 U.S.C. Section 7407), as amended, or is an affected county, as defined by Section 386.001, Health and Safety Code;

(B) \$15 of the fee if the applicant's residence is any other county;

or

(C) Fees collected under this subsection to be sent to the comptroller shall be deposited as follows:

(i) before September 1, 2008, to the credit of the Texas emissions reduction fund; and

(ii) after September 1, 2008, to the credit of the Texas Mobility Fund.

SECTION 25. Section 545.353, Transportation Code, is amended by adding Subsection (j) to read as follows:

(j) The commission may not determine or declare, or agree to determine or declare, a prima facie speed limit for environmental purposes on a part of the highway system.

SECTION 26. Sections 386.157 and 386.159, Health and Safety Code, are repealed.

SECTION 27. (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 21 and 22 of this Act take effect on the first day of the first month beginning on or after the earliest date on which this Act may take effect 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 effect before September 1, 2003, Sections 21 and 22 of this Act take effect September 1, 2003. The comptroller of public accounts may adopt emergency rules for the implementation of Sections 21 and 22 of this Act.

(c) The change in law made by Section 25 of this Act does not affect speed limits that have been approved by the Texas Transportation Commission before the effective date of this Act.

Representative Bonnen moved to adopt the conference committee report on **HB 1365**.

A record vote was requested.

The motion prevailed by (Record 930): 132 Yeas, 11 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; Eiland; Eissler; Elkins; Ellis; Escobar; Farabee;

Farrar; Flores; Flynn; Gallego; Garza; Gattis; Geren; Goodman; Goolsby; Griggs; Grusendorf; Guillen; Gutierrez; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Heflin; Hegar; Hilderbran; Hill; Hochberg; Homer; Hope; Hopson; Howard; Hughes; Hupp; Isett; Jones, J.; Keel; Keffer, J.; King; Kolkhorst; Krusee; Kuempel; Laubenberg; Lewis; Luna; Mabry; Madden; Marchant; Martinez Fischer; McCall; McClendon; McReynolds; Menendez; Mercer; Miller; Moreno, J.; Moreno, P.; Morrison; Mowery; Nixon; Oliveira; Paxton; Peña; Pickett; Pitts; Puente; Quintanilla; Raymond; Reyna; Riddle; Ritter; Rodriguez; Seaman; Smith, T.; Smith, W.; Solis; Solomons; Stick; Swinford; Taylor; Thompson; Truitt; Turner; Uresti; Van Arsdale; Villarreal; West; Wilson; Wise; Wohlgenuth; Wolens; Wong; Woolley; Zedler.

Nays — Dukes; Hodge; Jones, D.; Laney; Merritt; Noriega; Olivo; Phillips; Rose; Smithee; Telford.

Present, not voting — Mr. Speaker; Hunter; Keffer, B.(C); Talton.

Absent — Giddings; Jones, E.; Naishtat.

STATEMENTS OF VOTE

I was shown voting yes on Record No. 930. I intended to vote no.

Menendez

I was shown voting yes on Record No. 930. I intended to vote no.

Pickett

I was shown voting yes on Record No. 930. I intended to vote no.

Reyna

HR 1865 - ADOPTED (by Edwards)

Representative Lewis moved to suspend all necessary rules to take up and consider at this time **HR 1865**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 1865, Recognizing the importance of Juneteenth.

HR 1865 was adopted without objection.

On motion of Representative Giddings, the names of all the members of the house were added to **HR 1865** as signers thereof.

HB 2020 - 24 HOUR LAYOUT RULE SUSPENDED

Representative Farabee moved to suspend Rule 13, Section 10 of the house rules to consider the conference committee report on **HB 2020** which was ineligible for consideration at this time.

The motion prevailed.

HB 2020 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Farabee submitted the following conference committee report on **HB 2020** :

Austin, Texas, May 31, 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 2020** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Duncan
Estes
Bivins
Armbrister

Farabee
West
B. Keffer

On the part of the senate

On the part of the house

HB 2020, A bill to be entitled An Act relating to financial security requirements for certain persons performing operations within the jurisdiction of the Railroad Commission of Texas.

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

SECTION 1. Section 91.104(b), Natural Resources Code, is amended to read as follow:

(b) A person required to file a bond or alternate form of financial security under Section 91.103 may choose to file:

- (1) an individual bond as provided under Section 91.1041;
- (2) a blanket bond as provided under Section 91.1042;
- (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; or
- (4) a nonrefundable annual fee [~~of \$1,000, if:~~

~~[(A) the commission determines that individual and blanket bonds as specified by Subdivisions (1) and (2) are not obtainable at reasonable prices; and~~

~~[(B) the person can demonstrate to the commission an acceptable record of compliance with all commission rules, orders, licenses, permits, or certificates that relate to safety or the prevention or control of pollution for the previous 48 months and the person and, if a firm, partnership, joint stock association, corporation, or other organization, its officers, directors, general partners, or owners of more than 25 percent ownership interest or any trustee:~~

~~[(i) has no outstanding violations of such commission rules, orders, licenses, permits, or certificates;~~

~~[(ii) has paid all administrative, civil, and criminal penalties, if any, relating to any violation of such commission rules, orders, licenses, permits, or certificates; and~~

~~[(iii) has paid all reimbursements of any costs and expenses incurred by the commission in relation to any violation of such commission rules, orders, licenses, permits, or certificates; or~~

~~[(5) a nonrefundable annual fee]~~ equal to 10 [~~+2 1/2~~] percent of the bond that otherwise would be required.

SECTION 2. Section 91.1042, Natural Resources Code, is amended to read as follows:

Sec. 91.1042. BLANKET BOND. (a) A person required to file a bond or alternate form of financial security under Section 91.103 who operates wells may file a blanket bond to cover all wells and operations for which a bond or alternate form of financial security is required as follows:

(1) a person who operates at least one well but not more than 10 wells [~~+10 or fewer wells or performs other operations~~] shall file a \$15,000 [~~\$25,000~~] blanket bond;

(2) a person who operates more than 10 but fewer than 25 [~~100~~] wells shall file a \$35,000 [~~\$50,000~~] blanket bond; [~~and~~]

(3) a person who operates 25 [~~100~~] or more wells but fewer than 100 wells shall file a \$50,000 [~~\$250,000~~] blanket bond;

(4) a person who operates 100 or more wells but fewer than 150 wells shall file a \$100,000 blanket bond;

(5) a person who operates 150 or more wells but fewer than 200 wells shall file a \$175,000 blanket bond; and

(6) a person who operates 200 or more wells shall file a \$250,000 blanket bond.

(b) Notwithstanding Subsection (a), the commission by rule shall set the amount of the bond for an operator of bay or offshore wells at a reasonable amount that exceeds the amount provided by Subsection (a)(1), (2), [~~or~~] (3), (4), (5), or (6), as applicable.

SECTION 3. Effective June 1, 2005, Section 91.1042(a), Natural Resources Code, is amended to read as follows:

(a) A person required to file a bond, letter of credit, or cash deposit [~~or alternate form of financial security~~] under Section 91.103 who operates wells may file a blanket bond to cover all wells and operations for which a bond, letter of credit, or cash deposit [~~or alternate form of financial security~~] is required as follows:

(1) a person who operates at least one well but not more than 10 wells [~~+10 or fewer wells or performs other operations~~] shall file a \$15,000 [~~\$25,000~~] blanket bond;

(2) a person who operates more than 10 but fewer than 25 [~~100~~] wells shall file a \$35,000 [~~\$50,000~~] blanket bond; [~~and~~]

(3) a person who operates 25 [~~100~~] or more wells but fewer than 100 wells shall file a \$50,000 [~~\$250,000~~] blanket bond;

(4) a person who operates 100 or more wells but fewer than 150 wells shall file a \$100,000 blanket bond;

(5) a person who operates 150 or more wells but fewer than 200 wells shall file a \$175,000 blanket bond; and

(6) a person who operates 200 or more wells shall file a \$250,000 blanket bond.

SECTION 4. Section 24, Chapter 1233, Acts of the 77th Legislature, Regular Session, 2001, is repealed.

SECTION 5. The changes in law made by this Act apply only to a person required to file a bond or alternate form of financial security under Section 91.103, Natural Resources Code, on or after the effective date of this Act. A person required to file a bond or alternate form of financial security under Section 91.103, Natural Resources Code, before the effective date of this Act is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 6. This Act takes effect September 1, 2003.

Representative Farabee moved to adopt the conference committee report on **HB 2020**.

The motion prevailed.

HR 1868 - NOTICE OF INTRODUCTION

Pursuant to the provisions of Rule 13, Section 9(f) of the House Rules, the chair announced the introduction of **HR 1868**, suspending the limitations on the conferees for **SB 463**.

HB 2424 - 24 HOUR LAYOUT RULE SUSPENDED

Representative McCall moved to suspend Rule 13, Section 10 of the house rules to consider the conference committee report on **HB 2424** which was ineligible for consideration at this time.

The motion prevailed.

HR 1860 - ADOPTED (by McCall)

The following privileged resolution was laid before the house:

HR 1860

BE IT RESOLVED, by the House of Representatives of the State of Texas, 78th Legislature, Regular Session, 2003, That House Rule 13, Section 9(a), be suspended in part as provided by House Rule 13, Section 9(f), to enable the conference committee appointed to resolve the differences on **HB 2424**, relating to technical changes to taxes and fees administered by the comptroller and providing penalties, to consider and take action on the following matter:

(1) House Rule 13, Section 9(a)(2), is suspended to permit the committee to omit text that amends Sections 153.013(a), 153.117, 153.120, 153.205 as amended by Chapters 1263 and 1444, Acts of the 77th Legislature, Regular

Session, 2001, 153.208(d), 153.219(c), 153.222(a), 153.223, and 153.403, Tax Code, to impose certain administrative requirements on certain users and suppliers of motor fuels.

Explanation: This omission is necessary to conform to the repeal of Chapter 153, Tax Code, and the adoption of new Chapter 162, Tax Code, by **HB 2458**, Acts of the 78th Legislature, Regular Session, 2003.

(2) House Rule 13, Section 9(a)(4), is suspended to permit the committee to add Section 105 to the bill to read as follows:

SECTION 105. Contingent on **HB 2458**, Acts of the 78th Legislature, Regular Session, 2003, being enacted and becoming law, and effective January 1, 2004, Sections 162.405(a) and (d), Tax Code, are amended to read as follows:

(a) An offense under Section 162.403(1), (2), (3), (4), (5), (6), [~~7~~] or (8) is a Class C misdemeanor.

(d) An offense under Section 162.403(7), (22), (23), (24), (25), (26), (27), (28), or (29) is a felony of the third degree.

Explanation: This addition is necessary to ensure that an offense under Section 162.403(7), Tax Code, as added by **HB 2458**, Acts of the 78th Legislature, Regular Session, 2003, is classified in accordance with the severity of the offense.

(3) House Rule 13, Section 9(a)(4), is suspended to permit the committee to add Section 107 to the bill to read as follows:

SECTION 107. (a) Section 141.008(a-1), Local Government Code, as added by **HB 2425**, Acts of the 78th Legislature, Regular Session, 2003, is repealed.

(b) If **HB 2425**, Acts of the 78th Legislature, Regular Session, 2003, does not become law, this section has no effect.

Explanation: This addition is necessary to eliminate a requirement that municipalities make certain payroll deductions for municipal employees.

(Hopson in the chair)

HR 1860 was adopted.

HB 2424 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative McCall submitted the following conference committee report on **HB 2424** :

Austin, Texas, May 31, 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 2424** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Armbrister

McCall

Staples
 Ellis, Rodney
 Brimer
 Bivins

Paxton
 Ritter
 Pitts

On the part of the senate

On the part of the house

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

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

SECTION 1. Section 161.122, Health and Safety Code, is amended by adding Subsection (f) to read as follows:

(f) A person commits an offense if the person places or authorizes the placement of a sign in violation of this section. An offense under this subsection is a Class C misdemeanor.

SECTION 2. Article 1.16(b), Insurance Code, is amended to read as follows:

(b) Assessments for the expenses of such domestic examination which shall be sufficient to meet all the expenses and disbursements necessary to comply with the provisions of the laws of Texas relating to the examination of insurance companies and to comply with the provisions of this Article and Articles 1.17 and 1.18 of this Code, shall be made by the State Board of Insurance upon the corporations or associations to be examined taking into consideration annual premium receipts, and/or admitted assets that are not attributable to 90 percent of pension plan contracts as defined in Section 818(a) of the Internal Revenue Code of 1986 (26 U.S.C. Section 818(a)), and/or insurance in force; provided such assessments shall be made and collected as follows: (1) expenses attributable directly to a specific examination including employees' salaries and expenses and expenses provided by Article 1.28 of this Code shall be collected at the time of examination; (2) assessments calculated annually for each corporation or association which take into consideration annual premium receipts, and/or admitted assets that are not attributable to 90 percent of pension plan contracts as defined in Section 818(a) of the Internal Revenue Code of 1986 (26 U.S.C. Section 818(a)), and/or insurance in force shall be assessed annually for each such corporation or association. In computing the assessments, the board may not consider insurance premiums for insurance contracted for by a state or federal governmental entity to provide welfare benefits to designated welfare recipients or contracted for in accordance with or in furtherance of Title 2, Human Resources Code, or the federal Social Security Act (42 U.S.C. Section 301 et seq.). The amount of all examination and evaluation fees [the assessments] paid in each taxable year to [or for the use of] the State of Texas by an [any] insurance carrier [corporation or association hereby affected] shall be allowed as a credit on the amount of premium taxes due under this article [to be paid by any such insurance corporation or association for such taxable year except as provided by Article 1.28 of this Code]. The limitations provided by Sections 803.007(1) and (2)(B) of this code for domestic insurance companies apply to foreign insurance companies.

SECTION 3. Section 1, Article 4.10, Insurance Code, is amended to read as follows:

Sec. 1. PAYMENT OF TAX. Every insurance carrier, including Lloyd's and reciprocal or interinsurance exchanges and any other organization or concern receiving gross premiums from the business of fire, marine, marine inland, accident, credit, livestock, fidelity, guaranty, surety, casualty, workers' compensation, employers' liability, or any other kind or character of insurance, except title insurance and except as provided in Sections 2, 3, and 4 of this article, shall pay to the comptroller a tax upon such gross premium receipts as provided in this article. Any such insurance carrier doing other kinds of insurance business shall pay the tax levied upon its gross premiums received from such other kinds of business as provided in Articles 4.03 and 4.11 of this code.

SECTION 4. Section 13, Article 4.10, Insurance Code, is amended to read as follows:

Sec. 13. EXAMINATION AND EVALUATION FEE CREDITS. The amount of all examination and evaluation fees paid in each taxable year to ~~[or for the use of]~~ the State of Texas by an insurance carrier shall be allowed as a credit on the amount of premium taxes due under this article ~~[except as provided by Article 1.28 of this code]~~. The limitations provided by Sections 803.007(1) and (2)(B) of this code for domestic insurance companies apply to foreign insurance companies. Any credit allowed by the provisions of this section is in addition to any other credits allowable by statute.

SECTION 5. Section 8, Article 4.11, Insurance Code, is amended to read as follows:

Sec. 8. EXAMINATION AND EVALUATION ~~[VALUATION]~~ FEES ALLOWED AS CREDITS. The amount of all examination and evaluation ~~[valuation]~~ fees paid in ~~[during]~~ each taxable ~~[tax]~~ year to ~~[or for the use of]~~ the State of Texas by an insurance carrier shall be allowed as a credit on the amount of premium taxes due under this article ~~[except as provided by Article 1.28 of this code]~~. The limitations provided by Sections 803.007(1) and (2)(B) of this code for domestic insurance companies apply to foreign insurance companies. Any credit allowed by the provisions of this section is in addition to any other credits allowable by statute.

SECTION 6. Article 4.17(a), Insurance Code, is amended to read as follows:

(a) The commissioner shall annually determine the rate of assessment of a maintenance tax to be paid on an annual, semiannual, or other periodic basis, as determined by the comptroller. The rate of assessment may not exceed .04 percent of the correctly reported gross premiums of life, health, and accident insurance coverages and the gross considerations for annuity and endowment contracts collected by all authorized insurers writing life, health, and accident insurance, annuity, or endowment contracts in this state. The comptroller shall collect the maintenance tax. For purposes of this article, the gross premiums on which an assessment is based may not include:

(1) premiums received from this state or the United States for insurance contracted for by this state or the United States for the purpose of providing welfare benefits to designated welfare recipients or for insurance contracted for by this state or the United States in accordance with or in furtherance of Title 2, Human Resources Code, or the federal Social Security Act (42 U.S.C. Section 301 et seq.); or

(2) premiums paid on group health, accident, and life policies in which the group covered by the policy consists of a single nonprofit trust established to provide coverage primarily for employees of:

(A) a municipality, county, or hospital district in this state; or

(B) a county or municipal hospital, without regard to whether the employees are employees of the county or municipality or of an entity operating the hospital on behalf of the county or municipality.

SECTION 7. Section 7, Article 9.59, Insurance Code, is amended to read as follows:

Sec. 7. EXAMINATION AND EVALUATION FEE CREDITS. The amount of all examination and evaluation fees paid in each taxable year to ~~[or for the use of]~~ the State of Texas by a title insurance company shall be allowed as a credit on the amount of premium taxes due under this article ~~[except as provided by Article 1.28 of this code]~~. The limitations provided by Sections 803.007(1) and (2)(B) of this code for domestic insurance companies apply to foreign insurance companies. Any credit allowed by this section is in addition to any other credits allowed by law.

SECTION 8. Article 20A.33(d), Insurance Code, is amended to read as follows:

(d) The commissioner shall annually determine the rate of assessment of a per capita maintenance tax to be paid on an annual or semiannual basis, on the correctly reported gross revenues for the issuance of health maintenance certificates or contracts collected by all authorized health maintenance organizations issuing such coverages in this state. The rate of assessment may not exceed \$2 for each enrollee. The rate of assessment may differ between basic health care plans, limited health care service plans, and single health care service plans and shall equitably reflect any differences in regulatory resources attributable to each type of plan. The comptroller shall collect the maintenance tax. For purposes of this section, the amount of maintenance tax assessed may not be computed on:

(1) enrollees who as individual certificate holders or their dependents are covered by a master group policy paid for by revenues received from this state or the United States for insurance contracted for by this state or the United States for the purpose of providing welfare benefits to designated welfare recipients or for insurance contracted for by this state or the United States in accordance with or in furtherance of Title 2, Human Resources Code, or the federal Social Security Act (42 U.S.C. Section 301 et seq.); or

(2) revenues paid on group health, accident, and life certificates or contracts in which the group covered by the certificate or contract consists of a single nonprofit trust established to provide coverage primarily for employees of:

(A) a municipality, county, or hospital district in this state; or
(B) a county or municipal hospital, without regard to whether the employees are employees of the county or municipality or of an entity operating the hospital on behalf of the county or municipality.

SECTION 9. Section 101.053(b), Insurance Code, as effective June 1, 2003, is amended to read as follows:

(b) Sections 101.051 and 101.052 do not apply to:

- (1) the lawful transaction of surplus lines insurance under Chapter 981;
- (2) the lawful transaction of reinsurance by insurers;
- (3) a transaction in this state that:

(A) involves a policy that:

(i) is lawfully solicited, written, and delivered outside this state; and
 (ii) covers, at the time the policy is issued, only subjects of insurance that are not resident, located, or expressly to be performed in this state; and

(B) takes place after the policy is issued;

(4) a transaction:

(A) that involves an insurance contract independently procured by the insured from an insurance company not authorized to do insurance business in this state through negotiations occurring entirely outside this state;

(B) that is reported; and

(C) on which premium tax is paid in accordance with this chapter;

(5) a transaction in this state that:

(A) involves group life, health, or accident insurance, other than credit insurance, and group annuities in which the master policy for the group was lawfully issued and delivered in a state in which the insurer or person was authorized to do insurance business; and

(B) is authorized by a statute of this state;

(6) an activity in this state by or on the sole behalf of a nonadmitted captive insurance company that insures solely:

(A) directors' and officers' liability insurance for the directors and officers of the company's parent and affiliated companies;

(B) the risks of the company's parent and affiliated companies; or

(C) both the individuals and entities described by Paragraphs (A)

and (B);

(7) the issuance of a qualified charitable gift annuity under Chapter 102; or

(8) a lawful transaction by a servicing company of the Texas workers' compensation employers' rejected risk fund under Section 4.08, Article 5.76-2, as that article existed before its repeal.

SECTION 9A. Subchapter L, Chapter 843, Insurance Code, is amended to read as follows:

Sec. 843.409. EXAMINATION EXPENSES. (a) A credit against the amount of premium taxes to be paid by a health maintenance organization in a taxable year may not be allowed on:

(1) an examination fee or expense paid to another state; or

(2) an examination expense:

(A) directly attributable to an examination of the books, records, accounts, or principal offices of a health maintenance organization located outside this state; or

(B) paid in a different taxable year.

(b) The limitations provided by Subsections (a)(1) and (a)(2)(B) apply to foreign health maintenance organizations.

SECTION 10. Section 912.002(b), Insurance Code, as effective June 1, 2003, is amended to read as follows:

(b) A county mutual insurance company is subject to:

(1) Sections 38.001 and 822.204; and

(2) Articles 1.15, 1.15A, 1.16, 1.35B, 2.10, 4.10, 5.12, 5.37, 5.38, 5.39, 5.40, 5.49, 21.21, and 21.49.

SECTION 11. Section 376.470, Local Government Code, as added by Chapter 1433, Acts of the 77th Legislature, Regular Session, 2001, is amended by adding Subsection (d) to read as follows:

(d) Chapter 321, Tax Code, applies to the imposition, computation, administration, enforcement, and collection of the sales and use tax imposed by this section except to the extent it is inconsistent with this chapter.

SECTION 12. Section 2153.153(a), Occupations Code, is amended to read as follows:

(a) A license applicant must file with the comptroller a license application that:

(1) contains a complete statement about the ownership of the business that is the subject of the application, including:

(A) the nature of the business entity; and

(B) except as provided by Subsection (b), the name and residence address of each person who has a financial interest in the business, including the nature, type, and extent of the interest;

(2) designates:

(A) an individual, as described by Subsection (c), responsible for maintaining a record of and reporting to the comptroller information as required by Section 2153.202; and

(B) an office located in this state where the applicant proposes to maintain the records required by this chapter, a rule adopted under this chapter, or other law;

(3) is accompanied by:

(A) a written statement executed by the individual designated under Subdivision (2) that the individual accepts the responsibility described by that subdivision; and

(B) a cashier's check, ~~or~~ money order, personal check, or other method of payment authorized by the comptroller, in an amount equal to the annual license fee under Section 2153.154;

(4) includes any other relevant information required by the comptroller;

and

(5) states that the information contained in the application is true and correct.

SECTION 13. Section 111.0046, Tax Code, is amended to read as follows:

Sec. 111.0046. ~~[REFUSAL TO]~~ PERMIT OR LICENSE. (a) The comptroller shall refuse to issue or renew any permit or license to a person who:

(1) is not permitted or licensed as required by law for a different tax or activity administered by the comptroller, except if the issuance or renewal of such license or permit is pending before the comptroller; or

(2) is currently delinquent in the payment of any tax collected by the comptroller.

(b) The comptroller by rule may establish a minimum age for a person to be eligible to apply for a permit or license issued by the comptroller.

SECTION 14. Sections 111.012(a) and (g), Tax Code, are amended to read as follows:

(a) If the comptroller finds that a tax imposed by this title is insecure, the comptroller may require a taxpayer ~~[who is delinquent in the payment of the tax]~~ to:

(1) provide security for the payment of taxes; or

(2) establish a tax escrow account at a bank or other financial institution.

(g) If a taxpayer does not furnish security to the comptroller or establish a tax escrow account as required by the comptroller before the expiration of 10 days following the day on which notice is received, the comptroller may:

(1) bring suit in a district court in Travis County for an order enjoining the taxpayer from engaging in business until the security is furnished or the tax escrow account is established; or

(2) pursue any other remedies or collection actions available to the comptroller under this chapter or Chapter 113 to ensure the security is furnished or the tax escrow account is established. ~~[Venue for a suit under this section is in Travis County.]~~

SECTION 15. Section 113.006(b), Tax Code, is amended to read as follows:

(b) One tax lien notice is sufficient to cover all taxes of any ~~[the same]~~ nature administered by the comptroller, including penalty and interest computed by reference to the amount of tax, that may have accrued before or after the filing of the notice.

SECTION 16. Section 151.0035, Tax Code, is amended to read as follows:

Sec. 151.0035. "DATA PROCESSING SERVICE." "Data processing service" includes word processing, data entry, data retrieval, data search, information compilation, payroll and business accounting data production, the performance of a totalisator service with the use of computational equipment ~~[equipment]~~ required by the Texas Racing Act (Article 179e, Vernon's Texas Civil Statutes), and other computerized data and information storage or manipulation. "Data processing service" also includes the use of a computer or computer time for data processing whether the processing is performed by the provider of the computer or computer time or by the purchaser or other

beneficiary of the service. "Data processing service" does not include the transcription of medical dictation by a medical transcriptionist. "Data storage," as used in this section, does not include a classified advertisement, banner advertisement, vertical advertisement, or link when the item is displayed on an Internet website owned by another person.

SECTION 17. Section 151.005, Tax Code, is amended to read as follows:

Sec. 151.005. "SALE" OR "PURCHASE." "Sale" or "purchase" means any of the following when done or performed for consideration:

- (1) a transfer of title or possession of tangible personal property;
- (2) the exchange, barter, lease, or rental of tangible personal property;
- (3) the performance of a taxable service, the charge for an extended warranty or service contract for the performance of a taxable service, or, in the case of an amusement service, a transfer of title to or possession of a ticket or other admission document, the collection of an admission fee, whether by individual performance, subscription series, or membership privilege, the collection of dues or a fee, charge, or assessment, including an initiation fee, by a club or organization for membership or a special privilege, status, or membership classification in the club or organization, or the use of a coin-operated machine;

- (4) the production, fabrication, processing, printing, or imprinting of tangible personal property for consumers who directly or indirectly furnish the materials used in the production, fabrication, processing, printing, or imprinting;

- (5) the furnishing and distribution of tangible personal property by a social club or fraternal organization to anyone;

- (6) the furnishing, preparation, or service of food, meals, or drinks;

- (7) a transfer of the possession of tangible personal property if the title to the property is retained by the seller as security for the payment of the price; or

- (8) a transfer of the title or possession of tangible personal property that has been produced, fabricated, or printed to the special order of the customer.

SECTION 18. Section 151.056, Tax Code, is amended by adding Subsection (f) to read as follows:

(f) A contractor is not eligible for the exemption provided by Section 151.318 on items used in the performance of a contract to improve real property.

SECTION 19. Section 151.313(a), Tax Code, is amended to read as follows:

(a) The following items are exempted from the taxes imposed by this chapter:

- (1) a drug or medicine, other than insulin, if prescribed or dispensed for a human or animal by a licensed practitioner of the healing arts;

- (2) insulin;

- (3) subject to Subsection (c), a drug or medicine, without regard to whether it is prescribed or dispensed by a licensed practitioner of the healing arts;

- (4) a hypodermic syringe or needle;

- (5) a brace; hearing aid or audio loop; orthopedic, dental, or prosthetic device; ileostomy, colostomy, or ileal bladder appliance; or supplies or replacement parts for the listed items;

(6) a therapeutic appliance, device, and any related supplies specifically designed for those products, if dispensed or prescribed by a licensed practitioner of the healing arts, when those items are purchased and used by an individual for whom the items listed in this subdivision were dispensed or prescribed;

(7) corrective lens and necessary and related supplies, if dispensed or prescribed by an ophthalmologist or optometrist;

(8) specialized printing or signalling equipment used by the deaf for the purpose of enabling the deaf to communicate through the use of an ordinary telephone and all materials, paper, and printing ribbons used in that equipment;

(9) a braille wristwatch, braille writer, braille paper and braille electronic equipment that connects to computer equipment, and the necessary adaptive devices and adaptive computer software;

(10) each of the following items if purchased for use by the blind to enable them to function more independently: a slate and stylus, print enlarger, light probe, magnifier, white cane, talking clock, large print terminal, talking terminal, or harness for guide dog;

(11) hospital beds;

(12) blood glucose monitoring test strips;

(13) an adjustable eating utensil used to facilitate independent eating if purchased for use by a person, including a person who is elderly or physically disabled, has had a stroke, or is a burn victim, who does not have full use or control of the person's hands or arms; ~~and~~

(14) subject to Subsection (d), a dietary supplement; and

(15) intravenous systems, supplies, and replacement parts used in the treatment of humans.

SECTION 20. Section 151.314(e), Tax Code, is amended to read as follows:

(e) Food products, candy, carbonated beverages, and diluted juices are exempted from the taxes imposed by this chapter if sold at an exempt sale qualifying under this subsection or if stored or used by the purchaser of the item at the exempt sale. A sale is exempted under this subsection if:

(1) the sale is made by a ~~[person under 19 years old who is a]~~ member of or volunteer for a nonprofit organization devoted to the exclusive purpose of education or religious or physical training or by a group associated with a public or private elementary or secondary school;

(2) the sale is made as a part of a fund-raising drive sponsored by the organization or group; and

(3) all net proceeds from the sale go to the organization or group for its exclusive use.

SECTION 21. Section 151.319(f), Tax Code, is amended to read as follows:

(f) In this section, "newspaper" means a publication that is printed on newsprint, the average sales price of which for each copy over a 30-day period does not exceed \$1.50 ~~[75 cents]~~, and that is printed and distributed at a daily, weekly, or other short interval for the dissemination of news of a general character and of a general interest. "Newspaper" does not include a magazine,

handbill, circular, flyer, sales catalog, or similar printed item unless the printed item is printed for distribution as a part of a newspaper and is actually distributed as a part of a newspaper. For the purposes of this section, an advertisement is news of a general character and of a general interest. Notwithstanding any other provision of this subsection, "newspaper" includes:

(1) a publication containing articles and essays of general interest by various writers and advertisements that is produced for the operator of a licensed and certified carrier of persons and distributed by the operator to its customers during their travel on the carrier; and

(2) a publication for the dissemination of news of a general character and of a general interest that is printed on newsprint and distributed to the general public free of charge at a daily, weekly, or other short interval.

SECTION 22. Section 151.323, Tax Code, is amended to read as follows:

Sec. 151.323. CERTAIN TELECOMMUNICATIONS SERVICES. (a) There are exempted from the taxes imposed by this chapter the receipts from the sale, use, or other consumption in this state of:

(1) long-distance telecommunications services that are not both originated from and billed to a telephone number or billing or service address within Texas;

(2) access to a local exchange telephone company's network by a regulated provider of telecommunications services; and

(3) broadcasts, other than cable television service, by commercial radio or television stations licensed or regulated by the Federal Communications Commission.

(b) The exemption provided by this section does not apply to mobile telecommunications services.

SECTION 23. Subchapter H, Chapter 151, Tax Code, is amended by adding Section 151.3501 to read as follows:

Sec. 151.3501. LABOR TO RESTORE, REPAIR, OR REMODEL HISTORIC SITES. (a) Labor to restore, repair, or remodel an improvement to real property is exempted from the taxes imposed by this chapter if:

(1) the amount of the charge for labor is separately itemized; and

(2) the restoration, repair, or remodeling is performed on an improvement to real property listed in the National Register of Historic Places.

(b) The exemption provided by this section does not apply to tangible personal property transferred by the service provider to the purchaser as part of the service.

SECTION 24. Section 151.355, Tax Code, as amended by Chapters 966 and 1234, Acts of the 77th Legislature, Regular Session, 2001, is reenacted and amended to read as follows:

Sec. 151.355. WATER-RELATED EXEMPTIONS. The following are exempted from taxes imposed by this chapter:

(1) rainwater harvesting equipment or supplies, water recycling and reuse equipment or supplies, or other equipment, services, or supplies used solely to reduce or eliminate water use;

(2) equipment, services, or supplies used solely for desalination of surface water or groundwater;

(3) equipment, services, or supplies used solely for brush control designed to enhance the availability of water;

(4) equipment, services, or supplies used solely for precipitation enhancement;

(5) equipment, services, or supplies used solely to construct or operate a water or wastewater system certified by the Texas Commission on Environmental Quality [~~Natural Resource Conservation Commission~~] as a regional system; and

(6) equipment, services, or supplies used solely to construct or operate a water supply or wastewater system by a private entity as a public-private partnership as certified by the political subdivision that is a party to the project.

SECTION 25. Section 152.086(a), Tax Code, is amended to read as follows:

(a) The taxes imposed by this chapter do not apply to the sale or use of a motor vehicle that:

(1) has been or will be modified before the second anniversary of the date of purchase for operation by, or for the transportation of, an orthopedically handicapped person; and

(2) is driven by or used for the transportation of an orthopedically handicapped person.

SECTION 26. Subchapter F, Chapter 152, Tax Code, is amended by adding Section 152.106 to read as follows:

Sec. 152.106. PROHIBITED ADVERTISING; CRIMINAL PENALTY. (a) A person who is required by Chapter 503, Transportation Code, to hold a dealer's general distinguishing number commits an offense if the person directly or indirectly advertises, holds out, or states to a customer or to the public that the person:

(1) will assume, absorb, or refund a part of the tax imposed by this chapter; or

(2) will not add the tax imposed by this chapter to the sales price of the motor vehicle sold, leased, or rented.

(b) An offense under this section is a Class C misdemeanor.

SECTION 35A. Section 155.002, Tax Code, is amended to read as follows:

Sec. 155.002. STORAGE. (a) The commercial business location where tobacco products are stored or kept cannot be a residence or a unit in a public storage facility.

(b) This section does not apply to a manufacturer's representative.

SECTION 36. Section 156.051(a), Tax Code, is amended to read as follows:

(a) A tax is imposed on a person who, under a lease, concession, permit, right of access, license, contract, or agreement, pays for the use or possession or for the right to the use or possession of a room or space in a hotel costing \$15 [~~\$2~~] or more each day.

SECTION 37. Section 156.102(b), Tax Code, is amended to read as follows:

(b) For purposes of this section:

(1) a corporation or association that is organized and operated exclusively for the cleaning of beaches and that has no part of its net earnings inure to the benefit of a private shareholder or individual is organized and operated exclusively for a charitable purpose; and

(2) a public or private institution of higher education is organized and operated exclusively for an educational purpose only if the institution is defined as a Texas ~~an~~ institution of higher education or as a Texas private or independent institution of higher education under any subdivision of Section 61.003, Education Code.

SECTION 38. Subchapter C, Chapter 156, Tax Code, is amended by adding Section 156.104 to read as follows:

Sec. 156.104. EXEMPTION CERTIFICATE. (a) The right to use or possess a room or space in a hotel is exempt from taxation under this chapter if the person required to collect the tax receives, in good faith from a guest, a properly completed exemption certificate stating that the guest is qualified for an exemption under Section 156.102 or 156.103. An exemption certificate must be supported by the documentation required under rules adopted by the comptroller.

(b) The comptroller shall produce and maintain a list of entities that have been provided a letter of exemption from the state hotel occupancy tax under Section 156.102. The comptroller shall make the list available on the comptroller's Internet website.

SECTION 39. Section 171.001(a), Tax Code, is amended to read as follows:

(a) A franchise tax is imposed on:

(1) each corporation that does business in this state or that is chartered ~~[or authorized to do business]~~ in this state; ~~;~~ and

(2) each limited liability company that does business in this state or that is organized under the laws of this state ~~[or is authorized to do business in this state]~~.

SECTION 40. Section 171.001(b)(2), Tax Code, is amended to read as follows:

(2) "Beginning date" means:

(A) for a corporation chartered in this state, the date on which the corporation's charter takes effect; and

(B) for a foreign corporation, ~~[the earlier of]~~ the date on which ~~;~~
~~[(i) the corporation's certificate of authority takes effect; or~~
~~[(ii) the corporation begins doing business in this state.~~

SECTION 41. Section 171.052, Tax Code, is amended to read as follows:

Sec. 171.052. CERTAIN CORPORATIONS. An insurance organization, title insurance company, or title insurance agent authorized to engage in insurance business in this state now required to pay an annual tax under Chapter 4 or 9, Insurance Code, measured by its gross premium receipts is exempted from the franchise tax. A ~~[An insurance organization performing management or~~

~~accounting activities in this state on behalf of a~~ nonadmitted [~~captive~~] insurance organization [~~company under Chapter 101, Insurance Code,~~] that is required to pay a gross premium receipts tax during a tax year is exempted from the franchise tax for that same tax year. Farm mutuals, local mutual aid associations, and burial associations are not subject to the franchise tax.

SECTION 42. Section 171.084(c), Tax Code, is amended to read as follows:

(c) In this section, "wholesale center" means a permanent wholesale facility that has permanent tenants and that promotes at least four national or regional trade shows in a calendar year. A tenant leasing space at a wholesale center for a period longer than the period prescribed by Subsection (b) may qualify for the exemption provided by this section only if the tenant solicits orders on an occasional basis at the trade show as prescribed by Subsection (b).

SECTION 43. Section 171.1032(b), Tax Code, is amended to read as follows:

(b) A corporation shall deduct from its gross receipts computed under Subsection (a) any amount to the extent included under Subsection (a) because of the application of Section 78 or Sections 951-964, Internal Revenue Code, any amount excludable under Section 171.110(k), and dividends received from a subsidiary, associate, or affiliated corporation that does not transact a substantial portion of its business or regularly maintain a substantial portion of its assets in the United States.

SECTION 44. Section 171.1051(c), Tax Code, is amended to read as follows:

(c) A corporation shall deduct from its gross receipts computed under Subsection (a) any amount to the extent included in Subsection (a) because of the application of Section 78 or Sections 951-964, Internal Revenue Code, any amount excludable under Section 171.110(k), and dividends received from a subsidiary, associate, or affiliated corporation that does not transact a substantial portion of its business or regularly maintain a substantial portion of its assets in the United States.

SECTION 45. Section 171.106, Tax Code, is amended by adding Subsection (i) to read as follows:

(i) Receipts from services that a defense readjustment project performs in a defense economic readjustment zone are not receipts from business done in this state.

SECTION 46. Section 171.109, Tax Code, is amended by adding Subsection (a-1) to read as follows:

(a-1) A legally enforceable obligation that requires the return of a like-kind property that was borrowed will be considered debt if it is a liability according to generally accepted accounting principles and if the return must be made within an ascertainable period of time or on demand. The amount that will be considered debt is the fair market value measured on the last day on which the report is based as required by Section 171.153. For purposes of this subsection, "like-kind property" means the same quantity, quality, and nature or character as the property borrowed.

SECTION 47. Section 171.110, Tax Code, is amended by amending Subsection (a) and adding Subsections (k) and (l) to read as follows:

(a) The net taxable earned surplus of a corporation is computed by:

(1) determining the corporation's reportable federal taxable income, subtracting from that amount any amount excludable under Subsection (k), any amount included in reportable federal taxable income under Section 78 or Sections 951-964, Internal Revenue Code, and dividends received from a subsidiary, associate, or affiliated corporation that does not transact a substantial portion of its business or regularly maintain a substantial portion of its assets in the United States, and adding to that amount any compensation of officers or directors, or if a bank, any compensation of directors and executive officers, to the extent excluded in determining federal taxable income to determine the corporation's taxable earned surplus;

(2) apportioning the corporation's taxable earned surplus to this state as provided by Section 171.106(b) or (c), as applicable, to determine the corporation's apportioned taxable earned surplus;

(3) adding the corporation's taxable earned surplus allocated to this state as provided by Section 171.1061; and

(4) subtracting from that amount any allowable deductions and any business loss that is carried forward to the tax reporting period and deductible under Subsection (e).

(k) Dividends and interest received from federal obligations are not included in earned surplus or gross receipts for earned surplus purposes.

(l) In this section:

(1) "Federal obligations" means:

(A) stocks and other direct obligations of, and obligations unconditionally guaranteed by, the United States government and United States government agencies; and

(B) direct obligations of a United States government-sponsored agency.

(2) "Obligation" means any bond, debenture, security, mortgage-backed security, pass-through certificate, or other evidence of indebtedness of the issuing entity. The term does not include a deposit, a repurchase agreement, a loan, a lease, a participation in a loan or pool of loans, a loan collateralized by an obligation of a United States government agency, or a loan guaranteed by a United States government agency.

(3) "United States government" means any department or ministry of the federal government, including a federal reserve bank. The term does not include a state or local government, a commercial enterprise owned wholly or partly by the United States government, or a local governmental entity or commercial enterprise whose obligations are guaranteed by the United States government.

(4) "United States government agency" means an instrumentality of the United States government whose obligations are fully and explicitly guaranteed as to the timely payment of principal and interest by the full faith and credit of the United States government. The term includes the Government National Mortgage

Association, the Department of Veterans Affairs, the Federal Housing Administration, the Farmers Home Administration, the Export-Import Bank, the Overseas Private Investment Corporation, the Commodity Credit Corporation, the Small Business Administration, and any successor agency.

(5) "United States government-sponsored agency" means an agency originally established or chartered by the United States government to serve public purposes specified by the United States Congress but whose obligations are not explicitly guaranteed by the full faith and credit of the United States government. The term includes the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the Farm Credit System, the Federal Home Loan Bank System, the Student Loan Marketing Association, and any successor agency.

SECTION 48. Sections 171.110(b) and (c), Tax Code, are amended to read as follows:

(b) Except as provided by Subsection (c), a [A] corporation is not required to add the compensation of officers or directors as required by Subsection (a)(1) if the corporation is:

(1) a corporation that has not more than 35 shareholders; or

(2) an S corporation, as that term is defined by Section 1361, Internal Revenue Code.

(c) A subsidiary corporation may not claim the exclusion under Subsection (b) if it has a parent corporation that does not qualify for the exclusion. For purposes of this subsection, a corporation qualifies as a parent if it ultimately controls the subsidiary, even if the control arises through a series or group of other subsidiaries or entities. Control is presumed if a parent corporation directly or indirectly owns, controls, or holds a majority of the outstanding voting stock of a corporation or ownership interests in another entity [Subsection (b) does not apply to a subsidiary corporation unless it applies to the subsidiary's parent corporation].

SECTION 49. Section 171.203, Tax Code, is amended by adding Subsection (f) to read as follows:

(f) A public information report that is filed electronically complies with the signature and certification requirements prescribed by Subsection (d).

SECTION 50. Subchapter O, Chapter 171, Tax Code, is amended by adding Section 171.731 to read as follows:

Sec. 171.731. ASSIGNMENT PROHIBITED. A corporation may not convey, assign, or transfer the credit allowed under this subchapter to another entity unless all of the assets of the corporation are conveyed, assigned, or transferred in the same transaction.

SECTION 51. Section 171.751(1), Tax Code, is amended to read as follows:

(1) "Agricultural processing" means an establishment primarily engaged in activities described in categories 0724, 2011-2099, 2211, 2231, 2824, 2833, 2834, 2835, 2836, 2841, 3111-3199, 3262, or 3952, in product classes

28692 or 28698 of category 2869, or in product classes 28992 or 28994 of category 2899 of the 1987 Standard Industrial Classification Manual published by the federal Office of Management and Budget.

SECTION 52. Subchapter P, Chapter 171, Tax Code, is amended by adding Section 171.7515 to read as follows:

Sec. 171.7515. "QUALIFIED BUSINESS." (a) In addition to the meaning assigned by Section 171.751(8), "qualified business" also means a corporation that has been designated as an enterprise project or as a defense readjustment project and is certified by the Texas Department of Economic Development as a qualified business under Section 2303.402 or 2310.302, Government Code.

(b) This section expires January 1, 2005.

SECTION 53. Section 171.753, Tax Code, is amended to read as follows:

Sec. 171.753. CALCULATION OF CREDIT. A corporation may establish a credit equal to five percent of the total wages and salaries paid by the corporation for qualifying jobs during the period upon which the tax is based, on each of five consecutive reports beginning with the report based on the period during which the qualifying jobs were created.

SECTION 54. Subchapter P, Chapter 171, Tax Code, is amended by adding Section 171.7541 to read as follows:

Sec. 171.7541. LENGTH OF CREDIT. Notwithstanding Section 171.753, a corporation that has been designated as an enterprise project or as a defense readjustment project on or after September 1, 2001, may, beginning on the date the project is designated, establish a credit equal to 25 percent of the total wages and salaries paid by the corporation for qualifying jobs. Subject to Section 171.755, the corporation may claim the entire credit earned on a report originally due on or after September 1, 2003, and before January 1, 2005. This section expires January 1, 2005.

SECTION 55. Section 171.802, Tax Code, is amended by adding Subsections (d) and (e) to read as follows:

(d) A corporation that has been designated as an enterprise project or as a defense readjustment project and is certified by the Texas Department of Economic Development as a qualified business under Section 2303.402 or 2310.302, Government Code, may qualify for the credit provided by this subchapter, regardless of whether the corporation meets the qualifications prescribed by Subsection (b). This subsection expires January 1, 2005.

(e) A corporation may claim a credit or take a carryforward credit for a qualified capital investment made on or after January 1, 2003, without regard to whether the county in which it makes the qualified capital investment has lost its designation as a strategic investment area if:

(1) the corporation committed to the investment in that county before January 2003;

(2) at the time the corporation made the commitment, the county was designated as a strategic investment area;

(3) the total investment is at least \$100 million;

(4) the county has a population of less than 15,700; and

(5) the corporation made a qualified capital investment in the county in each of the two years preceding the year in which the corporation made the qualified capital investment under this subsection.

SECTION 56. Section 171.803, Tax Code, is amended to read as follows:

Sec. 171.803. CALCULATION OF CREDIT. (a) Except as provided by Subsection (b), a ~~A~~ corporation may establish a credit equal to 7.5 percent of the qualified capital investment during the period upon which the tax is based.

(b) A corporation that has been designated as an enterprise project or as a defense readjustment project on or after September 1, 2001, may, beginning on the date the project is designated, establish a credit equal to 7.5 percent of the qualified capital investment. This subsection expires January 1, 2005.

SECTION 57. Section 171.804(b), Tax Code, as effective September 1, 2003, is amended to read as follows:

(b) Subject to Section 171.805, a corporation that has been designated as an enterprise project or as a defense readjustment project may claim the entire credit earned on a report originally due on or after September 1, 2003, and before January 1, 2006 [during an accounting period against the taxes imposed for the corresponding reporting period].

SECTION 58. Section 171.853(c), Tax Code, is amended to read as follows:

(c) The credit claimed for each privilege period may not exceed 50 percent of the amount of ~~net~~ franchise tax due, before ~~after~~ any other applicable tax credits, for the privilege period.

SECTION 59. Chapter 171, Tax Code, is amended by adding Subchapter U to read as follows:

SUBCHAPTER U. TAX CREDIT FOR TITLE INSURANCE HOLDING COMPANIES

Sec. 171.891. APPLICABILITY OF DEFINITIONS. In this subchapter:

(1) "Control" has the meaning described by Sections 823.005 and 823.151, Insurance Code.

(2) "Controlled insurer," "domestic insurer," and "holding company" have the meanings assigned by Section 823.002, Insurance Code.

(3) "Title insurance," "title insurance agent," and "title insurance company" have the meanings assigned by Article 9.02, Insurance Code.

Sec. 171.892. ELIGIBILITY. A corporation is entitled to a credit as provided by this subchapter against the tax imposed under this chapter if the corporation:

(1) is a title insurance holding company subject to Chapter 823, Insurance Code; and

(2) controls one or more domestic title insurance companies that are subject to the tax on premiums imposed under Article 9.59, Insurance Code.

Sec. 171.893. AMOUNT; LIMITATIONS. (a) The amount of the credit for each controlled domestic title insurance company is computed by multiplying the amount of tax on premiums paid by that company in the most recent calendar year ending before the franchise tax report is due by the percentage of ownership of the title insurance holding company in the controlled domestic title insurance

company. The percentage of ownership of a controlled domestic title insurance company is determined as of the accounting year-end on which the report is based.

(b) A claim for a credit is subject to the following limitations:

(1) if the total amount of the credit for all controlled title insurance companies exceeds the franchise tax due, the credit is an amount equal to the franchise tax due;

(2) no portion of a credit may be applied to another year's franchise tax report; and

(3) a corporation may not take credit for the same tax on premiums more than once.

Sec. 171.894. EFFECT ON OTHER TAXES. This subchapter does not exempt a title insurance holding company, a title insurance company, or a title insurance agent from paying a tax imposed by this code, except that a title insurance company or a title insurance agent whose principal activity is the business of title insurance is exempt from a tax imposed by this chapter.

SECTION 60. Section 201.057(c), Tax Code, is amended to read as follows:

(c) High-cost gas as defined in Subsection (a)(2)(A) produced from a well that is spudded or completed after August 31, 1996, [~~and before September 1, 2010,~~] is entitled to a reduction of the tax imposed by this chapter for the first 120 consecutive calendar months beginning on the first day of production, or until the cumulative value of the tax reduction equals 50 percent of the drilling and completion costs incurred for the well, whichever occurs first. The amount of tax reduction shall be computed by subtracting from the tax rate imposed by Section 201.052 the product of that tax rate times the ratio of drilling and completion costs incurred for the well to twice the median drilling and completion costs for high-cost wells as defined in Subsection (a)(2)(A) spudded or completed during the previous state fiscal year, except that the effective rate of tax may not be reduced below zero.

SECTION 61. Section 202.054(c), Tax Code, is amended to read as follows:

(c) This section applies to an enhanced recovery project that begins active operation on or after September 1, 1989, and to an expansion that the commission approves on or after September 1, 1991. An application for approval under this section must be filed on or after September 1, 1989, [~~and before January 1, 2008,~~] for a new enhanced recovery project. An application for approval under this section must be filed on or after September 1, 1991, [~~and before January 1, 2008,~~] for an expansion of an existing enhanced recovery project. A project may not qualify as an expansion if the project has qualified as a new enhanced recovery project under this section. An application may be filed on or after September 1, 1989, even if a separate application for approval of the project or expansion has already been filed under Subchapter B, Chapter 101, Natural Resources Code, or for approval as a tertiary recovery project for purposes of Section 4993, Internal Revenue Code of 1986, if the operation of a new project or the expansion of an existing project, other than a co-production project, does not begin before the

application for approval under this section is approved by the commission; provided, however, nothing herein shall require commission approval of a co-production project prior to commencing active operations on such project in order for such project to be eligible for the recovered oil tax rate.

SECTION 62. Subchapter B, Chapter 321, Tax Code, is amended by adding Section 321.107 to read as follows:

Sec. 321.107. ADMINISTRATION OF LOCAL SALES AND USE TAXES IMPOSED BY OTHER GOVERNMENTAL ENTITIES. The imposition, computation, administration, enforcement, and collection of any local sales and use tax imposed by any other local governmental entity is governed by this chapter, except as otherwise provided by law. In this section, "other local governmental entity" includes any governmental entity created by the legislature that has a limited purpose or function, that has a defined or restricted geographic territory, and that is authorized by law to impose a local sales and use tax. The term does not include a county, county health services district, county landfill and criminal detention center district, metropolitan transportation authority, economic development district, crime control district, hospital district, emergency services district, or library district.

SECTION 63. Section 321.203(j), Tax Code, is amended to read as follows:

(j) The sale of ~~[cable television]~~ services delivered through a cable system is consummated at the point of delivery to the consumer.

SECTION 64. Section 322.001(a), Tax Code, is amended to read as follows:

(a) This chapter applies to the imposition, assessment, collection, administration, and enforcement of a sales and use tax imposed under Chapter 451, 452, ~~[or]~~ 453, or 460, Transportation Code.

SECTION 65. Section 322.002(1), Tax Code, is amended to read as follows:

(1) "Taxing entity" means a rapid transit authority, a regional transit authority, including a subregional transportation authority, or a municipal mass transit department created under Chapter 451, 452, or 453, Transportation Code, or a coordinated county transportation authority created under Chapter 460, Transportation Code, that has adopted a sales and use tax under the law authorizing the creation of the entity.

SECTION 66. Section 323.203(j), Tax Code, is amended to read as follows:

(j) The sale of ~~[cable television]~~ services delivered through a cable system is consummated at the point of delivery to the consumer.

SECTION 67. The following are repealed:

- (1) Section 171.754, Tax Code;
- (2) Section 2.08, Chapter 1134, Acts of the 77th Legislature, Regular Session, 2001; and
- (3) Section 16, Article 9.59, Insurance Code.

SECTION 68. Each change in law made to the following provisions by this Act is a clarification of existing law and does not imply that existing law may be construed as inconsistent with the law as amended by this Act:

- (1) Section 1, Article 4.10, Insurance Code;

- (2) Article 4.17(a), Insurance Code;
- (3) Article 20A.33(d), Insurance Code;
- (4) Section 101.053(b), Insurance Code;
- (5) Section 912.002(b), Insurance Code;
- (6) Section 376.470(d), Local Government Code, as added by Chapter 1433, Acts of the 77th Legislature, Regular Session, 2001;
- (7) Section 2153.153(a), Occupations Code;
- (8) Section 151.0035, Tax Code;
- (9) Section 151.005, Tax Code;
- (10) Section 151.056(f), Tax Code;
- (11) Section 151.313(a), Tax Code;
- (12) Section 151.3501, Tax Code;
- (13) Section 151.355, Tax Code;
- (14) Section 153.013(a), Tax Code;
- (15) Section 153.120(d), Tax Code;
- (16) Section 153.205, Tax Code;
- (17) Section 153.222(a), Tax Code;
- (18) Section 153.403, Tax Code;
- (19) Section 171.052, Tax Code;
- (20) Section 171.084(c), Tax Code;
- (21) Section 171.1032(b), Tax Code;
- (22) Section 171.1051(c), Tax Code;
- (23) Section 171.106(i), Tax Code;
- (24) Sections 171.110(a), (b), (c), (k), and (l), Tax Code;
- (25) Section 171.731, Tax Code;
- (26) Section 171.751(1), Tax Code;
- (27) Subchapter U, Chapter 171, Tax Code;
- (28) Section 321.107, Tax Code;
- (29) Section 322.001(a), Tax Code;
- (30) Section 322.002(1), Tax Code; and
- (31) Section 151.319(c), Tax Code.

SECTION 69. To the extent of any conflict, Sections 1-68 of this Act prevail over another Act of the 78th Legislature, Regular Session, 2003, relating to nonsubstantive codifications of law or nonsubstantive additions to and corrections in enacted codes.

SECTION 71 (a) Subtitle C, Title 4, Local Government Code, is amended by adding Chapter 133 to read as follows:

CHAPTER 133. CRIMINAL AND CIVIL FEES PAYABLE
TO THE COMPTROLLER

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 133.001. PURPOSE. The purpose of this chapter is to consolidate and standardize:

- (1) collection of fees in criminal and civil matters by:
 - (A) an officer of a court for deposit in a county or municipal treasury; or

(B) an officer of a county or municipality for deposit in the county or municipal treasury, as appropriate;

(2) remittance of those fees to the comptroller as required by this chapter and other law; and

(3) distribution of those fees by the comptroller to the proper accounts and funds in the state treasury.

Sec. 133.002. DEFINITIONS. In this chapter:

(1) "Fee" means:

(A) a criminal fee listed under Section 133.003; and

(B) a civil fee listed under Section 133.004.

(2) "Indigent" means an individual who earns not more than 125 percent of the income standard established by applicable federal poverty guidelines.

(3) "Treasurer" means the custodian of money in a municipal or county treasury, as appropriate.

Sec. 133.003. CRIMINAL FEES. This chapter applies to the following criminal fees:

(1) the consolidated fee imposed under Section 133.102;

(2) the time payment fee imposed under Section 133.103;

(3) fees for services of peace officers employed by the state imposed under Article 102.011, Code of Criminal Procedure, and forwarded to the comptroller as provided by Section 133.104;

(4) costs on conviction imposed in certain statutory county courts under Section 51.702, Government Code, and deposited in the judicial fund;

(5) costs on conviction imposed in certain county courts under Section 51.703, Government Code, and deposited in the judicial fund;

(6) the administrative fee for failure to appear or failure to pay or satisfy a judgment imposed under Section 706.006, Transportation Code; and

(7) fines on conviction imposed under Section 621.506(g), Transportation Code.

Sec. 133.004. CIVIL FEES. This chapter applies to the following civil fees:

(1) the consolidated fee on filing in district court imposed under Section 133.151;

(2) the filing fee in district court for basic civil legal services for indigents imposed under Section 133.152;

(3) the filing fee in courts other than district court for basic civil legal services for indigents imposed under Section 133.153;

(4) the filing fees for the judicial fund imposed in certain statutory county courts under Section 51.702, Government Code;

(5) the filing fees for the judicial fund imposed in certain county courts under Section 51.703, Government Code;

(6) the filing fees for the judicial fund imposed in certain statutory probate courts under Section 51.704, Government Code;

(7) fees collected under Section 118.015;

(8) marriage license fees for the family trust fund collected under Section 118.018; and

(9) marriage license or declaration of informal marriage fees for the child abuse and neglect prevention trust fund account collected under Section 118.022.

[Sections 133.005-133.050 reserved for expansion]

SUBCHAPTER B. REPORTING, COLLECTION, AND

REMITTANCE OF FEES

Sec. 133.051. COLLECTION AND REMITTANCE OF FEES. A municipality or county shall collect, record, account for, and remit to the comptroller all fees in the manner provided by this subchapter.

Sec. 133.052. DEPOSIT OF FEES. (a) An officer collecting a fee in a case in municipal court shall deposit the money in the municipal treasury.

(b) An officer collecting a fee in a justice, county, or district court shall deposit the money in the county treasury.

(c) A municipal or county clerk collecting a fee shall deposit the money in the municipal or county treasury, as appropriate.

Sec. 133.053. INTEREST-BEARING ACCOUNT. (a) The treasurer may deposit fees in an interest-bearing account.

(b) The municipality or county may retain any interest accrued on the money the treasurer deposited in the treasury if the treasurer remits the funds to the comptroller within the period prescribed by Section 133.055(a).

Sec. 133.054. RECORDS. (a) An officer or clerk collecting a fee shall keep a record of the money collected.

(b) The treasurer shall keep a record of the money collected and on deposit in the treasury.

Sec. 133.055. QUARTERLY REMITTANCE OF FEES TO THE COMPTROLLER. (a) On or before the last day of the month following each calendar quarter, the treasurer shall:

(1) remit to the comptroller the money from all fees collected during the preceding quarter, except as provided by Section 133.058; and

(2) submit to the comptroller the report required under Section 133.056 for criminal fees and Section 133.057 for civil fees.

(b) If the treasurer does not collect any fees during a calendar quarter, the treasurer shall file the report required for the quarter in the regular manner. The report must state that no fees were collected. This subsection does not apply to fees collected under Sections 14 and 19, Article 42.12, Code of Criminal Procedure, or under Section 76.013, Government Code.

Sec. 133.056. QUARTERLY REPORT FOR CRIMINAL FEES. (a) On the last day of the month following a calendar quarter, the treasurer shall report the criminal fees collected for the preceding calendar quarter.

(b) For fees collected for convictions of offenses committed on or after January 1, 2004, a municipality or county shall report the fees collected for a calendar quarter categorized according to the class of offense.

(c) For fees collected for convictions of offenses committed before January 1, 2004, a municipality or county shall report the total of fees collected for a calendar quarter.

Sec. 133.057. QUARTERLY REPORT FOR CIVIL FEES. On the last day of the month following a calendar quarter, the treasurer shall report the civil fees collected for the preceding calendar quarter.

Sec. 133.058. PORTION OF FEE RETAINED. (a) Except as otherwise provided by this section, a municipality or county may retain 10 percent of the money collected from fees as a service fee for the collection if the municipality or county remits the remainder of the fees to the comptroller within the period prescribed by Section 133.055(a).

(b) A municipality or county may retain an amount greater than 10 percent of the money collected from fees if retention of the greater amount is authorized by law.

(c) A county may retain five percent of the money collected as a service fee on the basic civil legal service for indigents filing fee.

(d) A county may not retain a service fee on the collection of a fee:

(1) for the judicial fund; or

(2) under Sections 14 and 19, Article 42.12, Code of Criminal Procedure.

Sec. 133.059. AUDIT. (a) The comptroller may audit the records of a county or municipality relating to fees collected under this chapter.

(b) Money spent from fees collected under this chapter is subject to audit by the state auditor.

[Sections 133.060-133.100 reserved for expansion]

SUBCHAPTER C. CRIMINAL FEES

Sec. 133.101. MEANING OF CONVICTION. In this subchapter, a person is considered to have been convicted in a case if:

(1) a judgment, a sentence, or both a judgment and a sentence are imposed on the person;

(2) the person receives community supervision, deferred adjudication, or deferred disposition; or

(3) the court defers final disposition of the case or imposition of the judgment and sentence.

Sec. 133.102. CONSOLIDATED FEES ON CONVICTION. (a) A person convicted of an offense shall pay as a court cost, in addition to all other costs:

(1) \$133 on conviction of a felony;

(2) \$83 on conviction of a Class A or Class B misdemeanor; or

(3) \$40 on conviction of a nonjailable misdemeanor offense, including a criminal violation of a municipal ordinance, other than a conviction of an offense relating to a pedestrian or the parking of a motor vehicle.

(b) The court costs under Subsection (a) shall be collected and remitted to the comptroller in the manner provided by Subchapter B.

(c) The money collected under this section as court costs imposed on offenses committed on or after January 1, 2004, shall be allocated according to the percentages provided in Subsection (e).

(d) The money collected as court costs imposed on offenses committed before January 1, 2004, shall be distributed using historical data so that each account or fund receives the same amount of money the account or fund would have received if the court costs for the accounts and funds had been collected and reported separately.

(e) The comptroller shall allocate the court costs received under this section to the following accounts and funds so that each receives to the extent practicable, utilizing historical data as applicable, the same amount of money the account or fund would have received if the court costs for the accounts and funds had been collected and reported separately, except that the account or fund may not receive less than the following percentages:

<u>(1) abused children's counseling</u>	<u>0.0088 percent;</u>
<u>(2) crime stoppers assistance</u>	<u>0.2581 percent;</u>
<u>(3) breath alcohol testing</u>	<u>0.5507 percent;</u>
<u>(4) Bill Blackwood Law Enforcement</u>	
<u>Management Institute</u>	<u>2.1683 percent;</u>
<u>(5) law enforcement officers</u>	
<u>standards and education</u>	<u>5.0034 percent;</u>
<u>(6) comprehensive rehabilitation</u>	<u>5.3218 percent;</u>
<u>(7) operator's and chauffeur's license</u>	<u>11.1426 percent;</u>
<u>(8) criminal justice planning</u>	<u>12.5537 percent;</u>
<u>(9) an account in the state treasury</u>	
<u>to be used only for the establishment and operation</u>	
<u>of the Center for the Study and Prevention of</u>	
<u>Juvenile Crime and Delinquency at Prairie View</u>	
<u>A&M University</u>	<u>1.2090 percent;</u>
<u>(10) compensation to victims of</u>	
<u>crime fund</u>	<u>37.6338 percent;</u>
<u>(11) fugitive apprehension account</u>	<u>12.0904 percent;</u>
<u>(12) judicial and court personnel</u>	
<u>training fund</u>	<u>4.8362 percent;</u>
<u>(13) an account in the state</u>	
<u>treasury to be used for the establishment</u>	
<u>and operation of the Correctional Management</u>	
<u>Institute of Texas and Criminal Justice</u>	
<u>Center Account</u>	<u>1.2090 percent; and</u>
<u>(14) fair defense account</u>	<u>6.0143 percent.</u>

(f) Of each dollar credited to the law enforcement officers standards and education account under Subsection (e)(5):

- (1) 33.3 cents may be used only to pay administrative expenses; and
- (2) the remainder may be used only to pay expenses related to continuing education for persons licensed under Chapter 1701, Occupations Code.

Sec. 133.103. TIME PAYMENT FEE. (a) A person convicted of an offense shall pay, in addition to all other costs, a fee of \$25 if the person:

- (1) has been convicted of a felony or misdemeanor; and

(2) pays any part of a fine, court costs, or restitution on or after the 31st day after the date on which a judgment is entered assessing the fine, court costs, or restitution.

(b) The treasurer shall send 50 percent of the fees collected under this section to the comptroller. The comptroller shall deposit the fees received to the credit of the general revenue fund.

(c) The treasurer shall deposit 10 percent of the fees collected under this section in the general fund of the county or municipality for the purpose of improving the efficiency of the administration of justice in the county or municipality. The county or municipality shall prioritize the needs of the judicial officer who collected the fees when making expenditures under this subsection and use the money deposited to provide for those needs.

(d) The treasurer shall deposit the remainder of the fees collected under this section in the general revenue account of the county or municipality.

Sec. 133.104. FEES FOR SERVICES OF PEACE OFFICERS EMPLOYED BY THE STATE. (a) Fees imposed under Article 102.011, Code of Criminal Procedure, for services performed by peace officers employed by the state shall be forwarded to the comptroller after deducting four-fifths of the amount of each fee received for a service performed under Subsection (a)(1) or (a)(2) of that article, in a manner directed by the comptroller.

(b) The comptroller shall credit fees received under Subsection (a) to the general revenue fund.

[Sections 133.105-133.150 reserved for expansion]

SUBCHAPTER D. CIVIL FEES

Sec. 133.151. CONSOLIDATED CIVIL FEE ON FILING A CIVIL SUIT IN DISTRICT COURT. (a) In addition to each fee collected under Section 51.317(b)(1), Government Code, the clerk of a district court shall collect the following fees on the filing of any civil suit:

(1) \$45 for family law cases and proceedings as defined by Section 25.0002, Government Code; and

(2) \$50 for any case other than a case described by Subdivision (1).

(b) The fees under Subsection (a) shall be collected and remitted to the comptroller in the manner provided by Subchapter B.

(c) The comptroller shall allocate the fees received under this section to the following accounts and funds so that each receives to the extent practicable, utilizing historical data as applicable, the same amount of money the account or fund would have received if the fees for the accounts and funds had been collected and reported separately:

(1) the judicial fund to be used for court-related purposes for the support of the judiciary; and

(2) the basic civil legal services account of the judicial fund for use in programs approved by the supreme court that provide basic civil legal services to an indigent.

Sec. 133.152. ADDITIONAL FILING FEES FOR CERTAIN ACTIONS AND PROCEEDINGS IN DISTRICT COURT FOR BASIC CIVIL LEGAL SERVICES FOR INDIGENTS. (a) In addition to other fees authorized or

required by law, the clerk of a district court shall collect the following fees on the filing of any civil action or proceeding requiring a filing fee, including an appeal, and on the filing of any counterclaim, cross-action, intervention, interpleader, or third-party action requiring a filing fee:

(1) \$5 in family law cases and proceedings as defined by Section 25.0002, Government Code; and

(2) \$10 in any case other than a case described by Subdivision (1).

(b) The fees under this section shall be collected and remitted to the comptroller in the manner provided by Subchapter B.

(c) The comptroller shall deposit the fees to the credit of the basic civil legal services account of the judicial fund for use in programs approved by the supreme court that provide basic civil legal services to an indigent.

Sec. 133.153. ADDITIONAL FILING FEES FOR CERTAIN ACTIONS AND PROCEEDINGS IN COURTS OTHER THAN DISTRICT COURT FOR BASIC CIVIL LEGAL SERVICES FOR INDIGENTS. (a) In addition to other fees authorized or required by law, the clerk of a court other than a district court, the courts of appeals, or the supreme court shall collect the following fees on the filing of any civil action or proceeding requiring a filing fee, including an appeal, and on the filing of any counterclaim, cross-action, intervention, interpleader, or third-party action requiring a filing fee:

(1) \$5 for statutory and constitutional county courts; and

(2) \$2 for justice of the peace courts.

(b) The fees shall be collected and remitted to the comptroller in the manner provided by Subchapter B.

(c) The comptroller shall deposit the fees to the credit of the basic civil legal services account of the judicial fund for use in programs approved by the supreme court that provide basic civil legal services to an indigent.

(b) This section takes effect January 1, 2004.

SECTION 72. (a) Subsection (e), Section 14, Article 42.12, Code of Criminal Procedure, is amended to read as follows:

(e) The clerk of a court that collects a fee imposed under Subsection (c)(2) shall deposit the fee to be sent to the comptroller as provided by Subchapter B, Chapter 133, Local Government Code [~~remit the fee to the comptroller~~], and the comptroller shall deposit the fee into the general revenue fund. In requiring the payment of a fee under Subsection (c)(2), the judge shall consider fines, fees, and other necessary expenses for which the defendant is obligated in establishing the amount of the fee. The judge may not:

(1) establish the fee in an amount that is greater than 25 percent of the defendant's gross income while the defendant is a participant in residential aftercare; or

(2) require the defendant to pay the fee at any time other than a time at which the defendant is both employed and a participant in residential aftercare.

(b) This section takes effect January 1, 2004.

SECTION 73. (a) Subsection (f), Section 19, Article 42.12, Code of Criminal Procedure, is amended to read as follows:

(f) A community corrections and supervision department shall deposit the [remit] fees collected under Subsection (e) of this section to be sent to the comptroller as provided by Subchapter B, Chapter 133, Local Government Code. The comptroller shall deposit the fee in the [special revenue fund to the credit of the] sexual assault program fund [established] under Section 420.008, Government [44.0061, Health and Safety] Code.

(b) This section takes effect January 1, 2004.

SECTION 74. (a) Article 45.048, Code of Criminal Procedure, is amended to read as follows:

Art. 45.048. DISCHARGED FROM JAIL. (a) A defendant placed in jail on account of failure to pay the fine and costs shall be discharged on habeas corpus by showing that the defendant:

(1) is too poor to pay the fine and costs; or

(2) has remained in jail a sufficient length of time to satisfy the fine and costs, at the rate of not less than \$50 [~~\$100~~] for each period of time served, as specified by the convicting court in the judgment in the case.

(b) A convicting court may specify a period of time that is not less than eight hours or more than 24 hours as the period for which a defendant who fails to pay the fines and costs in the case must remain in jail to satisfy \$50 [~~\$100~~] of the fine and costs.

(b) This section takes effect January 1, 2004.

(c) The change in law made by this section to Article 45.048, Code of Criminal Procedure, applies only to a defendant serving a sentence for an offense committed on or after the effective date of this section. A defendant serving a sentence for an offense committed before the effective date of this section 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 subsection, an offense is committed before the effective date of this section if any element of the offense occurs before that date.

SECTION 75. (a) Subsection (e), Article 45.049, Code of Criminal Procedure, is amended to read as follows:

(e) A defendant is considered to have discharged not less than \$50 [~~\$100~~] of fines or costs for each eight hours of community service performed under this article.

(b) This section takes effect January 1, 2004.

(c) The change in law made by this section to Article 45.049, Code of Criminal Procedure, applies only to a defendant serving a sentence for an offense committed on or after the effective date of this section. A defendant serving a sentence for an offense committed before the effective date of this section 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 subsection, an offense is committed before the effective date of this section if any element of the offense occurs before that date.

SECTION 76. (a) Article 102.004, Code of Criminal Procedure, is amended by adding Subsection (c) to read as follows:

(c) In this article, "conviction" has the meaning assigned by Section 133.101, Local Government Code.

(b) This section takes effect January 1, 2004.

SECTION 77. (a) Article 102.011, Code of Criminal Procedure, is amended by adding Subsection (j) to read as follows:

(j) In this article, "conviction" has the meaning assigned by Section 133.101, Local Government Code.

(b) This section takes effect January 1, 2004.

SECTION 78. (a) Subsection (e), Article 102.014, Code of Criminal Procedure, is amended to read as follows:

(e) In this article, a person is considered to have been convicted in a case if the person would be considered to have been convicted under Section 133.101, Local Government Code[+:

~~(1) a sentence is imposed;~~

~~(2) the defendant receives probation or deferred adjudication; or~~

~~(3) the court defers final disposition of the case].~~

(b) This section takes effect January 1, 2004.

SECTION 79. (a) Subsection (d), Section 51.702, Government Code, is amended to read as follows:

(d) The clerk shall deposit ~~send~~ the fees and costs collected under this section to be sent to the comptroller as provided by Subchapter B, Chapter 133, Local Government Code ~~[at least as frequently as monthly]~~. The comptroller shall deposit the fees in the judicial fund.

(b) This section takes effect January 1, 2004.

SECTION 80. (a) Subsection (d), Section 51.703, Government Code, is amended to read as follows:

(d) The clerk shall deposit ~~send~~ the fees and costs collected under this section to be sent to the comptroller as provided by Subchapter B, Chapter 133, Local Government Code ~~[at least as frequently as monthly]~~. The comptroller shall deposit the fees in the judicial fund.

(b) This section takes effect January 1, 2004.

SECTION 81. (a) Subsection (c), Section 51.704, Government Code, is amended to read as follows:

(c) The clerk shall deposit ~~send~~ the fees collected under this section to be sent to the comptroller as provided by Subchapter B, Chapter 133, Local Government Code ~~[at least as frequently as monthly]~~. The comptroller shall deposit the fees in the judicial fund.

(b) This section takes effect January 1, 2004.

SECTION 82. (a) Section 51.941, Government Code, is amended to read as follows:

Sec. 51.941. ADDITIONAL FILING FEE IN APPELLATE COURTS FOR BASIC CIVIL LEGAL SERVICES FOR INDIGENTS. (a) In addition to other fees authorized or required by law, the clerk of the supreme court and courts of appeals ~~[each court]~~ shall collect a \$25 fee ~~[the following fees]~~ on the filing of

any civil action or proceeding requiring a filing fee, including an appeal, and on the filing of any counterclaim, cross-action, intervention, interpleader, or third-party action requiring a filing fee[±

[~~(1) supreme court and courts of appeals \$25;~~

[~~(2) district courts, for other than divorce and other family law matters~~

~~\$10;~~

[~~(3) district courts, divorce and other family law matters \$5;~~

[~~(4) statutory and constitutional county courts \$5;~~

[~~(5) justice of the peace courts \$2].~~

(b) Court fees under this section [~~subchapter~~] shall be collected in the same manner as other fees, fines, or costs in the case.

(c) The clerk shall send the fees collected under this section [~~Subsection (a)(1)~~] to the comptroller not later than the last day of the month following [~~10th day after the end of~~] each calendar quarter.

~~(d) [The clerk shall remit the fees collected under Subsections (a)(2) (5) at least as frequently as monthly to the county treasurer or the person who performs the duties of the county treasurer. The county treasurer or the person performing the duties of the county treasurer shall keep a record of the amount of money received under this subsection. The county treasurer or the person who performs the duties of the county treasurer shall remit the fees collected, minus an amount ordered retained by the county commissioners court as provided by Subsection (e), to the comptroller not later than the 10th day after the end of each quarter.~~

~~[(e) The commissioners court by order may require the county treasurer or the person who performs the duties of the county treasurer to deposit in the county's general revenue account five percent of the fees collected under Subsections (a)(2) (5) to reimburse the county for the expense of collecting and remitting the fees collected under Subsections (a)(2) (5).~~

~~[(f) The comptroller shall deposit the fees received under this section to the credit of the basic civil legal services account of the judicial fund for use in programs approved by the supreme court that provide basic civil legal services to the indigent.~~

(e) [~~(g)~~] In this section, "indigent"[±

[~~(1) "Family law matters" has the meaning assigned "family law cases and proceedings" by Section 25.0002.~~

[~~(2) "Indigent" means an individual who earns not more than 125 percent of the income standard established by applicable federal poverty guidelines.~~

(b) This section takes effect January 1, 2004.

SECTION _____. (a) Subsection (b), Section 118.015, Local Government Code, is amended to read as follows:

(b) A county clerk who collects a fee under this section for a certified copy of a birth certificate shall deposit the fee into the county treasury. The state's portion of the fee shall be sent [~~deduct 20 cents of that fee to apply to the clerk's administrative costs and remit \$1.80 of that fee~~] to the comptroller as provided by Subchapter B, Chapter 133, for deposit in the work and family policies fund.

(b) This section takes effect January 1, 2004.

SECTION 83. (a) Subsection (c), Section 118.018, Local Government Code, is amended to read as follows:

(c) A county clerk who collects a fee under this section from a marriage license applicant shall deposit [remit] \$3 of that fee to be sent to the comptroller as provided by Subchapter B, Chapter 133, for deposit in the family trust fund established under Section 2.014, Family Code.

(b) This section takes effect January 1, 2004.

SECTION 84. (a) Subsection (a), Section 118.022, Local Government Code, is amended to read as follows:

(a) The county clerk shall deposit, as provided by Subchapter B, Chapter 133, [not later than the 10th day of each month, send to the comptroller of public accounts] \$12.50 of each fee collected [during the preceding month] for issuance of a marriage license or declaration of informal marriage to be sent to the comptroller and deposited as provided by Subsection (b).

(b) This section takes effect January 1, 2004.

SECTION 85. (a) Section 542.403, Transportation Code, is amended by adding Subsection (c) to read as follows:

(c) In this section, "conviction" has the meaning assigned by Section 133.101, Local Government Code.

(b) This section takes effect January 1, 2004.

SECTION 86. (a) Section 621.506, Transportation Code, is amended by amending Subsection (g) and adding Subsection (h) to read as follows:

(g) Except as provided by Subsection (h), a [A] governmental entity that collects a fine under this section for an offense involving a vehicle having a single axle weight, tandem axle weight, or gross weight that is more than 5,000 pounds heavier than the vehicle's allowable weight shall send an amount equal to 50 percent of the fine to the comptroller in the manner provided by Subchapter B, Chapter 133, Local Government Code.

(h) If [unless] the offense described by Subsection (g) occurred within 20 miles of an international border, [in which event] the entire amount of the fine shall be deposited for the purposes of road maintenance in:

(1) the municipal treasury, if the fine was imposed by a municipal court; or

(2) the county treasury, if the fine was imposed by a justice court.

(b) This section takes effect January 1, 2004.

SECTION 87. (a) Subsection (a), Section 706.006, Transportation Code, is amended to read as follows:

(a) A person who fails to appear for a complaint or citation for an offense described by Section 706.002(a) shall be required to pay an administrative fee of \$30 for each complaint or citation reported to the department under this chapter [violation for which the person failed to appear], unless the person is acquitted of the charges for which the person failed to appear. The person shall pay the fee when:

(1) the court enters judgment on the underlying offense reported to the department;

(2) the underlying offense is dismissed; or

(3) bond or other security is posted to reinstate the charge for which the warrant was issued.

(b) This section takes effect January 1, 2004.

SECTION 88. (a) Subsections (a), (b), and (c), Section 706.007, Transportation Code, are amended to read as follows:

(a) An officer collecting a fee under Section 706.006 shall keep records and deposit the money as provided by Subchapter B, Chapter 133, Local Government Code;

~~(1) keep separate records of the money; and~~

~~(2) deposit the money in the appropriate municipal or county treasury].~~

(b) The custodian of the municipal or county treasury may[-

~~(4)] deposit each fee collected under Section 706.006 as provided by Subchapter B, Chapter 133, Local Government Code ~~[in an interest-bearing account; and~~~~

~~(2) retain for the municipality or county the interest earned on money in the account].~~

(c) The custodian shall keep records of money received and disbursed under this section as provided by Subchapter B, Chapter 133, Local Government Code, and shall provide an annual report, in the form approved by the comptroller, of all money received and disbursed under this section to:

(1) the comptroller;

(2) the department; and

(3) another entity as provided by interlocal contract.

(b) This section takes effect January 1, 2004.

SECTION 89. (a) Subchapter G, Chapter 51, Government Code, is amended by adding Section 51.607 to read as follows:

Sec. 51.607. IMPLEMENTATION OF NEW OR AMENDED COURT COSTS AND FEES. (a) Following each regular session of the legislature, the comptroller shall identify each law enacted by that legislature, other than a law disapproved by the governor, that imposes or changes the amount of a court cost or fee collected by the clerk of a district, county, statutory county, municipal, or justice court from a party to a civil case or a defendant in a criminal case, including a filing or docketing fee, jury fee, cost on conviction, or fee or charge for services or to cover the expenses of a public official or agency. This subsection does not apply to attorney's fees, civil or criminal fines or penalties, or amounts charged, paid, or collected on behalf of another party to a proceeding other than the state in a criminal case, including restitution or damages.

(b) The comptroller shall prepare a list of each court cost or fee covered by Subsection (a) to be imposed or changed and shall publish the list in the Texas Register not later than August 1 after the end of the regular session of the legislature at which the law imposing or changing the amount of the cost or fee was enacted. The comptroller shall include with the list a statement describing the operation of this section and stating the date the imposition or change in the amount of the court cost or fee will take effect under Subsection (c).

(c) Notwithstanding the effective date of the law imposing or changing the amount of a court cost or fee included on the list, the imposition or change in the amount of the court cost or fee does not take effect until the next January 1 after the law takes effect.

(d) This section does not apply to a court cost or fee if the law imposing or changing the amount of the cost or fee:

(1) expressly provides that this section does not apply to the imposition or change in the amount of the cost or fee; or

(2) takes effect before August 1 or after the next January 1 following the regular session of the legislature at which the law was enacted.

(b) Section 51.607, Government Code, as added by this section, does not apply to a law that takes effect before September 1, 2003.

(c) Section 51.607, Government Code, as added by this section, applies to a law enacted by the 78th Legislature, Regular Session, 2003, that takes effect on or after September 1, 2003, but only if this section takes effect before July 1, 2003.

(d) This section takes effect immediately if this Act receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this section takes effect September 1, 2003.

SECTION 90. The heading to Chapter 319, Government Code, is amended to read as follows:

CHAPTER 319. LEGISLATION REGARDING JUDICIAL SYSTEM [IMPACT NOTES]

SECTION 91. Sections 319.001 through 319.004, Government Code, are designated as Subchapter A of Chapter 319 and the following heading is added to that subchapter:

SUBCHAPTER A. JUDICIAL SYSTEM IMPACT NOTES

SECTION 92. Chapter 319, Government Code, is amended by adding Subchapter B to read as follows:

SUBCHAPTER B. LEGISLATION RELATING TO COURT COSTS

Sec. 319.021. IMPACT STATEMENT ON LEGISLATION IMPOSING COURT COSTS ON CRIMINAL DEFENDANTS. (a) This section applies only to a new court cost or fee that is remitted to the comptroller.

(b) The Legislative Budget Board shall prepare an impact statement for each resolution proposing a constitutional amendment or bill that proposes imposing a new court cost or fee on a person charged with a criminal offense or increasing the amount of an existing court cost or fee imposed on a person charged with a criminal offense, including a court cost or fee imposed on conviction or other disposition or postponed disposition of the criminal charge.

(c) The impact statement must show the total amount of court costs and fees that persons will be required to pay under the bill or resolution when considered together with all other applicable laws.

(d) The state auditor shall provide the Legislative Budget Board with the initial data needed to develop a mechanism that will be used to produce the impact statements.

SECTION 93. (a) The following are repealed:

- (1) Article 56.55, Code of Criminal Procedure;
- (2) Article 56.56, Code of Criminal Procedure;
- (3) Article 56.57, Code of Criminal Procedure;
- (4) Article 56.59, Code of Criminal Procedure;
- (5) Subsections (f), (g), and (h), Article 102.011, Code of Criminal Procedure;
- (6) Article 102.019, Code of Criminal Procedure;
- (7) Article 102.075, Code of Criminal Procedure;
- (8) Section 51.701, Government Code;
- (9) Section 51.921, Government Code; and
- (10) Subsections (b) through (h), Section 56.001, Government Code.

(b) This section takes effect January 1, 2004.

SECTION 95. (a) Section 151.025, Tax Code, is amended by adding Subsection (d) to read as follows:

(d) If any nontaxable charges are combined with and not separately stated from taxable telecommunications service charges on the customer bill or invoice of a provider of telecommunications services, the combined charge is subject to tax unless the provider can identify the portion of the charges that are nontaxable through the provider's books and records kept in the regular course of business. If the nontaxable charges cannot reasonably be identified, the charges from the sale of both nontaxable services and taxable telecommunications services are attributable to taxable telecommunications services. The provider of telecommunications services has the burden of proving nontaxable charges.

(b) Section 151.025(c), Tax Code, is repealed.

SECTION 96. Section 351.006, Tax Code, is amended by adding Subsection (g) to read as follows:

(g) The right to use or possess a room in a hotel is exempt from taxation under this chapter if the person required to collect the tax receives, in good faith from a guest, an exemption certificate stating qualification for an exemption provided in Subsection (c). The exemption must be supported by the documentation required under rules adopted by the comptroller and the municipality.

SECTION 97. Section 352.007, Tax Code, is amended by adding Subsection (g) to read as follows:

(g) The right to use or possess a room in a hotel is exempt from taxation under this chapter if the person required to collect the tax receives, in good faith from a guest, an exemption certificate stating qualification for an exemption provided in Subsection (c). The exemption must be supported by the documentation required under rules adopted by the comptroller and the county.

SECTION 98. Section 334.256(a), Tax Code, is amended to read as follows:

(a) Each bill or other receipt for a hotel charge subject to the tax imposed under this subchapter must contain a statement in a conspicuous location stating the applicable hotel occupancy tax rate collected by the hotel from the customer for the State of Texas (insert state rate of tax) and the tax rate and identity of each

other taxing authority that has imposed a hotel occupancy tax for the room night (insert rate of tax). [~~“(insert name of taxing municipality or county) requires that an additional tax of _____ percent (insert rate of tax) be imposed on each hotel charge for the purpose of financing a venue project. In addition to the tax imposed to finance a venue project, the State of Texas requires that a tax of six percent be imposed on each hotel charge.”~~]

SECTION 99. Section 351.101(a), Tax Code, is amended to read as follows:

(a) Revenue from the municipal hotel occupancy tax may be used only to promote tourism and the convention and hotel industry, and that use is limited to the following:

(1) the acquisition of sites for and the construction, improvement, enlarging, equipping, repairing, operation, and maintenance of convention center facilities or visitor information centers, or both;

(2) the furnishing of facilities, personnel, and materials for the registration of convention delegates or registrants;

(3) advertising and conducting solicitations and promotional programs to attract tourists and convention delegates or registrants to the municipality or its vicinity;

(4) the encouragement, promotion, improvement, and application of the arts, including instrumental and vocal music, dance, drama, folk art, creative writing, architecture, design and allied fields, painting, sculpture, photography, graphic and craft arts, motion pictures, radio, television, tape and sound recording, and other arts related to the presentation, performance, execution, and exhibition of these major art forms;

(5) historical restoration and preservation projects or activities or advertising and conducting solicitations and promotional programs to encourage tourists and convention delegates to visit preserved historic sites or museums:

(A) at or in the immediate vicinity of convention center facilities or visitor information centers; or

(B) located elsewhere in the municipality or its vicinity that would be frequented by tourists and convention delegates; and

(6) for a municipality located in a county with population of 290,000 [~~65,000~~] or less, expenses, including promotion expenses, directly related to a sporting event in which the majority of participants are tourists who substantially increase economic activity at hotels and motels within the municipality or its vicinity.

SECTION 100. Section 351.102, Tax Code, is amended to read as follows:

(c) A municipality to which subsection (b) applies is entitled to receive all funds that an owner of a project may receive under Section 151.429(h), Tax Code.

SECTION 101. Section 2303.406, Government Code, is amended by adding Subsection (e) to read as follows:

(e) The department may designate multiple concurrent enterprise projects in the same enterprise zone and may designate the same qualified business as more than one enterprise project.

SECTION 102. The change in law made by this Act to Chapter 2303, Government Code, applies only to:

- (1) an application for enterprise project designation submitted on or after September 1, 2003; or
- (2) an application for enterprise project designation approved by the Texas Department of Economic Development or its successor on or after September 1, 2003, for which the application for enterprise project designation was submitted in calendar year 2002.

SECTION 103. Section 151.319(c), Tax Code, is amended to read as follows:

(c) ~~[A transaction involving t]~~ The sale of a handbill, circular, flyer, advertising supplement, or similar item that is printed to the special order of a customer and tangible personal property that will become an ingredient or component part of such item are ~~[is]~~ exempted from the taxes imposed by this chapter if the item is printed for the exclusive purpose of being distributed as a part of a newspaper, is actually distributed as a part of the newspaper, and is delivered to the person who is responsible for the distribution of the newspaper in which the item is distributed and not to the customer.

SECTION 104. Subchapter Q, Chapter 171, Tax Code, is amended by adding Section 171.8015 to read as follows:

Sec. 171.8015. TANGIBLE PERSONAL PROPERTY FIRST PLACED IN SERVICE IN AN ENTERPRISE ZONE. For purposes of determining whether an investment is a "qualified capital investment" under Section 171.801, "tangible personal property first placed in service in an enterprise zone" includes tangible personal property:

- (1) purchased by a qualified business for placement in an incomplete improvement that is under active construction or other physical preparation;
- (2) identified by a purchase order, invoice, billing, sales slip, or contract; and
- (3) physically present at the enterprise zone and in use by the qualified business not later than September 30, 2005.

SECTION 105. Contingent on **HB 2458**, Acts of the 78th Legislature, Regular Session, 2003, being enacted and becoming law, and effective January 1, 2004, Sections 162.405(a) and (d), Tax Code, are amended to read as follows:

(a) An offense under Section 162.403(1), (2), (3), (4), (5), (6), ~~[(7),]~~ or (8) is a Class C misdemeanor.

(d) An offense under Section 162.403~~(7)~~, (22), (23), (24), (25), (26), (27), (28), or (29) is a felony of the third degree.

SECTION 107. (a) Section 141.008(a-1), Local Government Code, as added by **HB 2425**, Acts of the 78th Legislature, Regular Session, 2003, is repealed.

(b) If **HB 2425**, Acts of the 78th Legislature, Regular Session 2003, does not become law, this section has no effect.

SECTION 108. (a) Except as otherwise provided by this or another section, this Act takes effect September 1, 2003.

(b) Sections 14, 36, and 37 of this Act take effect October 1, 2003.

(c) Section 15 of this Act applies only to a tax lien filed on or after the effective date of this Act. A tax lien filed before the effective date of this Act is governed by the law in effect on the date the tax lien is filed, and that law is continued in effect for that purpose.

(d) Sections 2, 4, 5, 7, 8, and 9A of this Act take effect January 1, 2004.

(e) Sections 46, 49, and 58 of this Act take effect January 1, 2004, and apply to reports originally due on or after that date. A report originally due before January 1, 2004, is governed by the law in effect on the date the report is originally due, and that law is continued in effect for that purpose.

(f) Sections 51, 52, 53, 54, 55, 56, 57, and 104 of this Act apply only to a report originally due on or after the effective date of this Act.

(g) Section 156.104(b), Tax Code, as added by Section 38 of this Act, takes effect January 1, 2004.

(h) This Act takes effect July 1, 2003, 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 effect on that date, this Act takes effect October 1, 2003.

The change in law made by this Act does not affect taxes imposed before the effective date of this Act, and the law in effect before the effective date of this Act is continued in effect for purposes of the liability and collection of those taxes.

Representative McCall moved to adopt the conference committee report on **HB 2424**.

The motion prevailed.

HR 1857 - ADOPTED
(by Alonzo)

Representative Alonzo moved to suspend all necessary rules to take up and consider at this time **HR 1857**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 1857, Honoring Del Rio native Daniel Omar Ramón on his 24th birthday.

HR 1857 was adopted without objection.

On motion of Representative Noriega, the names of all the members of the house were added to **HR 1857** as signers thereof.

HR 1803 - ADOPTED
(by Hill)

The following privileged resolution was laid before the house:

HR 1803

BE IT RESOLVED by the House of Representatives of the State of Texas, 78th Legislature, Regular Session, 2003, That House Rule 13, Section 9(a), be suspended in part as provided by House Rule 13, Section 9(f), to enable the conference committee appointed to resolve the differences on **HB 3184**, relating

to the financing, construction, improvement, maintenance, and operation of toll facilities by the Texas Department of Transportation, to consider and take action on the following matter:

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

SECTION 78. (a) Subchapter H, Chapter 201, Transportation Code, is amended by adding Section 201.6011 to read as follows:

Sec. 201.6011. INTERNATIONAL TRADE CORRIDOR PLAN. (a) To the extent possible, the department shall coordinate with appropriate entities to develop an integrated international trade corridor plan. The plan must:

(1) include strategies and projects to aid the exchange of international trade using the system of multiple transportation modes in this state; and

(2) assign priorities based on the amount of international trade, measured by weight and value, using the transportation systems of this state, including:

(A) border ports of entry;

(B) commercial ports;

(C) inland ports;

(D) highways;

(E) pipelines;

(F) railroads; and

(G) deepwater gulf ports.

(b) The department shall report on the implementation of this section to the presiding officer of each house of the legislature no later than December 1, 2004.

(b) This section takes effect September 1, 2003.

SECTION 79. (a) Section 456.022, Transportation Code, is amended to read as follows:

Sec. 456.022. FORMULA ALLOCATION [BY CATEGORIES]. The commission shall adopt rules establishing a formula allocating funds among individual eligible public transportation providers. The formula may take into account a transportation provider's performance, the number of its riders, the need of residents in its service area for public transportation, population, population density, land area, and other factors established by the commission.

[Under the formula program the commission shall allocate:

(1) 50 percent of the money to municipalities that are:

[(A) designated recipients in urbanized areas or transit providers eligible under Section 456.003 and not served by a transit authority; and

[(B) designated recipients that are not included in a transit authority but are located in urbanized areas that include one or more transit authorities and received state transit funding during the biennium that ended August 31, 1997; and

(2) 50 percent of the money to designated recipients in nonurbanized areas.]

(b) Section 456.024, Transportation Code, is repealed.

(c) This section takes effect September 1, 2004.

Explanation: These additions are necessary to allow the Texas Transportation Commission to establish a formula for distribution of state grants to public transportation providers and to allow the Texas Department of Transportation to develop an international trade corridor plan to aid the exchange of international trade.

HR 1803 was adopted.

HB 3184 - 24 HOUR LAYOUT RULE SUSPENDED

Representative Hill moved to suspend Rule 13, Section 10 of the house rules to consider the conference committee report on **HB 3184** which was ineligible for consideration at this time.

The motion prevailed.

HB 3184 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Hill submitted the following conference committee report on **HB 3184** :

Austin, Texas, May 31, 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 3184** 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.

Barrientos
Shapleigh
Lindsay

Hill
Harper-Brown
Hamric
Garza

On the part of the senate

On the part of the house

HB 3184, A bill to be entitled An Act relating to the financing, construction, improvement, maintenance, and operation of toll facilities by the Texas Department of Transportation.

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

SECTION 1. Section 201.112(a), Transportation Code, is amended to read as follows:

(a) The commission may by rule establish procedures for the informal resolution of a claim arising out of a contract described by:

- (1) Section 22.018;
- (2) Chapter 223; ~~or~~
- (3) Chapter 361; or
- (4) Chapter 2254, Government Code.

SECTION 2. The heading to Chapter 361, Transportation Code, is amended to read as follows:

CHAPTER 361. STATE HIGHWAY [TEXAS] TURNPIKE
PROJECTS [AUTHORITY]

SECTION 3. Sections 361.001(2), (3), (4), and (5), Transportation Code, are amended to read as follows:

(2) [~~"Board" means the board of directors of the authority.~~

~~[(3)] "Owner" includes a person having title to or an interest in any property, rights, easements, and interests authorized to be acquired under this chapter.~~

(3) [(4)] "Turnpike project" means a toll highway constructed, maintained, or operated under this chapter as part of the state highway system and any improvement, extension, or expansion to the highway and includes:

(A) a facility to relieve traffic congestion and promote safety;

(B) a bridge, tunnel, overpass, underpass, interchange, entrance plaza, approach, toll house, service road, ramp, or service station;

(C) an administration, storage, or other building the department [authority] considers necessary to operate the project;

(D) property rights, easements, and interests the department [authority] acquires to construct or operate the project;

(E) a parking area or structure, rest stop, park, and any other improvement or amenity the department [authority] considers necessary, useful, or beneficial for the operation of a turnpike project; and

(F) a toll-free facility that is appurtenant to and necessary for the efficient operation of a turnpike project, including a service road, access road, ramp, interchange, bridge, or tunnel.

(4) [(5)] "Regional tollway authority" means a regional tollway authority created under Chapter 366.

SECTION 4. The heading to Subchapter B, Chapter 361, Transportation Code, is amended to read as follows:

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS [TEXAS TURNPIKE
AUTHORITY]

SECTION 5. Section 361.031, Transportation Code, as amended by Chapters 920 and 1237, Acts of the 77th Legislature, Regular Session, 2001, is reenacted and amended to read as follows:

Sec. 361.031. TEXAS TURNPIKE AUTHORITY. (a) The Texas Turnpike Authority is a division of the Texas Department of Transportation. The [that has full] authority is responsible for promoting and coordinating the development of turnpike projects under this chapter. The commission and the director shall assign duties to [exercise all powers granted to it under this chapter. Powers granted to the department under this chapter and Chapter 362 to study, design, construct, operate, expand, enlarge, or extend a turnpike project as a part of the state highway system shall be exercised by the department acting by and through] the authority and other offices of the department as appropriate for the proper administration of this chapter and other law.

(b) The exercise by the department [authority] of the powers conferred by this chapter in the construction, operation, and maintenance of a turnpike project is:

(1) in all respects for the benefit of the people of this state, for the increase of their commerce and prosperity, and for the improvement of their health and living conditions and public safety; and

(2) an essential governmental function of the state.

SECTION 6. Section 361.042, Transportation Code, is redesignated as Section 361.032, Transportation Code, and amended to read as follows:

Sec. 361.032 [~~361.042~~]. GENERAL POWERS AND DUTIES. (a) The commission [~~board~~] shall[~~:-~~

~~[(1) on its own initiative or at the request of the commission, consider, study, plan, and develop turnpike projects under this chapter;~~

~~[(2) adopt rules for the implementation and administration of this chapter [regulation of its affairs and the conduct of its business; and~~

~~[(3) undertake such other duties as are delegated to it by the commission].~~

(b) The department [~~authority~~] may:

(1) construct, maintain, repair, and operate turnpike projects in this state;

(2) acquire, hold, and dispose of property in the exercise of its powers and the performance of its duties under this chapter;

(3) with the approval of the governor and the commission, enter into contracts or operating agreements with similar authorities or agencies of another state, including a state of the United Mexican States;

(4) enter into contracts or agreements necessary or incidental to its duties and powers under this chapter;

(5) employ consulting engineers, accountants, construction and financial experts, superintendents, managers, and other employees and agents the department [~~authority~~] considers necessary and set their compensation;

~~[(6) employ attorneys to advance or defend legal actions pertaining to the division's activities, notwithstanding any other law to the contrary, including Section 402.0212, Government Code;~~

~~[(7) receive grants for the construction of a turnpike project and receive contributions of money, property, labor, or other things of value from any source to be used for the purposes for which the grants or contributions are made;~~

~~[(8) notwithstanding Chapter 2113, Government Code, adopt and enforce rules not inconsistent with this chapter for the use of any turnpike project, including rules establishing speed limits and maximum allowable vehicle and load weight limits for turnpike projects;~~

~~[(9) engage in marketing, advertising, and other activities to promote the development and use of turnpike projects and may enter into contracts or agreements necessary to procure marketing, advertising, or other promotional services from outside service providers;~~

~~[(10) with the concurrence of the commission, form, develop, or utilize a corporation created under Chapter 431 for the promotion and development of turnpike projects;] and~~

~~[(11) do all things necessary or appropriate to carry out the powers expressly granted by this chapter.~~

SECTION 7. Section 361.054, Transportation Code, is redesignated as Section 361.033, Transportation Code, and amended to read as follows:

Sec. 361.033 [~~361.054~~]. AUDIT. Notwithstanding any other law to the contrary, the department [~~authority~~] shall have an independent certified public accountant audit the department's [~~authority's~~] books and accounts for activities under this chapter at least annually. The audit shall be conducted in accordance with the requirements of any trust agreement securing bonds issued under this chapter that is in effect at the time of the audit. The cost of the audit may be treated as part of the cost of construction or operation of a turnpike project. This section does not affect the ability of a state agency to audit the department's [~~authority's~~] books and accounts.

SECTION 8. The heading to Subchapter C, Chapter 361, Transportation Code, is amended to read as follows:

SUBCHAPTER C. DEVELOPMENT [~~APPROVAL~~] OF TURNPIKE PROJECTS

SECTION 9. Section 361.101, Transportation Code, is amended to read as follows:

Sec. 361.101. DETERMINATION OF TURNPIKE PROJECTS. The department [~~authority~~] may:

- (1) construct, maintain, repair, and operate a turnpike project to:
 - (A) facilitate vehicular traffic throughout this state;
 - (B) promote the agricultural and industrial development of this state;
 - (C) effect traffic safety; or
 - (D) improve connections between highways of this state, adjoining states, and the United Mexican States; and
- (2) at any time determine to undertake a turnpike project, except that the commission by order must approve [~~the location of the project before~~] final designation.

SECTION 10. Section 361.103, Transportation Code, is amended to read as follows:

Sec. 361.103. APPLICATION OF OTHER LAW. All other law applicable to the department, the commission, or the state highway system shall apply to the development, construction, maintenance, and operation of a turnpike project under this chapter unless in conflict with a provision of this chapter. [~~ENVIRONMENTAL REVIEW. (a) The authority by rule shall provide for the authority's environmental review of turnpike projects. The rules must provide for:~~

- ~~(1) public comment on environmental reviews of turnpike projects, including the types of projects for which public hearings are required, and a procedure for requesting a public hearing on an environmental review for which a public hearing is not required;~~
- ~~(2) the environmental factors and impacts the authority will evaluate in its environmental reviews; and~~
- ~~(3) environmental review of alternate routes for a proposed turnpike project.~~

~~[(b) The environmental review of a turnpike project must be conducted before the location or alignment of the project is adopted.~~

~~[(e) The commission must approve each environmental review under this section before construction of a turnpike project begins.~~

~~[(d) At least once during each five year period, the authority, after a public hearing, shall review the rules relating to environmental review and make appropriate changes.]~~

SECTION 11. Subchapter C, Chapter 361, Transportation Code, is amended by adding Section 361.104 to read as follows:

Sec. 361.104. ENTRANCES AND EXITS OF TURNPIKE PROJECT.
The department shall:

(1) designate the location of and establish, limit, and control the entrances and exits of a turnpike project as considered necessary or desirable to ensure the proper operation and maintenance of the project; and

(2) prohibit entrance to a project at any place not designated as an entrance.

SECTION 12. Section 361.131, Transportation Code, is amended to read as follows:

Sec. 361.131. POWERS AND PROCEDURES OF DEPARTMENT
~~[AUTHORITY] IN ACQUIRING PROPERTY.~~ Except as otherwise provided by this chapter, the department ~~[authority, acting by and through the board,]~~ has the same powers and may use the same procedures:

(1) in acquiring property under this chapter as the commission or the department in acquiring property under Subchapter D, Chapter 203; and

(2) in disposing of surplus property acquired under this chapter as the commission or the department under Subchapter B, Chapter 202.

SECTION 13. Section 361.132, Transportation Code, is amended to read as follows:

Sec. 361.132. ACQUISITION OF PROPERTY. (a) The department ~~[authority]~~ may acquire, in the name of the state, public or private real property it determines necessary or convenient for the construction, expansion, enlargement, extension, improvement, or operation of a turnpike project or for otherwise carrying out this chapter.

(b) The real property the department ~~[authority]~~ may acquire under this subchapter includes:

(1) public parks, playgrounds, or reservations;

(2) parts of or rights in public parks, playgrounds, or reservations;

(3) rights-of-way;

(4) property rights, including:

(A) a right of ingress or egress; and

(B) a reservation right in real property that restricts or prohibits for

not more than seven years the:

(i) addition of a new improvement on the real property;

(ii) addition to or modification of an existing improvement on

the real property; or

(iii) subdivision of the real property;

- (5) franchises;
- (6) easements; and
- (7) other interests in real property.

(c) The department [~~authority~~] may acquire the real property by any method, including purchase and condemnation. The department [~~authority~~] may purchase public or private real property on the terms and at the price the department [~~authority~~] and the owner consider reasonable.

(d) Property necessary or convenient for the construction or operation of a turnpike project under Subsection (a) includes an interest in real property, a property right, or materials that the department [~~authority~~] determines are necessary or convenient to:

- (1) protect a turnpike project;
- (2) drain a turnpike project;
- (3) divert a stream, river, or other watercourse from the right-of-way of a turnpike project;
- (4) store materials or equipment used in the construction or maintenance of a turnpike project;
- (5) provide a location for an ancillary facility that generates revenue for use in the construction, maintenance, or operation of a turnpike project, including a gas station, garage, store, hotel, or restaurant;
- (6) construct or operate a warehouse, toll house, toll plaza, service station, or other facility used in connection with the construction, maintenance, or operation of a turnpike project;
- (7) [~~(6)~~] lay out, construct, or maintain a roadside park;
- (8) [~~(7)~~] lay out, construct, or maintain a parking lot that will contribute to the maximum use of a turnpike project with the least possible congestion;
- (9) [~~(8)~~] mitigate an adverse environmental effect that directly results from the construction or maintenance of a turnpike project; or
- (10) [~~(9)~~] accomplish any other purpose related to the location, construction, improvement, maintenance, beautification, preservation, or operation of a turnpike project.

(e) The department [~~authority~~] shall comply with all relocation assistance procedures applicable to the department in connection with any displacement of owners or tenants as a consequence of the department's [~~authority's~~] acquisition of real property under this chapter.

(f) The department [~~authority~~] may acquire timber, earth, stone, gravel, or other materials as necessary to carry out a purpose under this chapter.

SECTION 14. Sections 361.133(b) and (c), Transportation Code, are amended to read as follows:

(b) The governing body of a political subdivision or public agency may without advertising convey title to or rights or easements in real property the department [~~authority~~] needs in connection with the construction or operation of a turnpike project.

(c) Notwithstanding any law to the contrary, a political subdivision or a state agency may lease, lend, grant, or convey to the department [~~authority~~] at its request real property, including highways and other real property already devoted

to public use, that may be necessary or appropriate to accomplish the department's ~~[authority's]~~ purposes. The political subdivision or state agency may lease, lend, grant, or convey the property:

(1) on terms the subdivision or agency determines reasonable and fair; and

(2) without advertisement, court order, or other action or formality other than the regular and formal action of the subdivision or agency concerned.

SECTION 15. Section 361.134, Transportation Code, is amended to read as follows:

Sec. 361.134. DESCRIPTION OF REAL PROPERTY. Real property acquired by the department under this chapter ~~[authority]~~ shall be described so as to locate the boundary line of the property with reference to:

(1) lot and block lines and corners of all existing and recorded subdivision properties, if applicable; or

(2) survey lines and corners.

SECTION 16. Section 361.135, Transportation Code, is amended to read as follows:

Sec. 361.135. CONDEMNATION OF REAL PROPERTY. (a) The ~~[board, with the concurrence of the]~~ commission^[7] may approve the acquisition of ~~[acquire]~~ public or private real property in the name of the state by the exercise of the power of condemnation under the laws applicable to the exercise of that power on property for public use if:

(1) the department ~~[authority]~~ and the owner cannot agree on a reasonable price for the property; or

(2) the owner is legally incapacitated, absent, unknown, or unable to convey title.

(b) The ~~[board, with the concurrence of the]~~ commission^[7] may approve the condemnation of ~~[condemn]~~ real property that the commission ~~[authority]~~ determines is:

(1) necessary or convenient for the construction or operation of ~~[appropriate to construct or to efficiently operate]~~ a turnpike project, as described by Section 361.132(d);

(2) necessary to restore public or private property damaged or destroyed, including property necessary or convenient to mitigate an environmental effect that directly results from the construction, operation, or maintenance of a turnpike project;

(3) necessary for access, approach, service, and interchange roads;

(4) necessary to provide proper drainage and ground slope for a turnpike project; or

(5) necessary otherwise to carry out this chapter.

(c) ~~[The authority may construct a supplemental facility only on real property the authority purchases.]~~

~~(d)~~ The court having jurisdiction of a condemnation proceeding may:

(1) make orders as are just to the department ~~[authority]~~ and the owners of the real property; and

(2) require an undertaking or other security to secure the owners against any loss or damage by reason of the department's [~~board's~~] failure to accept and pay for the real property.

(d) [~~(e)~~] An undertaking or security under Subsection (c)(2) [~~(d)(2)~~] or an act or obligation of the department [~~authority~~] or the commission [~~board~~] does not impose any liability on the state, the department [~~authority~~], or the commission [~~board~~] except liability that may be paid from the money authorized by this chapter.

SECTION 17. Section 361.136, Transportation Code, is amended to read as follows:

Sec. 361.136. SEVERANCE OF REAL PROPERTY. (a) If a turnpike project severs an owner's real property, the department [~~authority~~] shall pay:

- (1) the value of the property acquired; and
- (2) the damages to the remainder of the owner's property caused by the severance, including damages caused by the inaccessibility of one tract from the other.

(b) The department [~~authority~~] may negotiate for and purchase the severed real property or either part of the severed real property if the department [~~authority~~] and the owner agree on terms for the purchase.

SECTION 18. Sections 361.137(a), (b), (c), and (d), Transportation Code, are amended to read as follows:

(a) The department [~~authority~~] may file a declaration of taking with the clerk of the court:

- (1) in which the department [~~authority~~] files a condemnation petition under Chapter 21, Property Code; or
- (2) to which the case is assigned.

(b) The department [~~authority~~] may file the declaration of taking concurrently with or subsequent to the petition but may not file the declaration after the special commissioners have made an award in the condemnation proceeding.

(c) The declaration of taking must include:

- (1) a specific reference to the legislative authority for the condemnation;
- (2) a description and plot plan of the real property to be condemned, including the following information if applicable:
 - (A) the municipality in which the property is located;
 - (B) the street address of the property; and
 - (C) the lot and block number of the property;
- (3) a statement of the property interest to be condemned;
- (4) the name and address of each property owner that the department [~~authority~~] can obtain after reasonable investigation and a description of the owner's interest in the property; and
- (5) a statement that immediate possession of all or part of the property to be condemned is necessary for the timely construction of a turnpike project.

(d) A deposit to the registry of the court of an amount equal to the appraised value, as determined by the department [authority], of the property to be condemned must accompany the declaration of taking.

SECTION 19. Sections 361.138(a) and (b), Transportation Code, are amended to read as follows:

(a) Immediately on the filing of a declaration of taking, the department [authority] shall serve a copy of the declaration on each person possessing an interest in the condemned property by a method prescribed by Section 21.016(d), Property Code. The department [authority] shall file evidence of the service with the clerk of the court. On filing of that evidence, the department [authority] may take possession of the property pending the litigation.

(b) If the condemned property is a homestead or a portion of a homestead as defined by Section 41.002, Property Code, the department [authority] may not take possession sooner than the 31st day after the date of service under Subsection (a).

SECTION 20. Section 361.141(a), Transportation Code, is amended to read as follows:

(a) The department [authority] may not pay compensation for public real property, parkways, streets, highways, alleys, or reservations it takes, except for:

- (1) parks and playgrounds; and
- (2) property acquired under restrictions and limitations requiring payment of compensation.

SECTION 21. Section 361.142, Transportation Code, is amended to read as follows:

Sec. 361.142. COVENANTS, CONDITIONS, RESTRICTIONS, OR LIMITATIONS. Covenants, conditions, restrictions, or limitations affecting property acquired in any manner by the department [authority] are not binding against the department [authority] and do not impair the department's [authority's] ability to use the property for a purpose authorized by this chapter. The beneficiaries of the covenants, conditions, restrictions, or limitations are not entitled to enjoin the department [authority] from using the property for a purpose authorized under this chapter, but this section does not affect the right of a person to seek damages to the person's property under Section 17, Article I, Texas Constitution.

SECTION 22. Sections 361.171(a), (b), (c), (d), and (e), Transportation Code, are amended to read as follows:

(a) The commission [authority] by order [resolution] may provide for the issuance of turnpike revenue bonds to pay all or part of the cost of a turnpike project. Each project shall be financed and built by a separate bond issue. The proceeds of a bond issue may be used solely for the payment of the project for which the bonds were issued and may not be divided between or among two or more projects. Each project is a separate undertaking, the cost of which shall be determined separately.

(b) The bonds of each issue:

- (1) must be dated;
- (2) bear interest at the rate or rates authorized by law;

(3) mature at the time or times, not exceeding 40 years from their date or dates, determined by the commission [authority]; and

(4) may be made redeemable before maturity, at the price or prices and under the terms set by the commission [authority] in the proceeding authorizing the issuance of the bonds.

(c) The department [authority] may sell the bonds at public or private sale in the manner and for the price it determines to be in the best interest of the department [authority].

(d) The proceeds of each bond issue shall be disbursed in the manner and under the restrictions, if any, the commission [authority] provides in the order [resolution] authorizing the issuance of the bonds or in the trust agreement securing the bonds.

(e) If the proceeds of a bond issue are less than the turnpike project cost, additional bonds may in like manner be issued to provide the amount of the deficit. Unless otherwise provided in the order [resolution] authorizing the issuance of the bonds or in the trust agreement securing the bonds, the additional bonds are on a parity with and are payable from the same fund without preference or priority of the bonds first issued.

SECTION 23. Section 361.172, Transportation Code, is amended to read as follows:

Sec. 361.172. APPLICABILITY OF OTHER LAWS. (a) Except as provided by Subsection (b), the commission [authority] may issue turnpike revenue bonds or turnpike revenue refunding bonds under this chapter without complying with any other law applicable to the issuance of bonds.

(b) Notwithstanding any other provisions of this chapter, the following laws apply to bonds issued by the commission under this chapter [authority]:

- (1) Chapters 1201, 1202, 1204, and 1371, Government Code; and
- (2) Subchapters A-C, Chapter 1207, Government Code.

SECTION 24. Section 361.173, Transportation Code, is amended to read as follows:

Sec. 361.173. PAYMENT OF BONDS; CREDIT OF STATE NOT PLEDGED. (a) The principal of, interest on, and any redemption premium on bonds issued by the commission under this chapter [authority] are payable solely from:

- (1) the money authorized for their payment under this chapter or other law; and
- (2) the revenue of the turnpike project for which the bonds were issued, including tolls pledged to pay the bonds.

(b) Bonds issued under this chapter do not constitute a debt of the state or a pledge of the faith and credit of the state. Each bond must contain on its face a statement to the effect that:

- (1) the state, the commission, and the department [authority] are not obligated to pay the bond or the interest on the bond from a source other than the amount pledged to pay the bond and the interest on the bond; and
- (2) the faith and credit and the taxing power of the state are not pledged to the payment of the principal of or interest on the bond.

(c) The commission and the department ~~[authority]~~ may not incur financial obligations that cannot be paid from tolls or revenue derived from owning or operating turnpike projects or from money provided by law.

SECTION 25. Section 361.174, Transportation Code, is amended to read as follows:

Sec. 361.174. SOURCES OF PAYMENT OF AND SECURITY FOR TURNPIKE PROJECT BONDS. Notwithstanding any other provisions of this chapter, turnpike project bonds issued by the commission ~~[authority]~~ may:

(1) be payable from and secured by payments made under an agreement with a local governmental entity as provided by Subchapter A, Chapter 362, and may state on their faces any pledge of revenue or taxes and any security for the bonds under the agreement; and

(2) be payable from and secured by money derived from any other source available to the department ~~[authority, other than money derived from a different turnpike project]~~.

SECTION 26. Section 361.175, Transportation Code, is amended to read as follows:

Sec. 361.175. TURNPIKE REVENUE REFUNDING BONDS. (a) The commission ~~[authority]~~ by order ~~[resolution]~~ may provide for the issuance of turnpike revenue refunding bonds to:

(1) refund any outstanding bonds issued under this chapter for a turnpike project, including the payment of any redemption premium on the bonds and any interest accrued as of the date of redemption of the bonds; and

(2) construct improvements, extensions, or enlargements to the turnpike project for which the outstanding bonds were issued.

(b) This chapter, to the extent applicable, governs:

(1) the issuance of the refunding bonds;

(2) the maturities and other details of the bonds;

(3) the rights of the bondholders; and

(4) the rights and obligations of the commission and the department ~~[authority]~~ with respect to the bonds and the bondholders.

(c) The commission ~~[authority]~~ may:

(1) issue refunding bonds in exchange for outstanding bonds; or

(2) sell refunding bonds and use the proceeds to pay or provide for the payment of the outstanding bonds.

SECTION 27. Sections 361.176(a) and (e), Transportation Code, are amended to read as follows:

(a) Bonds issued under this chapter may be secured by a trust agreement between the commission ~~[authority]~~ and a corporate trustee that is a trust company or a bank that has the powers of a trust company.

(e) A trust agreement may:

(1) set forth the rights and remedies of the bondholders and the trustee;

(2) restrict the individual right of action by bondholders as is customary in trust agreements or trust indentures securing corporate bonds and debentures; and

(3) contain provisions the commission [~~authority~~] determines reasonable and proper for the security of the bondholders.

SECTION 28. Section 361.177, Transportation Code, is amended to read as follows:

Sec. 361.177. PROVISIONS PROTECTING AND ENFORCING RIGHTS AND REMEDIES OF BONDHOLDERS. A trust agreement or order [~~resolution~~] providing for the issuance of bonds may contain reasonable provisions to protect and enforce the rights and remedies of the bondholders, including:

(1) covenants stating the duties of the department [~~authority~~] in relation to:

(A) the acquisition of property and the construction, improvement, expansion, maintenance, repair, operation, and insurance of the turnpike project in connection with which the bonds were authorized; and

(B) the custody, safeguarding, and application of money; and

(2) provisions for the employment of consulting engineers in connection with the construction or operation of the turnpike project.

SECTION 29. Section 361.178, Transportation Code, is amended to read as follows:

Sec. 361.178. FURNISHING OF INDEMNIFYING BONDS OR PLEDGE OF SECURITIES. A bank or trust company that has its main office or a branch office in this state and that acts as depository of the proceeds of bonds or of revenue may furnish indemnifying bonds or pledge securities that the department [~~authority~~] requires.

SECTION 30. Sections 361.179(a), (b), (d), (e), and (g), Transportation Code, are amended to read as follows:

(a) The department [~~authority~~] may:

(1) impose tolls for the use of each turnpike project and the different parts or sections of each turnpike project; and

(2) notwithstanding anything in Chapter 202 to the contrary, contract with a person for the use of part of a turnpike project or lease or sell part of a turnpike project, including the right-of-way adjoining the paved portion, for any purpose, including placing on the adjoining right-of-way a gas station, garage, store, hotel, restaurant, railroad tracks, telephone line, telecommunication line, telecommunications facilities and equipment, and electric line, and set the terms for the use, lease, or sale.

(b) The tolls shall be set so that the aggregate of tolls from the turnpike project:

(1) provides a fund sufficient with other revenue and contributions, if any, to pay:

(A) the cost of maintaining, repairing, and operating the project; and

(B) the principal of and interest on the bonds issued for the project as those bonds become due and payable; and

(2) creates reserves for the purposes listed under Subdivision (1).

(d) The tolls and other revenue derived from the turnpike project for which bonds were issued, except the part necessary to pay the cost of maintenance, repair, and operation and to provide reserves for those costs as may be provided in the order ~~[resolution]~~ authorizing the issuance of the bonds or in the trust agreement securing the bonds, shall be set aside at regular intervals as may be provided in the order ~~[resolution]~~ or trust agreement in a sinking fund that is pledged to and charged with the payment of:

- (1) interest on the bonds as it becomes due;
- (2) principal of the bonds as it becomes due;
- (3) necessary charges of paying agents for paying principal and interest;

and

(4) the redemption price or the purchase price of bonds retired by call or purchase as provided by the bonds.

(e) Use and disposition of money to the credit of the sinking fund are subject to the order ~~[resolution]~~ authorizing the issuance of the bonds or to the trust agreement.

(g) Money in the sinking fund, less the reserve provided by the order ~~[resolution]~~ or trust agreement, if not used within a reasonable time to purchase bonds for cancellation, shall be applied to the redemption of bonds at the applicable redemption price.

SECTION 31. Sections 361.181(a) and (b), Transportation Code, are amended to read as follows:

(a) Notwithstanding Section 361.179 or any other provision of this chapter to the contrary, the department ~~[authority]~~ may pay the expenses of studying the cost and feasibility and any other expenses relating to the preparation and issuance of turnpike revenue bonds for the construction of a proposed turnpike project by:

- (1) using available revenue derived from an existing turnpike project;
- (2) borrowing money and issuing interest-bearing evidences of indebtedness or entering into a loan agreement payable out of available revenue anticipated to be derived from the operation of an existing turnpike project; and
- (3) pledging available revenue anticipated to be derived from the operation of an existing turnpike project~~;~~ and
- ~~(4) using money received from the department for feasibility studies undertaken at the request of the commission.~~

(b) The department's ~~[authority's]~~ use of a financing method under Subsection (a) is subject to the prior approval of the commission.

SECTION 32. Sections 361.182(a), (b), (d), (f), (h), and (i), Transportation Code, are amended to read as follows:

(a) The department may ~~[authority shall]~~ maintain the Texas Turnpike Authority feasibility study fund. The fund is a revolving fund held in trust by a banking institution chosen by the department ~~[authority]~~ or, at the discretion of the department ~~[authority]~~, in trust in the state treasury outside the general revenue fund. The fund shall be kept separate from the money for any project.

(b) The department [authority] may transfer an amount from a surplus fund established for a turnpike project to the feasibility study fund if the remainder of the surplus fund is not less than any minimum amount required by the trust agreement to be retained for that project.

(d) The commission [authority] must authorize a feasibility study. The [; subject to the prior approval of the] commission may delegate this authority to the director.

(f) For a purpose described by Subsection (c), the department [authority] may borrow money and issue promissory notes or other interest-bearing evidences of indebtedness payable out of the feasibility study fund, pledging money in the fund or to be placed in the fund.

~~(h) [Money transferred to the department for the benefit of the authority under Section 8.02, Chapter 1171, Acts of the 75th Legislature, Regular Session, 1997, shall remain in the state treasury and may not be transferred to a private banking institution. This money is exempt from the application of Section 403.095, Government Code, and is not subject to reduction or elimination under any other provision of the Government Code.]~~

~~(i) The commission may authorize [request that the authority conduct] a feasibility study to be funded in accordance with Subchapter E, Chapter 222 [for any proposed turnpike project. The expenses of a study requested by the commission shall be paid for by the department. If the turnpike project is constructed, the department shall be reimbursed for money paid to the authority from the proceeds of turnpike revenue bonds issued for, or other proceeds that may be used for, the construction, improvement, extension, expansion, or operation of the project].~~

SECTION 33. Section 361.183(b), Transportation Code, is amended to read as follows:

(b) Money spent under Subsection (a) for a proposed turnpike project is reimbursable, with the consent of the commission [authority], to the person paying the expenses out of the proceeds from turnpike revenue bonds issued for or other proceeds that may be used for the construction, improvement, extension, expansion, or operation of the project.

SECTION 34. Sections 361.184(a), (b), and (c), Transportation Code, are amended to read as follows:

(a) The department [authority] may maintain the Texas Turnpike Authority project revolving fund. The fund is a revolving fund held in trust by a banking institution chosen by the department [authority] or, at the discretion of the department [authority], in trust in the state treasury outside the general revenue fund. The fund shall be kept separate from other funds of the department [authority].

(b) The commission [board] may transfer, or direct the department [authority] to transfer, into the project revolving fund money from any permissible source, including:

(1) money from a surplus fund established for a turnpike project if the remainder of the surplus fund is not less than any minimum amount required by the trust agreement to be retained for that project;

(2) money received under Subchapter I or from a transfer of a turnpike project under Subchapter H;

(3) money received from the state highway fund; and

(4) contributions or assistance from the United States, another state, a political subdivision of this state, the United Mexican States, or a political subdivision of the United Mexican States.

(c) The department [~~authority~~] may use money in the project revolving fund to:

(1) finance the construction, maintenance, or operation of a turnpike project;

(2) provide matching money necessary for a federal grant or other type of participatory funding;

(3) provide credit enhancement for bonds issued to construct, expand, or improve a turnpike project;

(4) provide security for or payment of future or existing debt for construction, operation, or maintenance of a turnpike project;

(5) borrow money and issue promissory notes or other indebtedness payable out of the fund for any purpose authorized by this chapter; and

(6) provide for any other reasonable purpose that assists in the financings of the department [~~authority~~] as authorized by this chapter.

SECTION 35. Section 361.185, Transportation Code, is amended to read as follows:

Sec. 361.185. TRUST FUND. (a) All money received under this chapter, whether as proceeds from the sale of bonds or as revenue, is a trust fund to be held and applied as provided by this chapter. Notwithstanding any other law, including Section 9, Chapter 1123, Acts of the 75th Legislature, Regular Session, 1997, funds held under this chapter shall be held in trust by a banking institution chosen by the department [~~authority~~] or, at the discretion of the department [~~authority~~], in trust in the state treasury outside the general revenue fund.

(b) The order [~~resolution~~] authorizing the issuance of bonds or the trust agreement securing the bonds shall provide that an officer to whom or a bank or trust company to which the money is paid shall act as trustee of the money and shall hold and apply the money for the purpose of the order [~~resolution~~] or trust agreement, subject to this chapter and the order [~~resolution~~] or trust agreement.

SECTION 36. Section 361.186, Transportation Code, is amended to read as follows:

Sec. 361.186. REMEDIES. Except to the extent restricted by a trust agreement, a holder of a bond issued under this chapter [~~or of a coupon incident to a bond~~] and a trustee under a trust agreement may:

(1) protect and enforce by a legal proceeding a right under:

(A) this chapter or another law of this state;

(B) the trust agreement; or

(C) the order [~~resolution~~] authorizing the issuance of the bond; and

(2) compel the performance of a duty this chapter, the trust agreement, or the order [~~resolution~~] requires the commission or the department [~~authority~~] or an officer of the commission or the department [~~authority~~] to perform, including the imposing of tolls.

SECTION 37. Section 361.187(a), Transportation Code, is amended to read as follows:

(a) The commission [~~authority~~] is exempt from taxation of or assessments on:

- (1) a turnpike project;
- (2) property the department [~~authority~~] acquires or uses under this chapter; or
- (3) income from property described by Subdivision (1) or (2).

SECTION 38. Section 361.188, Transportation Code, is amended to read as follows:

Sec. 361.188. VALUATION OF BONDS SECURING DEPOSIT OF PUBLIC FUNDS. Bonds of the commission [~~authority, when they are accompanied by the unmatured coupons incident to the bonds,~~] may secure the deposit of public funds of the state or a political subdivision of the state to the extent of the lesser of the face value of the bonds or their market value.

SECTION 39. Section 361.189, Transportation Code, is amended to read as follows:

Sec. 361.189. USE OF SURPLUS REVENUE. The commission by order [~~resolution~~] may authorize the use of surplus revenue of a turnpike project to pay the costs of another turnpike project, other than a project financed under Subchapter I, or a toll-free project. The commission may in the order [~~resolution~~] prescribe terms for the use of the revenue, including the pledge of the revenue, but may not take an action under this section that violates, impairs, or is inconsistent with a bond order [~~resolution~~], trust agreement, or indenture governing the use of the surplus revenue.

SECTION 40. Section 361.191, Transportation Code, is amended to read as follows:

Sec. 361.191. EXPENDITURE OF MONEY AUTHORIZED BY COMMISSION [~~DEPARTMENT OF TRANSPORTATION~~]. (a) The commission [~~Texas Department of Transportation~~] may provide for the expenditure of money for the cost of the acquisition, construction, maintenance, or operation of a turnpike project [~~by the authority~~]. The commission [~~department~~] may require the repayment of [~~authority to repay~~] money provided under this section from toll revenue or other sources on terms established by the commission.

(b) Money repaid as required by the commission [~~department~~] shall be deposited to the credit of the fund from which the money was provided. Money deposited as required by this section is exempt from the application of Section 403.095, Government Code.

SECTION 41. Section 361.231(a), Transportation Code, is amended to read as follows:

(a) A contract of the department [authority] for the construction, improvement, repair, or maintenance of a turnpike project shall, ~~to the extent applicable,~~ be awarded under the same terms as a contract of the department under Sections 223.001-223.007, ~~223.009,~~ and 223.009-223.011 ~~223.010~~.

SECTION 42. Sections 361.232(b), (c), and (d), Transportation Code, are amended to read as follows:

(b) The department [authority] may construct a grade separation at an intersection of a turnpike project with a railroad or highway and change the line or grade of a highway to accommodate it to the design of a grade separation. The department [authority] shall pay the cost of a grade separation and any damage incurred in changing a line or grade of a railroad or highway as part of the cost of the turnpike project.

(c) If feasible, the department [authority] shall provide access to properties previously abutting a county or other public road that is taken for a turnpike project and shall pay abutting property owners the expenses or any resulting damages for denial of access to the road.

(d) If the department [authority] finds it necessary to change the location of a portion of a highway, it shall reconstruct the highway at the location the [authority and the] department determines ~~determine~~ to be most favorable. The reconstructed highway must be of substantially the same type and in as good condition as the original highway. The department [authority] shall determine and pay the cost of the reconstruction and any damage incurred in changing the location of a highway as part of the cost of the turnpike project.

SECTION 43. Sections 361.233(a) and (c), Transportation Code, are amended to read as follows:

(a) The department [authority] and its authorized agents may enter any real property, water, or premises in this state to make a survey, sounding, drilling, or examination it determines necessary or appropriate for the purposes of this chapter.

(c) The department [authority] shall make reimbursement for any actual damages to real property, water, or premises that result from an activity described by Subsection (a).

SECTION 44. Sections 361.234(a), (b), (d), (e), (f), and (g), Transportation Code, are amended to read as follows:

(a) The commission [authority] may adopt rules for the installation, construction, maintenance, repair, renewal, relocation, and removal of a public utility facility in, on, along, over, or under a turnpike project.

(b) If the department [authority] determines it is necessary that a public utility facility located in, on, along, over, or under a turnpike project be relocated in the project, removed from the project, or carried along or across the turnpike by grade separation, the owner or operator of the facility shall relocate or remove the facility in accordance with the order of the department [authority]. The department [authority], as a part of the cost of the turnpike project or the cost of operating the project, shall pay the cost of the relocation, removal, or grade separation, including the cost of:

- (1) installing the facility in a new location or locations;

(2) interests in real property, and other rights acquired to accomplish the relocation or removal; and

(3) maintenance of grade separation structures.

(d) The department [authority] and the public utility shall have 90 days from the date the department [authority] provides written notice to the public utility of the need for relocation of utility facilities to reach an agreement concerning the period for completion of the relocation. The 90-day period may be extended by mutual written agreement. If the parties are unable to reach an agreement for the period for completion of the relocation, the department [authority] may specify a reasonable period. The department [authority] may reduce the total costs to be paid by the department [authority] by 10 percent for each 30-day period or portion of a 30-day period that the relocation exceeds the period specified by agreement between the department [authority] and public utility or as reasonably specified by the department [authority] if no agreement is reached, unless the public utility's failure to timely perform results from a material action or inaction by the department [authority] or from conditions that were beyond the reasonable control of the utility. If an owner or operator of a public utility facility does not timely remove or relocate the facility as required under Subsection (b) and the department [authority] relocates the facility, the department [authority] shall relocate the facility in a safe manner that complies with applicable law and utility construction standards recognized by the department [authority] and that minimizes disruption of utility service and shall notify the public utility and other appropriate regulatory agencies of the relocation. A public utility shall reimburse the department [authority] for expenses reasonably incurred for the relocation of a public utility facility unless the failure of the public utility to timely relocate the facility was the result of circumstances beyond the control of the utility, in which case the department [authority] shall pay the cost of the relocation.

(e) Notwithstanding anything in this chapter to the contrary, [:

~~(4)~~ Subchapter B, Chapter 181, Utilities Code, applies to the laying and maintenance of pipes, mains, conductors, and other facilities used for conducting gas by a gas utility described in that subchapter through, under, along, across, and over a turnpike project constructed by the department [authority; and

~~(2) the authority has the powers and duties assigned to the commission by Subchapter B, Chapter 181, Utilities Code].~~

(f) Notwithstanding anything in this chapter to the contrary, Subchapter C, Chapter 181, Utilities Code, applies to the erection, construction, maintenance, and operation of lines and poles owned by an electric utility, as that term is defined by Section 181.041, Utilities Code, over, under, across, on, and along a turnpike project constructed by the department [authority. ~~The authority has the powers and duties delegated to the commission by Subchapter C, Chapter 181, Utilities Code].~~

(g) Notwithstanding anything in this chapter to the contrary, the laws of this state applicable to the use of public roads, streets, and waters of this state by a telephone and telegraph corporation apply to the erection, construction,

maintenance, location, and operation of a line, pole, or other fixture by a telephone and telegraph corporation over, under, across, on, and along a turnpike project constructed by the department [authority].

SECTION 45. Section 361.235(a), Transportation Code, is amended to read as follows:

(a) The department [authority] may use real property owned by the state, including submerged land, that the department [authority] considers necessary for the construction or operation of a turnpike project.

SECTION 46. Section 361.236, Transportation Code, is amended to read as follows:

Sec. 361.236. MAINTENANCE OF TURNPIKE PROJECT. The department [authority] shall maintain and keep in good condition and repair each turnpike project opened to traffic.

SECTION 47. Section 361.238(c), Transportation Code, is amended to read as follows:

(c) The following entities shall consider offering motor vehicle operators the option of using a transponder to pay tolls without stopping, to mitigate congestion at toll locations, to enhance traffic flow, and to otherwise increase the efficiency of operations:

(1) the department [authority];

(2) an entity to which a project authorized by this chapter is transferred;

or

(3) a third party service provider under contract with an entity described by Subdivision (1) or (2).

SECTION 48. Section 361.251, Transportation Code, is amended to read as follows:

Sec. 361.251. TURNPIKE PROJECT A STATE [PUBLIC] HIGHWAY. A turnpike project is a state highway subject to all laws applicable to the regulation and control of traffic on a state [public] highway.

SECTION 49. Section 361.253, Transportation Code, is amended by amending Subsections (b), (d), (e), and (g) and adding Subsection (i) to read as follows:

(b) The department [authority] may impose and collect the administrative fee, so as to recover the cost of collecting the unpaid toll, not to exceed \$100. The department [authority] shall send a written notice of nonpayment to the registered owner of the vehicle at that owner's address as shown in the vehicle registration records of the department by first class mail not later than the 30th day after the date of the alleged failure to pay and may require payment not sooner than the 30th day the date the notice was mailed. The registered owner shall pay a separate toll and administrative fee for each event of nonpayment under Section 361.252.

(d) It is an exception to the application of Subsection (a) or (c) if the registered owner of the vehicle is a lessor of the vehicle and not later than the 30th day after the date the notice of nonpayment is mailed provides to the department [authority] a copy of the rental, lease, or other contract document covering the vehicle on the date of the nonpayment under Section 361.252, with the name and address of the lessee clearly legible. If the lessor provides the

required information within the period prescribed, the department [authority] may send a notice of nonpayment to the lessee at the address shown on the contract document by first class mail before the 30th day after the date of receipt of the required information from the lessor. The lessee of the vehicle for which the proper toll was not paid who is mailed a written notice of nonpayment under this subsection and fails to pay the proper toll and administrative fee within the time specified by the notice of nonpayment commits an offense. The lessee shall pay a separate toll and administrative fee for each event of nonpayment. Each failure to pay a toll or administrative fee under this subsection is a separate offense.

(e) It is an exception to the application of Subsection (a) or (c) if the registered owner of the vehicle transferred ownership of the vehicle to another person before the event of nonpayment under Section 361.252 occurred, submitted written notice of the transfer to the department in accordance with Section 520.023, and, before the 30th day after the date the notice of nonpayment is mailed, provides to the department [authority] the name and address of the person to whom the vehicle was transferred. If the former owner of the vehicle provides the required information within the period prescribed, the department [authority] may send a notice of nonpayment to the person to whom ownership of the vehicle was transferred at the address provided the former owner by first class mail before the 30th day after the date of receipt of the required information from the former owner. The subsequent owner of the vehicle for which the proper toll was not paid who is mailed a written notice of nonpayment under this subsection and fails to pay the proper toll and administrative fee within the time specified by the notice of nonpayment commits an offense. The subsequent owner shall pay a separate toll and administrative fee for each event of nonpayment under Section 361.252. Each failure to pay a toll or administrative fee under this subsection is a separate offense.

(g) The court in which a person is convicted of an offense under this section shall also collect the proper toll and administrative fee and forward the toll and fee to the department for deposit in the depository bank used for that purpose [authority].

(i) The department may contract, in accordance with Section 2107.003, Government Code, with a person to collect the unpaid toll and administrative fee before referring the matter to a court with jurisdiction over the offense.

SECTION 50. Section 361.255(b), Transportation Code, is amended to read as follows:

(b) Any peace officer of this state may seize a stolen or insufficiently funded transponder and return it to the department [authority], except that an insufficiently funded transponder may not be seized sooner than the 30th day after the date the department [authority] has sent a notice of delinquency to the holder of the account.

SECTION 51. Sections 361.256(a), (b), and (d), Transportation Code, are amended to read as follows:

(a) To aid in the collection of tolls and in the enforcement of toll violations, the department ~~[authority]~~ may use automated enforcement technology that it determines is necessary, including automatic vehicle license plate identification photography and video surveillance, by electronic imaging or photographic copying.

(b) Automated enforcement technology approved by the department ~~[authority]~~ under Subsection (a) may be used only for the purpose of producing, depicting, photographing, or recording an image of a license plate attached to the front or rear of a vehicle.

(d) Evidence obtained from technology approved by the department ~~[authority]~~ under Subsection (a) may not be used in the prosecution of an offense other than under Section 361.252 or 361.253.

SECTION 52. The heading to Subchapter H, Chapter 361, Transportation Code, is amended to read as follows:

SUBCHAPTER H. TRANSFER OF TURNPIKE PROJECT ~~[TO COUNTY, MUNICIPALITY, REGIONAL TOLLWAY AUTHORITY, OR LOCAL GOVERNMENT CORPORATION]~~

SECTION 53. Section 361.281, Transportation Code, is amended to read as follows:

Sec. 361.281. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to:

- (1) a county with a population of more than 1.5 million;
- (2) a local government corporation serving a county with a population of more than 1.5 million;
- (3) an adjacent county in a joint turnpike authority with a county with a population of more than 1.5 million;
- (4) a municipality with a population of more than 170,000 that is adjacent to the United Mexican States; ~~or~~
- (5) a regional tollway authority created under Chapter 366; or
- (6) a regional mobility authority created under Section 361.003.

SECTION 54. Section 361.282, Transportation Code, is amended to read as follows:

Sec. 361.282. LEASE, SALE, OR CONVEYANCE OF TURNPIKE PROJECT. (a) The department ~~[authority]~~ may lease, sell, or convey in another manner a turnpike project to a county, a municipality, regional tollway authority, regional mobility authority, or a local government corporation created under Chapter 431.

(b) The ~~[authority, the]~~ commission~~;~~ and the governor must approve the transfer of the turnpike project as being in the best interests of the state and the entity receiving the turnpike project.

SECTION 55. Section 361.283, Transportation Code, is amended to read as follows:

Sec. 361.283. DISCHARGE OF ~~[AUTHORITY'S]~~ OUTSTANDING BONDED INDEBTEDNESS. An agreement to lease, sell, or convey a turnpike project under Section 361.282 must provide for the discharge and final payment or redemption of the department's [authority's] outstanding bonded indebtedness for the project.

SECTION 56. Subchapter H, Chapter 361, Transportation Code, is amended by adding Section 361.284 to read as follows:

Sec. 361.284. REPAYMENT OF DEPARTMENT'S EXPENDITURES. (a) Except as provided by Subsection (b), an agreement to lease, sell, or convey a turnpike project under Section 361.282 must provide for the repayment of any expenditures of the department for the design, construction, operation, and maintenance of the project that have not been reimbursed with the proceeds of bonds issued for the project.

(b) The commission may waive repayment of all or a portion of the expenditures if it finds that the transfer will result in substantial net benefits to the state, the department, and the public that equal or exceed the amount of repayment waived.

SECTION 57. Section 361.285(a), Transportation Code, is amended to read as follows:

(a) An agreement for the lease, sale, or conveyance of a turnpike project under this subchapter shall be submitted to the attorney general for approval as part of the records of proceedings relating to the issuance of bonds of the county, municipality, regional tollway authority, regional mobility authority, or local government corporation.

SECTION 58. Section 361.301, Transportation Code, is amended to read as follows:

Sec. 361.301. AGREEMENTS WITH PUBLIC OR PRIVATE ENTITIES TO CONSTRUCT, MAINTAIN, REPAIR, AND OPERATE TURNPIKE PROJECTS. (a) Notwithstanding Section 361.231 and Subchapter A, Chapter 2254, Government Code, the department [The authority] may enter into an agreement with a public or private entity, including a toll road corporation, to permit the entity, independently or jointly with the department [authority], to construct, maintain, repair, and operate turnpike projects.

(b) The department [authority] may authorize the investment of public and private money, including debt and equity participation, to finance a function described by this section.

SECTION 59. Section 361.302, Transportation Code, is amended to read as follows:

Sec. 361.302. EXCLUSIVE DEVELOPMENT AGREEMENTS WITH ~~[PUBLIC OR]~~ PRIVATE ENTITIES. (a) Notwithstanding Subchapter A, Chapter 2254, Government Code, the department [The authority] may use an exclusive development agreement with a private entity to construct, maintain, repair, operate, extend, or expand a turnpike project. An exclusive development agreement may include the functions of design, construction, and operation in

any combination and may use any constitutionally permissible source of funds without restriction on the number of exclusive development agreements that the department may enter.

(b) The project may be financed in whole or in part by invested private funding ~~[or by public and private funding].~~

(c) The department ~~[authority]:~~

(1) has broad discretion to negotiate the terms of financing; and

(2) may negotiate provisions relating to professional and consulting services with regard to the turnpike project and to the construction, maintenance, and operation of the project, including provisions for combining those services.

(d) Until a final contract is executed relating to a proposed project, the following information is confidential, is not subject to disclosure, inspection, or copying under Chapter 552, Government Code, and is not subject to disclosure, discovery, subpoena, or other means of legal compulsion for its release:

(1) all or part of a proposal submitted by a private entity for a turnpike project under an exclusive development agreement;

(2) supplemental information or materials submitted by a private entity in connection with a proposal for a turnpike project under an exclusive development agreement; and

(3) information created or collected by the department or its agents during consideration of a proposal for a turnpike project under an exclusive development agreement.

(e) An agreement under this section is not subject to the requirements of Section 361.231 except that the process by which a private entity is chosen by the department to enter an agreement under this section is subject to the extent possible to Section 361.050.

SECTION 60. Subchapter I, Chapter 361, Transportation Code, is amended by adding Section 361.3021 to read as follows:

Sec. 361.3021. ADVERTISING. Before entering into an agreement under Section 361.302, the department shall publish notice in the Texas Register requesting competitive proposals for the agreement.

SECTION 61. Subchapter I, Chapter 361, Transportation Code, is amended by adding Section 361.3025 to read as follows:

Sec. 361.3025. PERFORMANCE AND PAYMENT SECURITY. (a) Notwithstanding Section 223.006 and the requirements of Subchapter B, Chapter 2253, Government Code, the department shall require a private entity entering into an exclusive development agreement under Section 361.302 to provide performance and payment bonds or alternative forms of security in an amount sufficient to protect:

(1) the department and ensure the proper performance of the agreement;
and

(2) payment bond beneficiaries who have a direct contractual relationship with the private entity or a subcontractor of the private entity to supply labor or material.

(b) The performance and payment bonds or alternative forms of security shall be in an amount equal to the cost of constructing the project.

(c) If the department determines that it is impracticable for a private entity to provide security in the amount described by Subsection (b), the department shall set the amount of the bonds or the alternative forms of security.

(d) A payment or performance bond or alternative form of security is not required for the portion of an agreement that includes only design or planning services, the performance of preliminary studies, or the acquisition of real property.

(e) The amount of the payment security must not be less than the amount of the performance security.

(f) In addition to performance and payment bonds, the department may require the following alternate forms of security:

(1) a cashier's check drawn on a financial entity specified by the department;

(2) United States bonds or notes;

(3) irrevocable bank letter of credit; or

(4) any other form of security determined suitable by the department.

(g) The commission by rule shall prescribe requirements for alternate forms of security provided under this section.

SECTION 62. Section 361.303, Transportation Code, is amended to read as follows:

Sec. 361.303. OWNERSHIP OF TURNPIKE PROJECT. (a) A turnpike project that is the subject of a development agreement with a private entity, including the facilities acquired or constructed on the project, is public property and belongs to the department [~~authority~~].

(b) Notwithstanding Subsection (a), the department [~~authority~~] may enter into an agreement that provides for the lease of rights-of-way, the granting of easements, the issuance of franchises, licenses, or permits, or any lawful uses to enable a private entity to construct, operate, and maintain a turnpike project, including supplemental facilities. At the termination of the agreement, the turnpike project, including the facilities, is to be in a state of proper maintenance as determined by the department [~~authority~~] and shall be returned to the department [~~authority~~] in satisfactory condition at no further cost.

SECTION 63. Section 361.304, Transportation Code, is amended to read as follows:

Sec. 361.304. LIABILITY FOR PRIVATE OBLIGATIONS. The department [~~authority~~] may not incur a financial obligation for a private entity that constructs, maintains, or operates a turnpike project. The state[, ~~the authority,~~] or a political subdivision of the state is not liable for any financial or other obligations of a turnpike project solely because a private entity constructs, finances, or operates any part of the project.

SECTION 64. Section 361.305, Transportation Code, is amended to read as follows:

Sec. 361.305. TERMS OF PRIVATE PARTICIPATION. The department [~~authority~~] shall negotiate the terms of private participation in a turnpike project, including:

- (1) methods to determine the applicable cost, profit, and project distribution between the private equity investors and the department [~~authority~~];
- (2) reasonable methods to determine and classify toll rates;
- (3) acceptable safety and policing standards; and
- (4) other applicable professional, consulting, construction, operation, and maintenance standards, expenses, and costs.

SECTION 65. Section 361.306, Transportation Code, is amended to read as follows:

Sec. 361.306. RULES, PROCEDURES, AND GUIDELINES GOVERNING SELECTION AND NEGOTIATING PROCESS. (a) The commission [~~authority~~] shall adopt rules, procedures, and guidelines governing selection and negotiations to promote fairness, obtain private participants in turnpike projects, and promote confidence among those participants. The rules must contain criteria relating to the qualifications of the participants and the award of the contracts and may authorize the department [~~authority~~] to impose a fee for reviewing proposals for private involvement in a turnpike project.

(b) The department may pay a private entity that submits an unsuccessful response to a request for proposals a stipulated amount of the final contract price for any costs incurred in preparing the proposal. The stipulated amount must be stated in the request for proposals and may not exceed one-third of the value of any work product contained in the proposal that can, as determined by the department, be used by the department in the performance of its functions. After payment of the stipulated amount, the department may make use of any work product contained in the proposal, including the technologies, techniques, methods, processes, and information contained in the project design.

(c) The department [~~authority~~] shall have up-to-date procedures for participation in negotiations on turnpike projects.

(d) [~~(c)~~] The department [~~authority~~] has exclusive judgment to determine the terms of an agreement.

(e) [~~(d)~~] The department [~~authority~~] shall include the attorney general or the attorney general's designated representative in a negotiation with a private participant.

SECTION 66. Section 361.307, Transportation Code, is amended to read as follows:

Sec. 361.307. AGREEMENTS WITH PRIVATE ENTITIES AND OTHER GOVERNMENTAL AGENCIES. The department [~~authority~~] and a private entity jointly may enter into an agreement with another governmental agency or entity, including a federal agency, an agency of this or another state, including the United Mexican States or a state of the United Mexican States, or a political subdivision, to independently or jointly provide services, to study the feasibility of a turnpike project, or to finance, construct, operate, and maintain a turnpike project.

SECTION 67. Section 361.331(a), Transportation Code, is amended to read as follows:

(a) After the department [~~authority~~] conducts a public hearing in each affected county, [~~and with the approval of~~] the commission[~~, the authority~~] may designate as a pooled turnpike project two or more turnpike projects that are wholly or partly located in the territory of:

- (1) a metropolitan planning organization; or
- (2) two adjacent districts of the department.

SECTION 68. Section 361.333, Transportation Code, is amended to read as follows:

Sec. 361.333. ISSUANCE OF TURNPIKE REVENUE BONDS; PLEDGE OF PROJECT REVENUE. Subject to this chapter, the commission [~~authority~~] may:

- (1) provide by order [~~resolution~~] for the issuance of turnpike revenue bonds to pay all or part of the cost of a pooled turnpike project; and
- (2) pledge all or part of the revenue of the project.

SECTION 69. Sections 361.334(a) and (e), Transportation Code, are amended to read as follows:

(a) The commission [~~authority~~] by order [~~resolution~~] may issue turnpike revenue refunding bonds to:

- (1) refund any outstanding bonds issued under this chapter for a pooled turnpike project, including any redemption premium on the bonds and any interest accrued as of the date of redemption of the bonds; and
- (2) construct an improvement, extension, or enlargement to a pooled turnpike project.

(e) The commission [~~authority~~] may:

- (1) issue refunding bonds in exchange for outstanding bonds; or
- (2) sell refunding bonds and use the proceeds to redeem outstanding bonds.

SECTION 70. Section 361.335, Transportation Code, is amended to read as follows:

Sec. 361.335. ISSUANCE OF BONDS AND PLEDGE OF TURNPIKE PROJECT REVENUE WITHOUT REGARD TO WHETHER BONDS ARE REFUNDED. Without regard to whether bonds are refunded, the commission [~~authority~~] by order [~~resolution~~] may:

- (1) issue bonds, of parity or otherwise, to:
 - (A) pay all or part of the cost of a pooled turnpike project; or
 - (B) construct an improvement, extension, or enlargement to a pooled turnpike project; and
- (2) pledge all or part of the revenue of the pooled turnpike project to the payment of the bonds.

SECTION 71. Sections 362.003(b) and (c), Transportation Code, are amended to read as follows:

(b) This chapter is cumulative of all laws affecting the commission, the department, and the local governmental entities, except that in the event any other law conflicts with this chapter, the provisions of this chapter prevail. Chapters 1201 and 1371, Government Code, and Subchapters A, B, and C, Chapter 1207, Government Code, apply to bonds issued by the commission under this chapter.

(c) ~~The department may [This chapter is cumulative of all laws affecting the authority, and the authority is authorized to] enter into all agreements necessary or convenient to effectuate the purposes of this chapter. [Particularly, but not by way of limitation, the provisions of Chapters 1201 and 1371, Government Code, and Subchapters A-C, Chapter 1207, Government Code, and Chapter 361 are applicable to the bonds issued by the authority under this chapter.]~~

SECTION 72. Sections 362.007(a) and (b), Transportation Code, are amended to read as follows:

(a) Under authority of Section 52, Article III, Texas Constitution, a local governmental entity other than a nonprofit corporation may, upon the required vote of the qualified voters, in addition to all other debts, issue bonds or enter into and make payments under agreements with the department ~~[authority]~~, not to exceed 40 years in term, in any amount not to exceed one-fourth of the assessed valuation of real property within the local governmental entity, except that the total indebtedness of any municipality shall never exceed the limits imposed by other provisions of the constitution, and levy and collect taxes to pay the interest thereon and provide a sinking fund for the redemption thereof, for the purposes of construction, maintenance, and operation of turnpike projects of the department ~~[authority]~~, or in aid thereof.

(b) In addition to Subsection (a), a local governmental entity may, within any applicable constitutional limitations, agree with the department ~~[authority]~~ to issue bonds or enter into and make payments under an agreement to construct, maintain, or operate any portion of a turnpike project of the department ~~[authority]~~.

SECTION 73. Section 362.008, Transportation Code, is amended to read as follows:

Sec. 362.008. ADDITIONAL AGREEMENTS OF DEPARTMENT ~~[AUTHORITY]~~. The department ~~[authority]~~ may enter into any agreement necessary or convenient to achieve the purposes of this subchapter.

SECTION 74. The heading to Section 545.354, Transportation Code, is amended to read as follows:

Sec. 545.354. ~~AUTHORITY OF [TEXAS TURNPIKE AUTHORITY AND] REGIONAL TOLLWAY AUTHORITIES TO ALTER SPEED LIMITS ON TURNPIKE PROJECTS.~~

SECTION 75. Section 545.354(a)(1), Transportation Code, is amended to read as follows:

(1) In this section, "authority" means ~~[the Texas Turnpike Authority or]~~ a regional tollway authority governed by Chapter 366.

SECTION 76. Section 621.102(a), Transportation Code, is amended to read as follows:

(a) ~~The [Except as provided by Subsection (h), the]~~ commission may set the maximum single axle weight, tandem axle weight, or gross weight of a vehicle, or maximum single axle weight, tandem axle weight, or gross weight of a combination of vehicles and loads, that may be moved over a state highway or a farm or ranch road if the commission finds that heavier maximum weight would

rapidly deteriorate or destroy the road or a bridge or culvert along the road. A maximum weight set under this subsection may not exceed the maximum set by statute for that weight.

SECTION 77. Sections 222.103(i) and (j), 361.005, 361.043, 361.046, 361.0485, 361.049, 361.051, 361.052, 361.053, 361.055, 361.102, 361.184(f), 361.231(b), 361.237, 361.308, 362.001(1), 362.052, 362.053, and 621.102(h), Transportation Code, are repealed.

SECTION 78. (a) Subchapter H, Chapter 201, Transportation Code, is amended by adding Section 201.6011 to read as follows:

Sec. 201.6011. INTERNATIONAL TRADE CORRIDOR PLAN. (a) To the extent possible, the department shall coordinate with appropriate entities to develop an integrated international trade corridor plan. The plan must:

(1) include strategies and projects to aid the exchange of international trade using the system of multiple transportation modes in this state; and

(2) assign priorities based on the amount of international trade, measured by weight and value, using the transportation systems of this state, including:

(A) border ports of entry;

(B) commercial ports;

(C) inland ports;

(D) highways;

(E) pipelines;

(F) railroads; and

(G) deepwater gulf ports.

(b) The department shall report on the implementation of this section to the presiding officer of each house of the legislature no later than December 1, 2004.

(b) This section takes effect September 1, 2003.

SECTION 79. (a) Section 456.022, Transportation Code, is amended to read as follows:

Sec. 456.022. FORMULA ALLOCATION [BY CATEGORIES]. The commission shall adopt rules establishing a formula allocating funds among individual eligible public transportation providers. The formula may take into account a transportation provider's performance, the number of its riders, the need of residents in its service area for public transportation, population, population density, land area, and other factors established by the commission.
~~[Under the formula program the commission shall allocate:~~

~~(1) 50 percent of the money to municipalities that are:~~

~~(A) designated recipients in urbanized areas or transit providers eligible under Section 456.003 and not served by a transit authority; and~~

~~(B) designated recipients that are not included in a transit authority but are located in urbanized areas that include one or more transit authorities and received state transit funding during the biennium that ended August 31, 1997; and~~

~~(2) 50 percent of the money to designated recipients in nonurbanized areas.]~~

(b) Section 456.024, Transportation Code, is repealed.

(c) This section takes effect September 1, 2004.

SECTION 80. 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 Hill moved to adopt the conference committee report on **HB 3184**.

A record vote was requested.

The motion prevailed by (Record 931): 142 Yeas, 1 Nays, 1 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; 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(C); Howard; Hughes; Hunter; Hupp; Isett; Jones, E.; Jones, J.; Keel; Keffer, B.; Keffer, J.; King; Kolkhorst; Kuempel; Laney; Laubenberg; Lewis; Luna; Mabry; Madden; Marchant; Martinez Fischer; McCall; McClendon; McReynolds; Menendez; Mercer; Merritt; Miller; Moreno, J.; Morrison; Mowery; Naishtat; Nixon; Noriega; Oliveira; Olivo; Paxton; Peña; Phillips; Pickett; Pitts; Puente; Quintanilla; Raymond; Reyna; Riddle; Ritter; Rodriguez; Rose; Seaman; Smith, T.; Smith, W.; Smithee; Solis; Solomons; Stick; Swinford; Talton; Taylor; Telford; Thompson; Truitt; Turner; Uresti; Van Arsdale; Villarreal; West; Wise; Wohlgemuth; Wolens; Wong; Woolley; Zedler.

Nays — Canales.

Present, not voting — Mr. Speaker.

Absent — Driver; Escobar; Jones, D.; Krusee; Moreno, P.; Wilson.

(Speaker in the chair)

HR 1850 - ADOPTED
(by Pickett)

The following privileged resolution was laid before the house:

HR 1850

BE IT RESOLVED by the House of Representatives of the State of Texas, 78th Legislature, Regular Session, 2003, That House Rule 13, Section 9(a) be suspended in part as provided by House Rule Section 9(f) to enable the conference committee appointed to resolve the differences on **HB 3442**, relating to certain expenditures and charges of certain governmental entities, to consider and take action on the following matters:

(1) House Rule 13, Sections 9(a)(3) and (4), are suspended to permit the committee to add additional text not included in either the house or senate version of the bill, consisting of the following new section to read as follows:

SECTION 14. IMPOSITION OF CERTAIN FEES. (a) Subchapter B, Chapter 1052, Occupations Code, is amended by adding Section 1052.0541 to read as follows:

Sec. 1052.0541. FEE INCREASE. (a) The fee for the issuance of a certificate of registration under this chapter and the fee for the renewal of a certificate of registration under this chapter is increased by \$200.

(b) Of each fee increase collected, \$50 shall be deposited in the foundation school fund and \$150 shall be deposited in the general revenue fund.

(b) Subchapter B, Chapter 1053, Occupations Code, is amended by adding Section 1053.0521 to read as follows:

Sec. 1053.0521. FEE INCREASE. (a) The fee for the issuance of a certificate of registration under this chapter and the fee for the renewal of a certificate of registration under this chapter is increased by \$200.

(b) Of each fee increase collected, \$50 shall be deposited in the foundation school fund and \$150 shall be deposited in the general revenue fund.

(c) Subchapter D, Chapter 1071, Occupations Code, is amended by adding Section 1071.1521 to read as follows:

Sec. 1071.1521. FEE INCREASE. (a) The fee for the issuance of a certificate of registration to a registered professional land surveyor under this chapter and the fee for the renewal of a certificate of registration for a registered professional land surveyor under this chapter is increased by \$200.

(b) Of each fee increase collected, \$50 shall be deposited in the foundation school fund and \$150 shall be deposited in the general revenue fund.

(c) This section does not apply to state agency employees who are employed by the state as land surveyors.

(d) Subchapter B, Chapter 1152, Occupations Code, is amended by adding Section 1152.053 to read as follows:

Sec. 1152.053. FEE INCREASE. (a) The fee for the registration of a person under this chapter and the fee for the renewal of a registration under this chapter is increased by \$200.

(b) Of each fee increase collected, \$50 shall be deposited in the foundation school fund and \$150 shall be deposited in the general revenue fund.

(e) The change in law made by this section applies only to the issuance or renewal of a certificate of registration under Chapter 1052, 1053, or 1071, Occupations Code, or the issuance or renewal of a registration under Chapter 1152, Occupations Code, on or after the effective date of this article. A certificate of registration or registration issued or renewed before the effective date of this section is governed by the law in effect on the date of the issuance or renewal, and the former law is continued in effect for that purpose.

Explanation: The added text is necessary to increase fees for landscape architects, interior designers, land surveyors, and property tax consultants by \$200, of which \$50 would be deposited in the foundation school fund and \$150 would be deposited in the general revenue fund.

(2) House Rule 13, Sections 9(a)(3) and (4), are suspended to permit the committee to add additional text not included in either the house or senate version of the bill, consisting of the following new section to read as follows:

SECTION 15. STATE AGENCY HUMAN RESOURCES STAFFING AND FUNCTIONS. (a) Subtitle B, Title 6, Government Code, is amended by adding Chapter 670 to read as follows:

CHAPTER 670. HUMAN RESOURCES STAFFING AND FUNCTIONS

Sec. 670.001. DEFINITIONS. In this chapter:

(1) "Human resources employee" does not include an employee whose primary job function is enforcement of Title VI or Title VII of the Civil Rights Act of 1964.

(2) "State agency" means a department, commission, board, office, authority, council, or other governmental entity in the executive branch of government that is created by the constitution or a statute of this state and has authority not limited to a geographical portion of the state. The term does not include a university system or institution of higher education as defined by Section 61.003, Education Code.

Sec. 670.002. HUMAN RESOURCES STAFFING FOR LARGE STATE AGENCIES. A state agency with 500 or more full-time equivalent employees shall adjust the agency's human resources staff to achieve a human resources employee-to-staff ratio of not more than one human resources employee for every 85 staff members.

Sec. 670.003. HUMAN RESOURCES STAFFING FOR MEDIUM-SIZED AND SMALL STATE AGENCIES; OUTSOURCING. (a) The State Council on Competitive Government shall determine the cost-effectiveness of consolidating the human resources functions of or contracting with private entities to perform the human resources functions of state agencies that employ fewer than 500 full-time equivalent employees.

(b) If the council determines that contracting with private entities is cost-effective, the council shall issue a request for proposals for vendors to perform the human resources functions of the agencies.

(c) The council shall determine which human resources functions are subject to the contract and which functions the agency may select to perform itself.

(d) Each agency shall pay for the contracts for human resources functions out of the agency's human resources budget.

(b) Not later than January 1, 2004, each state agency with 500 or more full-time equivalent employees shall comply with the human resources employee-to-staff ratio requirements in Section 670.002, Government Code, as added by this section.

(c) Not later than January 1, 2004, the State Council on Competitive Government shall conduct an initial feasibility study to determine the cost-effectiveness of consolidating the human resources functions of or contracting with private entities to perform human resources functions of state agencies under Section 670.003, Government Code, as added by this section.

Explanation: The added text is necessary to restrict agencies with 500 or more full-time equivalent employees from having human resources staffing that exceeds one for each 85 employees after January 1, 2004, and to allow for a feasibility study to determine the cost effectiveness of consolidating or contracting out for state agencies' human resources functions.

(3) House Rule 13, Sections 9(a)(3) and (4), are suspended to permit the committee to add additional text not included in either the house or senate version of the bill, consisting of the following new section to read as follows:

SECTION 16. AGENCY STAFFING AND PRODUCTIVITY. (a) Effective September 1, 2003, Section 651.004, Government Code, is amended by adding Subsections (c-1) and (d) to read as follows:

(c-1) A state agency in the executive branch of state government that employs more than 100 full-time equivalent employees may not, after March 31, 2004, employ more than one full-time equivalent employee in a management position for every eight full-time equivalent employees that the agency employs in nonmanagerial staff positions. This subsection expires September 1, 2005.

(d) A state agency that believes that the minimum management-to-staff ratios required by this section are inappropriate for that agency may appeal to the Legislative Budget Board. The Legislative Budget Board by rule shall adopt appeal procedures.

(b) Effective September 1, 2004, Section 651.004, Government Code, is amended by adding Subsection (c-2) to read as follows:

(c-2) A state agency in the executive branch of state government that employs more than 100 full-time equivalent employees may not, after August 31, 2005, employ more than one full-time equivalent employee in a management position for every nine full-time equivalent employees that the agency employs in nonmanagerial staff positions. This subsection expires September 1, 2006.

(c) Effective September 1, 2005, Section 651.004, Government Code, is amended by adding Subsection (c-3) to read as follows:

(c-3) A state agency in the executive branch of state government that employs more than 100 full-time equivalent employees may not, after August 31, 2006, employ more than one full-time equivalent employee in a management position for every 10 full-time equivalent employees that the agency employs in nonmanagerial staff positions. This subsection expires September 1, 2007.

(d) Effective September 1, 2006, Section 651.004, Government Code, is amended by adding Subsection (c) to read as follows:

(c) A state agency in the executive branch of state government that employs more than 100 full-time equivalent employees may not employ more than one full-time equivalent employee in a management position for every 11 full-time equivalent employees that the agency employs in nonmanagerial staff positions.

(e) A state agency in the executive branch of government shall achieve the management-to-staff ratio required by Subsection (c), Section 651.004, Government Code, as added by this section, not later than August 31, 2007.

(f) Subchapter K, Chapter 659, Government Code, is amended by adding Section 659.262 to read as follows:

Sec. 659.262. ADDITIONAL COMPENSATION FOR CERTAIN CLASSIFIED STATE EMPLOYEES. (a) In this section, "state agency" means an agency of any branch of state government that employs individuals who are classified under Chapter 654.

(b) To enhance the recruitment of competent personnel for certain classified employee positions, a state agency may provide to a state employee, at the time of the employee's hiring for a classified position, additional compensation in the form of a one-time recruitment payment not to exceed \$5,000. If the employee discontinues employment with the state agency for any reason less than three months after the date of receiving the recruitment payment, the employee shall refund to the state agency the full amount of the recruitment payment. If the employee discontinues employment with the state agency for any reason three months or longer but less than 12 months after the date of receiving the recruitment payment, the employee shall refund to the state agency an amount computed by:

(1) subtracting from 12 months the number of complete calendar months the employee worked after the date of receiving the recruitment payment;

(2) dividing the number of months computed under Subdivision (1) by 12 months; and

(3) multiplying the fraction computed under Subdivision (2) by the amount of the recruitment payment.

(c) To enhance the retention of employees who are employed in certain classified positions that are identified by the chief administrator of a state agency as essential for the state agency's operations, a state agency may enter into a deferred compensation contract with a classified employee to provide to the employee a one-time additional compensation payment not to exceed \$5,000 to be added to the employee's salary payment the month after the conclusion of the 12-month period of service under the deferred compensation contract.

(d) To be eligible to enter into a contract for deferred compensation under Subsection (c), a state employee must have already completed at least 12 months of service in a classified position.

(e) The chief administrator of a state agency shall determine whether additional compensation is necessary under this section on a case-by-case basis, considering:

(1) the criticality of the employee position in the operations of the state agency;

(2) evidence of high turnover rates among employees filling the position or an extended period during which the position is or has in the past been vacant;

(3) evidence of a shortage of employees qualified to fill the position or a shortage of qualified applicants; and

(4) other relevant factors.

(f) Before an agency provides or enters into a contract to provide additional compensation to an employee under this section, the chief administrator of the state agency must certify to the comptroller in writing the reasons why the additional compensation is necessary.

(g) Additional compensation paid to an employee under this section is specifically exempted from any limitation on salary or salary increases prescribed by this chapter.

(g) Subsection (b), Section 656.048, Government Code, is repealed.

Explanation: The added text is necessary to restrict agencies with more than 100 full-time equivalent employees from having more than one manager for every 11 non-managerial full-time equivalent employees after August 31, 2006. The added text also provides for a phase-in period between March 31, 2004, and August 31, 2006. The added text also provides for additional compensation to certain state employees in the form of a one-time recruitment or retention payment not to exceed \$5,000.

HR 1850 was adopted.

HB 3442 - 24 HOUR LAYOUT RULE SUSPENDED

Representative Pickett moved to suspend Rule 13, Section 10 of the house rules to consider the conference committee report on **HB 3442** which was ineligible for consideration at this time.

The motion prevailed.

HB 3442 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Pickett submitted the following conference committee report on **HB 3442** :

Austin, Texas, May 31, 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 3442** 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.

Averitt

Staples

Bivins

Barrientos

Pickett

J. Davis

Isett

McClendon

Hupp

On the part of the senate

On the part of the house

HB 3442, A bill to be entitled An Act relating to certain expenditures and charges of certain governmental entities.

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

SECTION 1. REDUCTION OF EXPENDITURES AND IMPOSITION OF CHARGES GENERALLY. (a) This section applies to any state agency that receives an appropriation under Article VI of the General Appropriations Act.

(b) Notwithstanding any other statute of this state, each state agency to which this section applies is authorized to reduce or recover expenditures by:

(1) consolidating any reports or publications the agency is required to make and filing or delivering any of those reports or publications exclusively by electronic means;

(2) extending the effective period of any license, permit, or registration the agency grants or administers;

(3) entering into a contract with another governmental entity or with a private vendor to carry out any of the agency's duties;

(4) adopting additional eligibility requirements for persons who receive benefits under any law the agency administers to ensure that those benefits are received by the most deserving persons consistent with the purposes for which the benefits are provided; and

(5) providing that any communication between the agency and another person and any document required to be delivered to or by the agency, including any application, notice, billing statement, receipt, or certificate, may be made or delivered by electronic mail or through the Internet.

SECTION 2. TEXAS ANIMAL HEALTH COMMISSION; DUTIES REGARDING RIDING STABLES. (a) The Texas Animal Health Commission shall reduce its expenditures of state money related to regulating equine riding stables.

(b) Chapter 2053, Occupations Code, is repealed.

SECTION 3. ADMINISTRATIVE HEARINGS OF RAILROAD COMMISSION OF TEXAS. Section 102.006, Utilities Code, is amended to read as follows:

Sec. 102.006. ~~[POWERS AND DUTIES OF STATE OFFICE OF]~~ ADMINISTRATIVE HEARINGS IN CONTESTED CASES. (a) The railroad commission by rule shall provide for administrative hearings in contested cases to be conducted by one or more members of the railroad commission, by railroad commission hearings examiners, or by the [The] utility division of the State Office of Administrative Hearings. The rules must provide for a railroad commission hearings examiner or the utility division of the State Office of Administrative Hearings to [shall] conduct each hearing in a contested case that is not conducted by one or more members of the railroad commission. A hearing must be conducted in accordance with the rules and procedures adopted by the railroad commission.

(b) The railroad commission may delegate to a railroad commission hearings examiner or to the utility division of the State Office of Administrative Hearings the authority to make a final decision and to issue findings of fact, conclusions of law, and other necessary orders in a proceeding in which there is not a contested issue of fact or law.

(c) The railroad commission by rule shall define the procedures by which it delegates final decision-making authority under Subsection (b) to a railroad commission hearings examiner or to the utility division of the State Office of Administrative Hearings.

(d) For purposes of judicial review, the [an administrative law judge's] final decision of a railroad commission hearings examiner or an administrative law judge of the State Office of Administrative Hearings in a matter delegated under Subsection (b) has the same effect as a final decision of the railroad commission unless a member of the commission requests formal review of the decision.

(e) The State Office of Administrative Hearings shall charge the railroad commission a fixed annual rate for hearings conducted by the office under this section only if the legislature appropriates money for that purpose. If the legislature does not appropriate money for the payment of a fixed annual rate under this section, the State Office of Administrative Hearings shall charge the railroad commission an hourly rate of not more than \$90 per hour for hearings conducted by the office under this section.

SECTION 4. TEXAS DEPARTMENT OF AGRICULTURE. (a) Section 146.021, Agriculture Code, is amended to read as follows:

Sec. 146.021. DEPARTMENT FACILITIES. The department may receive and hold for processing animals transported in international trade and may establish and collect reasonable fees for yardage, maintenance, feed, medical care, and other necessary expenses incurred in the course of processing those animals. Notwithstanding any other law, the department may use any portion of fees collected under this section that remains after spending the proceeds of the fees to meet other necessary expenses incurred under this section for expenses related to maintenance of or repairs to department facilities.

(b) Section 13.101(a), Agriculture Code, is amended to read as follows:

(a) At least once every four ~~three~~ years, or more often as required by the department, a weight or measure shall be inspected and tested for correctness by a sealer if it:

(1) is kept for sale, sold, or used by a proprietor, agent, lessee, or employee in proving the weight or measure, including the size, quantity, extent, or area, of any item; or

(2) is purchased, offered, or submitted by a proprietor, agent, lessee, or employee for sale, hire, or award.

(c) Section 9(d), Chapter 1033, Acts of the 71st Legislature, Regular Session, 1989 (Article 8614, Vernon's Texas Civil Statutes), is repealed.

(d) This section takes effect September 1, 2003.

SECTION 5. ANIMAL HEALTH COMMISSION. (a) Subchapter C, Chapter 161, Agriculture Code, is amended by adding Section 161.060 to read as follows:

Sec. 161.060. INSPECTION FEES. The commission may charge a fee, as provided by commission rule, for an inspection made by the commission.

(b) This section takes effect September 1, 2003.

SECTION 6. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY. (a) Section 5.701, Water Code, is amended by adding Subsection (r) to read as follows:

(r) The fee for processing a request for an expedited letter from the executive director stating the total depth of surface casing needed during the drilling of wells to protect usable ground waters in the state and required for the processing of certain permits from the Railroad Commission of Texas may not exceed \$75.

(b) Section 26.35731(c), Water Code, is amended to read as follows:

(c) Not later than the 90th day after the date on which the commission receives a completed application for reimbursement from the petroleum storage tank remediation account, the commission shall send a fund payment report to the owner or operator of a petroleum storage tank system that is seeking reimbursement, if sufficient funds are available to make the payment.

(d) This section takes effect September 1, 2003.

SECTION 7. TEXAS PARKS AND WILDLIFE DEPARTMENT FEES.

(a) Section 11.032, Parks and Wildlife Code, is amended by amending Subsection (b) and adding Subsection (c) to read as follows:

(b) The department shall deposit to the credit of the game, fish, and water safety account all revenue, less allowable costs, from the following sources:

(1) all types of fishing licenses and stamps and shrimping licenses, except as provided by Section 77.120;

(2) all types of hunting licenses and stamps;

(3) trapping licenses and other licenses relating to the taking, propagation, and sale of fur-bearing animals or their pelts;

(4) sale of marl, sand, gravel, shell, and mudshell;

(5) oyster bed rentals and permits;

(6) federal funds received for fish and wildlife research, management, development and conservation, resource protection, and law enforcement, unless the funds are received for the specific purposes of Subchapter F, Chapter 77;

(7) sale of property, less advertising costs, purchased from this account or a special fund or account that is now part of this account;

(8) fines and penalties collected for violations of a law pertaining to the protection and conservation of wild birds, wild fowl, wild animals, fish, shrimp, oysters, game birds and animals, fur-bearing animals, alligators, and any other wildlife resources of this state;

(9) sale of rough fish by the department;

(10) fees for importation permits;

(11) fees from supplying fish for or placing fish in water located on private property;

(12) sale of seized pelts;

(13) sale or lease of grazing rights to and the products from game preserves, sanctuaries, and management areas;

(14) contracts for the removal of fur-bearing animals and reptiles from wildlife management areas;

(15) vessel [~~motorboat~~] registration fees;

(16) vessel [~~motorboat~~] manufacturer or dealer licensing fees [~~registration fee~~];

- (17) fines or penalties imposed by a court for violation of water safety laws contained in Chapter 31 of this code;
- (18) alligator hunter's or alligator buyer's licenses;
- (19) sale of alligators or any part of an alligator by the department;
- (20) fees and revenue collected under Section 11.027(b) or (c) of this code that are associated with the conservation of fish and wildlife; ~~and~~
- (21) any other source provided by law; and
- (22) vessel and outboard motor titling fees.

(c) Not later than the 10th day of each month the department shall transfer 15 percent of all amounts collected during the previous month from sources described by Subsection (b)(15), (16), or (22) to the state parks account.

(b) This section takes effect September 1, 2003.

SECTION 8. TEXAS PARKS AND WILDLIFE DEPARTMENT REGULATION OF MARINE BUSINESSES. (a) Section 31.003, Parks and Wildlife Code, is amended by amending Subdivision (7) and adding Subdivision (16) to read as follows:

(7) "Dealer" means a person ~~[customarily]~~ engaged in the business of buying, selling, selling on consignment, displaying for sale, or exchanging at least five vessels, motorboats, or outboard motors during a calendar year at an established or permanent place of business in this state ~~[and that at each place of business there is a sign conspicuously displayed showing the name of the dealership so that it may be located by the public and sufficient space to maintain an office, service area, and display of products].~~

(16) "Distributor" means a person who offers for sale, sells, or processes for distribution new boats or outboard motors to dealers in this state.

(b) Subchapter A, Chapter 31, Parks and Wildlife Code, is amended by adding Section 31.007 to read as follows:

Sec. 31.007. DEALER REQUIREMENTS. A dealer shall:

- (1) display in each of the dealer's places of business a sign that:
 - (A) is conspicuous to the public; and
 - (B) shows the name of the dealership; and
- (2) operate in a space sufficient to maintain an office, service area, and display of products.

(c) Section 31.021, Parks and Wildlife Code, is amended to read as follows:

Sec. 31.021. REQUIRED NUMBERING. (a) Each ~~[undocumented]~~ vessel on the water of this state shall be numbered in accordance with the provisions of this chapter unless specifically exempted. The numbering system shall be in accord with the Federal Boating Act of 1958 and subsequent federal legislation.

(b) No person may operate or give permission for the operation of any vessel or may dock, moor, or store a vessel owned by the person on the water of this state unless:

- (1) the vessel is numbered as required by this chapter;
- (2) the certificate of number awarded to the vessel is in full force and effect; and
- (3) the identifying number set forth in the certificate is properly displayed on each side of the bow of the vessel as required by this chapter.

(d) Section 31.032, Parks and Wildlife Code, is amended to read as follows:

Sec. 31.032. NUMBERING ON BOW. (a) The owner of a vessel shall paint on or attach to each side of the vessel near the bow the identification number and a validation decal in the manner prescribed by the department. The number shall read from left to right and shall be of block characters of good proportion of not less than three inches in height. The numbers shall be of a color which will contrast with the hull material of the vessel and so maintained as to be clearly visible and legible.

(b) The owner of a vessel required to be numbered under this subchapter and documented by the United States Coast Guard is not required to attach an identification number as required by Subsection (a).

(c) The commission shall adopt rules for the placement of the validation decal in an alternate location for antique boats. In this subsection, "antique boat" means a boat that:

(1) is used primarily for recreational purposes; and

(2) was manufactured before 1968.

(e) Section 31.039, Parks and Wildlife Code, is amended to read as follows:

Sec. 31.039. PUBLIC RECORDS; FEES. (a) All ownership records of the department made or kept under this chapter are public records.

(b) The commission may by rule charge a fee for access to ownership records and other records made or kept under this chapter.

(f) Section 31.041, Parks and Wildlife Code, is amended to read as follows:

Sec. 31.041. DEALER'S, DISTRIBUTOR'S, AND MANUFACTURER'S LICENSE [NUMBER]. (a) A person may not engage in business in this state as a dealer, distributor, or manufacturer unless the person holds a license issued under this section. A dealer must have a license for each place of business owned and operated by the person.

(b) The commission shall establish the form and manner for display of a license issued under this section.

(c) The department shall issue a dealer, distributor, or manufacturer number to each dealer, distributor, or manufacturer licensed under this section in the manner provided by Section 31.031(b).

(d) A dealer, distributor, or manufacturer of vessels in this state may use the [obtain a] dealer's, distributor's, or [and] manufacturer's number for vessels the dealer, distributor, or manufacturer wishes to show, demonstrate, or test on the water of this state instead of securing a certificate of number for each vessel. The number shall be attached to any vessel that the dealer, distributor, or manufacturer sends temporarily on the water. For purposes of this subsection, "show, demonstrate, or test" does not include the use of a vessel for recreational purposes or for participation in a contest or event.

(e) [(b)] The application for a license under this section [number] must state that the applicant is a dealer, distributor, or manufacturer within the meaning of this chapter, and the facts stated on the application must be sworn before an officer authorized to administer oaths. An [The] application submitted by a dealer must be accompanied by photographs of the business sufficient to show any sign the business is required to display and the extent of the space the business is

required to maintain. The application must also be accompanied by a copy of the tax permit of the dealer, distributor, or manufacturer issued by the comptroller under Chapter 151, Tax Code, if the dealer, distributor, or manufacturer has a tax permit. The two-year fee for a dealer's, distributor's, or ~~[and]~~ manufacturer's number is \$500 ~~[\$45 or an amount set by the commission, whichever amount is more]~~. A license ~~[No number]~~ may not be issued until the provisions of this section have been satisfied.

(f) ~~[(e)]~~ A dealer, distributor, or manufacturer holding a dealer's, distributor's, or ~~[and]~~ manufacturer's license ~~[number]~~ may issue a reasonable temporary facsimile of the number issued under Subsection (c), which may be used by any authorized person. A person purchasing a vessel may use the dealer's number for a period not to exceed 15 days prior to filing an application for a certificate of number. The form of the facsimile and the manner of display of the number shall be prescribed by the department.

(g) ~~[(d)]~~ A dealer, distributor, or manufacturer holding a dealer's, distributor's, or ~~[and]~~ manufacturer's license ~~[number]~~ may transfer a certificate of number or a certificate of title to a vessel or outboard motor without securing a certificate of number or certificate of title in the dealer's, distributor's, or manufacturer's name if the vessel or outboard motor is sold in the normal course of the dealer's, distributor's, or manufacturer's business. ~~[Any other person transferring a vessel or outboard motor must secure a certificate of number or certificate of title in the person's name before transferring the certificate of number or the certificate of title.]~~

(g) Subchapter B, Chapter 31, Parks and Wildlife Code, is amended by adding Sections 31.0411, 31.0412, and 31.0413 to read as follows:

Sec. 31.0411. TERM OF LICENSE; TRANSFER. (a) Except as provided by Subsection (b), a license issued under Section 31.041:

- (1) is valid for two years from the date of issuance; and
- (2) may not be transferred to another person.

(b) A license issued under Section 31.041 in the name of a business remains valid for the business location specified on the license if a change of ownership or business name occurs.

(c) A license issued under Section 31.041 may be transferred to a new address if:

- (1) a business moves to another location; and
- (2) a change of ownership has not occurred.

Sec. 31.0412. LICENSING RULES. The commission may adopt rules regarding licenses issued under Section 31.041, including rules:

- (1) regarding license transfer procedures;
- (2) prescribing application forms;
- (3) regarding application and renewal procedures;
- (4) prescribing reporting and recordkeeping requirements for license

holders; and

- (5) setting fees to be charged for:
 - (A) a transferred license; or
 - (B) a replacement license.

Sec. 31.0413. EXEMPTION FROM DEALER LICENSING REQUIREMENTS. The dealer licensing provisions of this subchapter do not apply to the sale of a canoe, kayak, punt, rowboat, rubber raft, paddleboat, or other vessel that is less than 12 feet in length and has a horsepower rating of five horsepower or less or to the sale of an outboard motor with a manufacturer's rating of five horsepower or less.

(h) Section 31.042(b), Parks and Wildlife Code, is amended to read as follows:

(b) Causes for cancellation of certificates and voiding of numbers include:

- (1) surrender of the certificate for cancellation;
- (2) issuance of a new number for the same vessel;
- (3) ~~issuance of a marine document by the Bureau of Customs for the same vessel;~~
- ~~(4)~~ false or fraudulent certification in an application for number;
- (4) ~~(5)~~ failure to pay the prescribed fee; and
- (5) ~~(6)~~ dismantling, destruction, or other change in the form or character of the vessel or outboard motor so that it is no longer correctly described in the certificate or it no longer meets the definition of a vessel or outboard motor.

(i) Subchapter B, Chapter 31, Parks and Wildlife Code, is amended by adding Section 31.044 to read as follows:

Sec. 31.044. INSPECTIONS. A dealer, distributor, or manufacturer may not refuse to allow the department or a peace officer to inspect a vessel, outboard motor, or records relating to the possession, origination, ownership, or transfer of a vessel or outboard motor at a dealership or distributor's or manufacturer's place of business during normal business hours.

(j) Subchapter B-1, Chapter 31, Parks and Wildlife Code, is amended by adding Section 31.0465 to read as follows:

Sec. 31.0465. APPEAL REGARDING CERTIFICATE OF TITLE; BOND; RULES. (a) An applicant for a certificate of title under Section 31.046 may appeal the department's refusal to issue the title by filing a bond with the department as provided by this section.

(b) A bond filed under this section must be:

- (1) in the form prescribed by the department;
- (2) executed by the applicant;
- (3) issued by a person authorized to act as a surety business in this state;
- (4) in an amount equal to 1-1/2 times the value of the vessel or outboard motor as determined by the department; and
- (5) conditioned to indemnify all prior owners and lienholders and all subsequent purchasers of the vessel or outboard motor or persons who acquire a security interest in the vessel or outboard motor, and their successors in interest, against any expense, loss, or damage, including reasonable attorney's fees, resulting from:

(A) the issuance of the certificate of title for the vessel or outboard motor; or

(B) a defect in or undisclosed security interest in the right, title, or interest of the applicant to or in the vessel or outboard motor.

(c) The department may issue the certificate of title to the person filing the bond if the applicant proves to the satisfaction of the department that:

(1) the vessel or outboard motor is not stolen; and

(2) issuance of a certificate of title would not defraud the owner or a lienholder of the vessel or outboard motor.

(d) A person described by Subsection (b)(5) has a right of action to recover on the bond for a breach of a condition of the bond described by Subsection (b)(5). The aggregate liability of the surety to all persons may not exceed the amount of the bond.

(e) A bond filed under this section expires on the third anniversary of the date the bond became effective. The department shall return an expired bond to the person who filed the bond unless the department has been notified of a pending action to recover on the bond.

(f) On return of a bond under Subsection (e), the department shall issue a certificate of title to the person to whom the bond is returned.

(g) In addition to the situation described by Subsection (c), the commission by rule may define acceptable situations in which certificates of title may be issued after the filing of a bond under this section.

(k) Section 31.049(c), Parks and Wildlife Code, is amended to read as follows:

(c) If there is a lien on the vessel or outboard motor, the original certificate of title shall be sent to the first lienholder[~~, a duplicate original certificate shall be sent to the owner,~~] and a copy shall be retained by the department.

(l) Section 31.053, Parks and Wildlife Code, is amended by adding Subsection (f) to read as follows:

(f) A person who is not licensed as a dealer, distributor, or manufacturer under this chapter must obtain a certificate of number or certificate of title to a vessel or outboard motor in the person's name before transferring the certificate of number or certificate of title.

(m) Section 31.127(a), Parks and Wildlife Code, is amended to read as follows:

(a) A person who violates or fails to comply with any provision of this chapter, or who violates or fails to comply with a proclamation of the commission entered under this chapter or a city ordinance or order of a commissioners court or a political subdivision of the state made or entered under this chapter, commits an offense that is a Class C Parks and Wildlife Code misdemeanor.

(n) Not later than January 1, 2004, the Parks and Wildlife Commission shall adopt any rules necessary to implement Subsections (a)-(l) of this section.

(o) A person is not required to be licensed under Section 31.041, Parks and Wildlife Code, as amended by this section, until March 1, 2004. Before that date, the person is governed by the law as it existed immediately before the effective date of this section, and that law is continued in effect for that purpose.

(p) This section takes effect September 1, 2003.

SECTION 9. TEXAS PARKS AND WILDLIFE DEPARTMENT: FRESHWATER FISHING STAMP. (a) Chapter 43, Parks and Wildlife Code, is amended by adding Subchapter U to read as follows:

SUBCHAPTER U. FRESHWATER FISHING STAMP

Sec. 43.801. DEFINITION. In this subchapter, "fresh water" has the meaning provided by Section 66.001.

Sec. 43.802. FRESHWATER FISHING STAMP REQUIRED. (a) Except as provided by Subsection (b) or (c), no person may engage in fishing in fresh water for sporting purposes in this state unless the person has acquired a freshwater fishing stamp issued to the person by the department. The commission by rule may adopt requirements relating to possessing a freshwater fishing stamp required by this section.

(b) A person who is exempted from obtaining a fishing license under Chapter 46 is not required to obtain a freshwater fishing stamp.

(c) The commission by rule may exempt a person from the freshwater fishing stamp requirement of this section.

Sec. 43.803. FISHING LICENSE REQUIRED. The acquisition of a freshwater fishing stamp does not authorize a person to fish in fresh water for sporting purposes without having acquired a fishing license as provided by Chapter 46. The acquisition of a freshwater fishing stamp does not authorize a person to fish at any time or by any means not otherwise authorized by this code.

Sec. 43.804. DESIGN AND ISSUANCE OF STAMPS. (a) The department may issue a freshwater fishing stamp to any person on the payment to the department of \$5. Except as provided by Subsection (e), a stamp must be signed on its face by the person using it for the stamp to be valid for fishing purposes.

(b) The department may issue a collectible freshwater fishing stamp to any person on the payment to the department of \$5. A collectible freshwater fishing stamp does not authorize a person to fish and is not valid for fishing purposes.

(c) The commission by rule shall prescribe the form, design, and manner of issuance of the freshwater fishing stamp and the collectible freshwater fishing stamp. The department retains all reproduction rights to the design of the freshwater fishing stamp and the collectible freshwater fishing stamp.

(d) The commission may contract with and pay a person for designing and producing the freshwater fishing stamp or the collectible freshwater fishing stamp.

(e) The commission by rule may prescribe alternate requirements for identifying the purchaser of a freshwater fishing stamp issued in an automated manner.

Sec. 43.805. DISPOSITION OF STAMP FEES. (a) After deduction of any collection fee, the net receipts from freshwater fishing stamp and collectible freshwater fishing stamp sales shall be sent to the department.

(b) The net receipts from freshwater fishing stamp sales may be spent only for:

(1) the repair, maintenance, renovation, or replacement of freshwater fish hatcheries in this state; or

(2) the purchase of game fish that are stocked into the public water of this state.

(c) The net receipts from collectible freshwater fishing stamp sales may be spent only for the restoration, enhancement, or management of freshwater fish habitats.

Sec. 43.806. EXPIRATION OF STAMP. (a) Except as provided by Subsection (b) or (c), a freshwater fishing stamp is valid for fishing only during the yearly period for which the stamp is issued, without regard to the date on which the stamp is acquired. Each yearly period begins on September 1 of the year in which the stamp is issued or another date set by the commission and extends through August 31 of the next year or another date set by the commission. The commission by rule may set the amount of a stamp fee for a stamp issued during a transition period at an amount lower than prescribed in this subchapter and provide for a stamp term for a transition period that is shorter or longer than one year.

(b) A freshwater fishing stamp issued before September 1 or another date set by the commission that does not expire until August 31 of the next year or another date set by the commission is valid from the date of issuance through August 31 of the next year or another date set by the commission.

(c) A freshwater fishing stamp issued in conjunction with a license issued under Section 46.005 or 46.0051 expires on the later of the license expiration date or the date printed on the stamp.

Sec. 43.807. REFUSAL TO SHOW STAMP. A person fishing in fresh water for sporting purposes who refuses on demand of any game management officer or peace officer to show a freshwater fishing stamp or proof that the person is exempt under Section 43.802(b) or a rule adopted under that section is presumed to be in violation of Section 43.802.

Sec. 43.808. PENALTY. A person who violates Section 43.802 is guilty of a Class C Parks and Wildlife Code misdemeanor.

Sec. 43.809. EXPIRATION OF SUBCHAPTER. This subchapter expires September 1, 2014.

(b) Subchapters N and Q, Chapter 43, Parks and Wildlife Code, are repealed.

(c) This section takes effect September 1, 2004.

SECTION 10. TRANSFER OF RAILROAD COMMISSION OF TEXAS FUNCTIONS RELATED TO QUARRY AND PIT SAFETY. (a) On September 1, 2003:

(1) all powers, duties, functions, and activities performed by the Railroad Commission of Texas under Chapter 133, Natural Resources Code, immediately before that date are transferred to the Texas Department of Transportation;

(2) all employees of the Railroad Commission of Texas whose primary duties relate to the implementation of Chapter 133, Natural Resources Code, become employees of the Texas Department of Transportation;

(3) a rule, form, order, or procedure adopted by the Railroad Commission of Texas for the implementation or enforcement of Chapter 133, Natural Resources Code, is a rule, form, order, or procedure of the Texas Department of Transportation and remains in effect until changed by the Texas Department of Transportation;

(4) a reference in Chapter 133, Natural Resources Code, to the Railroad Commission of Texas means the Texas Department of Transportation;

(5) a permit or certification in effect under Chapter 133, Natural Resources Code, that was issued by the Railroad Commission of Texas is continued in effect as a permit or certification issued by the Texas Department of Transportation; and

(6) a complaint, investigation, or other proceeding under Chapter 133, Natural Resources Code, pending before the Railroad Commission of Texas is transferred without change in status to the Texas Department of Transportation.

(b) This section takes effect September 1, 2003.

SECTION 11. RAILROAD COMMISSION OF TEXAS FUNCTIONS RELATED TO RAILROAD SAFETY. (a) Article 6448a, Revised Statutes, is amended to read as follows:

Art. 6448a. IMPLEMENTATION OF FEDERAL RAILROAD SAFETY ACT OF 1970

Sec. 1. The Railroad Commission of Texas is hereby authorized to perform any act and issue any rules and orders as permitted by the Federal Railroad Safety Act of 1970 (45 U.S.C.A. 431 et seq.).

Sec. 2. (a) The Railroad Commission of Texas by rule shall adopt reasonable fees to be assessed annually against railroads operating within the state.

(b) The commission by rule shall establish the method by which the fees are calculated and assessed.

(c) The total amount of fees estimated to be collected by rules adopted by the commission under this section may not exceed the amount estimated by the commission to be necessary to recover the costs of administering the commission's rail safety program.

(d) In adopting a fee structure, the commission may consider the gross ton miles for railroad operations within the State of Texas for each railroad operating in the state to provide for the equitable allocation among railroads of the cost of administering the commission's rail safety program.

(e) A fee collected under this section shall be deposited to the credit of the general revenue fund to be used for the rail safety program.

(b) This section takes effect on September 1, 2003.

SECTION 12. RAILROAD COMMISSION OF TEXAS FUNCTIONS RELATED TO PIPELINES. (a) Subchapter E, Chapter 121, Utilities Code, is amended by adding Section 121.211 to read as follows:

Sec. 121.211. PIPELINE SAFETY FEES. (a) The railroad commission by rule may adopt an inspection fee to be assessed annually against operators of natural gas distribution pipelines and their pipeline facilities and natural gas master metered pipelines and their pipeline facilities subject to this chapter.

(b) The railroad commission by rule shall establish the method by which the fee is calculated and assessed. In adopting a fee structure, the railroad commission may consider any factors necessary to provide for the equitable allocation among operators of the costs of administering the railroad commission's pipeline safety program under this chapter.

(c) The total amount of fees estimated to be collected under rules adopted by the railroad commission under this section may not exceed the amount estimated by the railroad commission to be necessary to recover the costs of administering the railroad commission's pipeline safety program under this chapter, excluding costs that are fully funded by federal sources.

(d) The railroad commission may assess each investor-owned and each municipally owned natural gas distribution system subject to this chapter an annual inspection fee not to exceed 50 cents for each service line reported by the system on the Distribution Annual Report, Form RSPA F7100.1-1, due on March 15 of each year. The fee is due March 15 of each year.

(e) The railroad commission may assess each operator of a natural gas master metered system subject to this chapter an annual inspection fee not to exceed \$100 for each master metered system. The fee is due June 30 of each year.

(f) The railroad commission may assess a late payment penalty of 10 percent of the total assessment due under Subsection (d) or (e) that is not paid within 30 days after the annual due date established by the applicable subsection.

(g) Each investor-owned and municipally owned natural gas distribution company and each natural gas master meter operator shall recover as a surcharge to its existing rates the amounts paid to the railroad commission under this section. Amounts collected under this subsection by an investor-owned natural gas distribution company shall not be included in the revenue or gross receipts of the company for the purpose of calculating municipal franchise fees or any tax imposed under Subchapter B, Chapter 182, Tax Code, or under Chapter 122. Those amounts are not subject to a sales and use tax imposed by Chapter 151, Tax Code, or Chapters 321 through 327, Tax Code.

(h) A fee collected under this section shall be deposited to the credit of the general revenue fund to be used for the pipeline safety program.

(b) This section takes effect September 1, 2003.

SECTION 13. SOIL AND WATER CONSERVATION BOARD. (a) Section 201.011, Agriculture Code, is amended to read as follows:

Sec. 201.011. COMPOSITION. The State Soil and Water Conservation Board is a state agency composed of seven [~~five~~] members as follows:

(1) [~~with~~] one member elected from each of the state districts in accordance with this subchapter; and

(2) two members appointed by the governor, each of whom is:

(A) actively engaged in the business of farming, animal husbandry, or other business related to agriculture and who wholly or partly owns or leases land used in connection with that business; and

(B) not a member of the board of directors of a conservation district.

(b) Section 201.015(b), Agriculture Code, is amended to read as follows:

(b) The term of office of an elected [a] member of the state board begins on the day after the day on which the member was elected. The term of one member appointed by the governor expires February 1 of each odd-numbered year, and the term of the other member appointed by the governor expires February 1 of each even-numbered year.

(c) Section 201.016, Agriculture Code, is amended to read as follows:

Sec. 201.016. VACANCY. Vacancies on the state board for state district positions are filled by election in the manner provided by this subchapter for an unexpired term or for a full term.

(d) Subchapter B, Chapter 201, Agriculture Code, is amended by adding Sections 201.028 and 201.029 to read as follows:

Sec. 201.028. SEMIANNUAL REPORT. Not later than January 1 and July 1 of each year, the state board shall prepare and deliver a report to the governor, the lieutenant governor, and the speaker of the house of representatives relating to the status of the board's budget areas of responsibility assigned to the board, including outreach programs, grants made and received, federal funding applied for and received, special projects, and oversight of water conservation district activities.

Sec. 201.029. MANAGEMENT AUDIT. Not later than March 1, 2004, the state auditor, in coordination with the Legislative Budget Board, shall conduct a management audit of the State Soil and Water Conservation Board and deliver the audit report to the governor, the lieutenant governor, and the speaker of the house of representatives. The audit shall include an evaluation of the administrative budget for the board. This section expires April 1, 2004.

(e) Sections 203.011-203.013, Agriculture Code, are amended to read as follows:

Sec. 203.011. AUTHORITY OF BOARD. The board has jurisdiction over and shall administer the brush control program under this chapter with the assistance of local districts.

Sec. 203.012. RULES. The board shall adopt, after consulting with local districts, reasonable rules that are necessary to carry out this chapter.

Sec. 203.013. AUTHORITY OF DISTRICTS. Each district [~~in which all or part of a critical area is located~~] may carry out the responsibilities provided by Subchapter D of this code as delegated by the board [~~in that critical area~~].

(f) Section 203.016, Agriculture Code, is amended to read as follows:

Sec. 203.016. CONSULTATION. The board shall consult with:

(1) the department in regard to the effects of the brush control program on agriculture;

(2) the Texas Water Development Board in regard to the effects of the brush control program on water quantity; and

(3) the Parks and Wildlife Department in regard to the effects of the brush control program on fish and wildlife.

(g) Section 203.051, Agriculture Code, is amended to read as follows:

Sec. 203.051. STATE PLAN. The board shall prepare and adopt a state brush control plan that shall:

(1) include a comprehensive strategy for managing brush in all areas of the state where brush is contributing to a substantial water conservation problem; and

(2) rank [~~designate~~] areas [~~of critical need~~] in the state in need of a [which to implement the] brush control program.

(h) Sections 203.052(b), (c), and (d), Agriculture Code, are amended to read as follows:

(b) Not less than 30 days before the date the hearing is to be held, the board shall mail written notice of the hearing to each district in the state. The notice must:

(1) include the date and place for holding the hearing;

(2) include instructions for each district to submit comments on the proposed plan; and

(3) [~~must~~] state the purpose for holding the hearing.

(c) At the hearing, representatives of a district and any other person may appear and present testimony including information and suggestions for any changes in the proposed plan. The board shall:

(1) enter any written comments received on the proposed plan into the record of the hearing; and

(2) consider all written comments and testimony before taking final action on the proposed plan.

(d) After the conclusion of the hearing, the board shall consider the testimony including the information and suggestions made at the hearing and in written comments. After [~~and, after~~] making any changes in the proposed plan that it finds necessary, the board shall adopt the plan.

(i) Section 203.053, Agriculture Code, is amended to read as follows:

Sec. 203.053. CRITERIA FOR EVALUATING BRUSH CONTROL [~~DESIGNATING CRITICAL~~] AREAS. (a) In ranking [~~designating critical~~] areas under the plan, the board shall consider:

(1) the location of various brush infestations;

(2) the type and severity of [~~various~~] brush infestations;

(3) the various management methods that may be used to control brush;

[~~and~~]

(4) any other criteria that the board considers relevant to assure that the brush control program can be most effectively, efficiently, and economically implemented; and

(5) the amount of water produced by a project and the severity of water shortage in the areas.

(b) In ranking [~~designating critical~~] areas, the board shall give priority to areas with the most critical water conservation needs and in which brush control and revegetation projects will be most likely to produce substantial water conservation.

(j) Section 203.055, Agriculture Code, is amended to read as follows:

Sec. 203.055. APPROVED METHODS FOR BRUSH CONTROL. (a) The board shall study and must approve all methods used to control brush under this Act considering the overall impact the project will have [~~within critical areas~~].

(b) The board may approve a method for use under the cost-sharing program provided by Subchapter E of this chapter if the board finds that the proposed method:

(1) has proven to be an effective and efficient method for controlling brush;

(2) is cost efficient;

(3) will have a beneficial impact on the development of water sources and wildlife habitat;

(4) will maintain topsoil to prevent erosion or silting of any river or stream; and

(5) will allow the revegetation of the area after the brush is removed with plants that are beneficial to stream flows, groundwater levels, livestock, and wildlife.

(k) Section 203.101, Agriculture Code, is amended to read as follows:

Sec. 203.101. GENERAL AUTHORITY. Each district may administer the aspects of the brush control program [~~within any critical area~~] located within the jurisdiction of that district.

(l) Section 203.154, Agriculture Code, is amended by amending Subsections (a) and (c) and by adding Subsections (d) and (e) to read as follows:

(a) Not more than 70 [~~80~~] percent of the total cost of a single brush control project may be made available as the state's share in cost sharing.

(c) The board may grant an exception to Subsection (b) of this section if the board finds that joint participation of the state brush control program and any federal brush control program will:

(1) enhance the efficiency and effectiveness of a project; [~~and~~]

(2) lessen the state's financial commitment to the project; and

(3) not exceed 80 percent of the total cost of the project.

(d) A political subdivision of this state is eligible for cost sharing under the brush control program as long as the state's share does not exceed 50 percent of any one project.

(e) Notwithstanding any other provision of this section, 100 percent of the total costs of a single project on public lands may be made available as the state's share in cost sharing.

(m) Sections 203.156-203.158, Agriculture Code, are amended to read as follows:

Sec. 203.156. APPLICATION FOR COST SHARING. A person, including a political subdivision of this state, who desires to participate with the state in a brush control project and to obtain cost-sharing participation by the state shall file an application with the district board in the district in which the land on which the project is to be accomplished is located. The application must be in the form provided by board rules.

Sec. 203.157. CONSIDERATIONS IN PASSING ON APPLICATION. In passing on an application for cost sharing, the board shall consider:

- (1) the location of ~~[whether]~~ the project ~~[is to be carried out in a critical area]~~;
- (2) the method of control that is to be used by the project applicant;
- (3) the plans for revegetation;
- (4) the total cost of the project;
- (5) the amount of land to be included in the project;
- (6) whether the applicant for the project is financially able to provide his share of the money for the project;
- (7) the cost-share percentage, if an applicant agrees to a higher degree of financial commitment;
- (8) any comments and recommendations submitted by a local district, the department, the Texas Water Development Board, or ~~[of]~~ the Parks and Wildlife Department; and
- (9) any other pertinent information considered necessary by the board.

Sec. 203.158. APPROVAL OF APPLICATION. The board may approve an application if, after considering the factors listed in Section 203.157 of this code and any other relevant factors, the board finds:

- (1) the owner of the land fully agrees to cooperate in the project;
- (2) the method of eradication is a method approved by the board under Section 203.055 of this code; and
- (3) the project ranks higher than other projects submitted in accordance with ~~[is to be carried out in a critical area designated under]~~ the board's plan.

(n) Sections 203.159(a) and (c), Agriculture Code, are amended to read as follows:

(a) If the demand for funds under the cost-sharing program is greater than funds available, the board shall ~~[may]~~ establish priorities favoring the areas with the most critical water conservation needs and projects that will be most likely to produce substantial water conservation.

(c) The board shall consider quantity of stream flows, the quantity of groundwater, and the amount of ~~[land dedicated to the project that will produce significant]~~ water conservation from the eradication of brush each to be ~~[is]~~ a priority.

(o) Sections 203.001(5) and 203.155, Agriculture Code, are repealed.

(p) In making initial appointments to the State Soil and Water Conservation Board under Section 201.011, Agriculture Code, as amended by this section, the governor shall designate one member to serve a term expiring February 1, 2004, and the other member to serve a term expiring February 1, 2005.

(q) The State Soil and Water Conservation Board shall prepare and deliver the first report required by Section 201.028, Agriculture Code, as added by this section, not later than January 1, 2004.

(r) This section takes effect September 1, 2003.

SECTION 14. IMPOSITION OF CERTAIN FEES. (a) Subchapter B, Chapter 1052, Occupations Code, is amended by adding Section 1052.0541 to read as follows:

Sec. 1052.0541. FEE INCREASE. (a) The fee for the issuance of a certificate of registration under this chapter and the fee for the renewal of a certificate of registration under this chapter is increased by \$200.

(b) Of each fee increase collected, \$50 shall be deposited in the foundation school fund and \$150 shall be deposited in the general revenue fund.

(b) Subchapter B, Chapter 1053, Occupations Code, is amended by adding Section 1053.0521 to read as follows:

Sec. 1053.0521. FEE INCREASE. (a) The fee for the issuance of a certificate of registration under this chapter and the fee for the renewal of a certificate of registration under this chapter is increased by \$200.

(b) Of each fee increase collected, \$50 shall be deposited in the foundation school fund and \$150 shall be deposited in the general revenue fund.

(c) Subchapter D, Chapter 1071, Occupations Code, is amended by adding Section 1071.1521 to read as follows:

Sec. 1071.1521. FEE INCREASE. (a) The fee for the issuance of a certificate of registration to a registered professional land surveyor under this chapter and the fee for the renewal of a certificate of registration for a registered professional land surveyor under this chapter is increased by \$200.

(b) Of each fee increase collected, \$50 shall be deposited in the foundation school fund and \$150 shall be deposited in the general revenue fund.

(c) This section does not apply to state agency employees who are employed by the state as land surveyors.

(d) Subchapter B, Chapter 1152, Occupations Code, is amended by adding Section 1152.053 to read as follows:

Sec. 1152.053. FEE INCREASE. (a) The fee for the registration of a person under this chapter and the fee for the renewal of a registration under this chapter is increased by \$200.

(b) Of each fee increase collected, \$50 shall be deposited in the foundation school fund and \$150 shall be deposited in the general revenue fund.

(e) The change in law made by this section applies only to the issuance or renewal of a certificate of registration under Chapter 1052, 1053, or 1071, Occupations Code, or the issuance or renewal of a registration under Chapter 1152, Occupations Code, on or after the effective date of this article. A certificate of registration or registration issued or renewed before the effective date of this section is governed by the law in effect on the date of the issuance or renewal, and the former law is continued in effect for that purpose.

SECTION 15. STATE AGENCY HUMAN RESOURCES STAFFING AND FUNCTIONS. (a) Subtitle B, Title 6, Government Code, is amended by adding Chapter 670 to read as follows:

CHAPTER 670. HUMAN RESOURCES STAFFING AND FUNCTIONS

Sec. 670.001. DEFINITIONS. In this chapter:

(1) "Human resources employee" does not include an employee whose primary job function is enforcement of Title VI or Title VII of the Civil Rights Act of 1964.

(2) "State agency" means a department, commission, board, office, authority, council, or other governmental entity in the executive branch of government that is created by the constitution or a statute of this state and has authority not limited to a geographical portion of the state. The term does not include a university system or institution of higher education as defined by Section 61.003, Education Code.

Sec. 670.002. HUMAN RESOURCES STAFFING FOR LARGE STATE AGENCIES. A state agency with 500 or more full-time equivalent employees shall adjust the agency's human resources staff to achieve a human resources employee-to-staff ratio of not more than one human resources employee for every 85 staff members.

Sec. 670.003. HUMAN RESOURCES STAFFING FOR MEDIUM-SIZED AND SMALL STATE AGENCIES; OUTSOURCING. (a) The State Council on Competitive Government shall determine the cost-effectiveness of consolidating the human resources functions of or contracting with private entities to perform the human resources functions of state agencies that employ fewer than 500 full-time equivalent employees.

(b) If the council determines that contracting with private entities is cost-effective, the council shall issue a request for proposals for vendors to perform the human resources functions of the agencies.

(c) The council shall determine which human resources functions are subject to the contract and which functions the agency may select to perform itself.

(d) Each agency shall pay for the contracts for human resources functions out of the agency's human resources budget.

(b) Not later than January 1, 2004, each state agency with 500 or more full-time equivalent employees shall comply with the human resources employee-to-staff ratio requirements in Section 670.002, Government Code, as added by this section.

(c) Not later than January 1, 2004, the State Council on Competitive Government shall conduct an initial feasibility study to determine the cost-effectiveness of consolidating the human resources functions of or contracting with private entities to perform human resources functions of state agencies under Section 670.003, Government Code, as added by this section.

SECTION 16. AGENCY STAFFING AND PRODUCTIVITY. (a) Effective September 1, 2003, Section 651.004, Government Code, is amended by adding Subsections (c-1) and (d) to read as follows:

(c-1) A state agency in the executive branch of state government that employs more than 100 full-time equivalent employees may not, after March 31, 2004, employ more than one full-time equivalent employee in a management position for every eight full-time equivalent employees that the agency employs in nonmanagerial staff positions. This subsection expires September 1, 2005.

(d) A state agency that believes that the minimum management-to-staff ratios required by this section are inappropriate for that agency may appeal to the Legislative Budget Board. The Legislative Budget Board by rule shall adopt appeal procedures.

(b) Effective September 1, 2004, Section 651.004, Government Code, is amended by adding Subsection (c-2) to read as follows:

(c-2) A state agency in the executive branch of state government that employs more than 100 full-time equivalent employees may not, after August 31, 2005, employ more than one full-time equivalent employee in a management position for every nine full-time equivalent employees that the agency employs in nonmanagerial staff positions. This subsection expires September 1, 2006.

(c) Effective September 1, 2005, Section 651.004, Government Code, is amended by adding Subsection (c-3) to read as follows:

(c-3) A state agency in the executive branch of state government that employs more than 100 full-time equivalent employees may not, after August 31, 2006, employ more than one full-time equivalent employee in a management position for every 10 full-time equivalent employees that the agency employs in nonmanagerial staff positions. This subsection expires September 1, 2007.

(d) Effective September 1, 2006, Section 651.004, Government Code, is amended by adding Subsection (c) to read as follows:

(c) A state agency in the executive branch of state government that employs more than 100 full-time equivalent employees may not employ more than one full-time equivalent employee in a management position for every 11 full-time equivalent employees that the agency employs in nonmanagerial staff positions.

(e) A state agency in the executive branch of government shall achieve the management-to-staff ratio required by Subsection (c), Section 651.004, Government Code, as added by this section, not later than August 31, 2007.

(f) Subchapter K, Chapter 659, Government Code, is amended by adding Section 659.262 to read as follows:

Sec. 659.262. ADDITIONAL COMPENSATION FOR CERTAIN CLASSIFIED STATE EMPLOYEES. (a) In this section, "state agency" means an agency of any branch of state government that employs individuals who are classified under Chapter 654.

(b) To enhance the recruitment of competent personnel for certain classified employee positions, a state agency may provide to a state employee, at the time of the employee's hiring for a classified position, additional compensation in the form of a one-time recruitment payment not to exceed \$5,000. If the employee discontinues employment with the state agency for any reason less than three months after the date of receiving the recruitment payment, the employee shall refund to the state agency the full amount of the recruitment payment. If the employee discontinues employment with the state agency for any reason three months or longer but less than 12 months after the date of receiving the recruitment payment, the employee shall refund to the state agency an amount computed by:

(1) subtracting from 12 months the number of complete calendar months the employee worked after the date of receiving the recruitment payment;

(2) dividing the number of months computed under Subdivision (1) by 12 months; and

(3) multiplying the fraction computed under Subdivision (2) by the amount of the recruitment payment.

(c) To enhance the retention of employees who are employed in certain classified positions that are identified by the chief administrator of a state agency as essential for the state agency's operations, a state agency may enter into a deferred compensation contract with a classified employee to provide to the employee a one-time additional compensation payment not to exceed \$5,000 to be added to the employee's salary payment the month after the conclusion of the 12-month period of service under the deferred compensation contract.

(d) To be eligible to enter into a contract for deferred compensation under Subsection (c), a state employee must have already completed at least 12 months of service in a classified position.

(e) The chief administrator of a state agency shall determine whether additional compensation is necessary under this section on a case-by-case basis, considering:

(1) the criticality of the employee position in the operations of the state agency;

(2) evidence of high turnover rates among employees filling the position or an extended period during which the position is or has in the past been vacant;

(3) evidence of a shortage of employees qualified to fill the position or a shortage of qualified applicants; and

(4) other relevant factors.

(f) Before an agency provides or enters into a contract to provide additional compensation to an employee under this section, the chief administrator of the state agency must certify to the comptroller in writing the reasons why the additional compensation is necessary.

(g) Additional compensation paid to an employee under this section is specifically exempted from any limitation on salary or salary increases prescribed by this chapter.

(g) Subsection (b), Section 656.048, Government Code, is repealed.

SECTION 17. Sections 81.116(b) and (d), Natural Resources Code, are amended to read as follows:

(b) The fee is in addition to, and independent of any liability for, the taxes imposed under Section 81.111 of this code and Chapter 202, Tax Code.

(d) The comptroller shall suspend collection of the fee in the manner provided by Section 91.111 of this code. The exemptions and reductions set out in Sections 202.052, 202.054, 202.056, 202.057, and 202.059, Tax Code, do not affect the fee imposed by this section.

SECTION 18. Sections 81.117(b) and (d), Natural Resources Code, are amended to read as follows:

(b) The fee is in addition to, and independent of any liability for, the tax imposed under Section 201.052, Tax Code.

(d) The comptroller shall suspend collection of the fee in the manner provided by Section 91.111 of this code. The exemptions and reductions set out in Sections 201.053, 201.057, and 201.058, Tax Code, do not affect the fee imposed by this section.

SECTION 19. WATER POLLUTION AND CONSERVATION PROGRAMS ADMINISTERED BY THE TEXAS WATER DEVELOPMENT BOARD. (a) Section 15.602, Water Code, is amended by adding Subdivision (5-a) to read as follows:

(5-a) "Eligible lending institution" means a financial institution that makes commercial loans, is either a depository of state funds or an institution of the Farm Credit System headquartered in this state, agrees to participate in a linked deposit program established under Section 15.611 and to provide collateral equal to the amount of linked deposits placed with it, and meets any other requirements established by board rule.

(b) Section 15.603, Water Code, is amended by adding Subsection (i) to read as follows:

(i) In addition to authorized purposes under Subsection (a), the revolving fund is held by the board to provide linked deposits to eligible financial institutions for loans to persons for nonpoint source pollution control projects.

(c) Subsection (a), Section 15.604, Water Code, is amended to read as follows:

(a) The board may use the revolving fund for financial assistance only as provided by the federal act:

(1) to make loans, on the conditions that:

(A) those loans are made at or below market interest rates, including interest-free loans, at terms not to exceed 20 years;

(B) principal and interest payments will begin not later than one year after completion of any treatment works and all loans will be fully amortized not later than 20 years after completion of the treatment works;

(C) the recipient of a loan will establish a dedicated source of revenue for repayment of loans; and

(D) the revolving fund will be credited with all payments of principal of and interest on all loans;

(2) to buy or refinance the debt obligation of political subdivisions at or below market rates if the debt obligations were incurred after March 7, 1985;

(3) to guarantee or purchase insurance for political subdivisions if the guarantee or insurance would improve access to market credit or reduce interest rates;

(4) as a source of revenue or security for the payment of principal and interest on bonds issued by the state if the proceeds of the sale of those bonds will be deposited in the revolving fund;

(5) to provide loan guarantees to similar revolving funds established by municipalities or intermunicipal agencies;

(6) to earn interest on revolving fund accounts;

(7) for the reasonable costs of administering the revolving fund and conducting activities provided for by Title VI of the federal act, except that those amounts may not exceed the amount authorized under Title VI of the federal act;

(8) to provide financial assistance to persons for a nonpoint source pollution control project under Section 319 of the federal act or for an estuary management project under Section 320 of the federal act; ~~and~~

(9) for other purposes as provided by the federal act; and

(10) to provide linked deposits to eligible lending institutions for loans to persons for nonpoint source pollution control projects.

(d) Subchapter J, Chapter 15, Water Code, is amended by adding Sections 15.610 through 15.618 to read as follows:

Sec. 15.610. LINKED DEPOSIT. A linked deposit is a deposit governed by a written deposit agreement between the board and an eligible lending institution that provides that:

(1) the eligible lending institution pay interest on the deposit at a rate determined by the board;

(2) the state not withdraw any part of the deposit before the expiration of a period set by a written advance notice of the intention to withdraw; and

(3) the eligible lending institution agree to lend the value of the deposit to a person at a maximum rate that is the rate paid by the eligible lending institution to the board plus a maximum of four percent.

Sec. 15.611. LINKED DEPOSIT PROGRAM. (a) The board by rule may establish a nonpoint source pollution control linked deposit program in accordance with this subchapter.

(b) An eligible lending institution may participate in the program established under this section as provided by this subchapter.

Sec. 15.612. APPLICATION BY ELIGIBLE LENDING INSTITUTIONS TO PARTICIPATE IN LINKED DEPOSIT PROGRAM. To participate in the nonpoint source pollution control linked deposit program, an eligible lending institution must:

(1) solicit loan applications, which must contain a description of a proposed nonpoint source pollution control project;

(2) review applications to determine if applicants are eligible and creditworthy; and

(3) submit the applications of eligible and creditworthy applicants to the executive administrator with a certification:

(A) of the interest rate applicable to each applicant by the eligible lending institution; and

(B) of the proposed project by the appropriate person as required by Section 15.613.

Sec. 15.613. CERTIFICATION OF PROJECT. (a) An eligible lending institution must obtain from a director of a soil and water conservation district certification of an agricultural or silvicultural nonpoint source pollution control project proposed for the district. The certification must state that:

(1) the applicant of the proposed project has a water quality management plan certified by the State Soil and Water Conservation Board; and

(2) the project furthers or implements the plan.

(b) An eligible lending institution must obtain from the executive director certification of a proposed nonpoint source pollution control project that is not an agricultural or silvicultural nonpoint source pollution control project. The certification must state that the applicant's proposed project implements the state's nonpoint source pollution management plan.

Sec. 15.614. APPROVAL OR REJECTION OF APPLICATION. The board may approve or reject an application of an eligible lending institution to participate in the program. The board may delegate its authority to approve or reject an application to the executive administrator.

Sec. 15.615. DEPOSIT AGREEMENT. If the board approves an application of an eligible lending institution, the board and the eligible lending institution shall enter into a written deposit agreement. The agreement shall contain the conditions on which the linked deposit is made. On execution of the agreement, the board shall place a linked deposit from the revolving fund with the eligible lending institution in accordance with the agreement. A delay in payment or a default on a loan by an applicant does not affect the validity of the deposit agreement.

Sec. 15.616. COMPLIANCE. (a) On accepting a linked deposit, an eligible lending institution must lend money to an approved applicant in accordance with the deposit agreement and this subchapter. The eligible lending institution shall forward a compliance report to the board in accordance with board rules. The board shall adopt rules regarding the compliance report.

(b) The board shall monitor compliance with this subchapter and inform the comptroller of noncompliance on the part of an eligible lending institution.

Sec. 15.617. STATE LIABILITY PROHIBITED. The state is not liable to an eligible lending institution for payment of the principal, interest, or any late charges on a loan made to an approved applicant. A linked deposit is not an extension of the state's credit within the meaning of any state constitutional prohibition.

Sec. 15.618. LIMITATIONS ON PROGRAM. (a) The maximum amount of a loan under the linked deposit program is \$250,000.

(b) The board may withdraw linked deposits from an eligible lending institution if the institution ceases to be either a state depository or a Farm Credit System institution headquartered in this state.

(e) Subdivisions (3) through (6), Section 17.871, Water Code, are amended to read as follows:

(3) "Eligible lending institution" means a financial institution that makes commercial loans, is either a depository of state funds or an institution of the Farm Credit System headquartered in this state, agrees to participate in a linked deposit program established under Section 17.905 and to provide collateral equal to the amount of linked deposits placed with it, and meets any other requirements established by board rule [~~"Conservation loan" means a loan from the board to a borrower district or from a lender district to an individual borrower~~].

(4) "Fund" means the agricultural water conservation fund authorized by Section 50-d, Article III, of the Texas Constitution.

(5) "Person" means an individual, corporation, partnership, association, or other legal entity that is not a political subdivision [~~"Individual borrower" means a person who receives or is eligible to receive a conservation loan from a lender district~~].

(6) "Political subdivision" includes a district or authority created under Section 52, Article III, or Section 59, Article XVI, of the Texas Constitution, a municipality, a county, an institution of higher education as defined by Section 61.003, Education Code, any interstate compact commission to which the state is a party, and any nonprofit water supply corporation created and operating under Chapter 67 [~~"Lender district" means a political subdivision, including a soil and water conservation district under Chapter 201, Agriculture Code, a groundwater conservation district created under Article XVI, Section 59, of the Texas Constitution, or a district or authority created under Article III, Section 52(b)(1), or Article XVI, Section 59, of the Texas Constitution authorized to supply water for irrigation purposes, that is eligible to receive or that receives a loan from the board for the purpose of making conservation loans to individual borrowers].~~

(f) Subsections (c) and (d), Section 17.879, Water Code, are amended to read as follows:

(c) By rule or in the resolution or order authorizing issuance of bonds or other resolution or order of the board, the board may establish an interest and sinking fund and may establish accounts in the funds, including an interest and sinking account, and may transfer money among the funds and accounts [~~fund~~].

(d) The board may invest and reinvest money in the fund, the interest and sinking fund, and any account therein in any obligations or securities as provided by bond resolutions, [~~and~~] orders of the board, and Section 404.024, Government Code.

(g) Subsection (a), Section 17.880, Water Code, is amended to read as follows:

(a) Loans, bonds of political subdivisions [~~borrower districts or lender districts~~], and other obligations owned by the state and deposited in the fund or in the interest and sinking fund are considered to be securities under this subchapter.

(h) Subsection (b), Section 17.881, Water Code, is amended to read as follows:

(b) The board shall sell the loans or bonds of political subdivisions [~~borrower districts or lender districts~~] at the price and under the terms that it determines to be reasonable.

(i) Section 17.883, Water Code, is amended to read as follows:

Sec. 17.883. BOND REVIEW BOARD. Bonds may not be issued under this subchapter unless the issuance of the bonds has been reviewed and approved by the bond review board. Prior to issuance of bonds, the board shall estimate demand for [~~agricultural water~~] conservation programs or projects [~~loans~~] based on a survey of [~~districts~~] eligible participants [~~to participate~~] in the program. A summary of this information shall be furnished to the bond review board.

(j) Section 17.894, Water Code, is amended to read as follows:

Sec. 17.894. BOND ENHANCEMENT AGREEMENTS; PAYMENT OF EXPENSES. (a) The board at any time and from time to time may enter into one or more bond enhancement agreements that the board determines to be necessary or appropriate to place the obligation of the board, as represented by the bonds, in whole or in part, on the interest rate, currency, cash flow, or other basis desired by

the board. A bond enhancement agreement is an agreement for professional services and shall contain the terms and conditions and be for the period that the board approves.

(b) The fees and expenses of the board in connection with the issuance of the bonds and the providing of financial assistance to political subdivisions may be paid from money in the fund, provided that any payments due from the board under a bond enhancement agreement, other than fees and expenses, that relate to the payment of debt service on the bonds constitute payments of principal of and interest on the bonds.

(c) Bond enhancement agreements may include, on terms and conditions approved by the board, interest rate swap agreements; currency swap agreements; forward payment conversion agreements; agreements providing for payments based on levels of or changes in interest rates or currency exchange rates; agreements to exchange cash flows or a series of payments; agreements, including options, puts, or calls, to hedge payment, currency, rate, spread, or other exposure; or other agreements that further enhance the marketability, security, or creditworthiness of water financial assistance bonds [USE OF FUND.

~~(a) The board may use money in the fund to make conservation loans directly to borrower districts, to make loans to lender districts, and to pay the cost of bond issuance.~~

~~(b) The board may use money in the fund:~~

~~(1) to make loans to political subdivisions other than lender districts for agricultural water conservation projects;~~

~~(2) to make grants to political subdivisions for agricultural water conservation projects as provided by legislative appropriation; or~~

~~(3) to make grants to a state agency for the funding of any agricultural water conservation program of that agency, including a program in which the state agency provides funding to a political subdivision or a person for agricultural water conservation, as provided by legislative appropriation].~~

(k) Section 17.895, Water Code, is amended to read as follows:

Sec. 17.895. SOURCES OF ASSETS. The fund is composed of:

(1) money and assets, including bond proceeds, attributable to the bonds;

(2) investment income earned on money on deposit in the fund and depository interest earned on money on deposit in the state treasury;

(3) money appropriated by the legislature;

(4) repayments of principal and interest on loans made under this subchapter;

(5) administrative fees charged by the board under the bond program;
and

(6) any other funds, regardless of their source, that the board directs be deposited to the credit of the fund [CONSERVATION LOANS. (a) This section applies only to a conservation loan from a lender district that is:

(1) a soil and water conservation district under Chapter 201, Agriculture Code;

~~[(2) a groundwater conservation district created under Section 59, Article XVI, Texas Constitution; or~~

~~[(3) a district or authority created under Section 52(b)(1), Article III, or Section 59, Article XVI, Texas Constitution.~~

~~[(b) The board or a lender district may make conservation loans for capital equipment or materials, labor, preparation costs, and installation costs:~~

~~[(1) to improve water use efficiency of water delivery and application on existing irrigation systems;~~

~~[(2) for preparing irrigated land to be converted to dryland conditions;~~
and

~~[(3) for preparing dryland for more efficient use of natural precipitation.~~

~~[(e) Conservation loans for the purposes listed in Subsection (b) may be made by lender districts to individual borrowers for use on private property or by the board to borrower districts.~~

~~[(d) The board may make conservation loans to borrower districts for the cost of purchasing and installing devices, on public or private property, designed to indicate the amount of water withdrawn for irrigation purposes.~~

~~[(e) For purposes of this section, the board or lender districts may seek the advice of the Department of Agriculture regarding the feasibility of a project for which a conservation loan is sought].~~

(l) Section 17.896, Water Code, is amended to read as follows:

Sec. 17.896. REPAYMENT PROCEEDS. The board shall designate a transfer of repayment of principal and interest on a loan made under this subchapter to the fund, the interest and sinking fund, or any account in the funds ~~[INTEREST RATES AND FEES.~~ (a) The board shall establish the rate of interest it charges for loans to lender districts or for conservation loans to borrower districts.

~~[(b) A lender district may charge individual borrowers an interest rate not to exceed the interest rate the lender district is charged by the board, plus one percent for administrative expenses.~~

~~[(c) A lender district may charge individual borrowers a one-time application fee in an amount determined by the board to cover costs of processing loan applications].~~

(m) Section 17.897, Water Code, is amended to read as follows:

Sec. 17.897. CONSERVATION PROGRAM. (a) A conservation program is:

(1) an agricultural water conservation technical assistance program, including a program for an on-farm soil and water conservation plan developed jointly by a landowner, an operator, and a local soil and water conservation district as provided by Subchapter H, Chapter 201, Agriculture Code;

(2) a research, demonstration, technology transfer, or educational program relating to agricultural water use and conservation;

(3) a precipitation enhancement program in an area of the state where the program, in the board's judgment, would be most effective; and

(4) any other agricultural water conservation program defined by board rule.

(b) The costs of a conservation program eligible for financial assistance under Section 17.899 are the costs of the capital equipment, materials, labor, preparation, installation, or administration directly associated with implementing and completing the program [APPLICATION. A lender district that desires to obtain loans or a borrower district that desires to obtain conservation loans under this subchapter shall file with the executive administrator an application in the manner and in the form provided by board rules].

(n) Section 17.898, Water Code, is amended to read as follows:

Sec. 17.898. CONSERVATION PROJECT. (a) A conservation project is a project that:

(1) improves water use efficiency of water delivery and application on existing irrigation systems;

(2) prepares irrigated land for conversion to dryland conditions;

(3) prepares dryland for more efficient use of natural precipitation;

(4) purchases and installs on public or private property devices designed to indicate the amount of water withdrawn for irrigation purposes;

(5) prepares and maintains land to be used for brush control activities in areas of the state where those activities in the board's judgment would be most effective, including activities conducted under Chapter 203, Agriculture Code; or

(6) implements any other agricultural water conservation project defined by board rule.

(b) The costs of a conservation project eligible for financial assistance under Section 17.899 are the costs of the capital equipment, materials, labor, preparation, installation, or administration directly associated with implementing and completing the project [CONSIDERATIONS IN PASSING ON AN APPLICATION. (a) In passing on an application from a lender district, the board shall consider the lender district's ability to manage a loan program, ability to repay any loan defaults, and overall conservation program.

[(b) In passing on an application from a borrower district, the board shall consider the ability of the borrower district to repay the conservation loan and whether the conservation loan will further water conservation].

(o) Section 17.899, Water Code, is amended to read as follows:

Sec. 17.899. ELIGIBLE FUND USES. (a) Money in the fund, excluding money in the interest and sinking fund, may be used by the board to:

(1) provide a grant to a state agency to fund a conservation program or conservation project, including a conservation program that provides funding to a political subdivision or person for a conservation project;

(2) provide a grant or loan to a political subdivision for a conservation program or conservation project;

(3) provide a linked deposit to an eligible financial institution for a loan to a person for a conservation project;

(4) pay for a board conservation program;

(5) make a transfer to the interest and sinking fund;

(6) pay the costs of a bond issuance; and

(7) pay for a board expense in administering the agricultural water conservation program under this subchapter.

(b) Money in the interest and sinking fund may be used for the payment of bonds or, to the extent there are funds in excess of bond payment requirements, for transfers to the fund, or any other account in the funds ~~[APPROVAL OF APPLICATIONS. (a) The board may approve an application if, after considering the factors in Section 17.898 and other relevant factors, the board finds that:~~

~~(1) the public interest would be served in granting the application;~~

~~(2) a lender district has the ability to make conservation loans, manage a conservation loan program, and repay the loan to the board;~~

~~(3) a borrower district has the ability to repay the conservation loan;~~
and

~~(4) granting the application will further water conservation in the state.~~

~~[(b) The board by rule may delegate to the executive administrator the authority to approve an application based on the considerations in Section 17.898 and on the findings in Subsection (a)].~~

(p) Section 17.900, Water Code, is amended to read as follows:

Sec. 17.900. GRANT TO STATE AGENCY. (a) A state agency seeking a grant for a conservation program or conservation project must file an application with the board.

(b) In reviewing an application for a grant, the board shall consider:

(1) the commitment of the state agency to water conservation; and

(2) the benefits that will be gained by making the grant.

(c) To approve the grant, the board must find that:

(1) the grant funds will supplement rather than replace money of the state agency;

(2) the public interest is served by providing the grant; and

(3) the grant will further water conservation in the state.

(d) If a state agency is applying for funds that have been provided by legislative appropriation for that state agency, the board shall review the application according to the terms of the legislative appropriation. To approve the grant, the board must make the determination required by the legislative language.

(e) The board may make money available to a state agency in any manner that it considers feasible, including a grant agreement with the state agency ~~[METHODS OF MAKING LOANS AND ENFORCING OBLIGATIONS.~~

~~(a) The board may make financial assistance available to lender or borrower districts in any manner that it considers economically feasible, including purchase of bonds or securities of the lender or borrower district, or by entering into a contract with the lender or borrower district. The board shall not purchase bonds or securities that have not been approved by the attorney general and registered by the comptroller.~~

~~[(b) In the event of default in payment of the principal of or interest on bonds or securities purchased by the board or any other default as defined in the proceedings or indentures authorizing the issuance of the bonds or the default of any of the terms of a contract, the attorney general shall institute legal proceedings by mandamus or other legal remedies to compel the lender or~~

~~borrower district or its officers, agents, and employees to cure the default by performing those duties which they are legally obligated to perform. These proceedings shall be brought and venue shall be in a district court in Travis County.~~

~~[(e) This section is cumulative of any other rights or remedies to which the board may be entitled].~~

~~(q) Section 17.901, Water Code, is amended to read as follows:~~

~~Sec. 17.901. GRANT OR LOAN TO POLITICAL SUBDIVISION. The board may make a grant or loan to a political subdivision for a conservation program or conservation project. A political subdivision seeking a grant or loan must file an application with the board ~~[DEFAULT AND FORECLOSURE BY LENDER DISTRICTS.~~ (a) In the event of a default in payment of a conservation loan made by a lender district or the failure of an individual borrower to perform any of the terms or conditions of the conservation loan agreement, the lender district shall pursue all remedies available under law, including without limitation foreclosure under the conservation loan agreement and liquidation of any collateral provided under the conservation loan agreement. The lender district shall sell the collateral on terms and subject to procedures that it follows in liquidating other collateral.~~

~~[(b) Foreclosure under a conservation loan agreement shall be accomplished in the manner provided by law for foreclosure of similar loan agreements made by private lending institutions and by the conservation loan agreement.~~

~~[(c) The state guarantees to each lender district that in the event an individual borrower defaults on a conservation loan made by the lender district with money from this program, the state will assume 50 percent of the amount that remains due and payable under the default after all collateral for the conservation loan is liquidated.~~

~~[(d) The state is entitled to recover its pro rata share of any money recovered on a defaulted conservation loan on which the state has assumed liability under Subsection (c)].~~

~~(r) Section 17.902, Water Code, is amended to read as follows:~~

~~Sec. 17.902. REVIEW OF APPLICATION FOR AND APPROVAL OF GRANT. (a) In reviewing an application by a political subdivision for a grant, the board shall consider:~~

~~(1) the degree to which the political subdivision has used other available resources to finance the use for which the application is being made;~~

~~(2) the willingness and ability of the political subdivision to raise revenue;~~

~~(3) the commitment of the political subdivision to water conservation;~~
~~and~~

~~(4) the benefits that will be gained by making the grant.~~

~~(b) To approve a grant to a political subdivision, the board must find that:~~

~~(1) the grant funds will supplement rather than replace money of the political subdivision;~~

~~(2) the public interest is served by providing the grant; and~~

(3) the grant will further water conservation in the state [AUTHORITY OF DISTRICTS. A lender or borrower district may borrow and lend money for the purposes of this subchapter and may adopt necessary rules to carry out this subchapter].

(s) Subchapter J, Chapter 17, Water Code, is amended by adding Sections 17.9021 and 17.9022 to read as follows:

Sec. 17.9021. APPLICATION FOR AND APPROVAL OF LOAN. (a) In reviewing an application by a political subdivision for a loan, the board shall consider the ability of the political subdivision to repay the loan and whether the loan will further water conservation in this state.

(b) To approve a loan to a political subdivision, the board must determine that:

- (1) the public interest is served by providing the loan;
- (2) the political subdivision has the ability to repay the loan; and
- (3) the loan will further water conservation in the state.

(c) The board by rule shall establish the rate of interest it charges for a loan to a political subdivision.

Sec. 17.9022. FINANCING OF GRANT OR LOAN FOR POLITICAL SUBDIVISION; DEFAULT; VENUE. (a) The board may make a loan or grant available to a political subdivision in any manner the board considers economically feasible, including purchase of bonds or securities of the political subdivision or execution of a loan or grant agreement with the political subdivision. The board may not purchase bonds or securities that have not been approved by the attorney general and registered by the comptroller.

(b) In the event of a default in payment of the principal of or interest on bonds or securities purchased by the board, or any other default as defined in the proceedings or indentures authorizing the issuance of bonds, or a default of any of the terms of a loan agreement, the attorney general shall seek a writ of mandamus or other legal remedy to compel the political subdivision or its officers, agents, and employees to cure the default by performing the duties they are legally obligated to perform. The proceedings shall be brought and venue is in a district court in Travis County. This subsection is cumulative of any other rights or remedies to which the board may be entitled.

(t) Section 17.903, Water Code, is amended to read as follows:

Sec. 17.903. CONTRACT AUTHORITY. (a) A political subdivision may borrow money for the purposes of this subchapter and may adopt necessary rules to carry out this subchapter [RULES AND CONTRACTS. (a) The board shall adopt rules necessary to carry out this subchapter. The board by rule shall identify methods to be used by lender districts to ensure the financial integrity of a loan to an individual borrower, including an irrevocable letter of credit or a lien on property in excess of value of improvements].

(b) [The board by rule may establish:

(1) procedures for applying for a loan or grant under Section 17.894(b);

(2) procedures for considering and approving applications and for making loans or grants under Section 17.894(b); and

~~[(3) the rate of interest the board charges, if any, for loans under Section 17.894(b).~~

~~[(e)] The board shall have the power to enter into any contracts to carry out the provisions of this subchapter.~~

~~(u) Subchapter J, Chapter 17, Water Code, is amended by adding Sections 17.904 through 17.912 to read as follows:~~

Sec. 17.904. LINKED DEPOSIT. A linked deposit is a deposit governed by a written deposit agreement between the board and an eligible lending institution that provides that:

(1) the eligible lending institution pay interest on the deposit at a rate determined by the board;

(2) the state not withdraw any part of the deposit before the expiration of a period set by a written advance notice of the intention to withdraw; and

(3) the eligible lending institution agree to lend the value of the deposit to a person at a maximum rate that is the rate paid by the eligible lending institution to the board plus a maximum of four percent.

Sec. 17.905. LINKED DEPOSIT PROGRAM. (a) The board by rule may establish an agricultural water conservation linked deposit program in accordance with this subchapter.

(b) An eligible lending institution may participate in the program established under this section as provided by this subchapter.

Sec. 17.906. APPLICATION BY ELIGIBLE LENDING INSTITUTIONS TO PARTICIPATE IN LINKED DEPOSIT PROGRAM. To participate in the agricultural water conservation linked deposit program, an eligible lending institution must:

(1) solicit loan applications, which must contain a description of an agricultural water conservation project;

(2) review applications to determine if applicants are eligible and creditworthy; and

(3) submit the applications of eligible and creditworthy applicants to the executive administrator with a certification:

(A) of the interest rate applicable to each applicant by the eligible lending institution; and

(B) of the soil and water conservation district in which an applicant is located by a director of the district that states that:

(i) the applicant of the proposed project has a soil and water conservation plan approved by the district; and

(ii) the project furthers or implements the plan.

Sec. 17.907. APPROVAL OR REJECTION OF APPLICATION. The board may approve or reject an application of an eligible lending institution to participate in the program. The board may delegate its authority to approve or reject applications to the executive administrator.

Sec. 17.908. DEPOSIT AGREEMENT. If the board approves an application of an eligible lending institution, the board and the eligible lending institution shall enter into a written deposit agreement. The agreement shall contain the conditions on which the linked deposit is made. On execution of the

agreement, the board shall place a linked deposit from the fund with the eligible lending institution in accordance with the agreement. A delay in payment or a default on a loan by an applicant does not affect the validity of the deposit agreement.

Sec. 17.909. COMPLIANCE. (a) On accepting a linked deposit, an eligible lending institution must lend money to an approved applicant in accordance with the deposit agreement and this subchapter. The eligible lending institution shall forward a compliance report to the board in accordance with board rules. The board shall adopt rules regarding the compliance report.

(b) The board shall monitor compliance with this subchapter and inform the comptroller of noncompliance on the part of an eligible lending institution.

Sec. 17.910. STATE LIABILITY PROHIBITED. The state is not liable to an eligible lending institution for payment of the principal, interest, or any late charges on a loan made to an approved applicant. A linked deposit is not an extension of the state's credit within the meaning of any state constitutional prohibition.

Sec. 17.911. LIMITATIONS ON PROGRAM. (a) The maximum amount of a loan under the linked deposit program is \$250,000.

(b) The board may withdraw linked deposits from an eligible lending institution if the institution ceases to be either a state depository or a Farm Credit System institution headquartered in this state.

Sec. 17.912. RULES. The board shall adopt rules necessary to carry out this subchapter. Applications shall be in the form and manner as provided by board rules.

(v) The agricultural trust fund and the agricultural soil and water conservation fund are abolished and all assets of those funds are transferred to the agricultural water conservation fund.

(w) The following provisions of the Water Code are repealed:

(1) Subchapters G, H, and I, Chapter 15; and

(2) Subdivision (2), Section 17.871, Subdivision (7), Section 17.871, and Section 17.8955.

(x) The Texas Water Development Board shall continue to administer a loan made before September 1, 2003, under the pilot program for low-interest loans for agricultural water conservation equipment until the loan is fully repaid. Subchapter I, Chapter 15, Water Code, is continued in effect for the limited purpose of allowing the board to administer those loans and to pursue remedies if a loan recipient defaults on a loan or otherwise violates the terms of the loan or of any loan guarantee instrument.

(y) The Texas Water Development Board shall continue to administer a conservation loan made before September 1, 2003, under Subchapter J, Chapter 17, Water Code. Subchapter J, Chapter 17, Water Code, as it existed immediately before September 1, 2003, is continued in effect for the limited purpose of allowing the board to administer those loans and to pursue remedies if a loan recipient defaults on a loan or otherwise violates the terms of the loan or of any loan guarantee.

(z) This section takes effect September 1, 2003.

SECTION 20. (a) In this section, "district" shall mean the Hudspeth County Underground Water Conservation District No. 1.

(b) In order to reduce property taxes for the residents of Hudspeth County, Texas, and to reduce the expenditures of the district by excluding territory from the district that overlies aquifers not regulated by the district, the boundaries of the district are modified to include only the territory contained in the following described area:

BEGINNING at the northwest corner of Section 3, Block A, University, Hudspeth County, Texas, and being a point in the state line between Texas and New Mexico, for the northwest corner of the survey;

THENCE south with the west boundary line of Section 3, Block A, University, to its southwest corner;

THENCE east with the south boundary line of Section 3, Block A, University, to its southeast corner, which point is also the northeast corner of Section 10, Block A, University;

THENCE south with the west boundary line of Section 11, Block A, University, to its southwest corner;

THENCE east with the south boundary line of Section 11, Block A, University, and continuing east with the south boundary line of Section 12, Block A, University, to the southeast corner of Section 12, Block A, University;

THENCE south with the east boundary of Section 13, Block A, University, to the southeast corner of Section 13, Block A, University, which point is also the northeast corner of Section 24, Block A, University;

THENCE east with the north boundary line of Section 19, Block B, University, and continuing east with the north boundary line of Section 20, Block B, University, to the northeast corner of Section 20, Block B, University;

THENCE south with the east boundary line of Section 20, Block B, University, to the southeast corner of Section 20, Block B, University, which point is also the northeast corner of Section 29, Block B, University;

THENCE east with the north boundary line of Section 28, Block B, University, to the northeast corner of Section 28, Block B, University, which point is also the southeast corner of Section 21, Block B, University;

THENCE south with east boundary line of Section 28, Block B, University, to the southeast corner of Section 28, Block B, University, which point is also the northeast corner of Section 33, Block B, University;

THENCE east with the north boundary line of Section 34, Block B, University, and continuing east with the north boundary line of Section 35, Block B, University, to the northeast corner of Section 35, Block B, University;

THENCE south with east boundary line of Section 35, Block B, University, to its southeast corner, which point is also the northeast corner of Section 38, Block B, University;

THENCE east with the north boundary line of Section 37, Block B, University, and continuing east with the north boundary line of Section 48, Block C, University, to its northeast corner, which point is also the northwest corner of Section 47, Block C, University;

THENCE south with the east boundary line of Section 48, Block C, University, to its southeast corner;

THENCE east with the north boundary line of Section 50, Block C, University, to its northeast corner;

THENCE south with the east boundary line of Section 50, Block C, University, to its southeast corner;

THENCE east with the north boundary line of Section 4, Block D, University, and continuing east along the north boundary line of Section 3, Block D, University, to the northeast corner of Section 3;

THENCE south with the east boundary line of Section 3, Block D, University, to its southeast corner;

THENCE east with the north boundary line of Section 11, Block D, University, and continuing east along the north boundary line of Section 12, Block D, University, to its northeast corner;

THENCE south with the east boundary line of Section 12, Block D, University, to its southeast corner;

THENCE east with the north boundary line of Section 18, Block 72, Township 2, T & P, to its northeast corner;

THENCE south with the east boundary line of Section 18, Block 72, Township 2, T & P, to its southeast corner;

THENCE east with the north boundary line of Section 20, Block 72, Township 2, T & P, and continuing east along the north boundary line of Section 21, Block 72, Township 2, T & P, to the northeast corner of Section 21;

THENCE south with the east boundary line of Section 21, Block 72, Township 2, T & P, to its southeast corner;

THENCE east with the north boundary line of Section 27, Block 72, Township 2, T & P, and continuing east with the north boundary lines of Sections 26 and 25, Block 72, Township 2, T & P, and Section 30, Block 71, Township 2, T & P, to the northeast corner of Section 30;

THENCE south with the east boundary line of Section 30, Block 71, Township 2, T & P, to its southeast corner;

THENCE east with the north boundary line of Section 32, Block 71, Township 2, T & P, and continuing east with the north boundary line of Section 33, Block 71, Township 2, T & P, to the northeast corner of Section 33;

THENCE south with the east boundary line of Section 33, Block 71, Township 2, T & P, to its southeast corner;

THENCE east with the north boundary line of Section 39, Block 71, Township 2, T & P, to the northeast corner of Section 39;

THENCE south with the east boundary line of Section 39, Block 71, Township 2, T & P, to its southeast corner;

THENCE east with the north boundary line of Section 47, Block 71, Township 2, T & P, to the northeast corner of Section 47;

THENCE south with the east boundary line of Section 47, Block 71, Township 2, T & P, to the southeast corner of Section 47;

THENCE east with the south boundary line of Section 48, Block 71, Township 2, T & P, and continuing east with the south boundary line of Section 43, Block 70, Township 2, T & P, to the southeast corner of Section 43;

THENCE south with the east boundary lines of Section 7, Block JKL, P.S.L., and Section 6, Block K, University, to the southeast corner of Section 6;

THENCE east with the north boundary line of Section 8, Block K, University, and continuing east with the north boundary line of Section 9, Block K, University, to the northeast corner of Section 9;

THENCE south with the east boundary line of Section 9, Block K, University, to its southeast corner;

THENCE east with the north boundary line of Section 15, Block K, University, to its northeast corner;

THENCE south with the east boundary line of Section 15, Block K, University, and continuing south with the east boundary line of Section 22, Block K, University, to the southeast corner of Section 22;

THENCE east with the north boundary line of Section 26, Block K, University, to its northeast corner;

THENCE south with the east boundary line of Section 26, Block K, University, to its southeast corner;

THENCE east with the north boundary line of Section 36, Block K, University, to its northeast corner;

THENCE south with the east boundary line of Section 36, Block K, University, to its southeast corner;

THENCE east with the north boundary line of Section 42, Block L, University, to its northeast corner;

THENCE south with the east boundary line of Section 42, Block L, University, and continuing south with the east boundary line of Section 43, Block L, University, to the southeast corner of Section 43;

THENCE east with the north boundary line of Section 5, Block N, University, and continuing east with the north boundary line of Section 4, Block N, University, to the northeast corner of Section 4;

THENCE south with the east boundary line of Section 4, Block N, University, to its southeast corner;

THENCE east with the north boundary line of Section 22, Block N, University, to its northeast corner;

THENCE south with the east boundary line of Section 22, Block N, University, to its southeast corner;

THENCE east with the north boundary line of Section 26, Block N, University, and continuing east with the north boundary line of Section 25, Block N, University, to the northeast corner of Section 25;

THENCE south with the east boundary line of Section 25, Block N, University, to its southeast corner;

THENCE east with the north boundary line of Section 19, Block 68, Township 4, T & P, to its northeast corner;

THENCE south with the east boundary line of Section 19, Block 68, Township 4, T & P, to its southeast corner;

THENCE east with the north boundary line of Section 29, Block 68, Township 4, T & P, and continuing east with the north boundary line of Section 28, Block 68, Township 4, T & P, to the northeast corner of Section 28;

THENCE south with the east boundary line of Section 28, Block 68, Township 4, T & P, to its southeast corner;

THENCE east with the south boundary line of Section 27, Block 68, Township 4, T & P, and continuing east with the south boundary lines of Sections 26 and 25, Block 68, Township 4, T & P, to the intersection of the south boundary line of Section 25, Block 68, Township 4, T & P, with the east boundary line of Section 3, Block 30, P.S.L.;

THENCE south with the east boundary line of Section 3, Block 30, P.S.L., to its southeast corner;

THENCE east with the south boundary line of Section 2, Block 30, P.S.L., and continuing east with the south boundary lines of Section 1, Block 30, P.S.L., and Sections 5, 4, 3, and 2, Block 31, P.S.L., to the southeast corner of Section 2;

THENCE north with the east boundary line of Section 2, Block 31, P.S.L., and continuing north with the east boundary lines of Sections 26, 23, 14, 11, 2, Block 67, Township 4, T & P, and Sections 46, 37, 34, 25, 22, 13, 10, 5, Block 67, Township 3, T & P;

THENCE continuing north with the east boundary lines of Sections 43, 34, 33, 24, 23, 14, 11, 2, Block 67, Township 2, T & P, and Sections 47, 38, 35, 26, 23, 14, 11, 2, Block 67, Township 1, T & P, to the northeast corner of Section 2, being a point in the Texas-New Mexico State line forming the north boundary line of Hudspeth County, Texas;

THENCE west with the Texas-New Mexico State Line to the Point of Beginning.

(c) The legislature finds that the boundaries and field notes of the district under Subsection (b) 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.

(d) As a result of the change to the boundaries of the district made by Subsection (b) or if otherwise required by law, the board may:

- (1) adjust the precinct boundaries for the election of directors as necessary to provide for proper representation of the residents of the district; and
- (2) call and hold election under Chapter 36, Water Code, or other law to ensure the lawful representation and taxation of the residents of the district.

SECTION 21. EFFECTIVE DATE. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2003.

Representative Pickett moved to adopt the conference committee report on **HB 3442**.

A record vote was requested.

The motion prevailed by (Record 932): 144 Yeas, 1 Nay, 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.; Davis, Y.; Dawson; Delisi; Denny; Deshotel; Driver; Dukes; Dunnam; Dutton; Edwards; Eiland; Eissler; Elkins; Ellis; 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, E.; Jones, J.; Keel; Keffer, B.; Keffer, J.; King; Kolkhorst; Krusee; Kuempel; Laubenberg; Lewis; Luna; Mabry; Madden; Marchant; Martinez Fischer; McCall; McClendon; McReynolds; Menendez; Mercer; Merritt; Miller; Moreno, J.; Moreno, P.; Morrison; Mowery; Naishtat; Nixon; Noriega; Oliveira; Olivo; Paxton; Peña; Phillips; Pickett; Pitts; Puente; Quintanilla; Raymond; Reyna; Riddle; Ritter; Rodriguez; Rose; Seaman; Smith, T.; Smith, W.; Smithee; Solis; Solomons; Stick; Swinford; Talton; Taylor; Thompson; Truitt; Turner; Uresti; Van Arsdale; Villarreal; West; Wilson; Wise; Wohlgemuth; Wolens; Wong; Woolley; Zedler.

Nays — Laney.

Present, not voting — Mr. Speaker(C).

Absent — Escobar; Goodman; Jones, D.; Telford.

STATEMENTS OF VOTE

I was shown voting yes on Record No. 932. I intended to vote no.

Chisum

I was shown voting yes on Record No. 932. I intended to vote no.

R. Cook

I was shown voting yes on Record No. 932. I intended to vote no.

Dunnam

I was shown voting yes on Record No. 932. I intended to vote no.

Flynn

I was shown voting yes on Record No. 932. I intended to vote no.

Haggerty

When Record No. 932 was taken, I did not vote. I could not follow the explanation. I would have voted no.

D. Jones

I was shown voting yes on Record No. 932. I intended to vote no.

Kolkhorst

I was shown voting yes on Record No. 932. I intended to vote no.

Kuempel

I was shown voting yes on Record No. 932. I intended to vote no.

Merritt

I was shown voting yes on Record No. 932. I intended to vote no.

Noriega

I was shown voting yes on Record No. 932. I intended to vote no.

Zedler

SB 264 - 24 HOUR LAYOUT RULE SUSPENDED

Representative Callegari moved to suspend Rule 13, Section 10 of the house rules to consider the conference committee report on **SB 264** which was ineligible for consideration at this time.

The motion prevailed.

SB 264 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Callegari submitted the conference committee report on **SB 264**.

Representative Callegari moved to adopt the conference committee report on **SB 264**.

The motion prevailed.

SB 671 - 24 HOUR LAYOUT RULE SUSPENDED

Representative Wohlgemuth moved to suspend Rule 13, Section 10 of the house rules to consider the conference committee report on **SB 671** which was ineligible for consideration at this time.

The motion prevailed.

SB 671 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Wohlgemuth submitted the conference committee report on **SB 671**.

Representative Wohlgemuth moved to adopt the conference committee report on **SB 671**.

A record vote was requested.

The motion prevailed by (Record 933): 147 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; 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; 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.

Present, not voting — Mr. Speaker(C).

Absent — Coleman; Dutton.

STATEMENT OF VOTE

I was shown voting yes on Record No. 933. I intended to vote no.

Luna

SB 1369 - 24 HOUR LAYOUT RULE SUSPENDED

Representative Delisi moved to suspend Rule 13, Section 10 of the house rules to consider the conference committee report on **SB 1369** which was ineligible for consideration at this time.

The motion prevailed.

SB 1369 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Delisi submitted the conference committee report on **SB 1369**.

Representative Delisi moved to adopt the conference committee report on **SB 1369**.

The motion prevailed. (Capelo, Noriega, and Thompson recorded voting no)

HR 1864 - ADOPTED

(by Delisi)

The following privileged resolution was laid before the house:

HR 1864

BE IT RESOLVED by the House of Representatives of the State of Texas, 78th Legislature, Regular Session, 2003, That House Rule 13, Section 9(a), be suspended in part as provided by House Rule 13, Section 9(f), to enable the conference committee appointed to resolve the differences on **SB 1370**, relating to certain group benefit plans provided to certain governmental officers, employees, and retirees and their dependents, to consider and take action on the following matter:

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

SECTION 2.08. Subchapter G, Chapter 1551, Insurance Code, as effective June 1, 2003, is amended by adding Section 1551.3015 to read as follows:

Sec. 1551.3015. COST ASSESSMENT FOR CERTAIN PARTICIPANTS. Notwithstanding any other provision of law, the board of trustees may impose against an employer whose employees are not paid salaries from amounts appropriated by the General Appropriations Act and whose participation in the group benefits program begins after August 31, 2003, as a condition for participation in the program, a one-time assessment of administrative costs for participation of the employees and annuitants in the program, which may include the actuarial costs of including the group in the program and a participation premium determined by the board. The board of trustees shall deposit all amounts recovered under this section in the employees life, accident, and health insurance and benefits fund.

Explanation: The added section is necessary to authorize the board of trustees to impose a cost assessment against certain employers whose employees and annuitants participate in the group benefits program under the Texas Employees Group Benefits Act.

HR 1864 was adopted.

HB 3015 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Morrison submitted the following conference committee report on **HB 3015** :

Austin, Texas, May 31, 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 3015** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Shapiro
Bivins
Ogden
Duncan

F. Brown
Heflin
Pitts
Morrison
Menendez

On the part of the senate

On the part of the house

HB 3015, A bill to be entitled An Act relating to the tuition and fees charged to students of institutions of higher education, to financial assistance funded by tuition, and to reports of availability and access by institutions of higher education.

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

SECTION 1. The heading to Section 54.0513, Education Code, is amended to read as follows:

Sec. 54.0513. DESIGNATED TUITION [~~REDESIGNATION OF BUILDING USE FEE~~].

SECTION 2. Sections 54.0513(a) and (b), Education Code, are amended to read as follows:

(a) [~~The building use fee previously authorized in Section 55.16 of this code is redesignated as tuition.~~

~~(b)~~ In addition to amounts that a governing board of an institution of higher education is authorized to charge as tuition under the other provisions of this chapter, the governing board, under the terms the governing board considers appropriate, may [is authorized to] charge any student an amount designated as tuition that the governing board considers necessary for the effective operation of the institution [in an academic year an amount not to exceed the amount charged under Sections 54.051 or 54.0512, as applicable, in that academic year].

(b) A governing board may set a different tuition rate for each program and course level offered by each institution of higher education. A governing board may set a different tuition rate as the governing board considers appropriate to increase graduation rates, encourage efficient use of facilities, or enhance employee performance.

SECTION 3. Subchapter B, Chapter 54, Education Code, is amended by adding Section 54.0515 to read as follows:

Sec. 54.0515. LEGISLATIVE OVERSIGHT COMMITTEE ON HIGHER EDUCATION. (a) In this section, "committee" means the legislative oversight committee on higher education.

(b) The legislative oversight committee on higher education is composed of 12 members as follows:

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

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

(c) The lieutenant governor shall designate one of the committee members appointed by the lieutenant governor as committee co-chair and the speaker shall designate one of the committee members appointed by the speaker as committee co-chair.

(d) An appointed member of the committee serves at the pleasure of the appointing official. In making appointments to the committee, the appointing officials shall attempt to appoint persons who represent the gender composition, minority populations, and geographic regions of the state.

(e) It is the legislature's intent that each institution of higher education, as a condition to tuition deregulation under Section 54.0513, reasonably implement the following:

(1) each institution shall make satisfactory progress towards the goals provided in its master plan for higher education and in "Closing the Gaps," the state's master plan for higher education; and

(2) each institution shall meet acceptable performance criteria, including measures such as graduation rates, retention rates, enrollment growth, educational quality, efforts to enhance minority participation, opportunities for financial aid, and affordability.

(f) The committee shall:

(1) meet at the call of either chair;

(2) monitor and regularly report to the legislature on each institution of higher education's compliance with the requirements of Subsection (e); and

(3) receive and review information concerning the affordability and accessibility of higher education, including the impact of tuition deregulation.

(g) The committee may request reports and other information from institutions of higher education and the Texas Higher Education Coordinating Board as necessary to carry out this section.

(e) The committee shall make recommendations for any legislative action the committee considers necessary to meet the criteria provided by Subsection (e), and such other criteria as the legislature may establish, and to improve higher education affordability and access.

(f) This section does not create a cause of action.

SECTION 4. Section 54.624, Education Code, is amended to read as follows:

Sec. 54.624. SENIOR COLLEGE PLAN. (a) Through the senior college plan, a prepaid tuition contract shall provide prepaid tuition and required fees for the beneficiary to attend a public senior college or university for a specified number of undergraduate credit hours not to exceed the typical number of hours required for a baccalaureate degree awarded by a public senior college or university.

(b) When the beneficiary of a senior college plan prepaid tuition contract enrolls in a public senior college or university, the university shall accept as payment in full of the beneficiary's tuition and required fees the lesser of:

(1) the amount of tuition and required fees charged by the institution; or

(2) an amount paid by the board under the contract equal to the weighted average amount of tuition and required fees of all public senior colleges and universities for that semester or other academic period as determined by the board.

(c) Each public senior college or university shall provide the information requested by the board on or before June 1 each year to assist the board in determining the weighted average amount of tuition and required fees of all public senior colleges and universities for each semester or other academic term of the following academic year for purposes of this section.

SECTION 5. Chapter 56, Education Code, is amended by adding Subchapter B to read as follows:

SUBCHAPTER B. FINANCIAL ASSISTANCE FUNDED
FROM DESIGNATED TUITION

Sec. 56.011. RESIDENT UNDERGRADUATE STUDENT ASSISTANCE. (a) The governing board of each institution of higher education shall cause to be set aside not less than 20 percent of any amount of tuition charged to a resident

undergraduate student under Section 54.0513 in excess of \$46 per semester credit hour. The funds set aside under this section by an institution shall be used to provide financial assistance for resident undergraduate students enrolled in the institution.

(b) To be eligible for assistance under this section, a student must establish financial need in accordance with rules and procedures established by the Texas Higher Education Coordinating Board. Priority shall be given to students who meet the coordinating board definition of financial need and whose cost for tuition and required fees is not met through other non-loan financial assistance programs.

(c) The financial assistance provided under this section may include grants, scholarships, work-study programs, student loans, and student loan repayment assistance.

Sec. 56.012. RESIDENT GRADUATE STUDENT ASSISTANCE. (a) The governing board of each institution of higher education shall cause to be set aside not less than 15 percent of any amount of tuition charged to a resident student enrolled in a graduate or professional degree program under Section 54.0513 in excess of \$46 per semester credit hour. The funds set aside under this section by an institution shall be used to provide financial assistance for resident students enrolled in graduate and professional degree programs at the institution.

(b) To be eligible for assistance under this section, a student must establish financial need in accordance with rules and procedures established by the Texas Higher Education Coordinating Board. Priority shall be given to students who meet the coordinating board definition of financial need and whose cost for tuition and required fees is not met through other non-loan financial assistance programs.

(c) The financial assistance provided under this section may include grants, scholarships, work-study programs, student loans, and student loan repayment assistance.

Sec. 56.013. INFORMATION REGARDING FINANCIAL ASSISTANCE FUNDED FROM DESIGNATED TUITION. The Texas Higher Education Coordinating Board shall disseminate to each public or accredited private high school in this state information regarding the financial assistance available under this subchapter and shall include information designed to educate high school students and the parents of those students on available opportunities and required preparation with respect to institutions of higher education. The coordinating board shall recommend a method of delivery of the information to parents and students under this section.

SECTION 6. Subchapter H, Chapter 51, Education Code, is amended by adding Section 51.4031 to read as follows:

Sec. 51.4031. REPORTS OF AFFORDABILITY AND ACCESS. (a) Not later than November 1 of each year, the chief executive officer of each institution of higher education, as defined by Section 61.003, shall provide to the governing board of the institution a report for the preceding fall, spring, and summer semesters that examines the affordability and access of the institution.

(b) The report must include:

(1) statistical information on the percentage of gross family income required for a student who is a resident of this state to pay tuition and required fees charged by the institution;

(2) the criteria used by the institution to admit students to the institution;

(3) an analysis of the criteria used to admit students and to award financial assistance to students, considering the mission of the institution and the purposes of higher education in this state;

(4) an analysis of the manner in which the factors described by Subdivisions (1)-(3) relate to:

(A) the regions of this state in which students reside;

(B) the race or ethnicity of students;

(C) the gender of students; and

(D) the level of education achieved by the parents of students; and

(5) comparisons of the institution with peer institutions in this state and in other states with respect to affordability and access.

(c) For purposes of the report, a student who applies for admission to or enrolls in an institution and applies for financial aid from the institution may be required to provide documentation necessary for the institution to complete the report.

(d) An institution's report must be in the form prescribed by the Texas Higher Education Coordinating Board in consultation with the institution.

SECTION 7. (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 changes in law made by this Act relating to tuition charged by institutions of higher education apply beginning with the 2003 fall semester.

Representative Morrison moved to adopt the conference committee report on **HB 3015**.

A record vote was requested.

The motion prevailed by (Record 934): 100 Yeas, 43 Nays, 0 Present, not voting.

Yeas — Mr. Speaker(C); Allen; Baxter; Berman; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Callegari; Campbell; Capelo; Casteel; Chisum; Cook, B.; Cook, R.; Corte; Crabb; Crownover; Davis, J.; Dawson; Delisi; Denny; Driver; Dutton; Eiland; Eissler; Elkins; Ellis; Farabee; Flynn; Gattis; Geren; Goodman; Goolsby; Griggs; Grusendorf; Gutierrez; Hamric; Hardcastle; Harper-Brown; Hartnett; Heflin; Hegar; Hill; Homer; Hope; Hopson; Howard; Hunter; Hupp; Jones, E.; Keel; Keffer, B.; Keffer, J.; King; Kolkhorst; Krusee; Kuempel; Laubenberg; Lewis; Luna; Mabry; Madden; Marchant; McCall; McClendon; McReynolds; Menendez; Mercer; Merritt; Miller; Morrison; Mowery; Nixon; Paxton; Pickett; Pitts; Puente; Reyna; Riddle; Rose; Seaman; Smith, W.; Solis; Solomons; Stick; Swinford; Talton; Taylor; Truitt; Uresti; Van Arsdale; Villarreal; West; Wohlgemuth; Wolens; Wong; Woolley; Zedler.

Nays — Alonzo; Burnam; Castro; Chavez; Christian; Coleman; Davis, Y.; Deshotel; Dukes; Dunnam; Edwards; Escobar; Farrar; Gallego; Giddings; Guillen; Haggerty; Hamilton; Hilderbran; Hochberg; Hodge; Isett; Jones, D.; Laney; Martinez Fischer; Moreno, J.; Moreno, P.; Naishtat; Noriega; Oliveira; Olivo; Peña; Phillips; Quintanilla; Raymond; Ritter; Rodriguez; Smith, T.; Telford; Thompson; Turner; Wilson; Wise.

Absent — Bailey; Canales; Flores; Garza; Hughes; Jones, J.; Smithee.

STATEMENTS OF VOTE

When Record No. 934 was taken, I was in the house but away from my desk. I would have voted yes.

Flores

When Record No. 934 was taken, I was in the house but away from my desk. I would have voted no.

Hughes

I was shown voting yes on Record No. 934. I intended to vote no.

Mabry

I was shown voting yes on Record No. 934. I intended to vote no.

Paxton

REASONS FOR VOTE

I voted "aye" on **HB 3015** to support flexible tuition for higher education primarily to help more fully fund community colleges during the biennium. It is my greatest desire that every Texan be afforded the opportunity to attend a school of higher education and achieve the highest degree they desire at an affordable price. I'm pleased that we have a select committee and an interim study on this vitally important issue.

Chisum

Homer

Hopson

McReynolds

I am opposed to the deregulation of tuition without further study by the legislature during the interim. This issue is much too serious to move to untested measures at this time. However, I am forced to vote in favor of **HB 3015** because the funding formula has been devised in such a way that if the bill does not pass, the community colleges in Bexar County, which includes St. Phillip's College in my legislative district, will lose \$60 million in funding for the biennium.

McClendon

HB 4 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Nixon submitted the following conference committee report on **HB 4** :

Austin, Texas, May 31, 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 4** 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.

Ratliff
Armbrister
Duncan
Nelson

Nixon
Gattis
King
Luna
Woolley

On the part of the senate

On the part of the house

HB 4, A bill to be entitled An Act relating to reform of certain procedures and remedies in civil actions.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:
ARTICLE 1. CLASS ACTIONS

SECTION 1.01. Subtitle B, Title 2, Civil Practice and Remedies Code, is amended by adding Chapter 26 to read as follows:

CHAPTER 26. CLASS ACTIONS

SUBCHAPTER A. SUPREME COURT RULES

Sec. 26.001. ADOPTION OF RULES BY SUPREME COURT. (a) The supreme court shall adopt rules to provide for the fair and efficient resolution of class actions.

(b) The supreme court shall adopt rules under this chapter on or before December 31, 2003.

Sec. 26.002. MANDATORY GUIDELINES. Rules adopted under Section 26.001 must comply with the mandatory guidelines established by this chapter.

Sec. 26.003. ATTORNEY'S FEES. (a) If an award of attorney's fees is available under applicable substantive law, the rules adopted under this chapter must provide that the trial court shall use the Lodestar method to calculate the amount of attorney's fees to be awarded class counsel. The rules may give the trial court discretion to increase or decrease the fee award calculated by using the Lodestar method by no more than four times based on specified factors.

(b) Rules adopted under this chapter must provide that in a class action, if any portion of the benefits recovered for the class are in the form of coupons or other noncash common benefits, the attorney's fees awarded in the action must be in cash and noncash amounts in the same proportion as the recovery for the class.

[Sections 26.004-26.050 reserved for expansion]
SUBCHAPTER B. CLASS ACTIONS INVOLVING JURISDICTION OF
STATE AGENCY

Sec. 26.051. STATE AGENCY WITH EXCLUSIVE OR PRIMARY JURISDICTION. (a) Before hearing or deciding a motion to certify a class action, a trial court must hear and rule on all pending pleas to the jurisdiction asserting that an agency of this state has exclusive or primary jurisdiction of the action or a part of the action, or asserting that a party has failed to exhaust administrative remedies. The court's ruling must be reflected in a written order.

(b) If a plea to the jurisdiction described by Subsection (a) is denied and a class is subsequently certified, a person may, as part of an appeal of the order certifying the class action, obtain appellate review of the order denying the plea to the jurisdiction.

(c) This section does not alter or abrogate a person's right to appeal or pursue an original proceeding in an appellate court in regard to a trial court's order granting or denying a plea to the jurisdiction if the right exists under statutory or common law in effect at the time review is sought.

SECTION 1.02. Section 22.225, Government Code, is amended by amending Subsections (b) and (d) and adding Subsection (e) to read as follows:

(b) Except as provided by Subsection (c) or (d), a judgment of a court of appeals is conclusive on the law and facts, and a petition for review ~~writ of error~~ is not allowed to ~~from~~ the supreme court, in the following civil cases:

(1) a case appealed from a county court or from a district court when, under the constitution, a county court would have had original or appellate jurisdiction of the case, with the exception of a probate matter or a case involving state revenue laws or the validity or construction of a statute;

(2) a case of a contested election other than a contested election for a state officer, with the exception of a case where the validity of a statute is questioned by the decision;

(3) an appeal from an interlocutory order appointing a receiver or trustee or from other interlocutory appeals that are allowed by law;

(4) an appeal from an order or judgment in a suit in which a temporary injunction has been granted or refused or when a motion to dissolve has been granted or overruled; and

(5) all other cases except the cases where appellate jurisdiction is given to the supreme court and is not made final in the courts of appeals.

(d) A petition for review ~~writ of error~~ is allowed to ~~from~~ the supreme court for an appeal from an interlocutory order described by Section 51.014(a)(3) or (6) ~~51.014(6)~~, Civil Practice and Remedies Code.

(e) For purposes of Subsection (c), one court holds differently from another when there is inconsistency in their respective decisions that should be clarified to remove unnecessary uncertainty in the law and unfairness to litigants.

SECTION 1.03. Sections 51.014(a), (b), and (c), Civil Practice and Remedies Code, are amended to read as follows:

(a) A person may appeal from an interlocutory order of a district court, county court at law, or county court that:

- (1) appoints a receiver or trustee;
- (2) overrules a motion to vacate an order that appoints a receiver or trustee;
- (3) certifies or refuses to certify a class in a suit brought under Rule 42 of the Texas Rules of Civil Procedure;
- (4) grants or refuses a temporary injunction or grants or overrules a motion to dissolve a temporary injunction as provided by Chapter 65;
- (5) denies a motion for summary judgment that is based on an assertion of immunity by an individual who is an officer or employee of the state or a political subdivision of the state;
- (6) denies a motion for summary judgment that is based in whole or in part upon a claim against or defense by a member of the electronic or print media, acting in such capacity, or a person whose communication appears in or is published by the electronic or print media, arising under the free speech or free press clause of the First Amendment to the United States Constitution, or Article I [†], Section 8, of the Texas Constitution, or Chapter 73;
- (7) grants or denies the special appearance of a defendant under Rule 120a, Texas Rules of Civil Procedure, except in a suit brought under the Family Code; ~~[or]~~
- (8) grants or denies a plea to the jurisdiction by a governmental unit as that term is defined in Section 101.001;
- (9) denies all or part of the relief sought by a motion under Section 74.351(b), except that an appeal may not be taken from an order granting an extension under Section 74.351; or
- (10) grants relief sought by a motion under Section 74.351(l).

(b) An interlocutory appeal under Subsection (a), other than an appeal under Subsection (a)(4), stays ~~[shall have the effect of staying]~~ the commencement of a trial in the trial court pending resolution of the appeal. An interlocutory appeal under Subsection (a)(3), (5), or (8) also stays all other proceedings in the trial court pending resolution of that appeal.

(c) A denial of a motion for summary judgment, special appearance, or plea to the jurisdiction described by Subsection (a)(5), (7), or (8) is not subject to the automatic stay ~~[of the commencement of trial]~~ under Subsection (b) unless the motion, special appearance, or plea to the jurisdiction is filed and requested for submission or hearing before the trial court not later than the later of:

- (1) a date set by the trial court in a scheduling order entered under the Texas Rules of Civil Procedure; or
- (2) the 180th day after the date the defendant files:
 - (A) the original answer;
 - (B) the first other responsive pleading to the plaintiff's petition; or
 - (C) if the plaintiff files an amended pleading that alleges a new cause of action against the defendant and the defendant is able to raise a defense to the new cause of action under Subsection (a)(5), (7), or (8), the responsive pleading that raises that defense.

SECTION 1.04. Section 22.001, Government Code, is amended by adding Subsection (e) to read as follows:

(e) For purposes of Subsection (a)(2), one court holds differently from another when there is inconsistency in their respective decisions that should be clarified to remove unnecessary uncertainty in the law and unfairness to litigants.

SECTION 1.05. (a) The changes in law made by Section 1.02 of this Act to Section 22.225(d), Government Code, apply to any case in which a petition for review to the Supreme Court of Texas is filed on or after the effective date of this Act.

(b) The changes in law made by Section 1.03 of this Act to Sections 51.014(b) and (c), Civil Practice and Remedies Code, apply to any case in which an appeal allowed by Section 51.014(a), Civil Practice and Remedies Code, as amended by this Act, is taken and the notice of appeal is filed on or after the effective date of this Act.

ARTICLE 2. SETTLEMENT

SECTION 2.01. Subtitle C, Title 2, Civil Practice and Remedies Code, is amended by adding Chapter 42 to read as follows:

CHAPTER 42. SETTLEMENT

Sec. 42.001. DEFINITIONS. In this chapter:

(1) "Claim" means a request, including a counterclaim, cross-claim, or third-party claim, to recover monetary damages.

(2) "Claimant" means a person making a claim.

(3) "Defendant" means a person from whom a claimant seeks recovery on a claim, including a counterdefendant, cross-defendant, or third-party defendant.

(4) "Governmental unit" means the state, a unit of state government, or a political subdivision of this state.

(5) "Litigation costs" means money actually spent and obligations actually incurred that are directly related to the case in which a settlement offer is made. The term includes:

(A) court costs;

(B) reasonable fees for not more than two testifying expert witnesses; and

(C) reasonable attorney's fees.

(6) "Settlement offer" means an offer to settle or compromise a claim made in compliance with this chapter.

Sec. 42.002. APPLICABILITY AND EFFECT. (a) The settlement procedures provided in this chapter apply only to claims for monetary relief.

(b) This chapter does not apply to:

(1) a class action;

(2) a shareholder's derivative action;

(3) an action by or against a governmental unit;

(4) an action brought under the Family Code;

(5) an action to collect workers' compensation benefits under Subtitle A, Title 5, Labor Code; or

(6) an action filed in a justice of the peace court.

(c) This chapter does not apply until a defendant files a declaration that the settlement procedure allowed by this chapter is available in the action. If there is more than one defendant, the settlement procedure allowed by this chapter is available only in relation to the defendant that filed the declaration and to the parties that make or receive offers of settlement in relation to that defendant.

(d) This chapter does not limit or affect the ability of any person to:

(1) make an offer to settle or compromise a claim that does not comply with this chapter; or

(2) offer to settle or compromise a claim to which this chapter does not apply.

(e) An offer to settle or compromise that is not made under this chapter or an offer to settle or compromise made in an action to which this chapter does not apply does not entitle the offering party to recover litigation costs under this chapter.

Sec. 42.003. MAKING SETTLEMENT OFFER. A settlement offer must:

(1) be in writing;

(2) state that it is made under this chapter;

(3) state the terms by which the claims may be settled;

(4) state a deadline by which the settlement offer must be accepted; and

(5) be served on all parties to whom the settlement offer is made.

Sec. 42.004. AWARDING LITIGATION COSTS. (a) If a settlement offer is made and rejected and the judgment to be rendered will be significantly less favorable to the rejecting party than was the settlement offer, the offering party shall recover litigation costs from the rejecting party.

(b) A judgment will be significantly less favorable to the rejecting party than is the settlement offer if:

(1) the rejecting party is a claimant and the award will be less than 80 percent of the rejected offer; or

(2) the rejecting party is a defendant and the award will be more than 120 percent of the rejected offer.

(c) The litigation costs that may be recovered by the offering party under this section are limited to those litigation costs incurred by the offering party after the date the rejecting party rejected the settlement offer.

(d) The litigation costs that may be awarded under this chapter may not be greater than an amount computed by:

(1) determining the sum of:

(A) 50 percent of the economic damages to be awarded to the claimant in the judgment;

(B) 100 percent of the noneconomic damages to be awarded to the claimant in the judgment; and

(C) 100 percent of the exemplary or additional damages to be awarded to the claimant in the judgment; and

(2) subtracting from the amount determined under Subdivision (1) the amount of any statutory or contractual liens in connection with the occurrences or incidents giving rise to the claim.

(e) If a claimant or defendant is entitled to recover fees and costs under another law, that claimant or defendant may not recover litigation costs in addition to the fees and costs recoverable under the other law.

(f) If a claimant or defendant is entitled to recover fees and costs under another law, the court must not include fees and costs incurred by that claimant or defendant after the date of rejection of the settlement offer when calculating the amount of the judgment to be rendered under Subsection (a).

(g) If litigation costs are to be awarded against a claimant, those litigation costs shall be awarded to the defendant in the judgment as an offset against the claimant's recovery from that defendant.

Sec. 42.005. SUPREME COURT TO MAKE RULES. (a) The supreme court shall promulgate rules implementing this chapter. The rules must be limited to settlement offers made under this chapter. The rules must be in effect on January 1, 2004.

(b) The rules promulgated by the supreme court must provide:

(1) the date by which a defendant or defendants must file the declaration required by Section 42.002(c);

(2) the date before which a party may not make a settlement offer;

(3) the date after which a party may not make a settlement offer; and

(4) procedures for:

(A) making an initial settlement offer;

(B) making successive settlement offers;

(C) withdrawing a settlement offer;

(D) accepting a settlement offer;

(E) rejecting a settlement offer; and

(F) modifying the deadline for making, withdrawing, accepting, or rejecting a settlement offer.

(c) The rules promulgated by the supreme court must address actions in which there are multiple parties and must provide that if the offering party joins another party or designates a responsible third party after making the settlement offer, the party to whom the settlement offer was made may declare the offer void.

(d) The rules promulgated by the supreme court may:

(1) designate other actions to which the settlement procedure of this chapter does not apply; and

(2) address other matters considered necessary by the supreme court to the implementation of this chapter.

SECTION 2.02. The changes in law provided by this article apply only to an action filed on or after January 1, 2004.

ARTICLE 3. VENUE; FORUM NON CONVENIENS

SECTION 3.01. Section 74.024(c), Government Code, is amended to read as follows:

(c) The supreme court may consider the adoption of rules relating to:

(1) nonbinding time standards for pleading, discovery, motions, and dispositions;

(2) nonbinding dismissal of inactive cases from dockets, if the dismissal is warranted;

(3) attorney's accountability for and incentives to avoid delay and to meet time standards;

(4) penalties for filing frivolous motions;

(5) firm trial dates;

(6) restrictive devices on discovery;

(7) a uniform dockets policy;

(8) formalization of settlement conferences or settlement programs;

[~~and~~]

(9) standards for selection and management of nonjudicial personnel;

and

(10) transfer of related cases for consolidated or coordinated pretrial proceedings.

SECTION 3.02. Chapter 74, Government Code, is amended by adding Subchapter H to read as follows:

SUBCHAPTER H. JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

Sec. 74.161. JUDICIAL PANEL ON MULTIDISTRICT LITIGATION. (a) The judicial panel on multidistrict litigation consists of five members designated from time to time by the chief justice of the supreme court. The members of the panel must be active court of appeals justices or administrative judges.

(b) The concurrence of three panel members is necessary to any action by the panel.

Sec. 74.162. TRANSFER OF CASES BY PANEL. Notwithstanding any other law to the contrary, the judicial panel on multidistrict litigation may transfer civil actions involving one or more common questions of fact pending in the same or different constitutional courts, county courts at law, probate courts, or district courts to any district court for consolidated or coordinated pretrial proceedings, including summary judgment or other dispositive motions, but not for trial on the merits. A transfer may be made by the judicial panel on multidistrict litigation on its determination that the transfer will:

(1) be for the convenience of the parties and witnesses; and

(2) promote the just and efficient conduct of the actions.

Sec. 74.163. OPERATION; RULES. (a) The judicial panel on multidistrict litigation must operate according to rules of practice and procedure adopted by the supreme court under Section 74.024. The rules adopted by the supreme court must:

(1) allow the panel to transfer related civil actions for consolidated or coordinated pretrial proceedings;

(2) allow transfer of civil actions only on the panel's written finding that transfer is for the convenience of the parties and witnesses and will promote the just and efficient conduct of the actions;

(3) require the remand of transferred actions to the transferor court for trial on the merits; and

(4) provide for appellate review of certain or all panel orders by extraordinary writ.

(b) The panel may prescribe additional rules for the conduct of its business not inconsistent with the law or rules adopted by the supreme court.

Sec. 74.164. AUTHORITY TO PRESIDE. Notwithstanding any other law to the contrary, a judge who is qualified and authorized by law to preside in the court to which an action is transferred under this subchapter may preside over the transferred action as if the transferred action were originally filed in the transferor court.

SECTION 3.03. Section 15.003, Civil Practice and Remedies Code, is amended to read as follows:

Sec. 15.003. MULTIPLE PLAINTIFFS AND INTERVENING PLAINTIFFS. (a) In a suit in which there is [where] more than one plaintiff, whether the plaintiffs are included by joinder, by intervention, because the lawsuit was begun by more than one plaintiff, or otherwise, [is joined] each plaintiff must, independently of every [any] other plaintiff, establish proper venue. If a plaintiff cannot independently [Any person who is unable to] establish proper venue, that plaintiff's part of the suit, including all of that plaintiff's claims and causes of action, must be transferred to a county of proper venue or dismissed, as is appropriate, [may not join or maintain venue for the suit as a plaintiff] unless that plaintiff [the person], independently of every [any] other plaintiff, establishes that:

(1) joinder of that plaintiff or intervention in the suit by that plaintiff is proper under the Texas Rules of Civil Procedure;

(2) maintaining venue as to that plaintiff in the county of suit does not unfairly prejudice another party to the suit;

(3) there is an essential need to have that plaintiff's [the person's] claim tried in the county in which the suit is pending; and

(4) the county in which the suit is pending is a fair and convenient venue for that plaintiff [the person seeking to join in or maintain venue for the suit] and all [the] persons against whom the suit is brought.

(b) An interlocutory appeal may be taken of a trial court's determination under Subsection (a) that:

(1) a plaintiff did or did not independently establish proper venue; or

(2) a plaintiff that did not independently establish proper venue did or did not establish the items prescribed by Subsections (a)(1)-(4) [A person may not intervene or join in a pending suit as a plaintiff unless the person, independently of any other plaintiff:

(1) establishes proper venue for the county in which the suit is pending; or

(2) satisfies the requirements of Subdivisions (1) through (4) of Subsection (a)].

(c) An [Any person seeking intervention or joinder, who is unable to independently establish proper venue, or a party opposing intervention or joinder of such a person may contest the decision of the trial court allowing or denying intervention or joinder by taking an] interlocutory appeal permitted by Subsection (b) must be taken to the court of appeals district in which the trial court is located under the procedures established for interlocutory appeals. The appeal may be

taken by a party that is affected by the trial court's determination under Subsection (a). ~~[The appeal must be perfected not later than the 20th day after the date the trial court signs the order denying or allowing the intervention or joinder.]~~ The court of appeals shall:

(1) determine whether the trial court's order ~~[joinder or intervention]~~ is proper based on an independent determination from the record and not under either an abuse of discretion or substantial evidence standard; and

(2) render judgment ~~[its decision]~~ not later than the 120th day after the date the appeal is perfected ~~[by the complaining party]~~.

(d) An interlocutory appeal under Subsection (b) has the effect of staying the commencement of trial in the trial court pending resolution of the appeal.

SECTION 3.04. Section 71.051(b), Civil Practice and Remedies Code, is amended to read as follows:

(b) If a court of this state, on written motion of a party, finds that in the interest of justice and for the convenience of the parties a claim or action to which this section applies would be more properly heard in a forum outside this state, the court shall decline to exercise jurisdiction under the doctrine of forum non conveniens and shall stay or dismiss the claim or action. In determining whether to grant a motion to stay or dismiss an action under the doctrine of forum non conveniens, the court may consider whether ~~[With respect to a plaintiff who is a legal resident of the United States, on written motion of a party, a claim or action to which this section applies may be stayed or dismissed in whole or in part under the doctrine of forum non conveniens if the party seeking to stay or dismiss the claim or action proves by a preponderance of the evidence that]:~~

(1) an alternate ~~[alternative]~~ forum exists in which the claim or action may be tried;

(2) the alternate forum provides an adequate remedy;

(3) maintenance of the claim or action in the courts of this state would work a substantial injustice to the moving party;

(4) the alternate forum, as a result of the submission of the parties or otherwise, can exercise jurisdiction over all the defendants properly joined to the plaintiff's claim;

(5) the balance of the private interests of the parties and the public interest of the state predominate in favor of the claim or action being brought in an alternate forum; and

(6) the stay or dismissal would not result in unreasonable duplication or proliferation of litigation.

SECTION 3.05. Section 5A, Texas Probate Code, is amended by adding Subsection (f) to read as follows:

(f) Notwithstanding any other provision of this chapter, the proper venue for an action by or against a personal representative for personal injury, death, or property damages is determined under Section 15.007, Civil Practice and Remedies Code.

SECTION 3.06. Section 5B, Texas Probate Code, is amended to read as follows:

Sec. 5B. TRANSFER OF PROCEEDING. (a) A judge of a statutory probate court, on the motion of a party to the action or on the motion of a person interested in an estate, may transfer to his court from a district, county, or statutory court a cause of action appertaining to or incident to an estate pending in the statutory probate court or a cause of action in which a personal representative of an estate pending in the statutory probate court is a party and may consolidate the transferred cause of action with the other proceedings in the statutory probate court relating to that estate.

(b) Notwithstanding any other provision of this chapter, the proper venue for an action by or against a personal representative for personal injury, death, or property damages is determined under Section 15.007, Civil Practice and Remedies Code.

SECTION 3.07. Section 607, Texas Probate Code, is amended by adding Subsection (e) to read as follows:

(e) Notwithstanding any other provision of this chapter, the proper venue for an action by or against a personal representative for personal injury, death, or property damages is determined under Section 15.007, Civil Practice and Remedies Code.

SECTION 3.08. Section 281.056(a), Health and Safety Code, is amended to read as follows:

(a) The board may sue and be sued. A health care liability claim, as defined by Section 74.001, Civil Practice and Remedies Code, may be brought against the district only in the county in which the district is established.

SECTION 3.09. Sections 71.051(a) and 71.052, Civil Practice and Remedies Code, are repealed.

ARTICLE 4. PROPORTIONATE RESPONSIBILITY AND DESIGNATION OF RESPONSIBLE PARTIES

SECTION 4.01. Section 33.002(a), Civil Practice and Remedies Code, is amended to read as follows:

(a) This ~~[Except as provided by Subsections (b) and (e), this]~~ chapter applies to:

(1) any cause of action based on tort in which a defendant, settling person, or responsible third party is found responsible for a percentage of the harm for which relief is sought; or

(2) any action brought under the Deceptive Trade Practices-Consumer Protection Act (Subchapter E, Chapter 17, Business & Commerce Code) in which a defendant, settling person, or responsible third party is found responsible for a percentage of the harm for which relief is sought.

SECTION 4.02. Section 33.003, Civil Practice and Remedies Code, is amended to read as follows:

Sec. 33.003. DETERMINATION OF PERCENTAGE OF RESPONSIBILITY. (a) The trier of fact, as to each cause of action asserted, shall determine the percentage of responsibility, stated in whole numbers, for the following persons with respect to each person's causing or contributing to cause in any way the harm for which recovery of damages is sought, whether by

negligent act or omission, by any defective or unreasonably dangerous product, by other conduct or activity that violates an applicable legal standard, or by any combination of these:

- (1) each claimant;
- (2) each defendant;
- (3) each settling person; and
- (4) each responsible third party who has been designated [~~joined~~] under

Section 33.004.

(b) This section does not allow a submission to the jury of a question regarding conduct by any person without sufficient evidence to support the submission.

SECTION 4.03. The heading to Section 33.004, Civil Practice and Remedies Code, is amended to read as follows:

Sec. 33.004. DESIGNATION [~~JOINER~~] OF RESPONSIBLE THIRD PARTY [~~PARTIES~~].

SECTION 4.04. Section 33.004, Civil Practice and Remedies Code, is amended by amending Subsections (a), (b), and (e) and adding Subsections (f)-(l) to read as follows:

(a) A [~~Except as provided in Subsections (d) and (e), prior to the expiration of limitations on the claimant's claim for damages against the defendant and on timely motion made for that purpose, a~~] defendant may seek to designate a person as [~~join~~] a responsible third party by filing a motion for leave to designate that person as a responsible third party [~~who has not been sued by the claimant~~]. The motion must be filed on or before the 60th day before the trial date unless the court finds good cause to allow the motion to be filed at a later date.

(b) Nothing in this section affects [~~shall affect~~] the third-party practice as previously recognized in the rules and statutes of this state with regard to the assertion by a defendant of rights to contribution or indemnity. Nothing in this section affects [~~shall affect~~] the filing of cross-claims or counterclaims.

(e) If a person is designated under this section as a responsible third party, a [~~A~~] claimant is not barred by limitations from seeking to [~~may~~] join that person [~~a responsible third party~~], even though such joinder would otherwise be barred by limitations, if the claimant seeks to join that person [~~the responsible third party~~] not later than 60 days after that person is designated as a responsible third party [~~a third party claim is filed under Subsection (d)~~].

(f) A court shall grant leave to designate the named person as a responsible third party unless another party files an objection to the motion for leave on or before the 15th day after the date the motion is served.

(g) If an objection to the motion for leave is timely filed, the court shall grant leave to designate the person as a responsible third party unless the objecting party establishes:

(1) the defendant did not plead sufficient facts concerning the alleged responsibility of the person to satisfy the pleading requirement of the Texas Rules of Civil Procedure; and

(2) after having been granted leave to plead, the defendant failed to plead sufficient facts concerning the alleged responsibility of the person to satisfy the pleading requirements of the Texas Rules of Civil Procedure.

(h) By granting a motion for leave to designate a person as a responsible third party, the person named in the motion is designated as a responsible third party for purposes of this chapter without further action by the court or any party.

(i) The filing or granting of a motion for leave to designate a person as a responsible third party or a finding of fault against the person:

(1) does not by itself impose liability on the person; and

(2) may not be used in any other proceeding, on the basis of res judicata, collateral estoppel, or any other legal theory, to impose liability on the person.

(j) Notwithstanding any other provision of this section, if, not later than 60 days after the filing of the defendant's original answer, the defendant alleges in an answer filed with the court that an unknown person committed a criminal act that was a cause of the loss or injury that is the subject of the lawsuit, the court shall grant a motion for leave to designate the unknown person as a responsible third party if:

(1) the court determines that the defendant has pleaded facts sufficient for the court to determine that there is a reasonable probability that the act of the unknown person was criminal;

(2) the defendant has stated in the answer all identifying characteristics of the unknown person, known at the time of the answer; and

(3) the allegation satisfies the pleading requirements of the Texas Rules of Civil Procedure.

(k) An unknown person designated as a responsible third party under Subsection (j) is denominated as "Jane Doe" or "John Doe" until the person's identity is known.

(l) After adequate time for discovery, a party may move to strike the designation of a responsible third party on the ground that there is no evidence that the designated person is responsible for any portion of the claimant's alleged injury or damage. The court shall grant the motion to strike unless a defendant produces sufficient evidence to raise a genuine issue of fact regarding the designated person's responsibility for the claimant's injury or damage.

SECTION 4.05. Sections 33.011(1), (2), (5), and (6), Civil Practice and Remedies Code, are amended to read as follows:

(1) "Claimant" means a person ~~[party]~~ seeking recovery of damages ~~[pursuant to the provisions of Section 33.001]~~, including a plaintiff, counterclaimant, cross-claimant, or third-party plaintiff ~~[seeking recovery of damages]~~. In an action in which a party seeks recovery of damages for injury to another person, damage to the property of another person, death of another person, or other harm to another person, "claimant" includes:

(A) the person who was injured, was harmed, or died or whose property was damaged; and

(B) any person who is [both that other person and the party] seeking, has sought, or could seek recovery of damages for the injury, harm, or death of that person or for the damage to the property of that person [pursuant to the provisions of Section 33.001].

(2) "Defendant" includes any person [party] from whom, at the time of the submission of the case to the trier of fact, a claimant seeks recovery of damages [pursuant to the provisions of Section 33.001 at the time of the submission of the case to the trier of fact].

(5) "Settling person" means a person who [at the time of submission] has, at any time, paid or promised to pay money or anything of monetary value to a claimant [at any time] in consideration of potential liability [pursuant to the provisions of Section 33.001] with respect to the personal injury, property damage, death, or other harm for which recovery of damages is sought.

(6) ~~(A)~~ "Responsible third party" means any person who is alleged to have caused or contributed to causing in any way the harm for which recovery of damages is sought, whether by negligent act or omission, by any defective or unreasonably dangerous product, by other conduct or activity that violates an applicable legal standard, or by any combination of these. [to whom all of the following apply:

~~[(i) the court in which the action was filed could exercise jurisdiction over the person;~~

~~[(ii) the person could have been, but was not, sued by the claimant; and~~

~~[(iii) the person is or may be liable to the plaintiff for all or a part of the damages claimed against the named defendant or defendants.~~

~~(B)~~ The term "responsible third party" does not include a seller eligible for indemnity under Section 82.002[

~~(i) the claimant's employer, if the employer maintained workers' compensation insurance coverage, as defined by Section 401.011(44), Labor Code, at the time of the act, event, or occurrence made the basis of the claimant's suit; or~~

~~(ii) a person or entity that is a debtor in bankruptcy proceedings or a person or entity against whom this claimant's claim has been discharged in bankruptcy, except to the extent that liability insurance or other source of third party funding may be available to pay claims asserted against the debtor].~~

SECTION 4.06. Section 33.012, Civil Practice and Remedies Code, is amended by amending Subsection (b) and adding Subsection (c) to read as follows:

(b) If the claimant has settled with one or more persons, the court shall further reduce the amount of damages to be recovered by the claimant with respect to a cause of action by a percentage equal to each settling person's percentage of responsibility [credit equal to one of the following, as elected in accordance with Section 33.014:

~~(1) the sum of the dollar amounts of all settlements; or~~

~~[(2) a dollar amount equal to the sum of the following percentages of damages found by the trier of fact:~~

~~[(A) 5 percent of those damages up to \$200,000;~~

~~[(B) 10 percent of those damages from \$200,001 to \$400,000;~~

~~[(C) 15 percent of those damages from \$400,001 to \$500,000; and~~

~~[(D) 20 percent of those damages greater than \$500,000].~~

(c) Notwithstanding Subsection (b), if the claimant in a health care liability claim filed under Chapter 74 has settled with one or more persons, the court shall further reduce the amount of damages to be recovered by the claimant with respect to a cause of action by an amount equal to one of the following, as elected by the defendant:

(1) the sum of the dollar amounts of all settlements; or

(2) a percentage equal to each settling person's percentage of responsibility as found by the trier of fact. The court shall apply the credit in subsection (1) unless all defendants elect the credit in this subsection.

SECTION 4.07. Section 33.013, Civil Practice and Remedies Code, is amended by amending Subsections (a) and (b) and adding Subsections (e) and (f) to read as follows:

(a) Except as provided in Subsection [Subsections] (b) [and (e)], a liable defendant is liable to a claimant only for the percentage of the damages found by the trier of fact equal to that defendant's percentage of responsibility with respect to the personal injury, property damage, death, or other harm for which the damages are allowed.

(b) Notwithstanding Subsection (a), each liable defendant is, in addition to his liability under Subsection (a), jointly and severally liable for the damages recoverable by the claimant under Section 33.012 with respect to a cause of action if:

(1) the percentage of responsibility attributed to the defendant with respect to a cause of action is greater than 50 percent; or

(2) the defendant, with the specific intent to do harm to others, acted in concert with another person to engage in the conduct described in the following provisions of the Penal Code and in so doing proximately caused the damages legally recoverable by the claimant:

(A) Section 19.02 (murder);

(B) Section 19.03 (capital murder);

(C) Section 20.04 (aggravated kidnapping);

(D) Section 22.02 (aggravated assault);

(E) Section 22.011 (sexual assault);

(F) Section 22.021 (aggravated sexual assault);

(G) Section 22.04 (injury to a child, elderly individual, or disabled

individual);

(H) Section 32.21 (forgery);

(I) Section 32.43 (commercial bribery);

(J) Section 32.45 (misapplication of fiduciary property or property of financial institution);

(K) Section 32.46 (securing execution of document by deception);

(L) Section 32.47 (fraudulent destruction, removal, or concealment of writing); or

(M) conduct described in Chapter 31 the punishment level for which is a felony of the third degree or higher.

(e) Notwithstanding anything to the contrary stated in the provisions of the Penal Code listed in Subsection (b)(2), that subsection applies only if the claimant proves the defendant acted or failed to act with specific intent to do harm. A defendant acts with specific intent to do harm with respect to the nature of the defendant's conduct and the result of the person's conduct when it is the person's conscious effort or desire to engage in the conduct for the purpose of doing substantial harm to others.

(f) The jury may not be made aware through voir dire, introduction into evidence, instruction, or any other means that the conduct to which Subsection (b)(2) refers is defined by the Penal Code.

SECTION 4.08. Section 33.017, Civil Practice and Remedies Code, is amended to read as follows:

Sec. 33.017. PRESERVATION OF EXISTING RIGHTS OF INDEMNITY. Nothing in this chapter shall be construed to affect any rights of indemnity granted by ~~by [to a seller eligible for indemnity by Chapter 82, the Texas Motor Vehicle Commission Code (Article 4413(36), Vernon's Texas Civil Statutes), or]~~ any ~~[other]~~ statute, ~~[nor shall it affect rights of indemnity granted]~~ by contract, or by ~~[a]~~ common law. To the extent of any conflict between this chapter and any right to indemnification granted by ~~[Section 82.002, the Texas Motor Vehicle Commission Code (Article 4413(36), Vernon's Texas Civil Statutes), or any other]~~ statute, contract, or common law, those rights of indemnification shall prevail over the provisions of this chapter.

SECTION 4.09. Section 417.001(b), Labor Code, is amended to read as follows:

(b) If a benefit is claimed by an injured employee or a legal beneficiary of the employee, the insurance carrier is subrogated to the rights of the injured employee and may enforce the liability of the third party in the name of the injured employee or the legal beneficiary. The insurance carrier's subrogation interest is limited to the amount of the total benefits paid or assumed by the carrier to the employee or the legal beneficiary, less the amount by which the court reduces the judgment based on the percentage of responsibility determined by the trier of fact under Section 33.003, Civil Practice and Remedies Code, attributable to the employer. If the recovery is for an amount greater than the amount of the insurance carrier's subrogation interest ~~[that paid or assumed by the insurance carrier to the employee or the legal beneficiary]~~, the insurance carrier shall:

- (1) reimburse itself and pay the costs from the amount recovered; and
- (2) pay the remainder of the amount recovered to the injured employee or the legal beneficiary.

SECTION 4.10. The following sections of the Civil Practice and Remedies Code are repealed:

- (1) 33.002(b), (d), (e), (f), (g), and (h);

- (2) 33.004(c) and (d);
- (3) 33.011(7);
- (4) 33.012(c);
- (5) 33.013(c); and
- (6) 33.014.

SECTION 4.11. Nothing in the changes to Chapter 33, Civil Practice and Remedies Code, made by this article allowing an employer covered by workers' compensation insurance to be designated as a responsible third party affects or impairs the immunity granted to the employer by workers' compensation law.

SECTION 4.12. The supreme court shall amend Rule 194.2, Texas Rules of Civil Procedure, as soon as practical following the effective date of this article, to include disclosures of the name, address, and telephone number of any person who may be designated as a responsible third party.

ARTICLE 5. PRODUCTS LIABILITY

SECTION 5.01. Section 16.012, Civil Practice and Remedies Code, is amended to read as follows:

Sec. 16.012. PRODUCTS LIABILITY [~~MANUFACTURING EQUIPMENT~~]. (a) In this section:

(1) "Claimant," [~~products liability action,~~] "seller," and "manufacturer" have the meanings assigned by Section 82.001.

(2) "Products liability action" means any action against a manufacturer or seller for recovery of damages or other relief for harm allegedly caused by a defective product, whether the action is based in strict tort liability, strict products liability, negligence, misrepresentation, breach of express or implied warranty, or any other theory or combination of theories, and whether the relief sought is recovery of damages or any other legal or equitable relief, including a suit for:

(A) injury or damage to or loss of real or personal property;

(B) personal injury;

(C) wrongful death;

(D) economic loss; or

(E) declaratory, injunctive, or other equitable relief.

~~["Manufacturing equipment" means equipment and machinery used in the manufacturing, processing, or fabrication of tangible personal property but does not include agricultural equipment or machinery.]~~

(b) Except as provided by Subsections [~~Subsection~~] (c), (d), and (d-1), a claimant must commence a products liability action against a manufacturer or seller of a product [~~manufacturing equipment~~] before the end of 15 years after the date of the sale of the product [~~equipment~~] by the defendant.

(c) If a manufacturer or seller expressly warrants [~~represents~~] that the product [~~manufacturing equipment~~] has a useful safe life of longer than 15 years, a claimant must commence a products liability action against that manufacturer or seller of the product [~~equipment~~] before the end of the number of years warranted [~~represented~~] after the date of the sale of the product [~~equipment~~] by that seller.

(d) This section does not apply to a products liability action seeking damages for personal injury or wrongful death in which the claimant alleges:

(1) the claimant was exposed to the product that is the subject of the action before the end of 15 years after the date the product was first sold;

(2) the claimant's exposure to the product caused the claimant's disease that is the basis of the action; and

(3) the symptoms of the claimant's disease did not, before the end of 15 years after the date of the first sale of the product by the defendant, manifest themselves to a degree and for a duration that would put a reasonable person on notice that the person suffered some injury.

(d-1) This section does not reduce a limitations period for a cause of action described by Subsection (d) [~~that applies to a products liability action involving manufacturing equipment~~] that accrues before the end of the limitations period under this section.

(e) This section does not extend the limitations period within which a products liability action involving the product [~~manufacturing equipment~~] may be commenced under any other law.

(f) This section applies only to the sale and not to the lease of a product [~~manufacturing equipment~~].

(g) This section does not apply to any claim to which the General Aviation Revitalization Act of 1994 (Pub. L. No. 103-298, 108 Stat. 1552 (1994), reprinted in note, 49 U.S.C. Section 40101) or its exceptions are applicable.

SECTION 5.02. Chapter 82, Civil Practice and Remedies Code, is amended by adding Sections 82.003, 82.007, and 82.008 to read as follows:

Sec. 82.003. LIABILITY OF NONMANUFACTURING SELLERS. (a) A seller that did not manufacture a product is not liable for harm caused to the claimant by that product unless the claimant proves:

(1) that the seller participated in the design of the product;

(2) that the seller altered or modified the product and the claimant's harm resulted from that alteration or modification;

(3) that the seller installed the product, or had the product installed, on another product and the claimant's harm resulted from the product's installation onto the assembled product;

(4) that:

(A) the seller exercised substantial control over the content of a warning or instruction that accompanied the product;

(B) the warning or instruction was inadequate; and

(C) the claimant's harm resulted from the inadequacy of the warning or instruction;

(5) that:

(A) the seller made an express factual representation about an aspect of the product;

(B) the representation was incorrect;

(C) the claimant relied on the representation in obtaining or using the product; and

(D) if the aspect of the product had been as represented, the claimant would not have been harmed by the product or would not have suffered the same degree of harm;

(6) that:

(A) the seller actually knew of a defect to the product at the time the seller supplied the product; and

(B) the claimant's harm resulted from the defect; or

(7) that the manufacturer of the product is:

(A) insolvent; or

(B) not subject to the jurisdiction of the court.

(b) This section does not apply to a manufacturer or seller whose liability in a products liability action is governed by Chapter 2301, Occupations Code. In the event of a conflict, Chapter 2301, Occupations Code, prevails over this section.

Sec. 82.007. MEDICINES. (a) In a products liability action alleging that an injury was caused by a failure to provide adequate warnings or information with regard to a pharmaceutical product, there is a rebuttable presumption that the defendant or defendants, including a health care provider, manufacturer, distributor, and prescriber, are not liable with respect to the allegations involving failure to provide adequate warnings or information if:

(1) the warnings or information that accompanied the product in its distribution were those approved by the United States Food and Drug Administration for a product approved under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 301 et seq.), as amended, or Section 351, Public Health Service Act (42 U.S.C. Section 262), as amended; or

(2) the warnings provided were those stated in monographs developed by the United States Food and Drug Administration for pharmaceutical products that may be distributed without an approved new drug application.

(b) The claimant may rebut the presumption in Subsection (a) as to each defendant by establishing that:

(1) the defendant, before or after pre-market approval or licensing of the product, withheld from or misrepresented to the United States Food and Drug Administration required information that was material and relevant to the performance of the product and was causally related to the claimant's injury;

(2) the pharmaceutical product was sold or prescribed in the United States by the defendant after the effective date of an order of the United States Food and Drug Administration to remove the product from the market or to withdraw its approval of the product;

(3)(A) the defendant recommended, promoted, or advertised the pharmaceutical product for an indication not approved by the United States Food and Drug Administration;

(B) the product was used as recommended, promoted, or advertised; and

(C) the claimant's injury was causally related to the recommended, promoted, or advertised use of the product;

(4)(A) the defendant prescribed the pharmaceutical product for an indication not approved by the United States Food and Drug Administration;

(B) the product was used as prescribed; and

(C) the claimant's injury was causally related to the prescribed use of the product; or

(5) the defendant, before or after pre-market approval or licensing of the product, engaged in conduct that would constitute a violation of 18 U.S.C. Section 201 and that conduct caused the warnings or instructions approved for the product by the United States Food and Drug Administration to be inadequate.

Sec. 82.008. COMPLIANCE WITH GOVERNMENT STANDARDS. (a) In a products liability action brought against a product manufacturer or seller, there is a rebuttable presumption that the product manufacturer or seller is not liable for any injury to a claimant caused by some aspect of the formulation, labeling, or design of a product if the product manufacturer or seller establishes that the product's formula, labeling, or design complied with mandatory safety standards or regulations adopted and promulgated by the federal government, or an agency of the federal government, that were applicable to the product at the time of manufacture and that governed the product risk that allegedly caused harm.

(b) The claimant may rebut the presumption in Subsection (a) by establishing that:

(1) the mandatory federal safety standards or regulations applicable to the product were inadequate to protect the public from unreasonable risks of injury or damage; or

(2) the manufacturer, before or after marketing the product, withheld or misrepresented information or material relevant to the federal government's or agency's determination of adequacy of the safety standards or regulations at issue in the action.

(c) In a products liability action brought against a product manufacturer or seller, there is a rebuttable presumption that the product manufacturer or seller is not liable for any injury to a claimant allegedly caused by some aspect of the formulation, labeling, or design of a product if the product manufacturer or seller establishes that the product was subject to pre-market licensing or approval by the federal government, or an agency of the federal government, that the manufacturer complied with all of the government's or agency's procedures and requirements with respect to pre-market licensing or approval, and that after full consideration of the product's risks and benefits the product was approved or licensed for sale by the government or agency. The claimant may rebut this presumption by establishing that:

(1) the standards or procedures used in the particular pre-market approval or licensing process were inadequate to protect the public from unreasonable risks of injury or damage; or

(2) the manufacturer, before or after pre-market approval or licensing of the product, withheld from or misrepresented to the government or agency information that was material and relevant to the performance of the product and was causally related to the claimant's injury.

(d) This section does not extend to manufacturing flaws or defects even though the product manufacturer has complied with all quality control and manufacturing practices mandated by the federal government or an agency of the federal government.

(e) This section does not extend to products covered by Section 82.007.

SECTION 5.03. As soon as practicable after the effective date of this Act, the supreme court shall amend Rule 407(a), Texas Rules of Evidence, to conform that rule to Rule 407, Federal Rules of Evidence.

ARTICLE 6. INTEREST

SECTION 6.01. Section 304.003(c), Finance Code, is amended to read as follows:

(c) The postjudgment interest rate is:

(1) the prime rate as published by the Federal Reserve Bank of New York on ~~[auction rate quoted on a discount basis for 52 week treasury bills issued by the United States government as most recently published by the Federal Reserve Board before]~~ the date of computation;

(2) five ~~[+0]~~ percent a year if the prime rate as published by the Federal Reserve Bank of New York ~~[auction rate]~~ described by Subdivision (1) is less than five ~~[+0]~~ percent; or

(3) 15 ~~[20]~~ percent a year if the prime rate as published by the Federal Reserve Bank of New York ~~[auction rate]~~ described by Subdivision (1) is more than 15 ~~[20]~~ percent.

SECTION 6.02. Subchapter B, Chapter 304, Finance Code, is amended by adding Section 304.1045 to read as follows:

Sec. 304.1045. FUTURE DAMAGES. Prejudgment interest may not be assessed or recovered on an award of future damages.

SECTION 6.03. Section 304.108, Finance Code, is repealed.

SECTION 6.04. The changes in law made by this article apply in any case in which a final judgment is signed or subject to appeal on or after the effective date of this Act.

ARTICLE 7. APPEAL BONDS

SECTION 7.01. Section 35.006, Civil Practice and Remedies Code, is amended to read as follows:

Sec. 35.006. STAY. (a) If the judgment debtor shows the court that an appeal from the foreign judgment is pending or will be taken, that the time for taking an appeal has not expired, or that a stay of execution has been granted, has been requested, or will be requested, and proves that the judgment debtor has furnished or will furnish the security for the satisfaction of the judgment required by the state in which it was rendered, the court shall stay enforcement of the foreign judgment until the appeal is concluded, the time for appeal expires, or the stay of execution expires or is vacated.

(b) If the judgment debtor shows the court a ground on which enforcement of a judgment of the court of this state would be stayed, the court shall stay enforcement of the foreign judgment for an appropriate period and require the same security for suspending enforcement ~~[satisfaction]~~ of the judgment that is required in this state in accordance with Section 52.006.

SECTION 7.02. Chapter 52, Civil Practice and Remedies Code, is amended by adding Section 52.006 to read as follows:

Sec. 52.006. AMOUNT OF SECURITY FOR MONEY JUDGMENT. (a) Subject to Subsection (b), when a judgment is for money, the amount of security must equal the sum of:

- (1) the amount of compensatory damages awarded in the judgment;
- (2) interest for the estimated duration of the appeal; and
- (3) costs awarded in the judgment.

(b) Notwithstanding any other law or rule of court, when a judgment is for money, the amount of security must not exceed the lesser of:

- (1) 50 percent of the judgment debtor's net worth; or
- (2) \$25 million.

(c) On a showing by the judgment debtor that the judgment debtor is likely to suffer substantial economic harm if required to post security in an amount required under Subsection (a) or (b), the trial court shall lower the amount of the security to an amount that will not cause the judgment debtor substantial economic harm.

(d) An appellate court may review the amount of security as allowed under Rule 24, Texas Rules of Appellate Procedure, except that when a judgment is for money, the appellate court may not modify the amount of security to exceed the amount allowed under this section.

(e) Nothing in this section prevents a trial court from enjoining the judgment debtor from dissipating or transferring assets to avoid satisfaction of the judgment, but the trial court may not make any order that interferes with the judgment debtor's use, transfer, conveyance, or dissipation of assets in the normal course of business.

SECTION 7.03. The following sections of the Civil Practice and Remedies Code are repealed:

- (1) 52.002;
- (2) 52.003; and
- (3) 52.004.

SECTION 7.04. (a) The changes in law made in Section 7.01 of this article apply to any judgment filed in this state under Chapter 35, Civil Practice and Remedies Code, on or after the effective date of this Act.

(b) The changes in law made in Sections 7.02 and 7.03 of this article apply to any case in which a final judgment is signed on or after the effective date of this Act.

ARTICLE 8. EVIDENCE RELATING TO SEAT BELTS

SECTION 8.01. Sections 545.412(d) and 545.413(g), Transportation Code, are repealed.

ARTICLE 9. RESERVED

ARTICLE 10. HEALTH CARE

SECTION 10.01. Chapter 74, Civil Practice and Remedies Code, is amended to read as follows:

CHAPTER 74. MEDICAL LIABILITY [~~GOOD SAMARITAN LAW;~~
~~LIABILITY FOR EMERGENCY CARE~~]
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 74.001. DEFINITIONS. (a) In this chapter:

(1) "Affiliate" means a person who, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with a specified person, including any direct or indirect parent or subsidiary.

(2) "Claimant" means a person, including a decedent's estate, seeking or who has sought recovery of damages in a health care liability claim. All persons claiming to have sustained damages as the result of the bodily injury or death of a single person are considered a single claimant.

(3) "Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of the person, whether through ownership of equity or securities, by contract, or otherwise.

(4) "Court" means any federal or state court.

(5) "Disclosure panel" means the Texas Medical Disclosure Panel.

(6) "Economic damages" has the meaning assigned by Section 41.001.

(7) "Emergency medical care" means bona fide emergency services provided after the sudden onset of a medical or traumatic condition manifesting itself by acute symptoms of sufficient severity, including severe pain, such that the absence of immediate medical attention could reasonably be expected to result in placing the patient's health in serious jeopardy, serious impairment to bodily functions, or serious dysfunction of any bodily organ or part. The term does not include medical care or treatment that occurs after the patient is stabilized and is capable of receiving medical treatment as a nonemergency patient or that is unrelated to the original medical emergency.

(8) "Emergency medical services provider" means a licensed public or private provider to which Chapter 773, Health and Safety Code, applies.

(9) "Gross negligence" has the meaning assigned by Section 41.001.

(10) "Health care" means any act or treatment performed or furnished, or that should have been performed or furnished, by any health care provider for, to, or on behalf of a patient during the patient's medical care, treatment, or confinement.

(11) "Health care institution" includes:

(A) an ambulatory surgical center;

(B) an assisted living facility licensed under Chapter 247, Health and Safety Code;

(C) an emergency medical services provider;

(D) a health services district created under Chapter 287, Health and Safety Code;

(E) a home and community support services agency;

(F) a hospice;

(G) a hospital;

(H) a hospital system;

(I) an intermediate care facility for the mentally retarded or a home and community-based services waiver program for persons with mental retardation adopted in accordance with Section 1915(c) of the federal Social Security Act (42 U.S.C. Section 1396n), as amended;

(J) a nursing home; or

(K) an end stage renal disease facility licensed under Section 251.011, Health and Safety Code.

(12)(A) "Health care provider" means any person, partnership, professional association, corporation, facility, or institution duly licensed, certified, registered, or chartered by the State of Texas to provide health care, including:

(i) a registered nurse;

(ii) a dentist;

(iii) a podiatrist;

(iv) a pharmacist;

(v) a chiropractor;

(vi) an optometrist; or

(vii) a health care institution.

(B) The term includes:

(i) an officer, director, shareholder, member, partner, manager, owner, or affiliate of a health care provider or physician; and

(ii) an employee, independent contractor, or agent of a health care provider or physician acting in the course and scope of the employment or contractual relationship.

(13) "Health care liability claim" means a cause of action against a health care provider or physician for treatment, lack of treatment, or other claimed departure from accepted standards of medical care, or health care, or safety or professional or administrative services directly related to health care, which proximately results in injury to or death of a claimant, whether the claimant's claim or cause of action sounds in tort or contract.

(14) "Home and community support services agency" means a licensed public or provider agency to which Chapter 142, Health and Safety Code, applies.

(15) "Hospice" means a hospice facility or activity to which Chapter 142, Health and Safety Code, applies.

(16) "Hospital" means a licensed public or private institution as defined in Chapter 241, Health and Safety Code, or licensed under Chapter 577, Health and Safety Code.

(17) "Hospital system" means a system of hospitals located in this state that are under the common governance or control of a corporate parent.

(18) "Intermediate care facility for the mentally retarded" means a licensed public or private institution to which Chapter 252, Health and Safety Code, applies.

(19) "Medical care" means any act defined as practicing medicine under Section 151.002, Occupations Code, performed or furnished, or which should have been performed, by one licensed to practice medicine in this state for, to, or on behalf of a patient during the patient's care, treatment, or confinement.

(20) "Noneconomic damages" has the meaning assigned by Section 41.001.

(21) "Nursing home" means a licensed public or private institution to which Chapter 242, Health and Safety Code, applies.

(22) "Pharmacist" means one licensed under Chapter 551, Occupations Code, who, for the purposes of this chapter, performs those activities limited to the dispensing of prescription medicines which result in health care liability claims and does not include any other cause of action that may exist at common law against them, including but not limited to causes of action for the sale of mishandled or defective products.

(23) "Physician" means:

(A) an individual licensed to practice medicine in this state;

(B) a professional association organized under the Texas Professional Association Act (Article 1528f, Vernon's Texas Civil Statutes) by an individual physician or group of physicians;

(C) a partnership or limited liability partnership formed by a group of physicians;

(D) a nonprofit health corporation certified under Section 162.001, Occupations Code; or

(E) a company formed by a group of physicians under the Texas Limited Liability Company Act (Article 1528n, Vernon's Texas Civil Statutes).

(24) "Professional or administrative services" means those duties or services that a physician or health care provider is required to provide as a condition of maintaining the physician's or health care provider's license, accreditation status, or certification to participate in state or federal health care programs.

(25) "Representative" means the spouse, parent, guardian, trustee, authorized attorney, or other authorized legal agent of the patient or claimant.

(b) Any legal term or word of art used in this chapter, not otherwise defined in this chapter, shall have such meaning as is consistent with the common law.

Sec. 74.002. CONFLICT WITH OTHER LAW AND RULES OF CIVIL PROCEDURE. (a) In the event of a conflict between this chapter and another law, including a rule of procedure or evidence or court rule, this chapter controls to the extent of the conflict.

(b) Notwithstanding Subsection (a), in the event of a conflict between this chapter and Section 101.023, 102.003, or 108.002, those sections of this code control to the extent of the conflict.

(c) The district courts and statutory county courts in a county may not adopt local rules in conflict with this chapter.

Sec. 74.003. SOVEREIGN IMMUNITY NOT WAIVED. This chapter does not waive sovereign immunity from suit or from liability.

Sec. 74.004. EXCEPTION FROM CERTAIN LAWS. (a) Notwithstanding any other law, Sections 17.41-17.63, Business & Commerce Code, do not apply to physicians or health care providers with respect to claims for damages for personal injury or death resulting, or alleged to have resulted, from negligence on the part of any physician or health care provider.

(b) This section does not apply to pharmacists.

[Sections 74.005-74.050 reserved for expansion]
SUBCHAPTER B. NOTICE AND PLEADINGS

Sec. 74.051. NOTICE. (a) Any person or his authorized agent asserting a health care liability claim shall give written notice of such claim by certified mail, return receipt requested, to each physician or health care provider against whom such claim is being made at least 60 days before the filing of a suit in any court of this state based upon a health care liability claim. The notice must be accompanied by the authorization form for release of protected health information as required under Section 74.052.

(b) In such pleadings as are subsequently filed in any court, each party shall state that it has fully complied with the provisions of this section and Section 74.052 and shall provide such evidence thereof as the judge of the court may require to determine if the provisions of this chapter have been met.

(c) Notice given as provided in this chapter shall toll the applicable statute of limitations to and including a period of 75 days following the giving of the notice, and this tolling shall apply to all parties and potential parties.

(d) All parties shall be entitled to obtain complete and unaltered copies of the patient's medical records from any other party within 45 days from the date of receipt of a written request for such records; provided, however, that the receipt of a medical authorization in the form required by Section 74.052 executed by the claimant herein shall be considered compliance by the claimant with this subsection.

(e) For the purposes of this section, and notwithstanding Chapter 159, Occupations Code, or any other law, a request for the medical records of a deceased person or a person who is incompetent shall be deemed to be valid if accompanied by an authorization in the form required by Section 74.052 signed by a parent, spouse, or adult child of the deceased or incompetent person.

Sec. 74.052. AUTHORIZATION FORM FOR RELEASE OF PROTECTED HEALTH INFORMATION. (a) Notice of a health care claim under Section 74.051 must be accompanied by a medical authorization in the form specified by this section. Failure to provide this authorization along with the notice of health care claim shall abate all further proceedings against the physician or health care provider receiving the notice until 60 days following receipt by the physician or health care provider of the required authorization.

(b) If the authorization required by this section is modified or revoked, the physician or health care provider to whom the authorization has been given shall have the option to abate all further proceedings until 60 days following receipt of a replacement authorization that must comply with the form specified by this section.

(c) The medical authorization required by this section shall be in the following form and shall be construed in accordance with the "Standards for Privacy of Individually Identifiable Health Information" (45 C.F.R. Parts 160 and 164).

AUTHORIZATION FORM FOR RELEASE OF PROTECTED HEALTH INFORMATION

A. I, _____ (name of patient or authorized representative), hereby authorize _____ (name of physician or other health care provider to whom the notice of health care claim is directed) to obtain and disclose (within the parameters set out below) the protected health information described below for the following specific purposes:

1. To facilitate the investigation and evaluation of the health care claim described in the accompanying Notice of Health Care Claim; or
2. Defense of any litigation arising out of the claim made the basis of the accompanying Notice of Health Care Claim.

B. The health information to be obtained, used, or disclosed extends to and includes the verbal as well as the written and is specifically described as follows:

1. The health information in the custody of the following physicians or health care providers who have examined, evaluated, or treated _____ (patient) in connection with the injuries alleged to have been sustained in connection with the claim asserted in the accompanying Notice of Health Care Claim. (Here list the name and current address of all treating physicians or health care providers). This authorization shall extend to any additional physicians or health care providers that may in the future evaluate, examine, or treat _____ (patient) for injuries alleged in connection with the claim made the basis of the attached Notice of Health Care Claim;

2. The health information in the custody of the following physicians or health care providers who have examined, evaluated, or treated _____ (patient) during a period commencing five years prior to the incident made the basis of the accompanying Notice of Health Care Claim. (Here list the name and current address of such physicians or health care providers, if applicable.)

C. Excluded Health Information - the following constitutes a list of physicians or health care providers possessing health care information concerning _____ (patient) to which this authorization does not apply because I contend that such health care information is not relevant to the damages being claimed or to the physical, mental, or emotional condition of _____ (patient) arising out of the claim made the basis of the accompanying Notice of Health Care Claim. (Here state "none" or list the name of each physician or health care provider to whom this authorization does not extend and the inclusive dates of examination, evaluation, or treatment to be withheld from disclosure.)

D. The persons or class of persons to whom the health information of _____ (patient) will be disclosed or who will make use of said information are:

1. Any and all physicians or health care providers providing care or treatment to _____ (patient);

2. Any liability insurance entity providing liability insurance coverage or defense to any physician or health care provider to whom Notice of Health Care Claim has been given with regard to the care and treatment of (patient);

3. Any consulting or testifying experts employed by or on behalf of (name of physician or health care provider to whom Notice of Health Care Claim has been given) with regard to the matter set out in the Notice of Health Care Claim accompanying this authorization;

4. Any attorneys (including secretarial, clerical, or paralegal staff) employed by or on behalf of (name of physician or health care provider to whom Notice of Health Care Claim has been given) with regard to the matter set out in the Notice of Health Care Claim accompanying this authorization;

5. Any trier of the law or facts relating to any suit filed seeking damages arising out of the medical care or treatment of (patient).

E. This authorization shall expire upon resolution of the claim asserted or at the conclusion of any litigation instituted in connection with the subject matter of the Notice of Health Care Claim accompanying this authorization, whichever occurs sooner.

F. I understand that, without exception, I have the right to revoke this authorization in writing. I further understand the consequence of any such revocation as set out in Section 74.052, Civil Practice and Remedies Code.

G. I understand that the signing of this authorization is not a condition for continued treatment, payment, enrollment, or eligibility for health plan benefits.

H. I understand that information used or disclosed pursuant to this authorization may be subject to redisclosure by the recipient and may no longer be protected by federal HIPAA privacy regulations.

Signature of Patient/Representative

Date

Name of Patient/ Representative

Description of Representative's Authority

Sec. 74.053. PLEADINGS NOT TO STATE DAMAGE AMOUNT; SPECIAL EXCEPTION; EXCLUSION FROM SECTION. Pleadings in a suit based on a health care liability claim shall not specify an amount of money claimed as damages. The defendant may file a special exception to the pleadings on the ground the suit is not within the court's jurisdiction, in which event the plaintiff shall inform the court and defendant in writing of the total dollar amount claimed. This section does not prevent a party from mentioning the total dollar amount claimed in examining prospective jurors on voir dire or in argument to the court or jury.

[Sections 74.054-74.100 reserved for expansion]
SUBCHAPTER C. INFORMED CONSENT

Sec. 74.101. THEORY OF RECOVERY. In a suit against a physician or health care provider involving a health care liability claim that is based on the failure of the physician or health care provider to disclose or adequately disclose the risks and hazards involved in the medical care or surgical procedure rendered by the physician or health care provider, the only theory on which recovery may be obtained is that of negligence in failing to disclose the risks or hazards that could have influenced a reasonable person in making a decision to give or withhold consent.

Sec. 74.102. TEXAS MEDICAL DISCLOSURE PANEL. (a) The Texas Medical Disclosure Panel is created to determine which risks and hazards related to medical care and surgical procedures must be disclosed by health care providers or physicians to their patients or persons authorized to consent for their patients and to establish the general form and substance of such disclosure.

(b) The disclosure panel established herein is administratively attached to the Texas Department of Health. The Texas Department of Health, at the request of the disclosure panel, shall provide administrative assistance to the panel; and the Texas Department of Health and the disclosure panel shall coordinate administrative responsibilities in order to avoid unnecessary duplication of facilities and services. The Texas Department of Health, at the request of the panel, shall submit the panel's budget request to the legislature. The panel shall be subject, except where inconsistent, to the rules and procedures of the Texas Department of Health; however, the duties and responsibilities of the panel as set forth in this chapter shall be exercised solely by the disclosure panel, and the board or Texas Department of Health shall have no authority or responsibility with respect to same.

(c) The disclosure panel is composed of nine members, with three members licensed to practice law in this state and six members licensed to practice medicine in this state. Members of the disclosure panel shall be selected by the commissioner of health.

(d) At the expiration of the term of each member of the disclosure panel so appointed, the commissioner shall select a successor, and such successor shall serve for a term of six years, or until his successor is selected. Any member who is absent for three consecutive meetings without the consent of a majority of the disclosure panel present at each such meeting may be removed by the commissioner at the request of the disclosure panel submitted in writing and signed by the chairman. Upon the death, resignation, or removal of any member, the commissioner shall fill the vacancy by selection for the unexpired portion of the term.

(e) Members of the disclosure panel are not entitled to compensation for their services, but each panelist is entitled to reimbursement of any necessary expense incurred in the performance of his duties on the panel, including necessary travel expenses.

(f) Meetings of the panel shall be held at the call of the chairman or on petition of at least three members of the panel.

(g) At the first meeting of the panel each year after its members assume their positions, the panelists shall select one of the panel members to serve as chairman and one of the panel members to serve as vice chairman, and each such officer shall serve for a term of one year. The chairman shall preside at meetings of the panel, and in his absence, the vice chairman shall preside.

(h) Employees of the Texas Department of Health shall serve as the staff for the panel.

Sec. 74.103. DUTIES OF DISCLOSURE PANEL. (a) To the extent feasible, the panel shall identify and make a thorough examination of all medical treatments and surgical procedures in which physicians and health care providers may be involved in order to determine which of those treatments and procedures do and do not require disclosure of the risks and hazards to the patient or person authorized to consent for the patient.

(b) The panel shall prepare separate lists of those medical treatments and surgical procedures that do and do not require disclosure and, for those treatments and procedures that do require disclosure, shall establish the degree of disclosure required and the form in which the disclosure will be made.

(c) Lists prepared under Subsection (b) together with written explanations of the degree and form of disclosure shall be published in the Texas Register.

(d) At least annually, or at such other period the panel may determine from time to time, the panel will identify and examine any new medical treatments and surgical procedures that have been developed since its last determinations, shall assign them to the proper list, and shall establish the degree of disclosure required and the form in which the disclosure will be made. The panel will also examine such treatments and procedures for the purpose of revising lists previously published. These determinations shall be published in the Texas Register.

Sec. 74.104. DUTY OF PHYSICIAN OR HEALTH CARE PROVIDER. Before a patient or a person authorized to consent for a patient gives consent to any medical care or surgical procedure that appears on the disclosure panel's list requiring disclosure, the physician or health care provider shall disclose to the patient or person authorized to consent for the patient the risks and hazards involved in that kind of care or procedure. A physician or health care provider shall be considered to have complied with the requirements of this section if disclosure is made as provided in Section 74.105.

Sec. 74.105. MANNER OF DISCLOSURE. Consent to medical care that appears on the disclosure panel's list requiring disclosure shall be considered effective under this chapter if it is given in writing, signed by the patient or a person authorized to give the consent and by a competent witness, and if the written consent specifically states the risks and hazards that are involved in the medical care or surgical procedure in the form and to the degree required by the disclosure panel under Section 74.103.

Sec. 74.106. EFFECT OF DISCLOSURE. (a) In a suit against a physician or health care provider involving a health care liability claim that is based on the negligent failure of the physician or health care provider to disclose or adequately disclose the risks and hazards involved in the medical care or surgical procedure rendered by the physician or health care provider:

(1) both disclosure made as provided in Section 74.104 and failure to disclose based on inclusion of any medical care or surgical procedure on the panel's list for which disclosure is not required shall be admissible in evidence and shall create a rebuttable presumption that the requirements of Sections 74.104 and 74.105 have been complied with and this presumption shall be included in the charge to the jury; and

(2) failure to disclose the risks and hazards involved in any medical care or surgical procedure required to be disclosed under Sections 74.104 and 74.105 shall be admissible in evidence and shall create a rebuttable presumption of a negligent failure to conform to the duty of disclosure set forth in Sections 74.104 and 74.105, and this presumption shall be included in the charge to the jury; but failure to disclose may be found not to be negligent if there was an emergency or if for some other reason it was not medically feasible to make a disclosure of the kind that would otherwise have been negligence.

(b) If medical care or surgical procedure is rendered with respect to which the disclosure panel has made no determination either way regarding a duty of disclosure, the physician or health care provider is under the duty otherwise imposed by law.

Sec. 74.107. INFORMED CONSENT FOR HYSTERECTOMIES. (a) The disclosure panel shall develop and prepare written materials to inform a patient or person authorized to consent for a patient of the risks and hazards of a hysterectomy.

(b) The materials shall be available in English, Spanish, and any other language the panel considers appropriate. The information must be presented in a manner understandable to a layperson.

(c) The materials must include:

(1) a notice that a decision made at any time to refuse to undergo a hysterectomy will not result in the withdrawal or withholding of any benefits provided by programs or projects receiving federal funds or otherwise affect the patient's right to future care or treatment;

(2) the name of the person providing and explaining the materials;

(3) a statement that the patient or person authorized to consent for the patient understands that the hysterectomy is permanent and nonreversible and that the patient will not be able to become pregnant or bear children if she undergoes a hysterectomy;

(4) a statement that the patient has the right to seek a consultation from a second physician;

(5) a statement that the patient or person authorized to consent for the patient has been informed that a hysterectomy is a removal of the uterus through an incision in the lower abdomen or vagina and that additional surgery may be necessary to remove or repair other organs, including an ovary, tube, appendix, bladder, rectum, or vagina;

(6) a description of the risks and hazards involved in the performance of the procedure; and

(7) a written statement to be signed by the patient or person authorized to consent for the patient indicating that the materials have been provided and explained to the patient or person authorized to consent for the patient and that the patient or person authorized to consent for the patient understands the nature and consequences of a hysterectomy.

(d) The physician or health care provider shall obtain informed consent under this section and Section 74.104 from the patient or person authorized to consent for the patient before performing a hysterectomy unless the hysterectomy is performed in a life-threatening situation in which the physician determines obtaining informed consent is not reasonably possible. If obtaining informed consent is not reasonably possible, the physician or health care provider shall include in the patient's medical records a written statement signed by the physician certifying the nature of the emergency.

(e) The disclosure panel may not prescribe materials under this section without first consulting with the Texas State Board of Medical Examiners.

[Sections 74.108-74.150 reserved for expansion]

SUBCHAPTER D. EMERGENCY CARE

Sec. 74.151. LIABILITY FOR EMERGENCY CARE. (a) A person who in good faith administers emergency care, including using an automated external defibrillator, ~~[at the scene of an emergency but not in a hospital or other health care facility or means of medical transport]~~ is not liable in civil damages for an act performed during the emergency unless the act is wilfully or wantonly negligent.

(b) This section does not apply to care administered:

(1) for or in expectation of remuneration, provided that being legally entitled to receive remuneration for the emergency care rendered shall not determine whether or not the care was administered for or in anticipation of remuneration; or

(2) by a person who was at the scene of the emergency because he or a person he represents as an agent was soliciting business or seeking to perform a service for remuneration.

~~[(e) If the scene of an emergency is in a hospital or other health care facility or means of medical transport, a person who in good faith administers emergency care is not liable in civil damages for an act performed during the emergency unless the act is wilfully or wantonly negligent, provided that this subsection does not apply to care administered:~~

~~[(1) by a person who regularly administers care in a hospital emergency room unless such person is at the scene of the emergency for reasons wholly unrelated to the person's work in administering health care; or~~

~~[(2) by an admitting or attending physician of the patient or a treating physician associated by the admitting or attending physician of the patient in question.~~

~~[(d) For purposes of Subsections (b)(1) and (c)(1), a person who would ordinarily receive or be entitled to receive a salary, fee, or other remuneration for administering care under such circumstances to the patient in question shall be~~

~~deemed to be acting for or in expectation of remuneration even if the person waives or elects not to charge or receive remuneration on the occasion in question.]~~

(e) This section does not apply to a person whose negligent act or omission was a producing cause of the emergency for which care is being administered.

Sec. 74.152 ~~[74.002]~~. UNLICENSED MEDICAL PERSONNEL. Persons not licensed or certified in the healing arts who in good faith administer emergency care as emergency medical service personnel are not liable in civil damages for an act performed in administering the care unless the act is wilfully or wantonly negligent. This section applies without regard to whether the care is provided for or in expectation of remuneration.

Sec. 74.153. STANDARD OF PROOF IN CASES INVOLVING EMERGENCY MEDICAL CARE. In a suit involving a health care liability claim against a physician or health care provider for injury to or death of a patient arising out of the provision of emergency medical care in a hospital emergency department or obstetrical unit or in a surgical suite immediately following the evaluation or treatment of a patient in a hospital emergency department, the claimant bringing the suit may prove that the treatment or lack of treatment by the physician or health care provider departed from accepted standards of medical care or health care only if the claimant shows by a preponderance of the evidence that the physician or health care provider, with wilful and wanton negligence, deviated from the degree of care and skill that is reasonably expected of an ordinarily prudent physician or health care provider in the same or similar circumstances.

Sec. 74.154. JURY INSTRUCTIONS IN CASES INVOLVING EMERGENCY MEDICAL CARE. (a) In an action for damages that involves a claim of negligence arising from the provision of emergency medical care in a hospital emergency department or obstetrical unit or in a surgical suite immediately following the evaluation or treatment of a patient in a hospital emergency department, the court shall instruct the jury to consider, together with all other relevant matters:

(1) whether the person providing care did or did not have the patient's medical history or was able or unable to obtain a full medical history, including the knowledge of preexisting medical conditions, allergies, and medications;

(2) the presence or lack of a preexisting physician-patient relationship or health care provider-patient relationship;

(3) the circumstances constituting the emergency; and

(4) the circumstances surrounding the delivery of the emergency medical care.

(b) The provisions of Subsection (a) do not apply to medical care or treatment:

(1) that occurs after the patient is stabilized and is capable of receiving medical treatment as a nonemergency patient;

(2) that is unrelated to the original medical emergency; or

(3) that is related to an emergency caused in whole or in part by the negligence of the defendant.

[Sections 74.155-74.200 reserved for expansion]

SUBCHAPTER E. RES IPSA LOQUITUR

Sec. 74.201. APPLICATION OF RES IPSA LOQUITUR. The common law doctrine of res ipsa loquitur shall only apply to health care liability claims against health care providers or physicians in those cases to which it has been applied by the appellate courts of this state as of August 29, 1977.

[Sections 74.202-74.250 reserved for expansion]

SUBCHAPTER F. STATUTE OF LIMITATIONS

Sec. 74.251. STATUTE OF LIMITATIONS ON HEALTH CARE LIABILITY CLAIMS. (a) Notwithstanding any other law and subject to Subsection (b), no health care liability claim may be commenced unless the action is filed within two years from the occurrence of the breach or tort or from the date the medical or health care treatment that is the subject of the claim or the hospitalization for which the claim is made is completed; provided that, minors under the age of 12 years shall have until their 14th birthday in which to file, or have filed on their behalf, the claim. Except as herein provided this section applies to all persons regardless of minority or other legal disability.

(b) A claimant must bring a health care liability claim not later than 10 years after the date of the act or omission that gives rise to the claim. This subsection is intended as a statute of repose so that all claims must be brought within 10 years or they are time barred.

[Sections 74.252-74.300 reserved for expansion]

SUBCHAPTER G. LIABILITY LIMITS

Sec. 74.301. LIMITATION ON NONECONOMIC DAMAGES. (a) In an action on a health care liability claim where final judgment is rendered against a physician or health care provider other than a health care institution, the limit of civil liability for noneconomic damages of the health care provider other than a health care institution, inclusive of all persons and entities for which vicarious liability theories may apply, shall be limited to an amount not to exceed \$250,000 for each claimant, regardless of the number of defendant physicians or health care providers other than a health care institution against whom the claim is asserted or the number of separate causes of action on which the claim is based.

(b) In an action on a health care liability claim where final judgment is rendered against a single health care institution, the limit of civil liability for noneconomic damages inclusive of all persons and entities for which vicarious liability theories may apply, shall be limited to an amount not to exceed \$250,000.

(c) In an action on a health care liability claim where final judgment is rendered against more than one health care institution, the limit of civil liability for noneconomic damages for each health care institution, inclusive of all persons and entities for which vicarious liability theories may apply, shall be limited to an amount not to exceed \$250,000 and the limit of civil liability for noneconomic damages for all health care institutions, inclusive of all persons and entities for which vicarious liability theories may apply, shall be limited to an amount not to exceed \$500,000.

Sec. 74.302. ALTERNATIVE LIMITATION ON NONECONOMIC DAMAGES. (a) In the event that Section 74.301 is stricken from this subchapter or is otherwise to any extent invalidated by a method other than through legislative means, the following, subject to the provisions of this section, shall become effective:

(1) In an action on a health care liability claim where final judgment is rendered against a physician or health care provider other than a health care institution, the limit of civil liability for noneconomic damages of the health care provider other than a health care institution, inclusive of all persons and entities for which vicarious liability theories may apply, shall be limited to an amount not to exceed \$250,000 for each claimant, regardless of the number of defendant physicians or health care providers other than a health care institution against whom the claim is asserted or the number of separate causes of action on which the claim is based.

(2) In an action on a health care liability claim where final judgment is rendered against a single health care institution, the limit of civil liability for noneconomic damages inclusive of all persons and entities for which vicarious liability theories may apply, shall be limited to an amount not to exceed \$250,000.

(3) In an action on a health care liability claim where final judgment is rendered against more than one health care institution, the limit of civil liability for noneconomic damages for each health care institution, inclusive of all persons and entities for which vicarious liability theories may apply, shall be limited to an amount not to exceed \$250,000 and the limit of civil liability for noneconomic damages for all health care institutions, inclusive of all persons and entities for which vicarious liability theories may apply, shall be limited to an amount not to exceed \$500,000.

(b) Effective before September 1, 2005, Subsection (a) of this section applies to any physician or health care provider that provides evidence of financial responsibility in the following amounts in effect for any act or omission to which this subchapter applies:

(1) at least \$100,000 for each health care liability claim and at least \$300,000 in aggregate for all health care liability claims occurring in an insurance policy year, calendar year, or fiscal year for a physician participating in an approved residency program;

(2) at least \$200,000 for each health care liability claim and at least \$600,000 in aggregate for all health care liability claims occurring in an insurance policy year, calendar year, or fiscal year for a physician or health care provider, other than a hospital; and

(3) at least \$500,000 for each health care liability claim and at least \$1.5 million in aggregate for all health care liability claims occurring in an insurance policy year, calendar year, or fiscal year for a hospital.

(c) Effective September 1, 2005, Subsection (a) of this section applies to any physician or health care provider that provides evidence of financial responsibility in the following amounts in effect for any act or omission to which this subchapter applies:

(1) at least \$100,000 for each health care liability claim and at least \$300,000 in aggregate for all health care liability claims occurring in an insurance policy year, calendar year, or fiscal year for a physician participating in an approved residency program;

(2) at least \$300,000 for each health care liability claim and at least \$900,000 in aggregate for all health care liability claims occurring in an insurance policy year, calendar year, or fiscal year for a physician or health care provider, other than a hospital; and

(3) at least \$750,000 for each health care liability claim and at least \$2.25 million in aggregate for all health care liability claims occurring in an insurance policy year, calendar year, or fiscal year for a hospital.

(d) Effective September 1, 2007, Subsection (a) of this section applies to any physician or health care provider that provides evidence of financial responsibility in the following amounts in effect for any act or omission to which this subchapter applies:

(1) at least \$100,000 for each health care liability claim and at least \$300,000 in aggregate for all health care liability claims occurring in an insurance policy year, calendar year, or fiscal year for a physician participating in an approved residency program;

(2) at least \$500,000 for each health care liability claim and at least \$1 million in aggregate for all health care liability claims occurring in an insurance policy year, calendar year, or fiscal year for a physician or health care provider, other than a hospital; and

(3) at least \$1 million for each health care liability claim and at least \$3 million in aggregate for all health care liability claims occurring in an insurance policy year, calendar year, or fiscal year for a hospital.

(e) Evidence of financial responsibility may be established at the time of judgment by providing proof of:

(1) the purchase of a contract of insurance or other plan of insurance authorized by this state or federal law or regulation;

(2) the purchase of coverage from a trust organized and operating under Article 21.49-4, Insurance Code;

(3) the purchase of coverage or another plan of insurance provided by or through a risk retention group or purchasing group authorized under applicable laws of this state or under the Product Liability Risk Retention Act of 1981 (15 U.S.C. Section 3901 et seq.), as amended, or the Liability Risk Retention Act of 1986 (15 U.S.C. Section 3901 et seq.), as amended, or any other contract or arrangement for transferring and distributing risk relating to legal liability for damages, including cost or defense, legal costs, fees, and other claims expenses;
or

(4) the maintenance of financial reserves in or an irrevocable letter of credit from a federally insured financial institution that has its main office or a branch office in this state.

Sec. 74.303. LIMITATION ON DAMAGES. (a) In a wrongful death or survival action on a health care liability claim where final judgment is rendered against a physician or health care provider, the limit of civil liability for all

damages, including exemplary damages, shall be limited to an amount not to exceed \$500,000 for each claimant, regardless of the number of defendant physicians or health care providers against whom the claim is asserted or the number of separate causes of action on which the claim is based.

(b) When there is an increase or decrease in the consumer price index with respect to the amount of that index on August 29, 1977, the liability limit prescribed in Subsection (a) shall be increased or decreased, as applicable, by a sum equal to the amount of such limit multiplied by the percentage increase or decrease in the consumer price index, as published by the Bureau of Labor Statistics of the United States Department of Labor, that measures the average changes in prices of goods and services purchased by urban wage earners and clerical workers' families and single workers living alone (CPI-W: Seasonally Adjusted U.S. City Average - All Items), between August 29, 1977, and the time at which damages subject to such limits are awarded by final judgment or settlement.

(c) Subsection (a) does not apply to the amount of damages awarded on a health care liability claim for the expenses of necessary medical, hospital, and custodial care received before judgment or required in the future for treatment of the injury.

(d) The liability of any insurer under the common law theory of recovery commonly known in Texas as the "Stowers Doctrine" shall not exceed the liability of the insured.

(e) In any action on a health care liability claim that is tried by a jury in any court in this state, the following shall be included in the court's written instructions to the jurors:

(1) "Do not consider, discuss, nor speculate whether or not liability, if any, on the part of any party is or is not subject to any limit under applicable law."

(2) "A finding of negligence may not be based solely on evidence of a bad result to the claimant in question, but a bad result may be considered by you, along with other evidence, in determining the issue of negligence. You are the sole judges of the weight, if any, to be given to this kind of evidence."

[Sections 74.304-74.350 reserved for expansion]

SUBCHAPTER H. PROCEDURAL PROVISIONS

Sec. 74.351. EXPERT REPORT. (a) In a health care liability claim, a claimant shall, not later than the 120th day after the date the claim was filed, serve on each party or the party's attorney one or more expert reports, with a curriculum vitae of each expert listed in the report for each physician or health care provider against whom a liability claim is asserted. The date for serving the report may be extended by written agreement of the affected parties. Each defendant physician or health care provider whose conduct is implicated in a report must file and serve any objection to the sufficiency of the report not later than the 21st day after the date it was served, failing which all objections are waived.

(b) If, as to a defendant physician or health care provider, an expert report has not been served within the period specified by Subsection (a), the court, on the motion of the affected physician or health care provider, shall, subject to Subsection (c), enter an order that:

(1) awards to the affected physician or health care provider reasonable attorney's fees and costs of court incurred by the physician or health care provider; and

(2) dismisses the claim with respect to the physician or health care provider, with prejudice to the refiling of the claim.

(c) If an expert report has not been served within the period specified by Subsection (a) because elements of the report are found deficient, the court may grant one 30-day extension to the claimant in order to cure the deficiency. If the claimant does not receive notice of the court's ruling granting the extension until after the 120-day deadline has passed, then the 30-day extension shall run from the date the plaintiff first received the notice.

[Subsections (d)-(h) reserved]

(i) Notwithstanding any other provision of this section, a claimant may satisfy any requirement of this section for serving an expert report by serving reports of separate experts regarding different physicians or health care providers or regarding different issues arising from the conduct of a physician or health care provider, such as issues of liability and causation. Nothing in this section shall be construed to mean that a single expert must address all liability and causation issues with respect to all physicians or health care providers or with respect to both liability and causation issues for a physician or health care provider.

(j) Nothing in this section shall be construed to require the serving of an expert report regarding any issue other than an issue relating to liability or causation.

(k) Subject to Subsection (t), an expert report served under this section:

(1) is not admissible in evidence by any party;

(2) shall not be used in a deposition, trial, or other proceeding; and

(3) shall not be referred to by any party during the course of the action for any purpose.

(l) A court shall grant a motion challenging the adequacy of an expert report only if it appears to the court, after hearing, that the report does not represent an objective good faith effort to comply with the definition of an expert report in Subsection (r)(6).

[Subsections (m)-(q) reserved]

(r) In this section:

(1) "Affected parties" means the claimant and the physician or health care provider who are directly affected by an act or agreement required or permitted by this section and does not include other parties to an action who are not directly affected by that particular act or agreement.

(2) "Claim" means a health care liability claim.

[(3) reserved]

(4) "Defendant" means a physician or health care provider against whom a health care liability claim is asserted. The term includes a third-party defendant, cross-defendant, or counterdefendant.

(5) "Expert" means:

(A) with respect to a person giving opinion testimony regarding whether a physician departed from accepted standards of medical care, an expert qualified to testify under the requirements of Section 74.401;

(B) with respect to a person giving opinion testimony regarding whether a health care provider departed from accepted standards of health care, an expert qualified to testify under the requirements of Section 74.402;

(C) with respect to a person giving opinion testimony about the causal relationship between the injury, harm, or damages claimed and the alleged departure from the applicable standard of care in any health care liability claim, a physician who is otherwise qualified to render opinions on such causal relationship under the Texas Rules of Evidence;

(D) with respect to a person giving opinion testimony about the causal relationship between the injury, harm, or damages claimed and the alleged departure from the applicable standard of care for a dentist, a dentist or physician who is otherwise qualified to render opinions on such causal relationship under the Texas Rules of Evidence; or

(E) with respect to a person giving opinion testimony about the causal relationship between the injury, harm, or damages claimed and the alleged departure from the applicable standard of care for a podiatrist, a podiatrist or physician who is otherwise qualified to render opinions on such causal relationship under the Texas Rules of Evidence.

(6) "Expert report" means a written report by an expert that provides a fair summary of the expert's opinions as of the date of the report regarding applicable standards of care, the manner in which the care rendered by the physician or health care provider failed to meet the standards, and the causal relationship between that failure and the injury, harm, or damages claimed.

(s) Until a claimant has served the expert report and curriculum vitae as required by Subsection (a), all discovery in a health care liability claim is stayed except for the acquisition by the claimant of information, including medical or hospital records or other documents or tangible things, related to the patient's health care through:

(1) written discovery as defined in Rule 192.7, Texas Rules of Civil Procedure;

(2) depositions on written questions under Rule 200, Texas Rules of Civil Procedure; and

(3) discovery from nonparties under Rule 205, Texas Rules of Civil Procedure.

(t) If an expert report is used by the claimant in the course of the action for any purpose other than to meet the service requirement of Subsection (a), the restrictions imposed by Subsection (k) on use of the expert report by any party are waived.

(u) Notwithstanding any other provision of this section, after a claim is filed all claimants, collectively, may take not more than two depositions before the expert report is served as required by Subsection (a).

Sec. 74.352. DISCOVERY PROCEDURES. (a) In every health care liability claim the plaintiff shall within 45 days after the date of filing of the original petition serve on the defendant's attorney or, if no attorney has appeared for the defendant, on the defendant full and complete answers to the appropriate standard set of interrogatories and full and complete responses to the appropriate standard set of requests for production of documents and things promulgated by the Health Care Liability Discovery Panel.

(b) Every physician or health care provider who is a defendant in a health care liability claim shall within 45 days after the date on which an answer to the petition was due serve on the plaintiff's attorney or, if the plaintiff is not represented by an attorney, on the plaintiff full and complete answers to the appropriate standard set of interrogatories and complete responses to the standard set of requests for production of documents and things promulgated by the Health Care Liability Discovery Panel.

(c) Except on motion and for good cause shown, no objection may be asserted regarding any standard interrogatory or request for production of documents and things, but no response shall be required where a particular interrogatory or request is clearly inapplicable under the circumstances of the case.

(d) Failure to file full and complete answers and responses to standard interrogatories and requests for production of documents and things in accordance with Subsections (a) and (b) or the making of a groundless objection under Subsection (c) shall be grounds for sanctions by the court in accordance with the Texas Rules of Civil Procedure on motion of any party.

(e) The time limits imposed under Subsections (a) and (b) may be extended by the court on the motion of a responding party for good cause shown and shall be extended if agreed in writing between the responding party and all opposing parties. In no event shall an extension be for a period of more than an additional 30 days.

(f) If a party is added by an amended pleading, intervention, or otherwise, the new party shall file full and complete answers to the appropriate standard set of interrogatories and full and complete responses to the standard set of requests for production of documents and things no later than 45 days after the date of filing of the pleading by which the party first appeared in the action.

(g) If information or documents required to provide full and complete answers and responses as required by this section are not in the possession of the responding party or attorney when the answers or responses are filed, the party shall supplement the answers and responses in accordance with the Texas Rules of Civil Procedure.

(h) Nothing in this section shall preclude any party from taking additional non-duplicative discovery of any other party. The standard sets of interrogatories provided for in this section shall not constitute, as to each plaintiff and each physician or health care provider who is a defendant, the first of the two sets of interrogatories permitted under the Texas Rules of Civil Procedure.

[Sections 74.353-74.400 reserved for expansion]

SUBCHAPTER I. EXPERT WITNESSES

Sec. 74.401. QUALIFICATIONS OF EXPERT WITNESS IN SUIT AGAINST PHYSICIAN. (a) In a suit involving a health care liability claim against a physician for injury to or death of a patient, a person may qualify as an expert witness on the issue of whether the physician departed from accepted standards of medical care only if the person is a physician who:

(1) is practicing medicine at the time such testimony is given or was practicing medicine at the time the claim arose;

(2) has knowledge of accepted standards of medical care for the diagnosis, care, or treatment of the illness, injury, or condition involved in the claim; and

(3) is qualified on the basis of training or experience to offer an expert opinion regarding those accepted standards of medical care.

(b) For the purpose of this section, "practicing medicine" or "medical practice" includes, but is not limited to, training residents or students at an accredited school of medicine or osteopathy or serving as a consulting physician to other physicians who provide direct patient care, upon the request of such other physicians.

(c) In determining whether a witness is qualified on the basis of training or experience, the court shall consider whether, at the time the claim arose or at the time the testimony is given, the witness:

(1) is board certified or has other substantial training or experience in an area of medical practice relevant to the claim; and

(2) is actively practicing medicine in rendering medical care services relevant to the claim.

(d) The court shall apply the criteria specified in Subsections (a), (b), and (c) in determining whether an expert is qualified to offer expert testimony on the issue of whether the physician departed from accepted standards of medical care, but may depart from those criteria if, under the circumstances, the court determines that there is a good reason to admit the expert's testimony. The court shall state on the record the reason for admitting the testimony if the court departs from the criteria.

(e) A pretrial objection to the qualifications of a witness under this section must be made not later than the later of the 21st day after the date the objecting party receives a copy of the witness's curriculum vitae or the 21st day after the date of the witness's deposition. If circumstances arise after the date on which the objection must be made that could not have been reasonably anticipated by a party before that date and that the party believes in good faith provide a basis for an objection to a witness's qualifications, and if an objection was not made previously, this subsection does not prevent the party from making an objection

as soon as practicable under the circumstances. The court shall conduct a hearing to determine whether the witness is qualified as soon as practicable after the filing of an objection and, if possible, before trial. If the objecting party is unable to object in time for the hearing to be conducted before the trial, the hearing shall be conducted outside the presence of the jury. This subsection does not prevent a party from examining or cross-examining a witness at trial about the witness's qualifications.

(f) This section does not prevent a physician who is a defendant from qualifying as an expert.

(g) In this subchapter, "physician" means a person who is:

(1) licensed to practice medicine in one or more states in the United States; or

(2) a graduate of a medical school accredited by the Liaison Committee on Medical Education or the American Osteopathic Association only if testifying as a defendant and that testimony relates to that defendant's standard of care, the alleged departure from that standard of care, or the causal relationship between the alleged departure from that standard of care and the injury, harm, or damages claimed.

Sec. 74.402. QUALIFICATIONS OF EXPERT WITNESS IN SUIT AGAINST HEALTH CARE PROVIDER. (a) For purposes of this section, "practicing health care" includes:

(1) training health care providers in the same field as the defendant health care provider at an accredited educational institution; or

(2) serving as a consulting health care provider and being licensed, certified, or registered in the same field as the defendant health care provider.

(b) In a suit involving a health care liability claim against a health care provider, a person may qualify as an expert witness on the issue of whether the health care provider departed from accepted standards of care only if the person:

(1) is practicing health care in a field of practice that involves the same type of care or treatment as that delivered by the defendant health care provider, if the defendant health care provider is an individual, at the time the testimony is given or was practicing that type of health care at the time the claim arose;

(2) has knowledge of accepted standards of care for health care providers for the diagnosis, care, or treatment of the illness, injury, or condition involved in the claim; and

(3) is qualified on the basis of training or experience to offer an expert opinion regarding those accepted standards of health care.

(c) In determining whether a witness is qualified on the basis of training or experience, the court shall consider whether, at the time the claim arose or at the time the testimony is given, the witness:

(1) is certified by a licensing agency of one or more states of the United States or a national professional certifying agency, or has other substantial training or experience, in the area of health care relevant to the claim; and

(2) is actively practicing health care in rendering health care services relevant to the claim.

(d) The court shall apply the criteria specified in Subsections (a), (b), and (c) in determining whether an expert is qualified to offer expert testimony on the issue of whether the defendant health care provider departed from accepted standards of health care but may depart from those criteria if, under the circumstances, the court determines that there is good reason to admit the expert's testimony. The court shall state on the record the reason for admitting the testimony if the court departs from the criteria.

(e) This section does not prevent a health care provider who is a defendant, or an employee of the defendant health care provider, from qualifying as an expert.

(f) A pretrial objection to the qualifications of a witness under this section must be made not later than the later of the 21st day after the date the objecting party receives a copy of the witness's curriculum vitae or the 21st day after the date of the witness's deposition. If circumstances arise after the date on which the objection must be made that could not have been reasonably anticipated by a party before that date and that the party believes in good faith provide a basis for an objection to a witness's qualifications, and if an objection was not made previously, this subsection does not prevent the party from making an objection as soon as practicable under the circumstances. The court shall conduct a hearing to determine whether the witness is qualified as soon as practicable after the filing of an objection and, if possible, before trial. If the objecting party is unable to object in time for the hearing to be conducted before the trial, the hearing shall be conducted outside the presence of the jury. This subsection does not prevent a party from examining or cross-examining a witness at trial about the witness's qualifications.

Sec. 74.403. QUALIFICATIONS OF EXPERT WITNESS ON CAUSATION IN HEALTH CARE LIABILITY CLAIM. (a) Except as provided by Subsections (b) and (c), in a suit involving a health care liability claim against a physician or health care provider, a person may qualify as an expert witness on the issue of the causal relationship between the alleged departure from accepted standards of care and the injury, harm, or damages claimed only if the person is a physician and is otherwise qualified to render opinions on that causal relationship under the Texas Rules of Evidence.

(b) In a suit involving a health care liability claim against a dentist, a person may qualify as an expert witness on the issue of the causal relationship between the alleged departure from accepted standards of care and the injury, harm, or damages claimed if the person is a dentist or physician and is otherwise qualified to render opinions on that causal relationship under the Texas Rules of Evidence.

(c) In a suit involving a health care liability claim against a podiatrist, a person may qualify as an expert witness on the issue of the causal relationship between the alleged departure from accepted standards of care and the injury, harm, or damages claimed if the person is a podiatrist or physician and is otherwise qualified to render opinions on that causal relationship under the Texas Rules of Evidence.

(d) A pretrial objection to the qualifications of a witness under this section must be made not later than the later of the 21st day after the date the objecting party receives a copy of the witness's curriculum vitae or the 21st day after the date of the witness's deposition. If circumstances arise after the date on which the objection must be made that could not have been reasonably anticipated by a party before that date and that the party believes in good faith provide a basis for an objection to a witness's qualifications, and if an objection was not made previously, this subsection does not prevent the party from making an objection as soon as practicable under the circumstances. The court shall conduct a hearing to determine whether the witness is qualified as soon as practicable after the filing of an objection and, if possible, before trial. If the objecting party is unable to object in time for the hearing to be conducted before the trial, the hearing shall be conducted outside the presence of the jury. This subsection does not prevent a party from examining or cross-examining a witness at trial about the witness's qualifications.

[Sections 74.404-74.450 reserved for expansion]

SUBCHAPTER J. ARBITRATION AGREEMENTS

Sec. 74.451. ARBITRATION AGREEMENTS. (a) No physician, professional association of physicians, or other health care provider shall request or require a patient or prospective patient to execute an agreement to arbitrate a health care liability claim unless the form of agreement delivered to the patient contains a written notice in 10-point boldface type clearly and conspicuously stating:

UNDER TEXAS LAW, THIS AGREEMENT IS INVALID AND OF NO LEGAL EFFECT UNLESS IT IS ALSO SIGNED BY AN ATTORNEY OF YOUR OWN CHOOSING. THIS AGREEMENT CONTAINS A WAIVER OF IMPORTANT LEGAL RIGHTS, INCLUDING YOUR RIGHT TO A JURY. YOU SHOULD NOT SIGN THIS AGREEMENT WITHOUT FIRST CONSULTING WITH AN ATTORNEY.

(b) A violation of this section by a physician or professional association of physicians constitutes a violation of Subtitle B, Title 3, Occupations Code, and shall be subject to the enforcement provisions and sanctions contained in that subtitle.

(c) A violation of this section by a health care provider other than a physician shall constitute a false, misleading, or deceptive act or practice in the conduct of trade or commerce within the meaning of Section 17.46 of the Deceptive Trade Practices-Consumer Protection Act (Subchapter E, Chapter 17, Business & Commerce Code), and shall be subject to an enforcement action by the consumer protection division under that act and subject to the penalties and remedies contained in Section 17.47, Business & Commerce Code, notwithstanding Section 74.004 or any other law.

(d) Notwithstanding any other provision of this section, a person who is found to be in violation of this section for the first time shall be subject only to injunctive relief or other appropriate order requiring the person to cease and desist from such violation, and not to any other penalty or sanction.

[Sections 74.452-74.500 reserved for expansion]

SUBCHAPTER K. PAYMENT FOR FUTURE LOSSES

Sec. 74.501. DEFINITIONS. In this subchapter:

(1) "Future damages" means damages that are incurred after the date of judgment for:

(A) medical, health care, or custodial care services;

(B) physical pain and mental anguish, disfigurement, or physical impairment;

(C) loss of consortium, companionship, or society; or

(D) loss of earnings.

(2) "Future loss of earnings" means the following losses incurred after the date of the judgment:

(A) loss of income, wages, or earning capacity and other pecuniary losses; and

(B) loss of inheritance.

(3) "Periodic payments" means the payment of money or its equivalent to the recipient of future damages at defined intervals.

Sec. 74.502. SCOPE OF SUBCHAPTER. This subchapter applies only to an action on a health care liability claim against a physician or health care provider in which the present value of the award of future damages, as determined by the court, equals or exceeds \$100,000.

Sec. 74.503. COURT ORDER FOR PERIODIC PAYMENTS. (a) At the request of a defendant physician or health care provider or claimant, the court shall order that medical, health care, or custodial services awarded in a health care liability claim be paid in whole or in part in periodic payments rather than by a lump-sum payment.

(b) At the request of a defendant physician or health care provider or claimant, the court may order that future damages other than medical, health care, or custodial services awarded in a health care liability claim be paid in whole or in part in periodic payments rather than by a lump sum payment.

(c) The court shall make a specific finding of the dollar amount of periodic payments that will compensate the claimant for the future damages.

(d) The court shall specify in its judgment ordering the payment of future damages by periodic payments the:

(1) recipient of the payments;

(2) dollar amount of the payments;

(3) interval between payments; and

(4) number of payments or the period of time over which payments must be made.

Sec. 74.504. RELEASE. The entry of an order for the payment of future damages by periodic payments constitutes a release of the health care liability claim filed by the claimant.

Sec. 74.505. FINANCIAL RESPONSIBILITY. (a) As a condition to authorizing periodic payments of future damages, the court shall require a defendant who is not adequately insured to provide evidence of financial responsibility in an amount adequate to assure full payment of damages awarded by the judgment.

(b) The judgment must provide for payments to be funded by:

(1) an annuity contract issued by a company licensed to do business as an insurance company, including an assignment within the meaning of Section 130, Internal Revenue Code of 1986, as amended;

(2) an obligation of the United States;

(3) applicable and collectible liability insurance from one or more qualified insurers; or

(4) any other satisfactory form of funding approved by the court.

(c) On termination of periodic payments of future damages, the court shall order the return of the security, or as much as remains, to the defendant.

Sec. 74.506. DEATH OF RECIPIENT. (a) On the death of the recipient, money damages awarded for loss of future earnings continue to be paid to the estate of the recipient of the award without reduction.

(b) Periodic payments, other than future loss of earnings, terminate on the death of the recipient.

(c) If the recipient of periodic payments dies before all payments required by the judgment are paid, the court may modify the judgment to award and apportion the unpaid damages for future loss of earnings in an appropriate manner.

(d) Following the satisfaction or termination of any obligations specified in the judgment for periodic payments, any obligation of the defendant physician or health care provider to make further payments ends and any security given reverts to the defendant.

Sec. 74.507. AWARD OF ATTORNEY'S FEES. For purposes of computing the award of attorney's fees when the claimant is awarded a recovery that will be paid in periodic payments, the court shall:

(1) place a total value on the payments based on the claimant's projected life expectancy; and

(2) reduce the amount in Subdivision (1) to present value.

SECTION 10.02. Section 84.003(1), Civil Practice and Remedies Code, is amended to read as follows:

(1) "Charitable organization" means:

(A) any organization exempt from federal income tax under Section 501(a) of the Internal Revenue Code of 1986 by being listed as an exempt organization in Section 501(c)(3) or 501(c)(4) of the code, if it is a nonprofit corporation, foundation, community chest, or fund organized and operated exclusively for charitable, religious, prevention of cruelty to children or animals, youth sports and youth recreational, neighborhood crime prevention or patrol, fire protection or prevention, emergency medical or hazardous material response services, or educational purposes, including [excluding] private primary or secondary schools if accredited by a member association of the Texas Private

School Accreditation Commission but excluding fraternities, sororities, and secret societies, [alumni associations and related on campus organizations,] or is organized and operated exclusively for the promotion of social welfare by being primarily engaged in promoting the common good and general welfare of the people in a community;

(B) any bona fide charitable, religious, prevention of cruelty to children or animals, youth sports and youth recreational, neighborhood crime prevention or patrol, or educational organization, excluding fraternities, sororities, and secret societies [alumni associations and related on campus organizations], or other organization organized and operated exclusively for the promotion of social welfare by being primarily engaged in promoting the common good and general welfare of the people in a community, and that:

(i) is organized and operated exclusively for one or more of the above purposes;

(ii) does not engage in activities which in themselves are not in furtherance of the purpose or purposes;

(iii) does not directly or indirectly participate or intervene in any political campaign on behalf of or in opposition to any candidate for public office;

(iv) dedicates its assets to achieving the stated purpose or purposes of the organization;

(v) does not allow any part of its net assets on dissolution of the organization to inure to the benefit of any group, shareholder, or individual; and

(vi) normally receives more than one-third of its support in any year from private or public gifts, grants, contributions, or membership fees;

(C) a homeowners association as defined by Section 528(c) of the Internal Revenue Code of 1986 or which is exempt from federal income tax under Section 501(a) of the Internal Revenue Code of 1986 by being listed as an exempt organization in Section 501(c)(4) of the code; or

(D) a volunteer center, as that term is defined by Section 411.126, Government Code.

SECTION 10.03. Section 84.003, Civil Practice and Remedies Code, is amended by adding Subdivision (6) to read as follows:

(6) "Hospital system" means a system of hospitals and other health care providers located in this state that are under the common governance or control of a corporate parent.

SECTION 10.04. Section 84.003, Civil Practice and Remedies Code, is amended by adding Subdivision (7) to read as follows:

(7) "Person responsible for the patient" means:

(A) the patient's parent, managing conservator, or guardian;

(B) the patient's grandparent;

(C) the patient's adult brother or sister;

(D) another adult who has actual care, control, and possession of the patient and has written authorization to consent for the patient from the parent, managing conservator, or guardian of the patient;

(E) an educational institution in which the patient is enrolled that has written authorization to consent for the patient from the parent, managing conservator, or guardian of the patient; or

(F) any other person with legal responsibility for the care of the patient.

SECTION 10.05. Section 84.004, Civil Practice and Remedies Code, is amended by adding Subsection (f) to read as follows:

(f) Subsection (c) applies even if:

(1) the patient is incapacitated due to illness or injury and cannot sign the acknowledgment statement required by that subsection; or

(2) the patient is a minor or is otherwise legally incompetent and the person responsible for the patient is not reasonably available to sign the acknowledgment statement required by that subsection.

SECTION 10.06. Chapter 84, Civil Practice and Remedies Code, is amended by adding Section 84.0065 to read as follows:

Sec. 84.0065. ORGANIZATION LIABILITY OF HOSPITALS. (a) Except as provided by Section 84.007, in any civil action brought against a hospital or hospital system, or its employees, officers, directors, or volunteers, for damages based on an act or omission by the hospital or hospital system, or its employees, officers, directors, or volunteers, the liability of the hospital or hospital system is limited to money damages in a maximum amount of \$500,000 for any act or omission resulting in death, damage, or injury to a patient if the patient or, if the patient is a minor or is otherwise legally incompetent, the person responsible for the patient signs a written statement that acknowledges:

(1) that the hospital is providing care that is not administered for or in expectation of compensation; and

(2) the limitations on the recovery of damages from the hospital in exchange for receiving the health care services.

(b) Subsection (a) applies even if:

(1) the patient is incapacitated due to illness or injury and cannot sign the acknowledgment statement required by that subsection; or

(2) the patient is a minor or is otherwise legally incompetent and the person responsible for the patient is not reasonably available to sign the acknowledgment statement required by that subsection.

SECTION 10.07. Section 242.0372, Health and Safety Code, is amended by adding Subsection (f) to read as follows:

(f) An institution is not required to comply with this section before September 1, 2005. This subsection expires September 2, 2005.

SECTION 10.08. Article 5.15-1, Insurance Code, is amended by adding Section 11 to read as follows:

Sec. 11. VENDOR'S ENDORSEMENT. An insurer may not exclude or otherwise limit coverage for physicians or health care providers under a vendor's endorsement issued to a manufacturer, as that term is defined by Section 82.001, Civil Practice and Remedies Code. A physician or health care provider shall be considered a vendor for purposes of coverage under a vendor's endorsement or a manufacturer's general liability or products liability policy.

SECTION 10.09. The Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes) is repealed.

SECTION 10.10. Unless otherwise removed as provided by law, a member of the Texas Medical Disclosure Panel serving on the effective date of this Act continues to serve for the term to which the member was appointed.

SECTION 10.11. (a) The Legislature of the State of Texas finds that:

(1) the number of health care liability claims (frequency) has increased since 1995 inordinately;

(2) the filing of legitimate health care liability claims in Texas is a contributing factor affecting medical professional liability rates;

(3) the amounts being paid out by insurers in judgments and settlements (severity) have likewise increased inordinately in the same short period;

(4) the effect of the above has caused a serious public problem in availability of and affordability of adequate medical professional liability insurance;

(5) the situation has created a medical malpractice insurance crisis in Texas;

(6) this crisis has had a material adverse effect on the delivery of medical and health care in Texas, including significant reductions of availability of medical and health care services to the people of Texas and a likelihood of further reductions in the future;

(7) the crisis has had a substantial impact on the physicians and hospitals of Texas and the cost to physicians and hospitals for adequate medical malpractice insurance has dramatically risen, with cost impact on patients and the public;

(8) the direct cost of medical care to the patient and public of Texas has materially increased due to the rising cost of malpractice insurance protection for physicians and hospitals in Texas;

(9) the crisis has increased the cost of medical care both directly through fees and indirectly through additional services provided for protection against future suits or claims, and defensive medicine has resulted in increasing cost to patients, private insurers, and Texas and has contributed to the general inflation that has marked health care in recent years;

(10) satisfactory insurance coverage for adequate amounts of insurance in this area is often not available at any price;

(11) the combined effect of the defects in the medical, insurance, and legal systems has caused a serious public problem both with respect to the availability of coverage and to the high rates being charged by insurers for medical professional liability insurance to some physicians, health care providers, and hospitals; and

(12) the adoption of certain modifications in the medical, insurance, and legal systems, the total effect of which is currently undetermined, will have a positive effect on the rates charged by insurers for medical professional liability insurance.

(b) Because of the conditions stated in Subsection (a) of this section, it is the purpose of this article to improve and modify the system by which health care liability claims are determined in order to:

(1) reduce excessive frequency and severity of health care liability claims through reasonable improvements and modifications in the Texas insurance, tort, and medical practice systems;

(2) decrease the cost of those claims and ensure that awards are rationally related to actual damages;

(3) do so in a manner that will not unduly restrict a claimant's rights any more than necessary to deal with the crisis;

(4) make available to physicians, hospitals, and other health care providers protection against potential liability through the insurance mechanism at reasonably affordable rates;

(5) make affordable medical and health care more accessible and available to the citizens of Texas;

(6) make certain modifications in the medical, insurance, and legal systems in order to determine whether or not there will be an effect on rates charged by insurers for medical professional liability insurance; and

(7) make certain modifications to the liability laws as they relate to health care liability claims only and with an intention of the legislature to not extend or apply such modifications of liability laws to any other area of the Texas legal system or tort law.

ARTICLE 11. CLAIMS AGAINST EMPLOYEES OR VOLUNTEERS OF A GOVERNMENTAL UNIT

SECTION 11.01. 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 11.02. 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 a contract with a municipality.

Sec. 261.052. LIABILITY OF A 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 11.03. 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(g)~~] under contract with a hospital district that was created by general or special law [~~and that has a population under 50,000~~].

SECTION 11.04. 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~~ 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 11.05. Section 101.106, Civil Practice and Remedies Code, is amended to read as follows:

Sec. 101.106. ELECTION OF REMEDIES. (a) The filing of a suit under this chapter against a governmental unit constitutes an irrevocable election by the plaintiff and immediately and forever bars any suit or recovery by the plaintiff against any individual employee of the governmental unit regarding the same subject matter.

(b) The filing of a suit against any employee of a governmental unit constitutes an irrevocable election by the plaintiff and immediately and forever bars any suit or recovery by the plaintiff against the governmental unit regarding the same subject matter unless the governmental unit consents.

(c) The settlement of a claim arising under this chapter shall immediately and forever bar the claimant from any suit against or recovery from any employee of the same governmental unit regarding the same subject matter.

(d) A judgment against an employee of a governmental unit shall immediately and forever bar the party obtaining the judgment from any suit against or recovery from the governmental unit.

(e) If a suit is filed under this chapter against both a governmental unit and any of its employees, the employees shall immediately be dismissed on the filing of a motion by the governmental unit.

(f) If a suit is filed against an employee of a governmental unit based on conduct within the general scope of that employee's employment and if it could have been brought under this chapter against the governmental unit, the suit is considered to be against the employee in the employee's official capacity only. On the employee's motion, the suit against the employee shall be dismissed unless the plaintiff files amended pleadings dismissing the employee and naming the governmental unit as defendant on or before the 30th day after the date the motion is filed. [EMPLOYEES NOT LIABLE AFTER SETTLEMENT OR JUDGMENT. A judgment in an action or a settlement of a claim under this chapter bars any action involving the same subject matter by the claimant against the employee of the governmental unit whose act or omission gave rise to the claim.]

SECTION 11.06. Section 108.001, Civil Practice and Remedies Code, is amended by adding Subdivision (3) to read as follows:

(3) "Public servant" includes a licensed physician who provides emergency or postemergency stabilization services to patients in a hospital owned or operated by a unit of local government.

SECTION 11.07. Section 108.002(c), Civil Practice and Remedies Code, is repealed.

ARTICLE 12. RESERVED

ARTICLE 13. DAMAGES

SECTION 13.01. The heading to Chapter 41, Civil Practice and Remedies Code, is amended to read as follows:

CHAPTER 41. ~~[EXEMPLARY]~~ DAMAGES

SECTION 13.02. Section 41.001, Civil Practice and Remedies Code, is amended by amending Subdivisions (1), (3), (4), (5), and (7) and adding Subdivisions (8)-(13) to read as follows:

(1) "Claimant" means a party, including a plaintiff, counterclaimant, cross-claimant, or third-party plaintiff, seeking recovery of ~~[exemplary]~~ damages. In a cause of action in which a party seeks recovery of ~~[exemplary]~~ damages related to injury to another person, damage to the property of another person, death of another person, or other harm to another person, "claimant" includes both that other person and the party seeking recovery of ~~[exemplary]~~ damages.

(3) "Defendant" means a party, including a counterdefendant, cross-defendant, or third-party defendant, from whom a claimant seeks relief ~~[with respect to exemplary damages].~~

(4) "Economic damages" means compensatory damages intended to compensate a claimant for actual economic or ~~[for]~~ pecuniary loss; the term does not include exemplary damages or noneconomic damages ~~[for physical pain and mental anguish, loss of consortium, disfigurement, physical impairment, or loss of companionship and society].~~

(5) "Exemplary damages" means any damages awarded as a penalty or by way of punishment but not for compensatory purposes. Exemplary damages are neither economic nor noneconomic damages. "Exemplary damages" includes punitive damages.

(7) "Malice" means~~[-~~
~~[(A)]~~ a specific intent by the defendant to cause substantial injury or harm to the claimant~~[-~~ ~~or~~

~~[(B)] an act or omission:~~
~~[(i) which when viewed objectively from the standpoint of the actor at the time of its occurrence involves an extreme degree of risk, considering the probability and magnitude of the potential harm to others; and~~

~~[(ii) of which the actor has actual, subjective awareness of the risk involved, but nevertheless proceeds with conscious indifference to the rights, safety, or welfare of others].~~

(8) "Compensatory damages" means economic and noneconomic damages. The term does not include exemplary damages.

(9) "Future damages" means damages that are incurred after the date of the judgment. Future damages do not include exemplary damages.

(10) "Future loss of earnings" means a pecuniary loss incurred after the date of the judgment, including:

(A) loss of income, wages, or earning capacity; and

(B) loss of inheritance.

(11) "Gross negligence" means an act or omission:

(A) which when viewed objectively from the standpoint of the actor at the time of its occurrence involves an extreme degree of risk, considering the probability and magnitude of the potential harm to others; and

(B) of which the actor has actual, subjective awareness of the risk involved, but nevertheless proceeds with conscious indifference to the rights, safety, or welfare of others.

(12) "Noneconomic damages" means damages awarded for the purpose of compensating a claimant for physical pain and suffering, mental or emotional pain or anguish, loss of consortium, disfigurement, physical impairment, loss of companionship and society, inconvenience, loss of enjoyment of life, injury to reputation, and all other nonpecuniary losses of any kind other than exemplary damages.

(13) "Periodic payments" means the payment of money or its equivalent to the recipient of future damages at defined intervals.

SECTION 13.03. Sections 41.002(a) and (b), Civil Practice and Remedies Code, are amended to read as follows:

(a) This chapter applies to any action in which a claimant seeks ~~[exemplary]~~ damages relating to a cause of action.

(b) This chapter establishes the maximum ~~[exemplary]~~ damages that may be awarded in an action subject to this chapter, including an action for which ~~[exemplary]~~ damages are awarded under another law of this state. This chapter does not apply to the extent another law establishes a lower maximum amount of ~~[exemplary]~~ damages for a particular claim.

SECTION 13.04. Section 41.003, Civil Practice and Remedies Code, is amended by amending Subsection (a) and adding Subsections (d) and (e) to read as follows:

(a) Except as provided by Subsection (c), exemplary damages may be awarded only if the claimant proves by clear and convincing evidence that the harm with respect to which the claimant seeks recovery of exemplary damages results from:

- (1) fraud;
- (2) malice; or

(3) gross negligence [~~wilful act or omission or gross neglect in wrongful death actions brought by or on behalf of a surviving spouse or heirs of the decedent's body, under a statute enacted pursuant to Section 26, Article XVI, Texas Constitution. In such cases, the definition of "gross neglect" in the instruction submitted to the jury shall be the definition stated in Section 41.001(7)(B).~~].

(d) Exemplary damages may be awarded only if the jury was unanimous in regard to finding liability for and the amount of exemplary damages.

(e) In all cases where the issue of exemplary damages is submitted to the jury, the following instruction shall be included in the charge of the court:

"You are instructed that, in order for you to find exemplary damages, your answer to the question regarding the amount of such damages must be unanimous."

SECTION 13.05. Section 41.004(b), Civil Practice and Remedies Code, is amended to read as follows:

(b) ~~[A claimant may recover exemplary damages, even if only nominal damages are awarded, if the claimant establishes by clear and convincing evidence that the harm with respect to which the claimant seeks recovery of exemplary damages results from malice as defined in Section 41.001(7)(A).]~~ Exemplary damages may not be awarded to a claimant who elects to have his recovery multiplied under another statute.

SECTION 13.06. Section 41.008, Civil Practice and Remedies Code, is amended to read as follows:

Sec. 41.008. LIMITATION ON AMOUNT OF RECOVERY. (a) In an action in which a claimant seeks recovery of ~~[exemplary]~~ damages, the trier of fact shall determine the amount of economic damages separately from the amount of other compensatory damages.

(b) Exemplary damages awarded against a defendant may not exceed an amount equal to the greater of:

(1)(A) two times the amount of economic damages; plus

(B) an amount equal to any noneconomic damages found by the jury, not to exceed \$750,000; or

(2) \$200,000.

(c) This section ~~[Subsection (b)]~~ does not apply to a cause of action against a defendant from whom a plaintiff seeks recovery of exemplary damages based on conduct described as a felony in the following sections of the Penal Code if, except for Sections 49.07 and 49.08, the conduct was committed knowingly or intentionally:

(1) Section 19.02 (murder);

(2) Section 19.03 (capital murder);

(3) Section 20.04 (aggravated kidnapping);

(4) Section 22.02 (aggravated assault);

(5) Section 22.011 (sexual assault);

(6) Section 22.021 (aggravated sexual assault);

(7) Section 22.04 (injury to a child, elderly individual, or disabled individual, but not if the conduct occurred while providing health care as defined by Section 74.001);

(8) Section 32.21 (forgery);

(9) Section 32.43 (commercial bribery);

(10) Section 32.45 (misapplication of fiduciary property or property of financial institution);

(11) Section 32.46 (securing execution of document by deception);

(12) Section 32.47 (fraudulent destruction, removal, or concealment of writing);

(13) Chapter 31 (theft) the punishment level for which is a felony of the third degree or higher;

(14) Section 49.07 (intoxication assault); or

(15) Section 49.08 (intoxication manslaughter).

(d) In this section, "intentionally" and "knowingly" have the same meanings assigned those terms in Sections 6.03(a) and (b), Penal Code.

(e) The provisions of this section [~~Subsections (a) and (b)~~] may not be made known to a jury by any means, including voir dire, introduction into evidence, argument, or instruction.

(f) This section [~~Subsection (b)~~] does not apply to a cause of action for damages arising from the manufacture of methamphetamine as described by Chapter 99.

SECTION 13.07. Section 41.010(b), Civil Practice and Remedies Code, is amended to read as follows:

(b) Subject to Section 41.008, the [~~The~~] determination of whether to award exemplary damages and the amount of exemplary damages to be awarded is within the discretion of the trier of fact.

SECTION 13.08. Chapter 41, Civil Practice and Remedies Code, is amended by adding Section 41.0105 to read as follows:

Sec. 41.0105. EVIDENCE RELATING TO AMOUNT OF ECONOMIC DAMAGES. In addition to any other limitation under law, recovery of medical or health care expenses incurred is limited to the amount actually paid or incurred by or on behalf of the claimant.

SECTION 13.09. Chapter 18, Civil Practice and Remedies Code, is amended by adding Subchapter D to read as follows:

SUBCHAPTER D. CERTAIN LOSSES

Sec. 18.091. PROOF OF CERTAIN LOSSES; JURY INSTRUCTION. (a) Notwithstanding any other law, if any claimant seeks recovery for loss of earnings, loss of earning capacity, loss of contributions of a pecuniary value, or loss of inheritance, evidence to prove the loss must be presented in the form of a net loss after reduction for income tax payments or unpaid tax liability pursuant to any federal income tax law.

(b) If any claimant seeks recovery for loss of earnings, loss of earning capacity, loss of contributions of a pecuniary value, or loss of inheritance, the court shall instruct the jury as to whether any recovery for compensatory damages sought by the claimant is subject to federal or state income taxes.

ARTICLE 14. RESERVED

ARTICLE 15. SCHOOL EMPLOYEES

SECTION 15.01. Subchapter B, Chapter 22, Education Code, is amended by amending Section 22.051 and adding Sections 22.0511, 22.0513, 22.0514, 22.0516, and 22.0517 to read as follows:

Sec. 22.051. DEFINITION. In this subchapter, "professional employee of a school district" includes:

(1) a superintendent, principal, teacher, including a substitute teacher, supervisor, social worker, counselor, nurse, and teacher's aide employed by a school district;

(2) a teacher employed by a company that contracts with a school district to provide the teacher's services to the district;

(3) a student in an education preparation program participating in a field experience or internship;

(4) a school bus driver certified in accordance with standards and qualifications adopted by the Department of Public Safety of the State of Texas;

(5) a member of the board of trustees of an independent school district;
and

(6) any other person employed by a school district whose employment requires certification and the exercise of discretion.

Sec. 22.0511. IMMUNITY FROM LIABILITY [FOR PROFESSIONAL EMPLOYEES]. (a) A professional employee of a school district is not personally liable for any act that is incident to or within the scope of the duties of the employee's position of employment and that involves the exercise of judgment or discretion on the part of the employee, except in circumstances in which a professional employee uses excessive force in the discipline of students or negligence resulting in bodily injury to students.

(b) This section does not apply to the operation, use, or maintenance of any motor vehicle.

(c) In addition to the immunity provided under this section and under other provisions of state law, an individual is entitled to any immunity and any other protections afforded under the Paul D. Coverdell Teacher Protection Act of 2001 (20 U.S.C. Section 6731 et seq.), as amended. Nothing in this subsection shall be construed to limit or abridge any immunity or protection afforded an individual under state law. For purposes of this subsection, "individual" includes a person who provides services to private schools, to the extent provided by federal law [this section, "professional employee" includes:

(1) a superintendent, principal, teacher, supervisor, social worker, counselor, nurse, and teacher's aide;

(2) a student in an education preparation program participating in a field experience or internship;

(3) a school bus driver certified in accordance with standards and qualifications adopted by the Department of Public Safety; and

(4) any other person whose employment requires certification and the exercise of discretion].

Sec. 22.0513. NOTICE OF CLAIM. (a) Not later than the 90th day before the date a person files a suit against a professional employee of a school district, the person must give written notice to the employee of the claim, reasonably describing the incident from which the claim arose.

(b) A professional employee of a school district against whom a suit is pending who does not receive written notice, as required by Subsection (a), may file a plea in abatement not later than the 30th day after the date the person files an original answer in the court in which the suit is pending.

(c) The court shall abate the suit if the court, after a hearing, finds that the person is entitled to an abatement because notice was not provided as required by this section.

(d) An abatement under Subsection (c) continues until the 90th day after the date that written notice is given to the professional employee of a school district as provided by Subsection (a).

Sec. 22.0514. EXHAUSTION OF REMEDIES. A person may not file suit against a professional employee of a school district unless the person has exhausted the remedies provided by the school district for resolving the complaint.

Sec. 22.0516. ALTERNATIVE DISPUTE RESOLUTION. A court in which a judicial proceeding is being brought against a professional employee of a school district may refer the case to an alternative dispute resolution procedure as described by Chapter 154, Civil Practice and Remedies Code.

Sec. 22.0517. RECOVERY OF ATTORNEY'S FEES IN ACTION AGAINST PROFESSIONAL EMPLOYEE. In an action against a professional employee of a school district involving an act that is incidental to or within the scope of duties of the employee's position of employment and brought against the employee in the employee's individual capacity, the employee is entitled to recover attorney's fees and court costs from the plaintiff if the employee is found immune from liability under this subchapter.

SECTION 15.02. Section 22.053(a), Education Code, is amended to read as follows:

(a) A volunteer who is serving as a direct service volunteer of a school district is immune from civil liability to the same extent as a professional employee of a school district under Section 22.0511 [~~22.051~~].

SECTION 15.03. Section 30.024(c), Education Code, is amended to read as follows:

(c) In addition to any other federal and state statutes limiting the liability of employees at the school, Sections 22.0511 [~~22.051~~], 22.052, and 22.053, respectively, apply to professional employees and volunteers of the school.

SECTION 15.04. Section 30.055(c), Education Code, is amended to read as follows:

(c) In addition to any other federal and state statutes limiting the liability of employees at the school, Sections 22.0511 [~~22.051~~], 22.052, and 22.053, respectively, apply to professional employees and volunteers of the school.

SECTION 15.05. Section 105.301(e), Education Code, is amended 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 22.0511 [~~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, except that the academy has a local share applied that is equivalent to the local fund assignment of the Denton Independent School District.

SECTION 15.06. The change in law made by this article applies only to a suit for damages or a school employee disciplinary proceeding involving conduct that occurs on or after the effective date of this Act. A suit for damages or a

school employee disciplinary proceeding involving conduct that occurs before the effective date of this Act is governed by the law in effect on the date the conduct occurs, and the former law is continued in effect for that purpose.

ARTICLE 16. ADMISSIBILITY OF CERTAIN EVIDENCE IN CIVIL ACTION

SECTION 16.01. Subchapter B, Chapter 32, Human Resources Code, is amended by adding Section 32.060 to read as follows:

Sec. 32.060. ADMISSIBILITY OF CERTAIN EVIDENCE RELATING TO NURSING INSTITUTIONS. (a) The following are not admissible as evidence in a civil action:

(1) any finding by the department that an institution licensed under Chapter 242, Health and Safety Code, has violated a standard for participation in the medical assistance program under this chapter; or

(2) the fact of the assessment of a monetary penalty against an institution under Section 32.021 or the payment of the penalty by an institution.

(b) This section does not apply in an enforcement action in which the state or an agency or political subdivision of the state is a party.

(c) Notwithstanding any other provision of this section, evidence described by Subsection (a) is admissible as evidence in a civil action only if:

(1) the evidence relates to a material violation of this chapter or a rule adopted under this chapter or assessment of a monetary penalty with respect to:

(A) the particular incident and the particular individual whose personal injury is the basis of the claim being brought in the civil action; or

(B) a finding by the department that directly involves substantially similar conduct that occurred at the institution within a period of one year before the particular incident that is the basis of the claim being brought in the civil action; and

(2) the evidence of a material violation has been affirmed by the entry of a final adjudicated and unappealable order of the department after formal appeal; and

(3) the record is otherwise admissible under the Texas Rules of Evidence.

SECTION 16.02. Subchapter A, Chapter 242, Health and Safety Code, is amended by adding Section 242.017 to read as follows:

Sec. 242.017. ADMISSIBILITY OF CERTAIN EVIDENCE IN CIVIL ACTIONS. (a) The following are not admissible as evidence in a civil action:

(1) any finding by the department that an institution has violated this chapter or a rule adopted under this chapter; or

(2) the fact of the assessment of a penalty against an institution under this chapter or the payment of the penalty by an institution.

(b) This section does not apply in an enforcement action in which the state or an agency or political subdivision of the state is a party.

(c) Notwithstanding any other provision of this section, evidence described by Subsection (a) is admissible as evidence in a civil action only if:

(1) the evidence relates to a material violation of this chapter or a rule adopted under this chapter or assessment of a monetary penalty with respect to:

(A) the particular incident and the particular individual whose personal injury is the basis of the claim being brought in the civil action; or

(B) a finding by the department that directly involves substantially similar conduct that occurred at the institution within a period of one year before the particular incident that is the basis of the claim being brought in the civil action; and

(2) the evidence of a material violation has been affirmed by the entry of a final adjudicated and unappealable order of the department after formal appeal; and

(3) the record is otherwise admissible under the Texas Rules of Evidence.

SECTION 16.03. The following laws are repealed:

(1) Sections 32.021(i) and (k), Human Resources Code; and

(2) Section 242.050, Health and Safety Code, as added by Chapter 1284, Acts of the 77th Legislature, Regular Session, 2001.

ARTICLE 17. LIMITATIONS IN CIVIL ACTIONS OF LIABILITIES
RELATING TO CERTAIN MERGERS OR CONSOLIDATIONS

SECTION 17.01. Title 6, Civil Practice and Remedies Code, is amended by adding Chapter 149 to read as follows:

CHAPTER 149. LIMITATIONS IN CIVIL ACTIONS OF LIABILITIES
RELATING TO CERTAIN MERGERS OR CONSOLIDATIONS

Sec. 149.001. DEFINITIONS. In this chapter:

(1) "Asbestos claim" means any claim, wherever or whenever made, for damages, losses, indemnification, contribution, or other relief arising out of, based on, or in any way related to asbestos, including:

(A) property damage caused by the installation, presence, or removal of asbestos;

(B) the health effects of exposure to asbestos, including any claim for:

(i) personal injury or death;

(ii) mental or emotional injury;

(iii) risk of disease or other injury; or

(iv) the costs of medical monitoring or surveillance; and

(C) any claim made by or on behalf of any person exposed to asbestos, or a representative, spouse, parent, child, or other relative of the person.

(2) "Corporation" means a corporation for profit, including:

(A) a domestic corporation organized under the laws of this state;

or

(B) a foreign corporation organized under laws other than the laws of this state.

(3) "Successor asbestos-related liabilities" means any liabilities, whether known or unknown, asserted or unasserted, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, or due or to become due, that are related in any way to asbestos claims that were assumed or incurred by a corporation as a result of or in connection with a merger or consolidation, or the plan of merger or consolidation related to the merger or consolidation, with or

into another corporation or that are related in any way to asbestos claims based on the exercise of control or the ownership of stock of the corporation before the merger or consolidation. The term includes liabilities that, after the time of the merger or consolidation for which the fair market value of total gross assets is determined under Section 149.004, were or are paid or otherwise discharged, or committed to be paid or otherwise discharged, by or on behalf of the corporation, or by a successor of the corporation, or by or on behalf of a transferor, in connection with settlements, judgments, or other discharges in this state or another jurisdiction.

(4) "Successor" means a corporation that assumes or incurs, or has assumed or incurred, successor asbestos-related liabilities.

(5) "Transferor" means a corporation from which successor asbestos-related liabilities are or were assumed or incurred.

Sec. 149.002. APPLICABILITY. (a) The limitations in Section 149.003 shall apply to a domestic corporation or a foreign corporation that has had a certificate of authority to transact business in this state or has done business in this state and that is a successor which became a successor prior to May 13, 1968, or which is any of that successor corporation's successors, but in the latter case only to the extent of the limitation of liability applied under Section 149.003(b) and subject also to the limitations found in this chapter, including those in Subsection (b).

(b) The limitations in Section 149.003 shall not apply to:

(1) workers' compensation benefits paid by or on behalf of an employer to an employee under the Texas Workers' Compensation Act, Subtitle A, Title 5, Labor Code, or a comparable workers' compensation law of another jurisdiction;

(2) any claim against a corporation that does not constitute a successor asbestos-related liability;

(3) an insurance corporation, as that term is used in the Insurance Code;

(4) any obligations under the National Labor Relations Act (29 U.S.C. Section 151 et seq.), as amended, or under any collective bargaining agreement;

(5) a successor that, after a merger or consolidation, continued in the business of mining asbestos or in the business of selling or distributing asbestos fibers or in the business of manufacturing, distributing, removing, or installing asbestos-containing products which were the same or substantially the same as those products previously manufactured, distributed, removed, or installed by the transferor;

(6) a contractual obligation existing as of the effective date of this chapter that was entered into with claimants or potential claimants or their counsel and which resolves asbestos claims or potential asbestos claims;

(7) any claim made against the estate of a debtor in a bankruptcy proceeding commenced prior to April 1, 2003, under the United States Bankruptcy Code (11 U.S.C. Section 101 et seq.) by or against such debtor, or against a bankruptcy trust established under 11 U.S.C. Section 524(g) or similar provisions of the United States Code in such a bankruptcy proceeding commenced prior to such date; or

(8) a successor asbestos-related liability arising from a claim brought under Chapter 95, a common law claim for premises liability, or a cause of action for premises liability, as applicable, but only if the successor owned or controlled the premise or premises at issue after the merger or consolidation.

Sec. 149.003. LIMITATIONS ON SUCCESSOR ASBESTOS-RELATED LIABILITIES. (a) Except as further limited in Subsection (b), the cumulative successor asbestos-related liabilities of a corporation are limited to the fair market value of the total gross assets of the transferor determined as of the time of the merger or consolidation. The corporation does not have any responsibility for successor asbestos-related liabilities in excess of this limitation.

(b) If the transferor had assumed or incurred successor asbestos-related liabilities in connection with a prior merger or consolidation with a prior transferor, then the fair market value of the total assets of the prior transferor, determined as of the time of such earlier merger or consolidation, shall be substituted for the limitation set forth in Subsection (a) for purposes of determining the limitation of liability of a corporation.

Sec. 149.004. ESTABLISHING FAIR MARKET VALUE OF TOTAL GROSS ASSETS. (a) A corporation may establish the fair market value of total gross assets for the purpose of the limitations under Section 149.003 through any method reasonable under the circumstances, including:

(1) by reference to the going concern value of the assets or to the purchase price attributable to or paid for the assets in an arm's-length transaction; or

(2) in the absence of other readily available information from which fair market value can be determined, by reference to the value of the assets recorded on a balance sheet.

(b) Total gross assets include intangible assets.

(c) Total gross assets include the aggregate coverage under any applicable liability insurance that was issued to the transferor whose assets are being valued for purposes of this section and which insurance has been collected or is collectable to cover successor asbestos-related liabilities (except compensation for liabilities arising from workers' exposure to asbestos solely during the course of their employment by the transferor). A settlement of a dispute concerning such insurance coverage entered into by a transferor or successor with the insurers of the transferor 10 years or more before the enactment of this chapter shall be determinative of the aggregate coverage of such liability insurance to be included in the calculation of the transferor's total gross assets.

(d) The fair market value of total gross assets shall reflect no deduction for any liabilities arising from any asbestos claim.

Sec. 149.005. ADJUSTMENT. (a) Except as provided in Subsections (b), (c), and (d), the fair market value of total gross assets at the time of a merger or consolidation increases annually at a rate equal to the sum of:

(1) the prime rate as listed in the first edition of the Wall Street Journal published for each calendar year since the merger or consolidation; and

(2) one percent.

(b) The rate in Subsection (a) is not compounded.

(c) The adjustment of fair market value of total gross assets continues as provided under Subsection (a) until the date the adjusted value is exceeded by the cumulative amounts of successor asbestos-related liabilities paid or committed to be paid by or on behalf of the corporation or a predecessor, or by or on behalf of a transferor, after the time of the merger or consolidation for which the fair market value of total gross assets is determined.

(d) No adjustment of the fair market value of total gross assets shall be applied to any liability insurance otherwise included in the definition of total gross assets by Section 149.004(c).

Sec. 149.006. SCOPE OF CHAPTER. The courts in this state shall apply, to the fullest extent permissible under the United States Constitution, this state's substantive law, including the limitation under this chapter, to the issue of successor asbestos-related liabilities.

SECTION 17.02. Chapter 149, Civil Practice and Remedies Code, as added by this article, applies to all actions:

- (1) commenced on or after the effective date of this Act; or
- (2) pending on that effective date and in which the trial, or any new trial or retrial following motion, appeal, or otherwise, begins on or after that effective date.

ARTICLE 18. CHARITABLE IMMUNITY AND LIABILITY

SECTION 18.01. Sections 84.004(a) and (c), Civil Practice and Remedies Code, are amended to read as follows:

(a) Except as provided by Subsection (d) and Section 84.007, a volunteer ~~[who is serving as an officer, director, or trustee]~~ of a charitable organization is immune from civil liability for any act or omission resulting in death, damage, or injury if the volunteer was acting in the course and scope of the volunteer's [his] duties or functions, including as an officer, director, or trustee within the organization.

(c) Except as provided by Subsection (d) and Section 84.007, a volunteer health care provider who is serving as a direct service volunteer of a charitable organization is immune from civil liability for any act or omission resulting in death, damage, or injury to a patient if:

(1) ~~[the volunteer was acting in good faith and in the course and scope of the volunteer's duties or functions within the organization;~~

~~(2)~~ the volunteer commits the act or omission in the course of providing health care services to the patient;

~~(2)~~ ~~(3)~~ the services provided are within the scope of the license of the volunteer; and

~~(3)~~ ~~(4)~~ before the volunteer provides health care services, the patient or, if the patient is a minor or is otherwise legally incompetent, the person responsible for [patient's parent, managing conservator, legal guardian, or other person with legal responsibility for the care of] the patient signs a written statement that acknowledges:

(A) that the volunteer is providing care that is not administered for or in expectation of compensation; and

(B) the limitations on the recovery of damages from the volunteer in exchange for receiving the health care services.

SECTION 18.02. Section 84.007(a), Civil Practice and Remedies Code, is amended to read as follows:

(a) This chapter does not apply to an act or omission that is intentional, wilfully [~~or wantonly~~] negligent, or done with conscious indifference or reckless disregard for the safety of others.

SECTION 18.03. The following provisions of the Civil Practice and Remedies Code are repealed:

- (1) Section 84.003(4); and
- (2) Section 84.004(b).

ARTICLE 19. LIABILITY OF VOLUNTEER FIRE DEPARTMENTS AND VOLUNTEER FIRE FIGHTERS

SECTION 19.01. (a) The legislature finds that:

(1) 80 percent of the area of this state is currently protected by volunteer fire departments;

(2) concern regarding personal liability arising out of services rendered by volunteer fire fighters on behalf of volunteer fire departments deters individuals from offering their services as volunteer fire fighters;

(3) the diminishing number of volunteer fire fighters leads to increased costs and less service to areas of this state that are served by volunteer fire departments; and

(4) it is in the public interest of the citizens of this state to encourage the continued level of service provided by volunteer fire departments.

(b) The purpose of this article is to reduce the exposure to liability of:

(1) a volunteer fire department while involved in or providing an emergency response; and

(2) a volunteer fire fighter while acting as a member of a volunteer fire department.

SECTION 19.02. Chapter 78, Civil Practice and Remedies Code, is amended by adding Subchapter C to read as follows:

SUBCHAPTER C. FIRE-FIGHTING SERVICES

Sec. 78.101. DEFINITIONS. In this subchapter:

(1) "Emergency response" means a response involving fire protection or prevention, rescue, emergency medical, or hazardous material response services.

(2) "Volunteer fire department" means a nonprofit organization that is:

(A) operated by its members;

(B) exempt from the state sales tax under Section 151.310, Tax Code, or the state franchise tax under Section 171.083, Tax Code; and

(C) organized to provide an emergency response.

(3) "Volunteer fire fighter" means a member of a volunteer fire department.

Sec. 78.102. APPLICABILITY OF SUBCHAPTER: EMERGENCY RESPONSE. This subchapter applies only to damages for personal injury, death, or property damage, other than property damage to which Subchapter A applies, arising from an error or omission of:

(1) a volunteer fire department while involved in or providing an emergency response; or

(2) a volunteer fire fighter while involved in or providing an emergency response as a member of a volunteer fire department.

Sec. 78.103. LIABILITY OF VOLUNTEER FIRE DEPARTMENT. A volunteer fire department is:

(1) liable for damages described by Section 78.102 only to the extent that a county providing the same or similar services would be liable under Chapter 101; and

(2) entitled to the exclusions, exceptions, and defenses applicable to a county under Chapter 101 and other statutory or common law.

Sec. 78.104. LIABILITY OF VOLUNTEER FIRE FIGHTER. A volunteer fire fighter is:

(1) liable for damages described by Section 78.102 only to the extent that an employee providing the same or similar services for a county would be liable; and

(2) entitled to the exclusions, exceptions, immunities, and defenses applicable to an employee of a county under Chapter 101 and other statutory or common law.

ARTICLE 20. DESIGN PROFESSIONALS

SECTION 20.01. Title 6, Civil Practice and Remedies Code, is amended by adding Chapter 150 to read as follows:

CHAPTER 150. DESIGN PROFESSIONALS

Sec. 150.001. DEFINITION. In this chapter, "design professional" means a registered architect or licensed professional engineer.

Sec. 150.002. CERTIFICATE OF MERIT. (a) In any action for damages alleging professional negligence by a design professional, the plaintiff shall be required to file with the complaint an affidavit of a third-party registered architect or licensed professional engineer competent to testify and practicing in the same area of practice as the defendant, which affidavit shall set forth specifically at least one negligent act, error, or omission claimed to exist and the factual basis for each such claim. The third-party professional engineer or registered architect shall be licensed in this state and actively engaged in the practice of architecture or engineering.

(b) The contemporaneous filing requirement of Subsection (a) shall not apply to any case in which the period of limitation will expire within 10 days of the date of filing and, because of such time constraints, the plaintiff has alleged that an affidavit of a third-party registered architect or professional engineer could not be prepared. In such cases, the plaintiff shall have 30 days after the filing of the complaint to supplement the pleadings with the affidavit. The trial court may, on motion, after hearing and for good cause, extend such time as it shall determine justice requires.

(c) The defendant shall not be required to file an answer to the complaint and affidavit until 30 days after the filing of such affidavit.

(d) The plaintiff's failure to file the affidavit in accordance with Subsection (a) or (b) may result in dismissal with prejudice of the complaint against the defendant.

(e) This statute shall not be construed to extend any applicable period of limitation or repose.

ARTICLE 21. LIMITATIONS OF LIABILITY

SECTION 21.01. Section 75.002, Civil Practice and Remedies Code, is amended by adding Subsection (h) to read as follows:

(h) An owner, lessee, or occupant of real property in this state is liable for trespass as a result of migration or transport of any air contaminant, as defined in Section 382.003(2), Health and Safety Code, other than odor, only upon a showing of actual and substantial damages by a plaintiff in a civil action.

ARTICLE 22. COMMUNITY BENEFITS AND CHARITY CARE

SECTION 22.01. Section 311.041, Health and Safety Code, is amended to read as follows:

Sec. 311.041. POLICY STATEMENT. It is the purpose of this subchapter to clarify and set forth the duties, ~~and~~ responsibilities, and benefits that apply to ~~[of nonprofit]~~ hospitals for providing community benefits that include charity care.

SECTION 22.02. Subchapter D, Chapter 311, Health and Safety Code, is amended by adding Section 311.0456 to read as follows:

Sec. 311.0456. ELIGIBILITY AND CERTIFICATION FOR LIMITED LIABILITY. (a) In this section, "department" means the Texas Department of Health.

(b) This section applies only to a nonprofit hospital or hospital system that is certified by the department under Subsection (d).

(c) To be eligible for certification under Subsection (d), a nonprofit hospital or hospital system must provide:

(1) charity care in an amount equal to at least eight percent of the net patient revenue of the hospital or hospital system during the preceding fiscal year of the hospital or system; and

(2) at least 40 percent of the charity care provided in the county in which the hospital is located.

(d) To be certified under this subsection, a nonprofit hospital or hospital system must submit a report based on its most recent completed and audited prior fiscal year to the department not later than April 30 of each year stating that the hospital or system is eligible for certification. The department must verify the information in the report not later than May 31 of the year in which the department receives the report by checking the information against the report filed by the hospital or system under Section 311.046. After the department has verified the information in the report, the department shall certify that the hospital or hospital system has met the requirements for certification. The certification issued under this subsection to a nonprofit hospital or hospital system takes effect on May 31 of that year and expires on the anniversary of that date.

(e) For the purposes of Subsection (b), a corporation certified by the Texas State Board of Medical Examiners as a nonprofit organization under Section 162.001, Occupations Code, whose sole member is a qualifying hospital or hospital system is considered a nonprofit hospital or hospital system.

(f) Notwithstanding any other law, the liability of a nonprofit hospital or hospital system for noneconomic damages as defined by Section 41.001, Civil Practice and Remedies Code, for a cause of action that accrues during the period that the hospital or system is certified under this section is subject to the limitations specified by Section 101.023(b), Civil Practice and Remedies Code, and Subsection (c) of that section does not apply. This subsection establishes the total combined limit of liability of the nonprofit hospital or hospital system and any employee, officer, or director of the hospital or system for noneconomic damages for each person and each single occurrence, as described by Section 101.023(b), Civil Practice and Remedies Code.

SECTION 22.03. The heading to Subchapter D, Chapter 311, Health and Safety Code, is amended to read as follows:

SUBCHAPTER D. COMMUNITY BENEFITS AND CHARITY CARE

[DUTIES OF NONPROFIT HOSPITALS]

ARTICLE 23. ACCELERATED APPEAL;
EFFECTIVE DATE; SEVERABILITY

SECTION 23.01. (a) The constitutionality and other validity under the state or federal constitution of all or any part of Article 10 of this Act may be determined in an action for declaratory judgment in a district court in Travis County under Chapter 37, Civil Practice and Remedies Code, if it is alleged that all or any part of Article 10 of this Act affects the rights, status, or legal relation of a party in a civil action with respect to any other party in the civil action.

(b) An appeal of a declaratory judgment or order, however characterized, of a district court, including an appeal of the judgment of an appellate court, holding or otherwise determining that all or any part of Article 10 of this Act is constitutional or unconstitutional, or otherwise valid or invalid, under the state or federal constitution is an accelerated appeal.

(c) If the judgment or order is interlocutory, an interlocutory appeal may be taken from the judgment or order and is an accelerated appeal.

(d) A district court in Travis County may grant or deny a temporary or otherwise interlocutory injunction or a permanent injunction on the grounds of the constitutionality or unconstitutionality, or other validity or invalidity, under the state or federal constitution of all or any part of Article 10 of this Act.

(e) There is a direct appeal to the supreme court from an order, however characterized, of a trial court granting or denying a temporary or otherwise interlocutory injunction or a permanent injunction on the grounds of the constitutionality or unconstitutionality, or other validity or invalidity, under the state or federal constitution of all or any part of Article 10 this Act. The direct appeal is an accelerated appeal.

(f) This section exercises the authority granted by Section 3-b, Article V, Texas Constitution.

(g) An appeal under this section, including an interlocutory, accelerated, or direct appeal, is governed, as applicable, by the Texas Rules of Appellate Procedure, including Rules 25.1(d)(6), 26.1(b), 28.1, 28.3, 32.1(g), 37.3(a)(1), 38.6(a) and (b), 40.1(b), and 49.4.

SECTION 23.02. (a) All articles of this Act, other than Article 17, take effect September 1, 2003.

(b) Article 17 of this Act takes effect immediately if this Act receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, Article 17 of this Act takes effect September 1, 2003.

(c) Articles 4, 5, and 8 of this Act apply to an action filed on or after July 1, 2003. An action filed before July 1, 2003, is governed by the law in effect immediately before the change in law made by Articles 4, 5, and 8, and that law is continued in effect for that purpose.

(d) Except as otherwise provided in this section or by a specific provision in an article, this Act applies only to an action filed on or after the effective date of this Act. An action filed before the effective date of this Act, including an action filed before that date in which a party is joined or designated after that date, is governed by the law in effect immediately before the change in law made by this Act, and that law is continued in effect for that purpose.

SECTION 23.03. If any provision of this Act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

HB 4 - STATEMENT OF LEGISLATIVE INTENT

REPRESENTATIVE LUNA: I would like to clarify a couple of points relating to the rebuttable presumption created by Section 82.009 of the bill. How does the presumption work in a case where the manufacturer complied with all federal standards that exist for a product but no standard exists that relates specifically to the defect that has been alleged by a plaintiff?

REPRESENTATIVE NIXON: The presumption created by the bill would not apply in that case. The bill provides that the presumption comes into play only when there is a mandatory federal standard that "governed the product risk that allegedly caused harm". The intent of this language is to have the presumption apply only when there is a federal standard that is designed to regulate the aspect of the manufacture or design of the product that the plaintiff claims is defective. The intent of the bill is to ensure that there is a relationship between the federal standard in question and the defect being alleged by the plaintiff. If there is not a relationship, the presumption will not apply.

LUNA: I read the bill to also provide that even if there is a federal standard that applies to alleged defect that the plaintiff is complaining about, the plaintiff can rebut the presumption by showing that the federal standard is inadequate to protect the public from unreasonable risk of injury.

NIXON: That's correct.

LUNA: What happens if the manufacturer learns of a defect in a product after it is sold but fails to inform the federal government or the public of the problem? Does the presumption in the bill give the manufacturer any additional protection in that case?

NIXON: No. The purpose of the government standards defense is to provide manufacturers some protection where they comply with mandatory federal standards that are specifically designed to address that alleged defect in question in a lawsuit. However, the bill does not create immunity for a manufacturer. There will only be additional protection if the manufacturer complied with the mandatory standard and the standard was, in fact, adequate to accomplish its purpose. The bill is intended to focus the debate where it should be—that is, on whether the mandatory standard is adequate. If the standard is adequate, then by definition, the product is not defective with respect to that aspect of the product. If the standard is not adequate, then the bill offers the manufacturer no additional protection because the presumption is rebutted, and the factfinder may then determine whether the product is defective as the plaintiff has alleged. If the manufacturer learns of information that demonstrates that the standard is not, in fact, adequate and fails to share that information with the federal government, this evidence can be presented to the factfinder to show that the standard is not adequate and thereby rebut the presumption. The bill is intended to prevent having an anomalous situation where a standard is determined to be adequate, but the product is found to be defective with respect to the risk covered by the standard. If the standard is adequate and the product complies with the standard, it is not defective. If the standard is not adequate, there is no presumption and the factfinder will determine whether there is a defect.

LUNA: How does this part of the bill affect Texas law with respect to no post-sale duty to warn? Does it create a conflict?

NIXON: No. If the manufacturer has relevant information concerning the adequacy of the standard and fails to disclose that information or misrepresents that information, the manufacturer will not get the benefit of the presumption. This is expressly set out in the bill as a way of rebutting the presumption and it does not matter whether the failure to disclose occurred before or after the product was sold. This does not create a post-sale duty to warn, but it does encourage manufacturers to disclose information they obtain post-sale if they want to have the benefit of the protections provided in the bill. If they do not disclose this information to the appropriate federal agency, they will not get the benefit of presumption.

LUNA: How does this bill affect existing federal notification requirements, such as those governing vehicles and tires?

NIXON: It does not affect any such requirement under federal law at all. However, because a manufacturer will lose the benefit of the presumption created by this bill if the manufacturer fails to disclose information that is relevant to a federal agency's determination of the adequacy of a safety standard, it is likely

that, in most cases, a manufacturer will not get the benefit of the presumption if the manufacturer has failed to comply with federal notification requirements. Also, information that is required to be disclosed by federal law is quite likely to be information that is also relevant to a factfinder's determination of the adequacy of the safety standard in question.

REMARKS ORDERED PRINTED

Representative Luna moved to print remarks between Representative Luna and Representative Nixon.

The motion prevailed without objection.

HB 4 - STATEMENT OF LEGISLATIVE INTENT

REPRESENTATIVE GATTIS: Chairman Nixon, is it your intent that Article 21 of the bill, adding 75.002(h) to the Civil Practice and Remedies Code, shall not affect any existing legal remedies for actions regarding odors?

REPRESENTATIVE NIXON: Yes, Article 21 is not intended to affect any existing legal remedies for actions regarding odors.

REMARKS ORDERED PRINTED

Representative Gattis moved to print remarks between Representative Gattis and Representative Nixon.

The motion prevailed without objection.

HB 4 - STATEMENT OF LEGISLATIVE INTENT

REPRESENTATIVE EILAND: Chairman Nixon, on the medical malpractice Section 10 portion of the claim of the bill—you and I talked about this briefly but I want to make sure—in the section on page 61, standard of proof regarding emergency medical care, we added, basically, obstetrics to the definition. You and I talked but I want to make sure I understand. A woman goes to the hospital with preterm contractions and her physician is not there, but whoever that physician has on call for their group or whatever, sees the lady and say she is hospitalized and stabilized, but later on the baby's heart rate drops because maybe the cord is wrapped around its neck or something, and they say we have to do an emergency C-section right now. Under the bill, would that situation arise where the new higher standard would be required?

REPRESENTATIVE NIXON: No, it is the intent of this legislation that emergency situations where you do not have a prior relationship with the patient is the one given the protection. If you have a prior relationship with a patient, and you know about their medical history and their background you should not be given the protection to the same extent as someone who just shows up in the emergency room. You have no history, you have to treat them. That is why we have a different standard of care.

EILAND: OK. And like an emergency arises while you're in the hospital—

NIXON: That's right. If you create the emergency, you don't get the protection either.

REPRESENTATIVE TALTON: Representative Nixon, would you talk to us a little bit about the limitations on the noneconomic damage caps that are presently in the bill that y'all worked out with the senate.

NIXON: Yes and thank you. Of course, you know that was some of the sticking points. One of the things we've done is we have one cap for doctors. I don't care how many doctors you sue, there is one \$250,000 cap in noneconomic damages applied to all doctors, whether there's one or there's ten. There's a second \$250,000 cap applied to an institution. It could be a hospital, it could be a nursing home, whatever the institution is that is sued. Medical health care institution is defined in the statute. You may add a third cap if there is another institution but in no event, is any one institution subject to a cap greater than \$250,000. And that was really our goal, to make sure we calm down the insurance liability damage awards so now there is predictability of a particular standard.

TALTON: So the possibility could be the \$250,000 regards to how many claimants or how many doctors, and then the possibility of two of the health care institutions could be up to \$500,000. Is that correct? Possibly if there is vicarious liability.

NIXON: No. Only if you sued two institutions, but it would be one cap per institution.

TALTON: Correct. So if you're able to do that on two institutions and one on the doctors. A total amount, if you're able to find those three liable, is \$750,000?

NIXON: You could get there.

REMARKS ORDERED PRINTED

Representative Eiland moved to print remarks between Representative Eiland and Representative Nixon and Representative Talton and Representative Nixon.

The motion prevailed without objection.

(Smithee in the chair)

Representative Nixon moved to adopt the conference committee report on **HB 4**.

A record vote was requested.

The motion prevailed by (Record 935): 110 Yeas, 34 Nays, 2 Present, not voting.

Yeas — Allen; Bailey; Baxter; Berman; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Callegari; Campbell; Capelo; Casteel; Chisum; Christian; Cook, B.; Cook, R.; Corte; Crabb; Crownover; Davis, J.; Dawson; Delisi; Denny; Driver; Eissler; Elkins; Ellis; Farabee; Flynn; Gallego; Garza; Gattis; Geren; Goodman; Goolsby; Griggs; Grusendorf; 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;

Laubenberg; Luna; Madden; Marchant; McCall; McClendon; McReynolds; Mercer; Merritt; Miller; Morrison; Mowery; Nixon; Oliveira; Paxton; Phillips; Pickett; Pitts; Reyna; Riddle; Ritter; Rose; Seaman; Smith, T.; Smith, W.; Solomons; Stick; Swinford; Talton; Taylor; Telford; Truitt; Van Arsdale; Villarreal; West; Wilson; Wise; Wohlgemuth; Wolens; Wong; Woolley; Zedler.

Nays — Alonzo; Burnam; Castro; Chavez; Coleman; Davis, Y.; Deshotel; Dukes; Dunnam; Dutton; Edwards; Eiland; Escobar; Farrar; Giddings; Guillen; Hodge; Lewis; Mabry; Martinez Fischer; Moreno, J.; Moreno, P.; Naishtat; Noriega; Olivo; Peña; Puente; Quintanilla; Raymond; Rodriguez; Solis; Thompson; Turner; Uresti.

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

Absent — Canales; Flores; Laney; Menendez.

STATEMENTS OF VOTE

When Record No. 935 was taken, I was temporarily out of the house chamber. I would have voted no.

Canales

When Record No. 935 was taken, I was in the house but away from my desk. I would have voted yes.

Flores

I was shown voting no on Record No. 935. I intended to vote yes.

Mabry

When Record No. 935 was taken, I was in the senate chamber working a bill. I would have voted yes.

Menendez

I was shown voting no on Record No. 935. I intended to vote yes.

Solis

I was shown voting no on Record No. 935. I intended to vote yes.

Uresti

I was shown voting yes on Record No. 935. I intended to vote present, not voting.

Wolens

HB 4 - STATEMENT OF LEGISLATIVE INTENT

Amendments to **SB 496** and **HB 4**

Concerning Successor Asbestos-related Civil Liabilities Arising from Certain Mergers

I. The Original Policy Idea behind the Legislation

A corporation is currently liable up to its total value for all injuries it causes. If that corporation merges with a much larger corporation, however, the successor corporation is liable for the injuries caused by its predecessor (even though not

caused in any way by the successor) up to the successor's much higher value. In the case of long-tailed and unknown asbestos-related liabilities, a much larger successor can easily be bankrupted by the asbestos-related liabilities it innocently received from a much smaller predecessor with which it merged many decades ago.

To eliminate that unfairness—and even to save successor corporations from bankruptcy—some have proposed a new rule limiting liability especially for asbestos-related successor liabilities acquired solely through a merger. The successor would be liable only up to the entire gross asset value of the predecessor from whom it received the asbestos-related liabilities. Any successor corporation (or successors of that corporation) liable for asbestos claims solely because of a merger with another corporation that had previously done something with asbestos that created an asbestos liability would be required to pay asbestos claims only up to the entire total gross asset value of that predecessor corporation. In other words, any asbestos-related liabilities acquired solely through a merger would be traced back through one or more mergers to the original transferor who did something related to asbestos that actually resulted in harm. The total of transferred liabilities that the successor corporation had to pay would be limited to the value (adjusted upward for time and inflation) of the total gross assets of the original transferor that caused those same liabilities.

II. Reasons for Limiting the breadth of the Legislation

The compromise legislation is still based upon the same original policy idea. Several concerns about the breadth of its application have, however, now been addressed in a rational manner:

—There was concern that the benefits of this legislation should be limited in some way to those successor corporations who were the most innocent about the potential hazards of asbestos;

—There was further concern that the benefits should be limited in some way to innocent successors who were also at the greatest financial peril, especially those threatened with bankruptcy;

—There was also concern that the legislature should test this new concept by taking one step at a time and providing realistic relief to those innocent successor corporations most at peril financially without limiting every type of asbestos liability.

In order to meet these concerns, the limitations on total liability were themselves narrowed or restricted in three ways—by two restrictions premised upon the innocence of the successor and one based upon financial viability.

To focus the benefits upon innocent successor corporations, two restrictions were added:

—Under § 149.002(a), the original transfer of successor asbestos liabilities has to have occurred prior to May 13, 1968. Of course, subsequent successors who receive only that same bundle of original asbestos liabilities through successive mergers will also be entitled to the liability limits applicable to that first successor pre-1968 no matter when the later mergers occur.

It wasn't until the mid-1960s that Dr. Irving Selikoff issued his now famous warnings about the dangers of asbestos in the workplace. The earliest date after Selikoff's warnings when even a quasi-governmental organization in the United States suggested a tighter standard for asbestos in the workplace was, however, May 13, 1968. On that date, the influential American Conference of Governmental Industrial Hygienists (ACGIH) first adopted a change in the recommended, longstanding threshold limit for asbestos in the air of a workplace from 5 mppcf to 2 mppcf (the ACGIH 1958 Standard).

A successor corporation would therefore have been much less likely to be aware of the hazards of asbestos prior to May 13, 1968. By requiring that the first transfer of asbestos liabilities to a successor occurred prior to May 13, 1968, the legislation therefore focuses its benefits upon innocent successors.

—One class of successors might, however, have been less innocent than others: those in the asbestos business. Therefore, § 149.002(b)(5) restricts the benefits of the legislation to successor corporations that did not continue the predecessor's asbestos business: the business of mining asbestos, of selling or distributing asbestos fibers, or of manufacturing, distributing, installing, or removing asbestos products. A successor that did not merge with a predecessor in order to continue that predecessor's asbestos business was less likely to have known of the hazards of asbestos. For example, a successor that was merely trying to acquire a predecessor's non-asbestos line of business would be less knowledgeable about asbestos than a successor who wanted to continue a predecessor's asbestos line of business. A successor that did not continue the asbestos business of its predecessor also could not have caused any of the injuries that arose from the discontinued asbestos business.

Together, the preceding restrictions limit the benefits of the statute to those who were more innocent than others and were unwittingly saddled with often massive long-tail liabilities only because of a merger.

The third restriction in the legislation deals primarily with the issue of financial viability. Corporations actually in the asbestos business and their successors through merger have been financially drained by decades of litigation. As a result, nearly 70 such corporations have sought protection through bankruptcy. The cost in jobs and pension benefits, to cite just two examples, has been substantial. This legislation seeks to help keep remaining hard-pressed successors out of bankruptcy. In an effort to help those most in need first, the legislation focuses upon the most hard-pressed of successors, rather than all successors. Any successor would be liable—even beyond the total gross asset value of its predecessor—for any asbestos-related premises liabilities it received from a predecessor for injuries caused on premises the successor continued to own or control after a merger. Such successors have not thus far been so financially burdened by litigation as the successors to those in the asbestos business itself. Unlike successors to those in the asbestos business, much greater insurance resources remain available to successors facing premises liability claims. In addition, successor liability for premises claims are still protected under the legislation in the case of any premises the successor did not continue to own or control after the merger. That distinction shows additional concern for

(1) the operation of the golf cart occurs in the daytime, as defined by Section 541.401; and

(2) the operation:

(A) does not exceed a distance of two miles from the point of origin to the destination if driven to and from a golf course;

(B) occurs entirely within a master planned community with a uniform set of restrictive covenants that has had a plat approved by a county or a municipality; or

(C) occurs on a public or private beach.

Sec. 502.0072. MANUFACTURED HOUSING. Manufactured housing, as defined by Section 1201.003, Occupations Code, is not a vehicle subject to this chapter.

Sec. 502.0073. POWER SWEEPERS. (a) An owner of a power sweeper is not required to register the power sweeper.

(b) In this section, "power sweeper" means an implement, with or without motive power, designed for the removal by broom, vacuum, or regenerative air system of debris, dirt, gravel, litter, or sand from asphaltic concrete or cement concrete surfaces, including surfaces of parking lots, roads, streets, highways, and warehouse floors. The term includes a vehicle on which the implement is permanently mounted if the vehicle is used only as a power sweeper.

Sec. 502.0074. MOTORIZED MOBILITY DEVICE. The owner of a motorized mobility device, as defined by Section 542.008, as amended by Chapter 497, Acts of the 77th Legislature, Regular Session, 2001, is not required to register the motorized mobility device.

Sec. 502.0078. VEHICLES OPERATED ON PUBLIC HIGHWAY SEPARATING REAL PROPERTY UNDER VEHICLE OWNER'S CONTROL. Where a public highway separates real property under the control of the owner of a motor vehicle, the operation of the motor vehicle by the owner or the owner's agent or employee across the highway is not a use of the motor vehicle on the public highway.

Sec. 502.0079. VEHICLES OPERATED BY CERTAIN NONRESIDENTS. (a) A nonresident owner of a motor vehicle, trailer, or semitrailer that is registered in the state or country in which the person resides may operate the vehicle to transport persons or property for compensation without being registered in this state, if the person does not exceed two trips in a calendar month and each trip does not exceed four days.

(b) A nonresident owner of a privately owned vehicle that is not registered in this state may not make more than five occasional trips in any calendar month into this state using the vehicle. Each occasional trip into this state may not exceed five days.

(c) A nonresident owner of a privately owned passenger car that is registered in the state or country in which the person resides and that is not operated for compensation may operate the car in this state for the period in which the car's license plates are valid. In this subsection, "nonresident" means a resident of a state or country other than this state whose presence in this state is as

a visitor and who does not engage in gainful employment or enter into business or an occupation, except as may otherwise be provided by any reciprocal agreement with another state or country.

(d) This section does not prevent:

(1) a nonresident owner of a motor vehicle from operating the vehicle in this state for the sole purpose of marketing farm products raised exclusively by the person; or

(2) a resident of an adjoining state or country from operating in this state a privately owned and registered vehicle to go to and from the person's place of regular employment and to make trips to purchase merchandise, if the vehicle is not operated for compensation.

(e) The privileges provided by this section may be allowed only if, under the laws of the appropriate state or country, similar privileges are granted to vehicles registered under the laws of this state and owned by residents of this state.

(f) This section does not affect the right or status of a vehicle owner under any reciprocal agreement between this state and another state or country.

SECTION 2. Subchapter D, Chapter 502, Transportation Code, is amended by adding Sections 502.187 and 502.188 to read as follows:

Sec. 502.187. PARADE VEHICLES OWNED BY NONPROFIT SERVICE ORGANIZATIONS. (a) A motor vehicle owned and operated by a nonprofit service organization and designed, constructed, and used primarily for parade purposes is subject to registration as provided by this chapter but is exempt from the fee otherwise prescribed by this chapter.

(b) Subsection (a) does not apply to a vehicle for which a registration fee has been paid under other law.

Sec. 502.188. CERTAIN SOIL CONSERVATION EQUIPMENT. (a) The owner of a truck-tractor, semitrailer, or low-boy trailer used on a highway exclusively to transport the owner's soil conservation machinery or equipment used in clearing real property, terracing, or building farm ponds, levees, or ditches may register the vehicle for a fee equal to 50 percent of the fee otherwise prescribed by this chapter for the vehicle.

(b) An owner may register only one truck-tractor and only one semitrailer or low-boy trailer under this section.

(c) An owner applying for registration under this section must submit a statement that the vehicle is to be used only as provided by Subsection (a).

(d) The registration receipt issued for a vehicle registered under this section shall state the nature of the operation for which the vehicle may be used. The receipt must be carried at all times in or on the vehicle to permit ready inspection.

(e) A vehicle to which this section applies that is operated on a public highway in violation of this section is considered to be operated while unregistered and is immediately subject to the applicable registration fees and penalties prescribed by this chapter.

SECTION 3. Section 503.038(c), Transportation Code, is amended to read as follows:

(c) A person whose general distinguishing number is canceled under this chapter shall surrender to a representative of the department each license, license plate, temporary cardboard tag, sticker, and receipt issued under this chapter not later than the 10th day after the date the general distinguishing number is canceled. The department shall direct any peace officer to secure and return to the department any plate, tag, sticker, or receipt of a person who does not comply with this subsection.

SECTION 4. Section 503.061, Transportation Code, is amended to read as follows:

Sec. 503.061. DEALER'S LICENSE PLATES. (a) Instead of registering under Chapter 502 a vehicle that the dealer owns, operates, or permits to be operated on a public street or highway, the dealer may apply for, receive, and attach metal dealer's license plates to the vehicle if it is the type of vehicle:

- (1) that the dealer sells; and
- (2) for which the dealer has been issued a general distinguishing number.

(b) The board may adopt rules regulating the issuance and use of a license plate issued pursuant to the terms of this section.

SECTION 5. Section 503.066(d), Transportation Code, is amended to read as follows:

(d) A metal license plate issued under this chapter ~~[section]~~ expires on the same date as the expiration of the dealer license to which it is issued ~~[March 31 of the year after the year of issuance, unless provided otherwise by law or rule of the department's Motor Vehicle Board].~~

SECTION 6. Subtitle A, Title 7, Transportation Code, is amended by adding Chapter 504 to read as follows:

CHAPTER 504. SPECIALTY LICENSE PLATES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 504.001. DEFINITIONS. (a) In this chapter, "commission" and "director" have the meanings assigned by Section 201.001.

(b) A word or phrase that is not defined by this chapter but is defined by Section 502.001 has the meaning in this chapter that is assigned by that section.

Sec. 504.002. PROVISIONS OF GENERAL APPLICABILITY. Unless expressly provided by this chapter or by department rule:

(1) any vehicle is eligible to be issued specialty license plates, provided that the department may vary the design of a license plate to accommodate or reflect its use on a motor vehicle other than a passenger car or light truck;

(2) an application for specialty license plates must be submitted in the manner specified by the department, provided that if issuance of a specialty license plate is limited to particular persons or motor vehicles, the application must be accompanied by evidence satisfactory to the department that the applicant or the applicant's vehicle is eligible;

(3) the fee for issuance of a specialty license plate is in addition to each other fee that is paid for or at the time of the registration of the motor vehicle and shall be deposited to the credit of the state highway fund;

(4) each fee described by this chapter is an annual fee, provided that the department may prorate the fee for a specialty license plate fee on a monthly basis to align the license plate fee to the registration period for the motor vehicle for which the license plate was issued, and if a fee is prorated the allocation of the fee by this chapter to an account or fund shall be prorated in proportion;

(5) the department is the exclusive owner of the design of each specialty license plate;

(6) the director may refuse to issue a specialty license plate with a design or alphanumeric pattern that the director considers potentially objectionable to one or more members of the public and the director's refusal may not be overturned in the absence of an abuse of discretion;

(7) for each specialty license plate that is issued through a county tax assessor-collector and for which the department is allocated a portion of a fee for administrative costs, the department shall credit 50 cents from its administrative costs to the county treasurer of the applicable county, who shall credit the money to the general fund of the county to defray the costs to the county of administering this chapter;

(8) if a specialty license plate is lost, stolen, or mutilated, an application for a replacement plate must be accompanied by the fee prescribed by Section 502.184(a)(2);

(9) if the owner of a motor vehicle for which a specialty license plate is issued disposes of the vehicle or for any reason ceases to be eligible for that specialty license plate, the owner shall return the specialty license plate to the department; and

(10) a person who is issued a specialty license plate may not transfer it to another person or vehicle without first receiving approval from the department.

Sec. 504.003. SOUVENIR LICENSE PLATES. (a) The department may issue a souvenir version of any specialty license plate for any vehicle, including a motorcycle.

(b) The fee for a single souvenir license plate is \$20. The fee shall be deposited to the credit of the state highway fund.

(c) If the souvenir license plate is personalized, the fee for the plate is \$40. Of the fee:

(1) \$20 shall be deposited to the credit of the state highway fund; and

(2) the remainder shall be deposited to the credit of the general revenue fund.

(d) A souvenir license plate may not be used on a motor vehicle, including a motorcycle, and is not an insignia of registration for a motor vehicle. Each souvenir license plate must be identified by the department in a way that identifies it to law enforcement officers and others as a souvenir license plate.

Sec. 504.004. RULES AND FORMS. The commission may adopt rules and the department may issue forms to implement and administer this chapter.

[Sections 504.005-504.100 reserved for expansion]

SUBCHAPTER B. PERSONALIZED LICENSE PLATES

Sec. 504.101. PERSONALIZED LICENSE PLATES. (a) The department shall issue personalized license plates. The department may not issue more than one set of license plates with the same alphanumeric pattern.

(b) A personalized license plate may be issued for a registration period only if the applicant submits an application and pays the required fee for the applicable registration period. A person who is issued a personalized license plate has first priority on that license plate for each subsequent registration period for which the person submits a new application for that plate.

(c) The fee for issuance of a personalized license plate is \$40.

(d) The department may not issue a replacement set of personalized license plates to the same person before the sixth anniversary of the date of issuance unless the applicant for issuance of replacement plates pays an additional fee of \$30.

(e) Of each fee collected by the department under this section:

(1) \$1.25 shall be used to defray the cost of administering this section;

and

(2) the remainder shall be deposited to the credit of the general revenue

fund.

Sec. 504.102. PERSONALIZATION OF OTHER SPECIALTY LICENSE PLATES. Unless expressly prohibited by this chapter or department rule, any specialty license plate issued under this chapter may be personalized. If another specialty license plate is personalized, the fee established by Section 504.101(c) shall be added to the fee for issuance of that specialty license plate.

Sec. 504.103. DESIGN AND ALPHANUMERIC PATTERN. The department has sole control over the design, typeface, color, and alphanumeric pattern for a personalized license plate.

[Sections 504.104-504.200 reserved for expansion]

SUBCHAPTER C. LICENSE PLATES FOR VEHICLES USED BY PERSONS WITH DISABILITIES

Sec. 504.201. PERSONS WITH DISABILITIES. (a) In this section:

(1) "Disability" and "mobility problem that substantially impairs a person's ability to ambulate" have the meanings assigned by Section 681.001.

(2) "Legally blind" means a condition described by Section 681.001(2)(B) or (C).

(b) The department shall issue specialty license plates for a motor vehicle that:

(1) has a manufacturer's rated carrying capacity of two tons or less; and

(2) is regularly operated for noncommercial use by or for the transportation of a person with a permanent disability.

(c) An owner of a motor vehicle regularly operated by or for the transportation of a person described by Subsection (a) may apply to the department for registration under this section.

(d) The initial application for specialty license plates under this section must be accompanied by a written statement from a physician who is licensed to practice medicine in this state or in a state adjacent to this state or who is authorized by applicable law to practice medicine in a hospital or other health facility of the Department of Veterans Affairs. If the applicant has a mobility problem caused by a disorder of the foot, the written statement may be issued by a person licensed to practice podiatry in this state or a state adjacent to this state. In this subsection, "podiatry" has the meaning assigned by Section 681.001. The statement must certify that the person making the application or on whose behalf the application is made is legally blind or has a mobility problem that substantially impairs the person's ability to ambulate. The statement must also certify whether a mobility problem is temporary or permanent. A written statement is not required as acceptable medical proof if:

(1) the person with a disability:

(A) has had a limb, hand, or foot amputated; or

(B) must use a wheelchair; and

(2) the applicant and the county assessor-collector processing the application execute an affidavit attesting to the person's disability.

(e) A person with a disability may receive:

(1) one disabled parking placard under Section 681.002 if the person receives a set of license plates under this section; or

(2) two disabled parking placards under Section 681.002 if the person does not receive a set of license plates under this section.

(f) A license plate issued under this section must include the symbol of access adopted by Rehabilitation International in 1969 at its Eleventh World Congress on Rehabilitation of the Disabled. The symbol must be the same size as the numbers on the license plate.

(g) In addition to a license plate issued under this section, an eligible person is entitled to be issued a set of the license plates for each motor vehicle owned by the person that has a carrying capacity of two tons or less and is equipped with special equipment that:

(1) is designed to allow a person who has lost the use of one or both of the person's legs to operate the vehicle; and

(2) is not standard equipment on that type of vehicle for use by a person who has use of both legs.

Sec. 504.202. VETERANS WITH DISABILITIES. (a) A person entitled to specialty license plates under this section may register, for the person's own use, one vehicle without payment of any fee paid for or at the time of registration except the fee for the license plates. Registration under this section is valid for one year.

(b) The department shall issue a specialty license plate for a motor vehicle that has a manufacturer's rated carrying capacity of two tons or less and that is owned by a veteran of the United States armed forces. A veteran is entitled to register, for the person's own use, two motor vehicles under this section if the person:

(1) has suffered, as a result of military service:

(A) at least a 50 percent service-connected disability; or
(B) a 40 percent service-connected disability because of the amputation of a lower extremity; and

(2) receives compensation from the United States because of the disability.

(c) An organization may register a motor vehicle under this section if:

(1) the vehicle is used exclusively to transport veterans of the United States armed forces who have suffered, as a result of military service, a service-connected disability; and

(2) the veterans are not charged for the transportation.

(d) A statement by the veterans county service officer of the county in which a vehicle described by Subsection (b) is registered or by the Department of Veterans Affairs that a vehicle is used exclusively to transport veterans with disabilities without charge is satisfactory proof of eligibility for an organization.

(e) License plates issued under this section must include:

(1) the letters "DV" as a prefix or suffix to any numeral on the plate;
and

(2) the words "Disabled Veteran" and "U.S. Armed Forces" at the bottom of each license plate.

(f) The fee for the first set of license plates is \$3. The fee for each additional set of license plates is \$15. If a license plate is lost, stolen, or mutilated, on payment of a \$1 fee the department shall issue a set of replacement plates.

Sec. 504.203. ISSUANCE OF DISABLED LICENSE PLATES TO CERTAIN INSTITUTIONS. (a) The department shall issue specialty license plates under this subchapter for a van or bus operated by an institution, facility, or residential retirement community for the elderly or for veterans in which an eligible person resides, including:

(1) an institution that holds a license issued under Chapter 242, Health and Safety Code; or

(2) a facility that holds a license issued under Chapter 246 or 247 of that code.

(b) An application for license plates under this section must be accompanied by a written statement signed by the administrator or manager of the institution, facility, or retirement community certifying that the institution, facility, or retirement community regularly transports, as a part of the services that the institution, facility, or retirement community provides, one or more eligible persons who reside in the institution, facility, or retirement community. The department shall determine the eligibility of the institution, facility, or retirement community on the evidence the applicant provides.

(c) The application and eligibility requirements for a license plate under this section are the same as those provided by Sections 504.201 and 504.202, as applicable.

[Sections 504.204-504.300 reserved for expansion]

SUBCHAPTER D. SPECIALTY LICENSE PLATES FOR THE MILITARY

Sec. 504.301. PROVISIONS GENERALLY APPLICABLE TO MILITARY SPECIALTY LICENSE PLATES. Unless expressly provided by this subchapter or department rule:

(1) the department shall design specialty license plates for the military;
and

(2) a person is not eligible to be issued a specialty license plate under this subchapter if the person was discharged from the armed forces under conditions less than honorable.

Sec. 504.302. SURVIVING SPOUSES OF CERTAIN MILITARY VETERANS. (a) The surviving spouse of a person who would be eligible for a specialty license plate under this subchapter is entitled to continue to register one vehicle under the applicable section as long as the spouse remains unmarried.

(b) An applicant for registration under this section must submit proof of the eligibility of the applicant's deceased spouse for the applicable specialty license plate.

(c) A surviving spouse applying for specialty license plates under this section must submit a written statement that the spouse is unmarried. If the surviving spouse is applying for Former Prisoner of War, Pearl Harbor Survivor, or Purple Heart specialty license plates, the statement must be sworn to by the surviving spouse.

Sec. 504.303. MEMBERS OR FORMER MEMBERS OF UNITED STATES ARMED FORCES. (a) The department shall issue specialty license plates for active or former members of the United States armed forces. The license plates must designate the appropriate branch of the United States armed forces.

(b) The fee for issuance of the license plates is:

(1) \$10 for the first set of license plates; and

(2) \$15 for each additional set of license plates.

Sec. 504.304. MEMBERS OF UNITED STATES ARMED FORCES AUXILIARIES. (a) The department shall issue specialty license plates for members of:

(1) the United States Air Force Auxiliary, Civil Air Patrol;

(2) the United States Coast Guard Auxiliary; and

(3) the Marine Corps League or its auxiliary.

(b) The license plates must include the words "Texas Wing Civil Air Patrol," the words "Coast Guard Auxiliary," or the emblem of the Marine Corps League and the words "Marine Corps League," as applicable.

(c) The fee for issuance of the license plates is:

(1) \$10 for the first set of license plates; and

(2) \$15 for each additional set of license plates.

Sec. 504.305. MEMBERS OF TEXAS NATIONAL GUARD, STATE GUARD, OR UNITED STATES ARMED FORCES RESERVES. (a) The department shall issue without charge specialty license plates for:

(1) active members of the Texas National Guard or Texas State Guard;

(2) retired members of the Texas National Guard or Texas State Guard who have completed 20 or more years of satisfactory federal service; and

(3) members of a reserve component of the United States armed forces.

(b) The department shall design the license plates in consultation with the adjutant general. The license plates must include the words "Texas Guard" or "Armed Forces Reserve," as applicable.

(c) A letter from the United States Department of Defense, the Department of the Army, or the Department of the Air Force stating that a retired guard member has 20 or more years of satisfactory federal service is satisfactory proof of eligibility.

Sec. 504.306. PERSONS RETIRED FROM SERVICE IN MERCHANT MARINE OF THE UNITED STATES. (a) The department shall issue specialty license plates for persons retired from service in the merchant marine of the United States. The license plates must include the words "Merchant Marine." A person may be issued only one set of license plates under this section.

(b) The fee for issuance of the license plates is \$10.

Sec. 504.307. AIRBORNE PARACHUTISTS. (a) The department shall issue specialty license plates for persons active and former members of the United States armed services who have:

(1) satisfactorily completed the prescribed proficiency tests while assigned or attached to an airborne unit or the Airborne Department of the United States Army Infantry School; or

(2) participated in at least one combat parachute jump.

(b) The license plates must include a likeness of the parachutist badge authorized by the Department of the Army.

(c) The fee for issuance of the license plates is:

(1) \$10 for the first set of license plates; and

(2) \$15 for each additional set of license plates.

Sec. 504.308. DISTINGUISHED FLYING CROSS MEDAL RECIPIENTS. (a) The department shall issue specialty license plates for persons who have received the Distinguished Flying Cross medal. The license plates must bear a depiction of the Distinguished Flying Cross medal and the words "Distinguished Flying Cross" at the bottom of each license plate.

(b) The fee for issuance of the license plates is \$3.

Sec. 504.309. MILITARY ACADEMY LICENSE PLATES. The department shall issue without charge specialty license plates for persons who:

(1) are graduates of the United States Military Academy, the United States Naval Academy, or the United States Air Force Academy; and

(2) are current or former commissioned officers of the United States armed forces.

Sec. 504.310. WORLD WAR II VETERANS. The department shall issue without charge specialty license plates for persons who served in the United States or Allied armed forces during World War II. The license plates must include the words "WWII Veteran."

Sec. 504.311. KOREAN WAR VETERANS. The department shall issue without charge specialty license plates for persons who served in the United States armed forces after June 26, 1950, and before February 1, 1955. License plates issued under this section must include the words "Korea Veteran."

Sec. 504.312. VIETNAM VETERANS. (a) The department shall issue without charge specialty license plates for persons who served in the United States armed forces during:

(1) the period beginning on February 28, 1961, and ending on May 7, 1975, in the case of a veteran who served in the Republic of Vietnam during that period; or

(2) the period beginning on August 5, 1964, and ending on May 7, 1975, in all other cases.

(b) License plates issued under this section must include the words "Vietnam Veteran."

Sec. 504.313. DESERT SHIELD OR DESERT STORM VETERANS. The department shall issue without charge specialty license plates for persons who served in the United States armed forces after August 1, 1990, and before April 12, 1991. License plates issued under this section must include the words "Desert Storm."

Sec. 504.3135. OPERATION IRAQI FREEDOM. The department shall issue without charge specialty license plates for persons who served in the United States armed forces on or after November 8, 2002, or on or before May 1, 2003. License plates issued under this section must include the words "Operation Iraqi Freedom."

Sec. 504.314. ENDURING FREEDOM VETERANS. The department shall issue without charge specialty license plates for persons who served in the United States armed services and participated in Operation Enduring Freedom. The license plates must include the words "Enduring Freedom."

Sec. 504.315. MILITARY SPECIALTY LICENSE PLATES FOR EXTRAORDINARY SERVICE. (a) A person entitled to specialty license plates under this section may register, for the person's own use, one vehicle without payment of any fee paid for or at the time of registration except the fee for the license plates. Registration is valid for one year and may be renewed without charge.

(b) The fee for issuance of the license plates is:

(1) \$3 for the first set of license plates; and

(2) \$15 for each additional set of license plates.

(c) The department shall issue specialty license plates for a person who was captured and incarcerated by an enemy of the United States during a period of conflict with the United States. The license plates must show that the recipient is a former prisoner of war.

(d) The department shall issue specialty license plates for survivors of the attack on Pearl Harbor on December 7, 1941. The license plates must include the words "Pearl Harbor Survivor" and must be consecutively numbered. A person is eligible if the person:

(1) served in the United States armed forces;

(2) was stationed in the Hawaiian Islands on December 7, 1941; and

(3) survived the attack on Pearl Harbor on December 7, 1941.

(e) The department shall issue specialty license plates to a recipient of a Congressional Medal of Honor awarded under Title 10, United States Code. The department shall assign the license plate number, and the plates may not be personalized.

(f) The department shall issue specialty license plates for recipients of the Air Force Cross or Distinguished Service Cross, the Army Distinguished Service Cross, the Navy Cross, or the Medal of Honor. The license plates must include the words "Legion of Valor."

(g) The department shall issue specialty license plates for recipients of the Purple Heart. License plates issued under this subsection must include:

(1) the Purple Heart emblem;

(2) the words "Purple Heart" at the bottom of each plate; and

(3) the letters "PH" as a prefix or suffix to the numerals on the plate if the plate is not personalized.

[Sections 504.316-504.400 reserved for expansion]

SUBCHAPTER E. SPECIALTY LICENSE PLATES WITH RESTRICTED DISTRIBUTION

Sec. 504.401. STATE OFFICIALS. (a) The department shall issue without charge specialty license plates to a state official. The license plates must include the words "State Official."

(b) A state official may be issued three sets of license plates under this section.

(c) The license plates remain valid until December 31 of each year.

(d) In this section, "state official" means:

(1) a member of the legislature;

(2) the governor;

(3) the lieutenant governor;

(4) a justice of the supreme court;

(5) a judge of the court of criminal appeals;

(6) the attorney general;

(7) the commissioner of the General Land Office;

(8) the comptroller;

(9) a member of the Railroad Commission of Texas;

(10) the commissioner of agriculture;

(11) the secretary of state; or

(12) a member of the State Board of Education.

Sec. 504.402. MEMBERS OF CONGRESS. (a) The department shall issue without charge specialty license plates for members of congress. License plates issued under this section must include the words "U.S. Congress."

(b) A person may be issued three sets of license plates under this section.

(c) The license plates remain valid until December 31 of each year.

Sec. 504.403. STATE AND FEDERAL JUDGES. (a) The department shall issue without charge specialty license plates for a current or visiting state or federal judge. The license plates must include the words "State Judge" or "U.S. Judge," as appropriate.

(b) A person may be issued three sets of license plates under this section.

(c) The license plates remain valid until December 31 of each year.

(d) In this section:

(1) "Federal judge" means:

(A) a judge of the Fifth Circuit Court of Appeals;

(B) a judge or magistrate of a United States district court; or

(C) a judge of a United States bankruptcy court.

(2) "State judge" means:

(A) a justice of the supreme court;

(B) a judge of the court of criminal appeals;

(C) a judge of a court of appeals;

(D) a district court judge;

(E) a presiding judge of an administrative judicial district; or

(F) a statutory county court judge.

Sec. 504.404. FEDERAL ADMINISTRATIVE LAW JUDGES. (a) The department shall issue without charge specialty license plates for current federal administrative law judges. The license plates shall bear the words "U.S. A.L. Judge."

(b) A person may be issued three sets of license plates under this section.

Sec. 504.405. COUNTY JUDGES. (a) The department shall issue without charge specialty license plates for current county judges of this state. The license plates shall bear the words "County Judge."

(b) A person may be issued three sets of license plates under this section.

(c) In this section, "county judge" means the judge of the county court established by Section 15, Article V, Texas Constitution.

Sec. 504.406. TEXAS CONSTABLES. The department shall issue without charge specialty license plates for Texas constables. The license plates shall bear the words "Texas Constable."

Sec. 504.407. PEACE OFFICERS WOUNDED OR KILLED IN LINE OF DUTY. (a) The department shall issue specialty license plates for:

(1) a person wounded in the line of duty as a peace officer; or

(2) a surviving spouse, parent, brother, sister, or adult child, including an adopted child or stepchild, of a person killed in the line of duty as a peace officer.

(b) License plates issued under this section must include the words "To Protect and Serve" above an insignia depicting a yellow rose superimposed over the outline of a badge.

(c) The fee for issuance of the license plates is \$20.

(d) In this section, "peace officer" has the meaning assigned by Section 1.07, Penal Code.

Sec. 504.408. GOLD STAR MOTHERS. (a) The department shall issue specialty license plates for the mother of a person who died while serving in the United States armed forces. License plates issued under this section must include the words "Gold Star Mother" and a gold star. A person may not be issued more than one set of the license plates at a time.

(b) The fee for issuance of the license plates is \$10.

Sec. 504.409. VOLUNTEER FIREFIGHTERS. (a) The department shall issue specialty license plates for volunteer firefighters certified by:

(1) the Texas Commission on Fire Protection; or

(2) the State Firemen's and Fire Marshals' Association of Texas.

(b) The fee for issuance of the license plates is \$4.

(c) A person may be issued only one set of the license plates.

Sec. 504.410. EMERGENCY MEDICAL SERVICES PERSONNEL. (a) The department shall issue specialty license plates for emergency medical services personnel certified by the Texas Department of Health under Subchapter C, Chapter 773, Health and Safety Code.

(b) The fee for issuance of the license plates is \$8.

(c) A person may be issued only one set of the license plates.

Sec. 504.411. HONORARY CONSULS. (a) The department shall issue specialty license plates for a person who is an honorary consul authorized by the United States to perform consular duties. License plates issued under this section must include the words "Honorary Consul."

(b) The fee for issuance of the license plates is \$40.

Sec. 504.412. FOREIGN ORGANIZATION VEHICLES. (a) The department shall issue specialty license plates for an instrumentality established by a foreign government recognized by the United States before January 1, 1979, that is without official representation or diplomatic relations with the United States. The license plates must include the words "Foreign Organization" and shall remain valid for five years.

(b) A person entitled to specialty license plates under this section may register the vehicle without payment of any fee paid for or at the time of registration.

Sec. 504.413. MEMBERS OF AMERICAN LEGION. (a) The department shall issue specialty license plates for members of the American Legion. The license plates shall include the words "Still Serving America" and the emblem of the American Legion. The department shall design the license plates in consultation with the American Legion.

(b) The fee for the license plates is \$30.

(c) After deduction of \$8 to reimburse the department for its administrative costs, the remainder of the fee for issuance of the license plates shall be deposited to the credit of the American Legion, Department of Texas account in the state treasury. Money in the account may be used only by the Texas Veterans Commission in making grants to the American Legion Endowment Fund for scholarships and youth programs sponsored by the American Legion, Department of Texas.

[Sections 504.414-504.500 reserved for expansion]
SUBCHAPTER F. SPECIALTY LICENSE PLATES FOR CERTAIN
VEHICLES

Sec. 504.501. CLASSIC MOTOR VEHICLES. (a) The department shall issue specialty license plates for a motor vehicle that is at least 25 years old. The license plates must include the words "Classic Auto," "Classic Motorcycle," or "Classic Truck" or a similar designation, as appropriate.

(b) A person eligible for the license plates may instead use license plates that were issued by this state in the same year as the model year of the vehicle and are approved by the department. The department may require the attachment of a registration insignia to the license plate in a manner that does not affect the display of information originally on the license plate.

(c) The fee for issuance or approval of license plates under this section is \$15.

Sec. 504.502. CERTAIN EXHIBITION VEHICLES; OFFENSE. (a) The department shall issue specialty license plates for a passenger car, truck, motorcycle, or former military vehicle that:

(1) is at least 25 years old, if the vehicle is a passenger car, truck, or motorcycle;

(2) is a collector's item;

(3) is used exclusively for exhibitions, club activities, parades, and other functions of public interest and is not used for regular transportation; and

(4) does not carry advertising.

(b) The license plates must include the words "Antique Auto," "Antique Truck," "Antique Motorcycle," or "Military Vehicle," as appropriate.

(c) A person eligible for the license plates may instead use license plates issued by this state in the same year as the model year of the vehicle and approved by the department, provided that a passenger car must bear passenger car or truck license plates and a truck must bear passenger car or truck license plates. The department may require attachment of a registration insignia to the license plate in a manner that does not affect the display of information originally on the license plate.

(d) License plates issued or approved under this section expire on the fifth anniversary of the date of issuance or approval.

(e) The fee for issuance or approval of license plates under this section is:

(1) \$10 for each year or portion of a year remaining in the five-year registration period if the vehicle was manufactured in 1921 or later; or

(2) \$8 for each year or portion of a year remaining in the five-year registration period if the vehicle was manufactured before 1921.

(f) The department may exempt a former military vehicle from the requirement to display a license plate or registration insignia if the exemption is necessary to maintain the vehicle's accurate military markings. The department may approve an alternative registration insignia that is compatible with the vehicle's original markings.

(g) A person entitled to specialty license plates or to department approval under this section may register the vehicle without payment of any fees paid for or at the time of registration except the fee for the license plate. An owner of a vehicle registered under this subsection who violates this section commits an offense. An offense under this section is a misdemeanor punishable by a fine of not less than \$5 or more than \$200.

(h) Notwithstanding any other provision of law, a vehicle issued license plates under Subsection (a) shall be required to attach and display only one license plate on the rear of the vehicle.

(i) In this section, "former military vehicle" means a vehicle, including a trailer, regardless of the vehicle's size, weight, or year of manufacture, that:

(1) was manufactured for use in any country's military forces; and

(2) is maintained to represent its military design and markings accurately.

Sec. 504.503. MUNICIPAL AND PRIVATE BUSES. (a) The department shall issue without charge specialty license plates for municipal buses and private buses. The license plates must include the words "City Bus" or "Private Bus," as appropriate.

(b) In this section, "private bus" means a bus that:

(1) is not operated for hire; and

(2) is not classified as a municipal bus or a motor bus.

Sec. 504.504. CERTAIN FARM VEHICLES AND DRILLING AND CONSTRUCTION EQUIPMENT. (a) The department shall issue specialty license plates to a vehicle described by Subsection (b) or (c). The fee for the license plates is \$5.

(b) An owner is not required to register a vehicle that is used only temporarily on the highways if the vehicle is:

(1) a farm trailer or farm semitrailer with a gross weight of more than 4,000 pounds but not more than 34,000 pounds that is used exclusively to transport:

(A) seasonally harvested agricultural products or livestock from the place of production to the place of processing, market, or storage; or

(B) farm supplies from the place of loading to the farm;

(2) machinery used exclusively for the purpose of drilling water wells;

or

(3) construction machinery that is not designed to transport persons or property on a public highway.

(c) An owner is not required to register a vehicle that is:

(1) a farm trailer or farm semitrailer owned by a cotton gin and used exclusively to transport agricultural products without charge from the place of production to the place of processing, market, or storage;

(2) a trailer used exclusively to transport fertilizer without charge from a place of supply or storage to a farm; or

(3) a trailer used exclusively to transport cottonseed without charge from a place of supply or storage to a farm or place of processing.

(d) A vehicle described by Subsection (b) is exempt from the inspection requirements of Subchapters B and F, Chapter 548.

(e) This section does not apply to a farm trailer or farm semitrailer that:

(1) is used for hire;

(2) has metal tires operating in contact with the highway;

(3) is not equipped with an adequate hitch pinned or locked so that it will remain securely engaged to the towing vehicle while in motion; or

(4) is not operated and equipped in compliance with all other law.

(f) A vehicle to which this section applies that is operated on a public highway in violation of this section is considered to be operated while unregistered and is immediately subject to the applicable registration fees and penalties prescribed by Chapter 502.

(g) In this section, the gross weight of a trailer or semitrailer is the combined weight of the vehicle and the load carried on the highway.

Sec. 504.505. COTTON VEHICLES. (a) The department shall issue specialty license plates for a single motor vehicle that is:

(1) used only to transport seed cotton modules, cotton, cotton burrs, or equipment used in transporting or processing cotton; and

(2) not more than 10 feet in width.

(b) The license plates must include the words "Cotton Vehicle."

(c) The initial fee for issuance of the license plates is \$8. The license plates may be renewed without payment of a fee.

Sec. 504.506. CERTAIN LOG LOADER VEHICLES. (a) The department shall issue specialty license plates for a vehicle that is temporarily operated on public highways, during daylight hours only, and on which machinery is mounted solely to load logs on other vehicles.

(b) The fee for issuance of the license plates is \$62.50.

(c) A person entitled to specialty license plates under this section may register the vehicle without payment of any fee paid for or at the time of registration other than the fee for the license plates.

(d) A vehicle having a license plate issued under this section is exempt from the inspection requirements of Chapter 548.

(e) This section does not apply to a vehicle used to haul logs.

(f) A vehicle to which this section applies that is operated on a public highway in violation of this section is considered to be operated or moved while unregistered and is immediately subject to the applicable fees and penalties prescribed by Chapter 502.

Sec. 504.507. FORESTRY VEHICLES. (a) The department shall issue specialty license plates for forestry vehicles. License plates issued under this section must include the words "Forestry Vehicle."

(b) The fee for issuance of the license plates is \$8. The department shall:

(1) also collect any additional fee that a county imposes under this chapter for registration of a forestry vehicle; and

(2) send the fee to the appropriate county for disposition.

(c) In this section, "forestry vehicle" means a vehicle used exclusively for transporting forest products in their natural state, including logs, debarked logs, untreated ties, stave bolts, plywood bolts, pulpwood billets, wood chips, stumps, sawdust, moss, bark, wood shavings, and property used in production of those products.

Sec. 504.508. TOW TRUCKS. (a) The department shall issue specialty license plates for a commercial motor vehicle used as a tow truck. The license plates must include the words "Tow Truck." A vehicle used commercially as a tow truck shall display license plates issued under this section.

(b) The fee for issuance of the license plates is \$15.

(c) Proof of eligibility for license plates under this section must include a copy of the registration certificate issued by the department for the tow truck.

(d) In this section, "tow truck" means a motor vehicle adapted or used to tow, winch, or otherwise move another motor vehicle.

Sec. 504.509. VEHICLES CARRYING MOBILE AMATEUR RADIO EQUIPMENT. (a) The department shall issue specialty license plates for a person who holds an amateur radio station license issued by the Federal Communications Commission and who operates receiving and transmitting mobile amateur radio equipment. The license plates shall include the person's amateur call letters as assigned by the Federal Communications Commission. A person may register more than one vehicle equipped with mobile amateur radio equipment under this section, and the department shall issue license plates that include the same amateur call letters for each vehicle.

(b) The fee for issuance of the license plates is \$2 for the first year and \$1 for each subsequent year.

Sec. 504.510. GOLF CART LICENSE PLATES. (a) The department shall issue specialty license plates for an eligible golf cart.

(b) The fee for issuance of the license plates is \$10.

(c) A person entitled to specialty license plates under this section may register the golf cart without payment of any fees paid for or at the time of registration other than the fee for the license plates. This section does not authorize the operation of a golf cart on a public road where it is otherwise prohibited by law.

(d) This section applies only to an owner of a golf cart who resides:

(1) on real property that is owned or under the control of the United States Corps of Engineers and is required by that agency to register the owner's golf cart under this chapter; and

(2) in a county that borders another state and has a population of more than 110,000 but less than 111,000.

[Sections 504.511-504.600 reserved for expansion]

SUBCHAPTER G. SPECIALTY LICENSE PLATES FOR GENERAL DISTRIBUTION

Sec. 504.601. GENERAL PROVISIONS APPLICABLE TO ALL SPECIALTY LICENSE PLATES FOR GENERAL DISTRIBUTION. Unless expressly provided by this subchapter or department rule:

(1) the fee for issuance of a license plate under this subchapter is \$30;
and

(2) of each fee received under this subchapter, the department shall use \$8 to defray its administrative costs in complying with this subchapter.

Sec. 504.602. KEEP TEXAS BEAUTIFUL LICENSE PLATES. (a) The department shall issue specialty license plates including the words "Keep Texas Beautiful." The department shall design the license plates in consultation with Keep Texas Beautiful, Inc.

(b) After deduction of the department's administrative costs, the remainder of the fee for issuance of the license plates shall be used in connection with the department's litter prevention and community beautification programs.

Sec. 504.603. TEXAS CAPITOL LICENSE PLATES. (a) The department shall issue specialty license plates depicting the State Capitol.

(b) After deduction of the department's administrative costs, the remainder of the fee for issuance of the license plates shall be deposited to the credit of the general revenue fund.

Sec. 504.604. TEXAS COMMISSION ON THE ARTS LICENSE PLATES. (a) The department shall issue specialty license plates including the words "State of the Arts." The department shall design the license plates in consultation with the Texas Commission on the Arts.

(b) After deduction of the department's administrative costs, the remainder of the fee for issuance of the license plates shall be deposited to the credit of the Texas Commission on the Arts operating fund established under Section 444.027, Government Code.

Sec. 504.605. ANIMAL FRIENDLY LICENSE PLATES. (a) The department shall issue specialty license plates including the words "Animal Friendly." The department shall design the license plates.

(b) After deduction of the department's administrative costs, the remainder of the fee for issuance of the license plates shall be deposited to the credit of the animal friendly account established by Section 828.014, Health and Safety Code.

Sec. 504.606. BIG BEND NATIONAL PARK LICENSE PLATES. (a) The department shall issue specialty license plates that include one or more graphic images of a significant feature of Big Bend National Park. The department shall design the license plates in consultation with the Parks and Wildlife Department and any organization designated by it.

(b) After deduction of the department's administrative costs, the remainder of the fee for issuance of the license plates shall be deposited to the credit of the Big Bend National Park account in the state treasury. Money in the account may be used only by the Parks and Wildlife Department to support the activities of a designated nonprofit organization whose primary purpose is the improvement or preservation of Big Bend National Park.

Sec. 504.607. READ TO SUCCEED. (a) The department shall issue specialty license plates including the words "Read to Succeed." The department shall design the license plates.

(b) After deduction of the department's administrative costs, the remainder of the fee shall be deposited to the credit of the "Read to Succeed" account in the general revenue fund. Money in the account may be used only to provide educational materials for public school libraries. The account is composed of:

(1) money required to be deposited to the credit of the account under this subsection; and

(2) donations made to the account.

Sec. 504.608. TEXAS COMMISSION ON ALCOHOL AND DRUG ABUSE LICENSE PLATES. (a) The department shall issue specialty license plates that include the words "Boy Scouts of America." The department shall design the license plates in consultation with the Boy Scouts of America.

(b) After deduction of the department's administrative costs, the remainder of the fee for issuance of the license plates shall be deposited to the credit of the general revenue fund and may be appropriated only to the Texas Commission on Alcohol and Drug Abuse for drug-abuse prevention programs provided by nonprofit organizations that primarily serve children.

(c) In selecting a program provider under Subsection (b), it is the intent of the legislature that, to the extent permissible, preference be given to a provider whose membership substantially consists of persons who purchase the specialty license plates.

Sec. 504.609. UNITED STATES OLYMPIC COMMITTEE LICENSE PLATES. The department shall issue specialty license plates including the words "United States Olympic Committee." The department shall design the license plates in consultation with the United States Olympic Committee.

Sec. 504.610. TEXAS AEROSPACE COMMISSION LICENSE PLATES. (a) The department shall issue specialty license plates including the words "Texas Aerospace Commission." The department shall design the license plates in consultation with the Texas Aerospace Commission.

(b) After deduction of the department's administrative costs, the remainder of the fee for issuance of the license plates shall be deposited to the credit of the general revenue fund.

Sec. 504.611. VOLUNTEER ADVOCATE PROGRAM LICENSE PLATES. (a) The department shall issue specialty license plates in recognition of children. The department shall design the license plates in consultation with the attorney general.

(b) After deduction of the department's administrative costs, the remainder of the fee for issuance of the license plates shall be deposited to the credit of the attorney general volunteer advocate program account in the general revenue fund. Money deposited to the credit of the volunteer advocate program account may be used only by the attorney general to fund a contract entered into by the attorney general under Section 264.602, Family Code.

Sec. 504.612. TEXAS YOUNG LAWYERS ASSOCIATION LICENSE PLATES. (a) The department shall issue specialty license plates including the words "And Justice for All." The department shall design the license plates in consultation with the Texas Young Lawyers Association.

(b) After deduction of the department's administrative costs, the remainder of the fee for issuance of the license plates shall be deposited to the credit of the basic civil legal services account established by Section 51.943, Government Code.

Sec. 504.613. HOUSTON LIVESTOCK SHOW AND RODEO LICENSE PLATES. (a) The department shall issue specialty license plates including the words "Houston Livestock Show and Rodeo." The department shall design the license plates in consultation with the Houston Livestock Show and Rodeo.

(b) After deduction of the department's administrative costs, the remainder of the fee for issuance of the license plates shall be deposited to the credit of the Houston Livestock Show and Rodeo scholarship account in the state treasury. Money in the account may be used only by the Texas Higher Education Coordinating Board in making grants to benefit the Houston Livestock Show and Rodeo.

Sec. 504.614. PROFESSIONAL SPORTS TEAM LICENSE PLATES. (a) The department may issue specialty license plates that include the name and insignia of a professional sports team located in this state. The department shall design the license plates in consultation with the professional sports team and may enter a trademark license with the professional sports team or its league to implement this section. A license plate may be issued under this section only for a professional sports team that:

(1) certifies to the department that it has determined that at least 3,500 persons will apply for the plates; and

(2) plays its home games in a facility constructed or operated, in whole or in part, with public funds.

(b) After deduction of the department's administrative costs, the remainder of the fee for issuance of the license plates shall be sent to the public entity that provided public funds for the construction or renovation of the facility in which the professional sports team plays its home games or that provides public funds for the operation of that facility. The funds shall be deposited to the credit of the venue project fund, if the public entity has created a venue project fund under Section 334.042 or 335.072, Local Government Code. If the public entity has not created a venue project fund, funds distributed to a public entity under this section must first be used to retire any public debt incurred by the public entity in the construction or acquisition of the facility in which the professional sports team plays its home games. After that debt is retired, funds distributed to the public entity may be spent only for maintenance or improvement of the facility.

(c) In this section:

(1) "Public entity" includes a municipality, county, industrial development corporation, or special district that is authorized to plan, acquire, establish, develop, construct, or renovate a facility in which a professional sports team plays its home games.

(2) "Professional sports team" means a sports team that is a member or an affiliate of a member of the National Football League, National Basketball Association, or National Hockey League or a major league baseball team.

Sec. 504.615. COLLEGIATE LICENSE PLATES. (a) The department shall issue specialty license plates that include the name and insignia of a college. The department shall design the license plates in consultation with the applicable college. The department may issue a license plate under this section only for a college that certifies to the department that it has determined that at least 1,500 persons will apply for the plates.

(b) After deduction of the department's administrative costs, the remainder of the fee for issuance of the license plates shall be deposited to the credit of the general revenue fund. The money may be used only for scholarships to students who demonstrate a need for financial assistance under Texas Higher Education Coordinating Board rule.

(c) If the fee is for the issuance of license plates for a college described by Subsection (e)(1), the money:

(1) shall be deposited to the credit of the institution of higher education designated on the license plates; and

(2) is supplementary and is not income for purposes of reducing general revenue appropriations to that institution of higher education.

(d) If the fee is for the issuance of license plates for a college described by Subsection (e)(2), the money shall be deposited to the credit of the Texas Higher Education Coordinating Board. The money:

(1) shall be allocated to students at the college designated on the plates;
and

(2) is in addition to other money that the board may allocate to that college.

(e) In this section, "college" means:

(1) an institution of higher education as defined by Section 61.003, Education Code; or

(2) a private college or university described by Section 61.222, Education Code.

Sec. 504.616. TEXAS READS LICENSE PLATES. (a) The department shall issue specialty license plates including the words "Texas Reads." The department shall design the license plates to incorporate one or more submissions from middle school students in a competition conducted by the department.

(b) After deduction of the department's administrative costs, the remainder of the fee shall be deposited to the credit of the Texas Reads account in the general revenue fund. Money from the account may be used only to make grants under Section 441.0092, Government Code. The account is composed of:

(1) money required to be deposited to the credit of the account under this subsection; and

(2) donations made to the account.

Sec. 504.617. TEXAS. IT'S LIKE A WHOLE OTHER COUNTRY LICENSE PLATES. (a) The department shall issue specialty license plates that include the trademarked Texas patch and the words "Texas. It's Like A Whole Other Country." The department shall design the license plates in consultation with the Texas Department of Economic Development.

(b) After deduction of the department's administrative costs, the remainder of the fee for issuance of the license plates shall be deposited to the credit of the tourism account in the general revenue fund to finance the Texas Department of Economic Development's tourism activities.

Sec. 504.618. CONSERVATION LICENSE PLATES. (a) The department shall issue specialty license plates to support Parks and Wildlife Department activities. The department shall design the license plates in consultation with the Parks and Wildlife Department.

(b) After deduction of the department's administrative costs, the remainder of the fee for issuance of the license plates shall be deposited to the credit of the Texas parks and wildlife conservation and capital account established by Section 11.043, Parks and Wildlife Code. Money deposited in the Texas parks and wildlife conservation and capital account under this section is supplementary and is not income for the purposes of reducing general revenue appropriations to the Parks and Wildlife Department.

Sec. 504.619. TEXAS COMMISSION FOR THE DEAF AND HARD OF HEARING LICENSE PLATES. (a) The department shall issue specialty license plates in support of the Texas Commission for the Deaf and Hard of Hearing. The department shall design the license plates in consultation with the Texas Commission for the Deaf and Hard of Hearing.

(b) After deduction of the department's administrative costs, the remainder of the fee for issuance of the license plates:

(1) shall be deposited to the credit of the general revenue fund; and

(2) may be appropriated only to the Texas Commission for the Deaf and Hard of Hearing for direct services programs, training, and education.

Sec. 504.620. TEXANS CONQUER CANCER LICENSE PLATES. (a) The department shall issue specialty license plates that include the words "Texans Conquer Cancer." The department shall design the license plates in consultation with the Texas Cancer Council.

(b) After deduction of the department's administrative costs, the remainder of the fee for issuance of the license plates shall be deposited to the credit of the Texans Conquer Cancer account established by Section 102.017, Health and Safety Code.

Sec. 504.621. SPECIAL OLYMPICS TEXAS LICENSE PLATES. (a) The department shall issue specialty license plates that include the words "Special Olympics Texas." The department shall design the license plates in consultation with Special Olympics Texas.

(b) After deduction of the department's administrative costs, the remainder of the fee for issuance of the license plates shall be deposited to the credit of the Special Olympics Texas account established by Section 533.018, Health and Safety Code.

Sec. 504.622. GIRL SCOUT LICENSE PLATES. (a) The department shall issue specialty license plates that include the words "Girl Scouts." The department shall design the license plates in consultation with the Girl Scout Councils of Texas.

(b) After deduction of the department's administrative costs, the remainder of the fee for issuance of the license plates shall be deposited to the credit of the Girl Scout account in the state treasury. Money in the account may be used by the Texas Higher Education Coordinating Board in making grants to benefit educational projects sponsored by the Girl Scout Councils of Texas.

Sec. 504.623. TEXAS YMCA. (a) The department shall issue specialty license plates in honor of the Young Men's Christian Association. The department shall design the license plates.

(b) After deduction of the department's administrative costs, the remainder of the fee for issuance of the license plates shall be deposited to the credit of the YMCA account established by Section 7.025, Education Code, as added by Chapter 869, Acts of the 77th Legislature, Regular Session, 2001.

Sec. 504.624. 100TH FOOTBALL SEASON OF STEPHEN F. AUSTIN HIGH SCHOOL. (a) The department shall issue specialty license plates in honor of the 100th football season of Stephen F. Austin High School in Austin. The department shall design the license plates in consultation with the principal of Stephen F. Austin High School.

(b) After deduction of the department's administrative costs, the remainder of the fee for issuance of the license plates shall be sent to the Texas Education Agency for distribution to the Austin Independent School District to be used only for the benefit of the Austin High School Athletic Department.

Sec. 504.625. TEXAS AGRICULTURAL PRODUCTS LICENSE PLATES. (a) The department shall issue specialty license plates that include the words "Go Texan" and the "Go Texan" logo of the Department of Agriculture. The department shall design the license plates in consultation with the commissioner of agriculture.

(b) After deduction of the department's administrative costs, the department shall deposit the remainder of the proceeds to the credit of the "Go Texan" partner program account established by Section 46.008, Agriculture Code.

Sec. 504.626. TEXAS CITRUS INDUSTRY. (a) The department shall issue specialty license plates in honor of the citrus industry in this state. The department shall design the license plates.

(b) After deduction of the department's administrative costs, the remainder of the fee for issuance of the license plates shall be deposited to the credit of an account in the general revenue fund that may be appropriated only to Texas A&M University–Kingsville to provide financial assistance to graduate students in the College of Agriculture and Human Sciences.

Sec. 504.627. WATERFOWL AND WETLAND CONSERVATION LICENSE PLATES. (a) The department shall issue specialty license plates including one or more graphic images supplied by the Parks and Wildlife Department. The department shall design the license plates in consultation with the Parks and Wildlife Department and any organization designated by it.

(b) After deducting the department's administrative costs, the remainder of the fee for issuance of the license plates shall be deposited to the credit of an account in the state treasury. Money in the account may be used only by the Parks

and Wildlife Department to support the activities of a designated nonprofit organization whose primary purpose is the conservation of waterfowl and wetland.

Sec. 504.628. UNITED WE STAND LICENSE PLATES. (a) The department shall issue specialty license plates that include the words "United We Stand" and include only the colors red, white, blue, and black.

(b) After deduction of the department's administrative costs, the remainder of the fee for issuance of the license plates shall be deposited to the credit of the Texas mobility fund.

Sec. 504.629. TEXAS PGA JUNIOR GOLF LICENSE PLATES. (a) The department shall issue specialty license plates in honor of Texas PGA Junior Golf. The department shall design the license plates in consultation with Texas PGA Junior Golf.

(b) After deduction of the department's administrative costs, the remainder of the fee shall be deposited to the credit of the general revenue fund for use only by the Parks and Wildlife Department in making grants to benefit Texas PGA Junior Golf to provide scholarships to students.

Sec. 504.630. AIR FORCE ASSOCIATION LICENSE PLATES. (a) The department shall issue specialty license plates that include the words "Air Force Association." The department shall design the license plates in consultation with the Air Force Association of Texas.

(b) After deduction of the department's administrative costs, the remainder of the fee shall be deposited to the credit of the Air Force Association of Texas account in the state treasury. Money in the account may be used by the Texas Veterans Commission in making grants to benefit projects sponsored by the Air Force Association of Texas.

Sec. 504.631. TEXAS STATE RIFLE ASSOCIATION LICENSE PLATES. (a) The department shall issue specialty license plates to honor the Texas State Rifle Association.

(b) After deduction of the department's administrative costs, the remainder of the fee shall be deposited to the credit of an account in the general revenue fund that may be appropriated only to The Texas A&M University System to supplement existing and future scholarship programs supported by the Texas State Rifle Association and to provide grants to 4-H Club shooting sports programs to promote safety education.

Sec. 504.632. URBAN FORESTRY LICENSE PLATES. (a) The department shall issue specialty license plates to benefit urban forestry. The department shall design the license plates in consultation with an organization described in Subsection (b).

(b) After deduction of the department's administrative costs, the remainder of the fee shall be deposited to the credit of the urban forestry account in the state treasury. Money in the account may be used by the Texas Forest Service in making grants to support the activities of a nonprofit organization located in Texas whose primary purpose is to sponsor projects involving urban and community:

(1) tree planting;

- (2) tree preservation; and
- (3) tree education programs.

Sec. 504.633. SHARE THE ROAD LICENSE PLATES. (a) The department shall issue specialty license plates that include the words "Share the Road" and the image of a bicycle or a bicycle with a rider. The department shall design the plates in consultation with the Texas Bicycle Coalition Education Fund.

(b) After deduction of the department's administrative costs, the remainder of the fee shall be deposited to the credit of the share the road account in the state treasury to be used only by the Texas Education Agency to support the activities of a designated nonprofit organization whose primary purpose is to promote bicyclist safety, education, and access through:

- (1) education and awareness programs; and
- (2) training, workshops, educational materials, and media events.

(c) Up to 25 percent of the amount in Subsection (b) may be used to support the activities of the nonprofit organization in marketing and promoting the share the road concept and license plates.

Sec. 504.634. SAN ANTONIO MISSIONS NATIONAL HISTORICAL PARK LICENSE PLATES. (a) The department shall issue San Antonio Missions National Historical Park specialty license plates. The department shall design the license plates in consultation with Los Compadres de San Antonio Missions National Historical Park.

(b) After deduction of the department's administrative costs, the remainder of the fee shall be deposited to the credit of Los Compadres de San Antonio Missions National Historical Park account in the state treasury. Money in the account may be used only by the Texas Historical Commission in making grants to Los Compadres de San Antonio Missions National Historical Park to be used for the purpose of the preservation and rehabilitation of the San Antonio Missions National Historical Park.

Sec. 504.635. EL PASO MISSION VALLEY LICENSE PLATES. (a) The department shall issue El Paso Mission Valley specialty license plates. The department shall design the license plates in consultation with the Socorro Mission Restoration Effort.

(b) After deduction of the department's administrative costs, the remainder of the fee shall be deposited to the credit of the El Paso Mission Restoration account in the state treasury. Money in the account may be used only by the Texas Historical Commission in making grants to the Socorro Mission Restoration Effort to be used for the purpose of the preservation and rehabilitation of the Socorro Mission.

Sec. 504.636. COTTON BOLL LICENSE PLATES. (a) The department shall issue specialty license plates depicting a graphic image of a cotton boll. The department shall design the license plates in consultation with Texas Cotton Producers, Inc.

(b) After deduction of the department's administrative costs, the remainder of the fee shall be deposited to the credit of the general revenue fund for use only by the Texas Higher Education Coordinating Board in making grants to benefit

Texas Cotton Producers, Inc., for the sole purpose of providing scholarships to students who are pursuing a degree in an agricultural field related to the cotton industry while enrolled in an institution of higher education, as defined by Section 61.003, Education Code.

Sec. 504.637. DAUGHTERS OF THE REPUBLIC OF TEXAS LICENSE PLATES. (a) The department shall issue specialty license plates that include the words "Native Texan." The department shall design the license plates in consultation with the Daughters of the Republic of Texas.

(b) After deduction of the department's administrative costs, the remainder of the fee shall be deposited to the credit of the Daughters of the Republic of Texas account in the state treasury. Money in the account may be used only by the Texas Department of Economic Development or its successor agency in making grants to the Daughters of the Republic of Texas to be used only for the purpose of:

- (1) preserving Texas historic sites; or
- (2) funding educational programs that teach Texas history.

Sec. 504.638. KNIGHTS OF COLUMBUS LICENSE PLATES. (a) The department shall issue specialty license plates that include the words "Knights of Columbus" and the emblem of the Order of the Knights of Columbus. The department shall design the license plates in consultation with the Knights of Columbus.

(b) After deduction of the department's administrative costs, the remainder of the fee for issuance of the license plates shall be deposited to the credit of the State Council Charities account in the general revenue fund. Money in the account may be used only by the Texas Education Agency to make grants to State Council Charities to carry out the purposes of that organization.

Sec. 504.639. TEXAS MUSIC LICENSE PLATES. (a) The department shall issue specialty license plates that include the words "Texas Music." The department shall design the license plates in consultation with the governor's office.

(b) After deduction of the department's administrative costs, the remainder of the fee for issuance of the license plates shall be deposited to the credit of the Texas Music Foundation account established by Section 7.027, Education Code.

Sec. 504.640. SPACE SHUTTLE COLUMBIA LICENSE PLATES. (a) The department shall issue Space Shuttle Columbia specialty license plates. The department shall design the license plates in consultation with the Aviation and Space Foundation of Texas.

(b) After deduction of the department's administrative costs, the remainder of the fee for issuance of the license plates shall be deposited to the credit of the general revenue fund and may be used only by the Texas Aerospace Commission or its successor agency in making grants to benefit the Aviation and Space Foundation of Texas for the purposes of furthering aviation and space activities in Texas and providing Columbia Crew memorial scholarships to students.

Sec. 504.641. BE A BLOOD DONOR LICENSE PLATES. (a) The department shall issue Be a Blood Donor specialty license plates. The department shall design the license plates in consultation with the Gulf Coast Regional Blood Center in Houston.

(b) After deduction of the department's administrative costs, the remainder of the fee for issuance of the license plates shall be deposited to the credit of the be a blood donor account under Section 162.016, Health and Safety Code.

Sec. 504.642. TEXAS COUNTY CHILD WELFARE BOARD LICENSE PLATES. (a) The department shall issue Texas County Child Welfare Boards specialty license plates. The department shall design the license plates in consultation with the Texas Council of Child Welfare Boards, Inc.

(b) After deduction of the department's administrative costs, the remainder of the fee for issuance of the license plates shall be deposited to the credit of a special account for abused and neglected children established at the Department of Protective and Regulatory Services. Money in the account may be used only by the Department of Protective and Regulatory Services to fund programs and services supporting abused and neglected children under Section 264.004, Family Code.

Sec. 504.643. STAR DAY SCHOOL LIBRARY READERS ARE LEADERS LICENSE PLATES. (a) The department shall issue specialty license plates that include the words "STAR Day School Library Readers Are Leaders." The department shall design the license plates in consultation with the State of Texas Anniversary Remembrance (STAR) Day Foundation.

(b) After deduction of the department's administrative costs, the remainder of the fee for issuance of the license plates shall be deposited to the credit of the general revenue fund and used only by the Texas Education Agency in making grants to benefit the State of Texas Anniversary Remembrance (STAR) Day Foundation to be used only for the purpose of providing supplementary reading and service programs in partnership with public schools in this state for seventh and eighth grade public school students.

Sec. 504.644. MARINE MAMMAL RECOVERY LICENSE PLATES. (a) The department shall issue Marine Mammal Recovery specialty license plates. The department shall design the license plates in consultation with the Parks and Wildlife Department and the Texas Marine Mammal Stranding Network.

(b) After deduction of the department's administrative costs, the remainder of the fee for issuance of the license plates shall be deposited to the credit of an account in the state treasury. Money in the account may be used only by the Parks and Wildlife Department to support the activities of the Texas Marine Mammal Stranding Network in the recovery, rehabilitation, and release of stranded marine mammals. The Parks and Wildlife Department shall establish reporting and other mechanisms necessary to ensure that the money is spent for purposes for which it is dedicated.

Sec. 504.645. 4-H LICENSE PLATES. (a) The department shall issue specialty license plates that include the words "To Make the Best Better," the words "Texas 4-H," and the 4-H symbol of the four-leaf clover. The department shall design the license plates in consultation with the Texas 4-H and Youth Development Program.

(b) After deduction of the department's administrative costs, the remainder of the fee for issuance of the license plates shall be deposited to the credit of the general revenue fund and shall be used only by the Texas Cooperative Extension of the Texas A&M University System for 4-H and Youth Development Programs and to support the Texas Cooperative Extension's activities related to 4-H and Youth Development Programs.

Sec. 504.646. SMILE TEXAS STYLE LICENSE PLATES. (a) The department shall issue specialty license plates that include the words "Smile Texas Style." The department shall design the license plates in consultation with the Texas Dental Association.

(b) After deduction of the department's administrative costs, the remainder of the fee for issuance of the license plates shall be deposited to the credit of the general revenue fund to be used only by the Texas Department of Health in making grants to benefit the Texas Dental Association Financial Services for the sole use of providing charitable dental care.

Sec. 504.647. FIGHT TERRORISM LICENSE PLATES. (a) The department shall issue Fight Terrorism specialty license plates. The license plates shall include a pentagon-shaped border surrounding:

(1) the date "9-11-01" with the likeness of the World Trade Center towers forming the "11";

(2) the likeness of the United States flag; and

(3) the words "Fight Terrorism."

(b) The fee shall be deposited to the credit of the state highway fund.

Sec. 504.648. GOD BLESS TEXAS AND GOD BLESS AMERICA LICENSE PLATES. (a) The department shall issue specialty license plates that include the words "God Bless Texas" and "God Bless America."

(b) After deduction of the department's administrative costs, the remainder of the fee for issuance of the license plates shall be deposited to the credit of the state highway fund and may only be used for the Safe Routes to School Program.

(c) The fee for the license plates is \$40.

Sec. 504.649. TEXAS JUNETEENTH LICENSE PLATES. (a) The department shall issue Texas Juneteenth specialty license plates. The department shall design the license plates in consultation with the Texas Emancipation Juneteenth Cultural and Historical Commission.

(b) After deduction of the department's administrative costs, the remainder of the fee for issuance of the license plates shall be deposited to the credit of the Texas Emancipation Juneteenth Cultural and Historical Commission in a special account in the state treasury. Money in the account may be used only by the Texas Emancipation Juneteenth Cultural and Historical Commission for grants to Juneteenth USA to erect a Juneteenth Memorial Monument on the south grounds of the State Capitol, place Juneteenth monuments and markers in various

historical parts of Texas, develop a Juneteenth Museum, Cultural, and Educational Institute, Recreation Center, and Park, and otherwise support the activities and projects of Juneteenth USA and its affiliates.

Sec. 504.650. KEEPING TEXAS STRONG LICENSE PLATES. (a) The department shall issue Keeping Texas Strong specialty license plates. The department shall design the license plates in consultation with the Texas Alliance of Energy Producers.

(b) After deduction of the department's administrative costs, the remainder of the fee for issuance of the license plates shall be deposited to the credit of the Texas Alliance Education Program account in the general revenue fund. Money in the account may be used only by the Texas Education Agency to finance the education programs of the Texas Alliance of Energy Producers.

Sec. 504.651. MARCH OF DIMES LICENSE PLATES. (a) The department shall issue specialty license plates that include the words "March of Dimes." The department shall design the license plates in consultation with the March of Dimes Texas Chapter.

(b) After deduction of the department's administrative costs, the remainder of the fee for issuance of the license plates shall be deposited to the credit of the Texas Department of Health for use in the Birth Defects Registry.

Sec. 504.652. MASTER GARDENER LICENSE PLATES. (a) The department shall issue specialty license plates that include the seal of the Texas Master Gardener program of Texas Cooperative Extension.

(b) After deduction of the department's administrative costs, the remainder of the fee for issuance of the license plates shall be deposited to the credit of an account in the general revenue fund. Money in the account may be used only by Texas Cooperative Extension for graduate student assistantships within the Texas Master Gardener program and to support Texas Cooperative Extension's activities related to the Texas Master Gardener program.

Sec. 504.653. MOTHER-CHILD SURVIVORS EDUCATIONAL SCHOLARSHIP FUND LICENSE PLATES. (a) The department shall issue mother-child survivors educational scholarship fund specialty license plates. The department shall design the license plates in consultation with Texans for Equal Justice.

(b) After deduction of the department's administrative costs, the remainder of the fee for issuance of the license plates shall be deposited to the credit of the general revenue fund and may only be used by the attorney general to support the Texans for Equal Justice mother-child survivors educational scholarship fund for educational scholarships to:

(1) surviving spouses of homicide victims who have one or more minor children and who need further education to adequately support the family; and

(2) surviving children of homicide victims entering an institution of higher education or vocational school for the first time.

Sec. 504.654. EAGLE SCOUT LICENSE PLATES. (a) The department shall issue specialty license plates that bear a depiction of the Eagle Scout medal.

(b) After deduction of the department's administrative costs, the remainder of the fee for issuance of the license plates shall be deposited to the credit of the Eagle Scout account in the general revenue fund. Money in the account may be used only by the Texas Higher Education Coordinating Board in making grants to support projects sponsored by Boy Scout councils in this state. The Texas Higher Education Coordinating Board shall distribute grants under this section geographically as nearly as possible in proportion to the number of license plates issued under this section in each region of the state.

Sec. 504.655. TEJANO MONUMENT LICENSE PLATES. (a) The department shall issue Tejano Monument specialty license plates. The department shall design the license plates in consultation with The Tejano Monument, Inc.

(b) After deduction of the department's administrative costs, the remainder of the fee for issuance of the license plates shall be deposited to the credit of the Tejano Monument account in the general revenue fund. Money in the account may be used only by the State Preservation Board to design and erect a Tejano Monument for placement on the Capitol grounds or related educational programs.

Sec. 504.656. TEXAS LIONS CAMP LICENSE PLATES. (a) The department shall issue Texas Lions Camp specialty license plates. The department shall design the license plates in consultation with the Texas Lions League for Crippled Children.

(b) After deduction of the department's administrative costs, the remainder of the fee for issuance of the license plates shall be deposited to the credit of the Texas Lions Camp account in the state treasury. Money in the account may be used only by the Parks and Wildlife Department to support the activities of a designated nonprofit organization that is accredited by the American Camping Association and is licensed by the Texas Department of Health and whose primary purpose is to provide, without charge, a camp for physically disabled, hearing or vision impaired, and diabetic children who reside in this state, regardless of race, religion, or national origin. The Parks and Wildlife Department shall establish reporting and other mechanisms necessary to ensure that the money is spent only for the purposes for which it is dedicated.

[Sections 504.657-504.700 reserved for expansion]

SUBCHAPTER H. ADMINISTRATIVE PROVISIONS RELATING TO
SPECIALTY LICENSE PLATES FOR GENERAL DISTRIBUTION

Sec. 504.701. DISCONTINUANCE OF CERTAIN SPECIALTY LICENSE PLATES. (a) This section applies only to license plates authorized by:

- (1) Section 504.602;
- (2) Section 504.603;
- (3) Section 504.604;
- (4) Section 504.605;
- (5) Section 504.606;
- (6) Section 504.607;
- (7) Section 504.608;
- (8) Section 504.609;
- (9) Section 504.610;
- (10) Section 504.611;

- (11) Section 504.612;
- (12) Section 504.613;
- (13) Section 504.614; or
- (14) Section 504.615.

(b) Except as provided by Subsections (d) and (e), on or after September 1, 2004, the department may continue to issue license plates to which this section applies only if before that date at least:

(1) 3,500 sets of the license plates authorized by the applicable section of this chapter have been issued or presold;

(2) \$15,000 has been received by the department from the issuance of license plates under that section; or

(3) \$15,000 has been deposited with the department for the continued issuance of those license plates.

(c) If before September 1, 2004, one of the conditions described by Subsection (b) is not met for the license plate, the section that authorizes the issuance of that license plate expires on that date.

(d) On or after September 1, 2004, the department may continue to issue license plates under:

(1) Section 504.615 for a particular institution of higher education or private college or university only if before that date:

(A) 1,500 sets of license plates for the particular institution, college, or university have been issued or presold;

(B) \$15,000 has been received by the department from the issuance of the license plates for that institution, college, or university; or

(C) \$15,000 has been deposited with the department for the continued issuance of the license plates for that institution, college, or university;
or

(2) Section 504.614 for a particular professional sports team only if before that date:

(A) 3,500 sets of the license plates for that sports team have been issued or presold;

(B) \$15,000 has been received by the department from the issuance of license plates for that sports team; or

(C) \$15,000 has been deposited with the department for the continued issuance of license plates for that sports team.

(e) Money deposited with the department under Subsection (b)(3), (d)(1)(C), or (d)(2)(C) shall be returned by the department to the person who made the deposit only after the requisite number of license plates under those subsections are issued or presold.

Sec. 504.702. SPECIALTY LICENSE PLATES AUTHORIZED AFTER JANUARY 1, 1999. (a) This section applies only to specialty license plates that are authorized to be issued by a law that takes effect on or after January 1, 1999.

(b) The department may manufacture the specialty license plates only if a request for manufacture of the license plates is filed with the department. The request must be:

- (1) made on a form adopted by the department;

(2) filed before the fifth anniversary of the effective date of the law that authorizes the issuance of the specialty license plates; and

(3) accompanied by:

(A) a deposit of \$15,000; or

(B) applications for issuance of at least 3,500 sets of the license plates plus the fees for issuance of that number of sets.

(c) Money deposited with the department under Subsection (b)(3)(A) shall be returned to the person who made the deposit only if 3,500 sets of the applicable license plates are issued or presold.

(d) If a request is not filed with the department before the date specified by Subsection (b)(2), the law that authorizes the issuance of the specialty license plates expires on that date.

[Sections 504.703-504.800 reserved for expansion]

SUBCHAPTER I. DEVELOPMENT OF NEW SPECIALTY LICENSE PLATES

Sec. 504.801. CREATION OF NEW SPECIALTY LICENSE PLATES BY THE DEPARTMENT. (a) The department may create new specialty license plates on its own initiative or on receipt of an application from a potential sponsor. A new specialty license plate created under this section must comply with each requirement of Section 504.702 unless the license is created by the department on its own initiative. The department may permit a specialty license plate created under this section to be personalized. The redesign of an existing specialty license plate at the request of a sponsor shall be treated like the issuance of a new specialty license plate, except that the department may require a lower deposit amount to reflect the actual costs of redesigning the license plate.

(b) Any person may sponsor a new specialty license plate by submitting an application to the department. An application may nominate a state agency to receive funds derived from the issuance of the license plates. The application may also identify uses to which those funds should be appropriated.

(c) The department shall design each new specialty license plate in consultation with the sponsor, if any, that applied for creation of that specialty license plate. The department may refuse to create a new specialty license plate if the design might be offensive to any member of the public, if the nominated state agency does not consent to receipt of the funds derived from issuance of the license plate, if the uses identified for those funds might violate a statute or constitutional provision, or for any other reason established by rule. At the request of the sponsor, distribution of the license plate may be limited by the department.

(d) The fee for issuance of license plates authorized under this subchapter is \$30 unless the department sets a higher fee.

(e) For each fee collected:

(1) \$8 shall be used to reimburse the department for its administrative costs; and

(2) the remainder shall be deposited to the credit of:

(A) the specialty license plate fund, which is an account in the general revenue fund, if the sponsor nominated a state agency to receive the funds; or

(B) the state highway fund if the sponsor did not nominate a state agency to receive the funds or if there is no sponsor.

(f) Subchapter D, Chapter 316, Government Code, and Section 403.095, Government Code, do not apply to fees collected under this section.

(g) The department may report to the legislature at any time concerning implementation of this section. The report may include recommendations concerning the appropriations, by amount, state agency, and uses, that are necessary to implement the requests of sponsors.

(h) The department may vary the design of a license plate created under this section to accommodate or reflect its use on a motor vehicle other than a passenger car or light truck.

(i) The sponsor of a new specialty plate may not be a for-profit enterprise.

[Sections 504.802-504.850 reserved for expansion]

SUBCHAPTER J. MARKETING OF SPECIALTY
PLATES THROUGH PRIVATE VENDOR

Sec. 504.851. CONTRACT WITH PRIVATE VENDOR. (a) The commission may authorize the department to enter into a contract with the private vendor whose proposal is most advantageous to the state as determined from competitive sealed proposals for the marketing and sale of:

(1) personalized prestige license plates authorized by Section 504.101;

or

(2) other specialized license plates authorized by this subchapter.

(b) Instead of the fees established by Section 504.101(c), if the commission authorizes the department to contract with a private vendor under Subsection (a)(1) for the marketing and sale of personalized prestige license plates, the commission by rule shall establish fees for the issuance or renewal of personalized prestige license plates that are marketed and sold by the private vendor. Fees must be reasonable and not less than the greater of:

(1) the amounts necessary to allow the department to recover all costs to the department associated with the evaluation of the competitive sealed proposals received by the department and with the implementation and enforcement of the contract, including direct, indirect, and administrative costs;

or

(2) the amount established by Section 504.101(c).

(c) If the commission authorizes the department to contract with a private vendor under Subsection (a)(2) for the marketing and sale of other specialized license plates authorized by this subchapter, including specialized license plates that may be personalized, the commission by rule shall establish the fees for the issuance or renewal of specialized license plates that are marketed and sold by the private vendor. Fees must be reasonable and not less than the amounts necessary to allow the department to recover all costs to the department associated with the evaluation of the competitive sealed proposals received by the department and

with the implementation and enforcement of the contract, including direct, indirect, and administrative costs. A fee established under this subsection is in addition to:

(1) the registration fee and any optional registration fee prescribed by this chapter for the vehicle for which the specialized license plates are issued;

(2) any additional fee prescribed by this subchapter for the issuance of the specialized license plates for that vehicle; and

(3) any additional fee prescribed by this subchapter for the issuance of personalized license plates for that vehicle.

(d) At any time as necessary to comply with Subsection (b) or (c), the commission may increase or decrease the amount of a fee established under the applicable subsection.

(e) A contract with a private vendor under Subsection (a)(1) is payable only from amounts derived from the collection of the fee established under Subsection (b). A contract with a private vendor under Subsection (a)(2) is payable only from amounts derived from the collection of the fee established under Subsection (c).

(f) The department may create new design and color combinations for personalized prestige license plates that are marketed or sold by a private vendor under a contract entered into under Subsection (a)(1). Each approved license plate design and color combination remains the property of the department.

(g) The department may create new design and color combinations for specialized license plates, including specialized license plates that may be personalized, that are marketed or sold by a private vendor under a contract entered into under Subsection (a)(2). Each approved license plate design and color combination remains the property of the department. This subsection does not authorize:

(1) the department to approve a design or color combination for a specialized license plate that is inconsistent with the design or color combination specified for the license plate by the section of this subchapter that authorizes the issuance of the specialized license plate; or

(2) the private vendor to market or sell a specialized license plate with a design or color combination that is inconsistent with the design or color combination specified by that section.

(h) In connection with a license plate that is marketed or sold by a private vendor under contract, the department may cancel a license plate or require the discontinuation of a license plate design or color combination at any time if the department determines that the cancellation or discontinuation is in the best interest of this state or the motoring public.

(i) A contract entered into by the department with a private vendor under this section:

(1) must comply with any law generally applicable to a contract for services entered into by the department;

(2) must require the private vendor to render at least quarterly to the department periodic accounts that accurately detail all material transactions, including information reasonably required by the department to support fees that are collected by the vendor, and to regularly remit all money payable to the department under the contract; and

(3) may allow or require the private vendor to establish an electronic infrastructure coordinated and compatible with the department's registration system, by which motor vehicle owners may electronically send and receive applications, other documents, or required payments, and that, when secure access is necessary, can be electronically validated by the department.

(j) From amounts received by the department, the department shall deposit to the credit of the state highway fund an amount sufficient to enable the department to recover its administrative costs for all license plates issued under this section, including any payments to the vendor under Subsection (a), and any other amounts allocated to the state highway fund by another law. To the extent that disposition of other amounts received from the vendor are governed by another law, those amounts shall be deposited in accordance with the other law, and for each type of license plate the amount charged for the license plate may not be less than the amount in effect on January 1, 2003. Any additional amount received from the vendor shall be deposited to the credit of the general revenue fund.

SECTION 7. Chapter 551, Transportation Code, is amended by adding Subchapter D to read as follows:

SUBCHAPTER D. NEIGHBORHOOD ELECTRIC VEHICLES

Sec. 551.301. DEFINITION. In this subchapter, "neighborhood electric vehicle" means a vehicle subject to Federal Motor Vehicle Safety Standard No. 500 (49 C.F.R. Section 571.500).

Sec. 551.302. REGISTRATION. The Texas Department of Transportation may adopt rules relating to the registration and issuance of license plates to neighborhood electric vehicles.

Sec. 551.303. OPERATION ON ROADWAYS. (a) A neighborhood electric vehicle may be operated only on a street or highway for which the posted speed limit is 35 miles per hour or less. A neighborhood electric vehicle may cross a road or street at an intersection where the road or street has a posted speed limit of more than 35 miles per hour.

(b) A county or municipality may prohibit the operation of a neighborhood electric vehicle on a street or highway if the governing body of the county or municipality determines that the prohibition is necessary in the interest of safety.

(c) The Texas Department of Transportation may prohibit the operation of a neighborhood electric vehicle on a highway if that department determines that the prohibition is necessary in the interest of safety.

SECTION 8. Subchapter B, Chapter 7, Education Code, is amended by adding Section 7.027 to read as follows:

Sec. 7.027. TEXAS MUSIC FOUNDATION ACCOUNT. (a) The Texas Music Foundation account is established as a separate account in the general revenue fund. The account is composed of money deposited to the credit of the account under Section 504.639, Transportation Code. Money in the account may be used only for the purposes of this section.

(b) The Music, Film, Television, and Multimedia Office in the governor's office shall administer the account. The agency may spend money credited to the account only to make grants to benefit music-related educational and community programs sponsored by nonprofit organizations based in this state. An administration fee of \$5 per license plate shall be retained by the Music, Film, Television, and Multimedia Office for performance of administrative duties.

SECTION 9. Chapter 162, Health and Safety Code, is amended by adding Sections 162.016 and 162.017 to read as follows:

Sec. 162.016. BE A BLOOD DONOR ACCOUNT. (a) The be a blood donor account is a separate account in the general revenue fund. The account is composed of:

(1) money deposited to the credit of the account under Section 504.641, Transportation Code; and

(2) gifts, grants, donations, and legislative appropriations.

(b) The department administers the account and may spend money credited to the account only to:

(1) make grants to nonprofit blood centers in this state for programs to recruit and retain volunteer blood donors; and

(2) defray the cost of administering the account.

(c) The board:

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

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

Sec. 162.017. BE A BLOOD DONOR ADVISORY COMMITTEE. (a) The commissioner shall appoint a five-member be a blood donor advisory committee composed of:

(1) one volunteer blood donor who has given at least one gallon of blood in the two years preceding the appointment;

(2) two representatives from nonprofit blood centers;

(3) one person who has received a blood transfusion in the five years preceding the appointment; and

(4) one representative from the department.

(b) The commissioner shall designate one member as presiding officer of the committee.

(c) The committee shall:

(1) meet at least annually or as called by the commissioner;

(2) assist the board in establishing guidelines for the expenditure of money credited to the be a blood donor account; and

(3) review and make recommendations to the department on applications submitted to the department for grants funded with money credited to the be a blood donor account.

(d) Members of the committee serve without compensation and are not entitled to reimbursement for expenses. Members of the committee serve staggered four-year terms, with the terms of as near one-half as possible of the members expiring on January 31 of each even-numbered year.

SECTION 10. (a) Subchapter F, Chapter 502, Transportation Code, is repealed.

(b) The repeal of Section 502.273, Transportation Code, by this Act does not affect the validity of license plates previously issued under that section, which shall be governed by Section 504.801, Transportation Code, as added by this Act.

SECTION 11. Notwithstanding Section 504.403(a), Transportation Code, as added by this Act, a retired state or federal judge who applied for or was issued state judge or federal judge license plates under Section 502.297, Transportation Code, as that law existed before the effective date of this Act, is entitled to apply for and to be issued state judge license plates or federal judge license plates, as applicable, under Section 504.403, Transportation Code, as added by this Act.

SECTION 12. (a) This section shall be implemented only if the Legislative Budget Board determines that this Act would otherwise reduce the amount of money allocated to the general revenue fund from the issuance by the Texas Department of Transportation of specialty license plates during fiscal years 2004 and 2005 relative to the amount of money allocated to the general revenue fund from the issuance by that department of specialized license plates during fiscal years 2002 and 2003.

(b) The Texas Department of Transportation shall reduce the amount of fees allocated to the department's administrative costs and allocate that amount to general revenue for deposit to the credit of the accounts specified in each section of Chapter 504, Transportation Code, as added by this Act. The amount of the reduction and reallocation shall be the amount necessary to ensure that sums allocated to the general revenue fund are not reduced as specified in Subsection (a) of this section. The reduction in administrative costs shall be taken proportionately from each specialty plate so that each will be reduced by the same percentage amount.

(c) This section expires September 1, 2005.

SECTION 13. This Act takes effect September 1, 2003.

HB 2971 - STATEMENT OF LEGISLATIVE INTENT

REPRESENTATIVE WISE: My question kind of revolves around what Representative Hartnett asked about. And I just want to make sure that nothing was added in the bill that would allow for-profit corporations to sponsor or pay for bills—I'm sorry, pay for license plates—other than professional sports teams.

REPRESENTATIVE HARPER-BROWN: No, that is exactly right. That language clarified that none—that was taken out of the bill entirely, except for professional sports teams.

WISE: And for-profit corporations—such as SBC, for example, which has a non-profit SBC Foundation—neither SBC nor SBC Foundation would be able to sponsor a plate that would have their name, their logo, their slogan, or their trademark on the plate?

HARPER-BROWN: No trademarks would be allowed, or their names or slogans.

REMARKS ORDERED PRINTED

Representative Wise moved to print remarks between Representative Wise and Representative Harper-Brown.

The motion prevailed without objection.

Representative Harper-Brown moved to adopt the conference committee report on **HB 2971**.

A record vote was requested.

The motion prevailed by (Record 936): 116 Yeas, 27 Nays, 3 Present, not voting.

Yeas — Allen; Bailey; Baxter; Berman; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Callegari; Campbell; Capelo; Casteel; Chavez; Chisum; Christian; Cook, B.; Cook, R.; Corte; Crabb; Crownover; Davis, J.; Dawson; Delisi; Denny; Deshotel; Dukes; Dunnam; Dutton; Edwards; Eiland; Eissler; Elkins; Ellis; Farabee; Flores; Flynn; Gallego; Garza; Gattis; Giddings; Goodman; Goolsby; Griggs; Grusendorf; Guillen; Gutierrez; Hamilton; Hamric; Hardcastle; Harper-Brown; Heflin; Hegar; Hill; Hochberg; Hodge; Homer; Hope; Howard; Hughes; Hunter; Hupp; Isett; Jones, D.; Jones, E.; Jones, J.; Keel; Keffer, B.; Keffer, J.; King; Krusee; Kuempel; Laney; Laubenberg; Lewis; Mabry; Madden; Marchant; McCall; McReynolds; Menendez; Mercer; Merritt; Mowery; Nixon; Paxton; Phillips; Pickett; Pitts; Puente; Quintanilla; Raymond; Reyna; Ritter; Seaman; Smith, T.; Smith, W.; Smithee; Solis; Solomons; Stick; Swinford; Talton; Taylor; Truitt; Turner; Uresti; Van Arsdale; West; Wilson; Wise; Wohlgemuth; Wolens; Wong; Woolley; Zedler.

Nays — Alonzo; Burnam; Castro; Coleman; Davis, Y.; Escobar; Farrar; Geren; Haggerty; Hopson; Kolkhorst; Luna; Martinez Fischer; McClendon; Moreno, J.; Moreno, P.; Naishtat; Noriega; Oliveira; Olivo; Peña; Riddle; Rodriguez; Rose; Telford; Thompson; Villarreal.

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

Absent — Canales; Hilderbran; Miller; Morrison.

STATEMENT OF VOTE

When Record No. 936 was taken, I was temporarily out of the house chamber. I would have voted yes.

Canales

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. 59).

SB 976 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Morrison submitted the conference committee report on **SB 976**.

Representative Morrison moved to adopt the conference committee report on **SB 976**.

The motion prevailed.

SB 286 - 24 HOUR LAYOUT RULE SUSPENDED

Representative Morrison moved to suspend Rule 13, Section 10 of the house rules to consider the conference committee report on **SB 286** which was ineligible for consideration at this time.

The motion prevailed.

SB 286 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Morrison submitted the conference committee report on **SB 286**.

(Castro in the chair)

Representative Morrison moved to adopt the conference committee report on **SB 286**.

The motion prevailed.

HR 1805 - ADOPTED

(by J. Moreno)

Representative J. Moreno moved to suspend all necessary rules to take up and consider at this time **HR 1805**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 1805, Honoring Azra Asaduddi, Democratic precinct judge of Harris County.

HR 1805 was adopted without objection.

On motion of Representative Raymond, the names of all the members of the house were added to **HR 1805** as signers thereof.

HR 1806 - ADOPTED

(by J. Moreno)

Representative J. Moreno moved to suspend all necessary rules to take up and consider at this time **HR 1806**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 1806, Honoring Ventura Ramirez, Democratic precinct judge of Harris County.

HR 1806 was adopted without objection.

On motion of Representative Raymond, the names of all the members of the house were added to **HR 1806** as signers thereof.

HR 1807 - ADOPTED
(by J. Moreno)

Representative J. Moreno moved to suspend all necessary rules to take up and consider at this time **HR 1807**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 1807, Honoring Richard Ochoa on receiving a scholarship from the Houston Livestock Show and Rodeo.

HR 1807 was adopted without objection.

On motion of Representative Raymond, the names of all the members of the house were added to **HR 1807** as signers thereof.

HR 1808 - ADOPTED
(by J. Moreno)

Representative J. Moreno moved to suspend all necessary rules to take up and consider at this time **HR 1808**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 1808, Honoring Amanda Lorraine Bice on receiving a scholarship from the Houston Livestock Show and Rodeo.

HR 1808 was adopted without objection.

On motion of Representative Raymond, the names of all the members of the house were added to **HR 1808** as signers thereof.

HR 1809 - ADOPTED
(by J. Moreno)

Representative J. Moreno moved to suspend all necessary rules to take up and consider at this time **HR 1809**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 1809, Honoring Evelyn Velasquez of Pasadena for her service as a legislative intern.

HR 1809 was adopted without objection.

On motion of Representative Raymond, the names of all the members of the house were added to **HR 1809** as signers thereof.

HR 1810 - ADOPTED
(by J. Moreno)

Representative J. Moreno moved to suspend all necessary rules to take up and consider at this time **HR 1810**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 1810, Honoring Daniel Hester, Democratic precinct judge of Harris County.

HR 1810 was adopted without objection.

On motion of Representative Raymond, the names of all the members of the house were added to **HR 1810** as signers thereof.

HR 1811 - ADOPTED
(by J. Moreno)

Representative J. Moreno moved to suspend all necessary rules to take up and consider at this time **HR 1811**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 1811, Honoring Arminda Mesa, Democratic precinct judge of Harris County.

HR 1811 was adopted without objection.

On motion of Representative Raymond, the names of all the members of the house were added to **HR 1811** as signers thereof.

HR 1812 - ADOPTED
(by J. Moreno)

Representative J. Moreno moved to suspend all necessary rules to take up and consider at this time **HR 1812**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 1812, Honoring Coleman Buster Philley as the 2003 valedictorian of Galena Park High School.

HR 1812 was adopted without objection.

On motion of Representative Raymond, the names of all the members of the house were added to **HR 1812** as signers thereof.

HR 1813 - ADOPTED
(by J. Moreno)

Representative J. Moreno moved to suspend all necessary rules to take up and consider at this time **HR 1813**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 1813, Honoring Ozny Lucia Olvera as the 2003 salutatorian of Galena Park High School.

HR 1813 was adopted without objection.

On motion of Representative Raymond, the names of all the members of the house were added to **HR 1813** as signers thereof.

HR 1814 - ADOPTED
(by J. Moreno)

Representative J. Moreno moved to suspend all necessary rules to take up and consider at this time **HR 1814**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 1814, Honoring Robert Clowers, Democratic precinct judge of Harris County.

HR 1814 was adopted without objection.

On motion of Representative Raymond, the names of all the members of the house were added to **HR 1814** as signers thereof.

HR 1815 - ADOPTED
(by J. Moreno)

Representative J. Moreno moved to suspend all necessary rules to take up and consider at this time **HR 1815**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 1815, Honoring Wayne Nichols, Democratic precinct judge of Harris County.

HR 1815 was adopted without objection.

On motion of Representative Raymond, the names of all the members of the house were added to **HR 1815** as signers thereof.

HR 1816 - ADOPTED
(by J. Moreno)

Representative J. Moreno moved to suspend all necessary rules to take up and consider at this time **HR 1816**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 1816, Honoring Joe Reyna, Democratic precinct judge of Harris County.

HR 1816 was adopted without objection.

On motion of Representative Raymond, the names of all the members of the house were added to **HR 1816** as signers thereof.

HR 1817 - ADOPTED
(by J. Moreno)

Representative J. Moreno moved to suspend all necessary rules to take up and consider at this time **HR 1817**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 1817, Honoring Wilbert Biggs, Democratic precinct judge of Harris County.

HR 1817 was adopted without objection.

On motion of Representative Raymond, the names of all the members of the house were added to **HR 1817** as signers thereof.

HR 1818 - ADOPTED
(by J. Moreno)

Representative J. Moreno moved to suspend all necessary rules to take up and consider at this time **HR 1818**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 1818, Honoring Antonio Valdez, Democratic precinct judge of Harris County.

HR 1818 was adopted without objection.

On motion of Representative Raymond, the names of all the members of the house were added to **HR 1818** as signers thereof.

HR 1819 - ADOPTED
(by J. Moreno)

Representative J. Moreno moved to suspend all necessary rules to take up and consider at this time **HR 1819**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 1819, Honoring Ida Alvarado, Democratic precinct judge of Harris County.

HR 1819 was adopted without objection.

On motion of Representative Raymond, the names of all the members of the house were added to **HR 1819** as signers thereof.

HR 1820 - ADOPTED
(by J. Moreno)

Representative J. Moreno moved to suspend all necessary rules to take up and consider at this time **HR 1820**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 1820, Honoring Andrea Jasso, Democratic precinct judge of Harris County.

HR 1820 was adopted without objection.

On motion of Representative Raymond, the names of all the members of the house were added to **HR 1820** as signers thereof.

HR 1821 - ADOPTED
(by J. Moreno)

Representative J. Moreno moved to suspend all necessary rules to take up and consider at this time **HR 1821**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 1821, Honoring Richard Cortez, Democratic precinct judge of Harris County.

HR 1821 was adopted without objection.

On motion of Representative Raymond, the names of all the members of the house were added to **HR 1821** as signers thereof.

HR 1822 - ADOPTED
(by J. Moreno)

Representative J. Moreno moved to suspend all necessary rules to take up and consider at this time **HR 1822**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 1822, Honoring Mario Moreno, Democratic precinct judge of Harris County.

HR 1822 was adopted without objection.

On motion of Representative Raymond, the names of all the members of the house were added to **HR 1822** as signers thereof.

HR 1823 - ADOPTED
(by J. Moreno)

Representative J. Moreno moved to suspend all necessary rules to take up and consider at this time **HR 1823**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 1823, Honoring Rose Springs, Democratic precinct judge of Harris County.

HR 1823 was adopted without objection.

On motion of Representative Raymond, the names of all the members of the house were added to **HR 1823** as signers thereof.

HR 1824 - ADOPTED
(by J. Moreno)

Representative J. Moreno moved to suspend all necessary rules to take up and consider at this time **HR 1824**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 1824, Honoring James Lopez, Democratic precinct judge of Harris County.

HR 1824 was adopted without objection.

On motion of Representative Raymond, the names of all the members of the house were added to **HR 1824** as signers thereof.

HR 1825 - ADOPTED
(by J. Moreno)

Representative J. Moreno moved to suspend all necessary rules to take up and consider at this time **HR 1825**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 1825, Honoring Claudia Flores, Democratic precinct judge of Harris County.

HR 1825 was adopted without objection.

On motion of Representative Raymond, the names of all the members of the house were added to **HR 1825** as signers thereof.

HR 1826 - ADOPTED
(by J. Moreno)

Representative J. Moreno moved to suspend all necessary rules to take up and consider at this time **HR 1826**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 1826, Honoring Benito Coronado, Democratic precinct judge of Harris County.

HR 1826 was adopted without objection.

On motion of Representative Raymond, the names of all the members of the house were added to **HR 1826** as signers thereof.

HR 1827 - ADOPTED
(by J. Moreno)

Representative J. Moreno moved to suspend all necessary rules to take up and consider at this time **HR 1827**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 1827, Honoring Nona Phillips, Democratic precinct judge of Harris County.

HR 1827 was adopted without objection.

On motion of Representative Raymond, the names of all the members of the house were added to **HR 1827** as signers thereof.

HR 1828 - ADOPTED
(by J. Moreno)

Representative J. Moreno moved to suspend all necessary rules to take up and consider at this time **HR 1828**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 1828, Honoring Larry Blevins, Democratic precinct judge of Harris County.

HR 1828 was adopted without objection.

On motion of Representative Raymond, the names of all the members of the house were added to **HR 1828** as signers thereof.

HR 1829 - ADOPTED
(by J. Moreno)

Representative J. Moreno moved to suspend all necessary rules to take up and consider at this time **HR 1829**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 1829, Honoring Lois Kerschen, Democratic precinct judge of Harris County.

HR 1829 was adopted without objection.

On motion of Representative Raymond, the names of all the members of the house were added to **HR 1829** as signers thereof.

HR 1830 - ADOPTED
(by J. Moreno)

Representative J. Moreno moved to suspend all necessary rules to take up and consider at this time **HR 1830**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 1830, Honoring Truman Cumming, Democratic precinct judge of Harris County.

HR 1830 was adopted without objection.

On motion of Representative Raymond, the names of all the members of the house were added to **HR 1830** as signers thereof.

HR 1831 - ADOPTED
(by J. Moreno)

Representative J. Moreno moved to suspend all necessary rules to take up and consider at this time **HR 1831**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 1831, Honoring Carolyn Jones, Democratic precinct judge of Harris County.

HR 1831 was adopted without objection.

On motion of Representative Raymond, the names of all the members of the house were added to **HR 1831** as signers thereof.

HR 1832 - ADOPTED
(by J. Moreno)

Representative J. Moreno moved to suspend all necessary rules to take up and consider at this time **HR 1832**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 1832, Honoring Luis Velazquez, Democratic precinct judge of Harris County.

HR 1832 was adopted without objection.

On motion of Representative Raymond, the names of all the members of the house were added to **HR 1832** as signers thereof.

HR 1833 - ADOPTED
(by J. Moreno)

Representative J. Moreno moved to suspend all necessary rules to take up and consider at this time **HR 1833**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 1833, Honoring Chris Onwukwe, Democratic precinct judge of Harris County.

HR 1833 was adopted without objection.

On motion of Representative Raymond, the names of all the members of the house were added to **HR 1833** as signers thereof.

HR 1834 - ADOPTED
(by J. Moreno)

Representative J. Moreno moved to suspend all necessary rules to take up and consider at this time **HR 1834**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 1834, Honoring Vanessa Hernandez on receiving a scholarship from the Houston Livestock Show and Rodeo.

HR 1834 was adopted without objection.

On motion of Representative Raymond, the names of all the members of the house were added to **HR 1834** as signers thereof.

HR 1835 - ADOPTED
(by J. Moreno)

Representative J. Moreno moved to suspend all necessary rules to take up and consider at this time **HR 1835**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 1835, Honoring Randall Doyle, Jr., and Eloy Cardenas of the Houston area for their loyalty to one another and their service to their country.

HR 1835 was adopted without objection.

On motion of Representative Raymond, the names of all the members of the house were added to **HR 1835** as signers thereof.

HR 1836 - ADOPTED
(by J. Moreno)

Representative J. Moreno moved to suspend all necessary rules to take up and consider at this time **HR 1836**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 1836, Honoring Carolyn McCain for her contributions to multicultural education.

HR 1836 was adopted without objection.

On motion of Representative Raymond, the names of all the members of the house were added to **HR 1836** as signers thereof.

HR 1837 - ADOPTED
(by J. Moreno)

Representative J. Moreno moved to suspend all necessary rules to take up and consider at this time **HR 1837**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 1837, Honoring Jess Stokely for his service to the community through the Christian Alliance.

HR 1837 was adopted without objection.

On motion of Representative Raymond, the names of all the members of the house were added to **HR 1837** as signers thereof.

HR 1838 - ADOPTED
(by J. Moreno)

Representative J. Moreno moved to suspend all necessary rules to take up and consider at this time **HR 1838**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 1838, Honoring Danielle Perry of Houston for her legislative service in the Capitol office of State Representative Joe Moreno.

HR 1838 was adopted without objection.

On motion of Representative Raymond, the names of all the members of the house were added to **HR 1838** as signers thereof.

HR 1839 - ADOPTED
(by J. Moreno)

Representative J. Moreno moved to suspend all necessary rules to take up and consider at this time **HR 1839**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 1839, Honoring Jamaal Rashad Smith for his legislative service in the district office of State Representative Joe Moreno.

HR 1839 was adopted without objection.

On motion of Representative Raymond, the names of all the members of the house were added to **HR 1839** as signers thereof.

HR 1840 - ADOPTED
(by J. Moreno)

Representative J. Moreno moved to suspend all necessary rules to take up and consider at this time **HR 1840**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 1840, Honoring the life of George Garrett of Galena Park.

HR 1840 was adopted without objection.

On motion of Representative Raymond, the names of all the members of the house were added to **HR 1840** as signers thereof.

HR 1841 - ADOPTED
(by J. Moreno)

Representative J. Moreno moved to suspend all necessary rules to take up and consider at this time **HR 1841**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 1841, Honoring Gerardo Trejo of Pasadena for being the 2003 valedictorian of Pasadena High School.

HR 1841 was adopted without objection.

On motion of Representative Raymond, the names of all the members of the house were added to **HR 1841** as signers thereof.

HR 1842 - ADOPTED
(by J. Moreno)

Representative J. Moreno moved to suspend all necessary rules to take up and consider at this time **HR 1842**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 1842, Honoring Tricia Anderson on receiving a scholarship from the Houston Livestock Show and Rodeo.

HR 1842 was adopted without objection.

On motion of Representative Raymond, the names of all the members of the house were added to **HR 1842** as signers thereof.

HR 1843 - ADOPTED
(by J. Moreno)

Representative J. Moreno moved to suspend all necessary rules to take up and consider at this time **HR 1843**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 1843, Honoring Monica Acuna on receiving a scholarship from the Houston Livestock Show and Rodeo.

HR 1843 was adopted without objection.

On motion of Representative Raymond, the names of all the members of the house were added to **HR 1843** as signers thereof.

HR 1844 - ADOPTED
(by J. Moreno)

Representative J. Moreno moved to suspend all necessary rules to take up and consider at this time **HR 1844**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 1844, Honoring Adam Lewis Philley on receiving a scholarship from the Houston Livestock Show and Rodeo.

HR 1844 was adopted without objection.

On motion of Representative Raymond, the names of all the members of the house were added to **HR 1844** as signers thereof.

HR 1845 - ADOPTED
(by J. Moreno)

Representative J. Moreno moved to suspend all necessary rules to take up and consider at this time **HR 1845**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 1845, Honoring Jose F. Segovia, Jr., on receiving a scholarship from the Houston Livestock Show and Rodeo.

HR 1845 was adopted without objection.

On motion of Representative Raymond, the names of all the members of the house were added to **HR 1845** as signers thereof.

HR 1846 - ADOPTED
(by J. Moreno)

Representative J. Moreno moved to suspend all necessary rules to take up and consider at this time **HR 1846**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 1846, Honoring Daisy May O'Donnell on receiving a scholarship from the Houston Livestock Show and Rodeo.

HR 1846 was adopted without objection.

On motion of Representative Raymond, the names of all the members of the house were added to **HR 1846** as signers thereof.

HR 1847 - ADOPTED
(by J. Moreno)

Representative J. Moreno moved to suspend all necessary rules to take up and consider at this time **HR 1847**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 1847, Honoring Staci Leigh Zost on receiving a scholarship from the Houston Livestock Show and Rodeo.

HR 1847 was adopted without objection.

On motion of Representative Raymond, the names of all the members of the house were added to **HR 1847** as signers thereof.

HR 1875 - ADOPTED
(by Branch)

Representative Branch moved to suspend all necessary rules to take up and consider at this time **HR 1875**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 1875, Congratulating the Highland Park High School girls' tennis team on winning the 2003 Class 4A state singles and doubles championships.

HR 1875 was adopted without objection.

HR 1876 - ADOPTED
(by Farabee)

Representative Farabee moved to suspend all necessary rules to take up and consider at this time **HR 1876**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 1876, In memory of Bob Schleider of North Texas.

HR 1876 was unanimously adopted by a rising vote.

HR 1874 - ADOPTED
(by Driver)

Representative Driver moved to suspend all necessary rules to take up and consider at this time **HR 1874**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 1874, Recognizing June 2003 as Texas Senior Mobility Awareness Month.

HR 1874 was adopted without objection.

HR 1798 - ADOPTED
(by Chavez)

Representative Chavez moved to suspend all necessary rules to take up and consider at this time **HR 1798**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 1798, In memory of the immigrants who lost their lives after being abandoned in Victoria, Texas.

HR 1798 was unanimously adopted by a rising vote.

HR 1799 - ADOPTED
(by Chavez)

Representative Chavez moved to suspend all necessary rules to take up and consider at this time **HR 1799**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 1799, Honoring Jessica Lynch for her courage during Operation Iraqi Freedom.

HR 1799 was adopted without objection.

HR 1800 - ADOPTED
(by Chavez)

Representative Chavez moved to suspend all necessary rules to take up and consider at this time **HR 1800**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 1800, Honoring Captain Joel Ehler for his service during Operation Iraqi Freedom.

HR 1800 was adopted without objection.

HR 1801 - ADOPTED
(by Chavez)

Representative Chavez moved to suspend all necessary rules to take up and consider at this time **HR 1801**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 1801, Congratulating Judge Guadalupe Rivera on her induction into the 2003 El Paso County Democratic Hall of Fame.

HR 1801 was adopted without objection.

HR 1802 - ADOPTED
(by Chavez)

Representative Chavez moved to suspend all necessary rules to take up and consider at this time **HR 1802**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 1802, Congratulating Santos "Super" Sanchez on his induction into the 2003 El Paso County Democratic Hall of Fame.

HR 1802 was adopted without objection.

HR 1696 - ADOPTED
(by Raymond)

Representative Raymond moved to suspend all necessary rules to take up and consider at this time **HR 1696**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 1696, In memory of Enrique A. "Kike" Mejia, Jr., of Laredo.

HR 1696 was unanimously adopted by a rising vote.

HR 1863 - ADOPTED
(by Raymond)

Representative Raymond moved to suspend all necessary rules to take up and consider at this time **HR 1863**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 1863, In memory of Arnulfo Perez, Jr.

HR 1863 was unanimously adopted by a rising vote.

HR 1868 - ADOPTED
(by Eiland)

The following privileged resolution was laid before the house:

HR 1868

BE IT RESOLVED by the House of Representatives of the State of Texas, 78th Legislature, Regular Session, 2003, That House Rule 13, Section 9(a), be suspended in part as provided by House Rule 13, Section 9(f), to enable the conference committee appointed to resolve the differences on **SB 463**, relating to structures that constitute insurable property under the Texas Windstorm Insurance Association, to consider and take action on the following matter:

(1) House Rule 13, Section 9(a)(1), is suspended to permit the committee to change Section 1 of the bill to read as follows:

SECTION 1. Subsection (f), Section 3, Article 21.49, Insurance Code, is amended to read as follows:

(f) "Insurable Property" means immovable property at fixed locations in a catastrophe area or corporeal movable property located therein (as may be designated in the plan of operation) which property is determined by the Association, pursuant to the criteria specified in the plan of operation to be in an insurable condition against windstorm, hail and/or fire and explosion as appropriate, as determined by normal underwriting standards; provided, however, that insofar as windstorm and hail insurance is concerned, any structure located within a catastrophe area, commenced on or after the 30th day following the publication of the plan of operation, not built or continuing in compliance with building specifications set forth in the plan of operation shall not be an insurable risk under this Act except as otherwise provided under this Act. A structure, or an addition thereto, which is constructed in conformity with plans and specifications that comply with the specifications set forth in the plan of operation at the time construction commences shall not be declared ineligible for windstorm and hail insurance as a result of subsequent changes in the building specifications set forth in the plan of operation. Except as otherwise provided by this subsection, if ~~When~~ repair of damage to a structure involves replacement of items covered in the building specifications as set forth in the plan of operation, such repairs must be completed in a manner to comply with such specifications for the structure to continue within the definition of Insurable Property for windstorm and hail insurance. If repair of damage to a structure is based on a direct loss and claim the amount of which is equal to less than five percent of the amount of total property coverage on the structure, the repairs may be completed in a manner that returns the structure to its condition immediately before the loss without affecting the eligibility of the structure to qualify as insurable property. Nothing in this Act shall preclude special rating of individual risks as may be provided in the plan of operation. For purposes of this Act, all structures which are located within those areas designated as units under the federal Coastal Barrier Resources Act (Public Law 97-348) and for which construction has commenced on or after July 1, 1991 shall not be considered insurable property.

Explanation: The change in SECTION 1 is necessary to remove language designating certain structures as insurable property by the Texas Windstorm Insurance Association if a building permit or plat was filed with the municipality, county, or United States Army Corps of Engineers before the effective date of the bill and to provide that if a direct loss occurs, and the amount of repair constitutes five percent or less of the value of the property, the insurability of the property is not affected if the repairs are properly made.

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

SECTION 2. Subdivision (9), Subsection (h), Section 8, Article 21.49, Insurance Code, is amended to read as follows:

(9) A rate established and authorized by the commissioner under this subsection may not reflect an average rate change that is more than 10 percent higher or lower than the rate for commercial or 10 percent higher or lower than the rate for noncommercial windstorm and hail insurance in effect on the date the filing is made. The rate may not reflect a rate change for an individual rating class that is 15 percent higher or lower than the rate for that individual class in effect on the date the filing is made. The commissioner may, after notice and hearing, suspend this subdivision upon a finding that a catastrophe loss or series of occurrences resulting in losses in the catastrophe area justify a need to assure rate adequacy in the catastrophe area and also justify a need to assure availability of insurance outside the catastrophe area. [~~This subdivision expires December 31, 2005.~~]

Explanation: The change in SECTION 2 is necessary to remove the expiration of Subsection (h) of Section 8, which establishes certain limitations on the amount of the rate the commissioner sets and requires the commissioner to justify the rate if the rate is not set within those limitations.

HR 1868 was adopted without objection.

SB 463 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Eiland submitted the conference committee report on **SB 463**.

Representative Eiland moved to adopt the conference committee report on **SB 463**.

A record vote was requested.

The motion prevailed by (Record 937): 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(C); 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; 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; 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; Turner; Uresti; Van Arsdale; West; Wilson; Wise; Wohlgemuth; Wolens; Wong; Woolley; Zedler.

Present, not voting — Mr. Speaker; Truitt.

Absent — Farabee; Farrar; Homer; Villarreal.

STATEMENT OF VOTE

I was shown voting present, not voting on Record No. 937. I intended to vote yes.

Truitt

**HR 1866 - ADOPTED
(by Merritt)**

Representative Merritt moved to suspend all necessary rules to take up and consider at this time **HR 1866**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 1866, Honoring Janice Caldwell of Lindale for receiving the Outstanding Speech/Theatre/Debate Educator Award.

HR 1866 was adopted without objection.

**HR 1867 - ADOPTED
(by Merritt)**

Representative Merritt moved to suspend all necessary rules to take up and consider at this time **HR 1867**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 1867, Honoring Charissa Romero on her graduation from Longview High School with perfect attendance.

HR 1867 was adopted without objection.

SB 1828 - 24 HOUR LAYOUT RULE SUSPENDED

Representative Swinford moved to suspend Rule 13, Section 10 of the house rules to consider the conference committee report on **SB 1828** which was ineligible for consideration at this time.

The motion prevailed.

**HR 1870 - ADOPTED
(by Gallego)**

Representative Gallego moved to suspend all necessary rules to take up and consider at this time **HR 1870**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 1870, Honoring former justice of the peace Leldon Greer for his service to the people of Pecos County.

HR 1870 was adopted without objection.

HR 1871 - ADOPTED
(by Gallego)

Representative Gallego moved to suspend all necessary rules to take up and consider at this time **HR 1871**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 1871, Honoring Ruby Nell Berry on her tenure as county treasurer of Ward County.

HR 1871 was adopted without objection.

HR 1873 - ADOPTED
(by Gallego)

Representative Gallego moved to suspend all necessary rules to take up and consider at this time **HR 1873**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 1873, Commending the Honorable Delmon Hodges for his service to the Fort Stockton community.

HR 1873 was adopted without objection.

SB 1828 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Swinford submitted the conference committee report on **SB 1828**.

Representative Swinford moved to adopt the conference committee report on **SB 1828**.

The motion prevailed. (B. Cook, Hamilton, J. Keffer, and Kolkhorst recorded voting no)

HR 1881 - NOTICE OF INTRODUCTION

Pursuant to the provisions of Rule 13, Section 9(f) of the House Rules, the chair announced the introduction of **HR 1881**, suspending the limitations on the conferees for **SB 14**.

HR 1882 - ADOPTED
(by Dunnam)

Representative Dunnam moved to suspend all necessary rules to take up and consider at this time **HR 1882**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 1882, In memory of Caroline Irene Mannschreck Brady of Waco.

HR 1882 was unanimously adopted by a rising vote.

(Alonzo in the chair)

HCR 284 - ADOPTED
(by Dutton)

The following privileged resolution was laid before the house:

HCR 284

WHEREAS, **HB 2319** has been adopted by the house of representatives and the senate and is being prepared for enrollment; and

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

RESOLVED by the 78th Legislature of the State of Texas that the enrolling clerk of the house of representatives be instructed to correct **HB 2319** at the end of Section 61.002(a)(9), Family Code, as added by SECTION 28 of the bill, by striking "54.041(g)" and substituting "54.041(f)".

HCR 284 was adopted.

HB 3035 - RECOMMITTED

Representative R. Cook moved to recommit **HB 3035** to the conference committee.

The motion prevailed.

HR 1856 - ADOPTED
(by Eissler)

Representative Eissler moved to suspend all necessary rules to take up and consider at this time **HR 1856**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 1856, Honoring State Representative Bill Keffer and the other members of the MalFunktions.

HR 1856 was adopted without objection.

(Speaker in the chair)

HB 3588 - 24 HOUR LAYOUT RULE SUSPENDED

Representative Krusee moved to suspend Rule 13, Section 10 of the house rules to consider the conference committee report on **HB 3588** which was ineligible for consideration at this time.

The motion prevailed.

HB 3588 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Krusee submitted the following conference committee report on **HB 3588** :

Austin, Texas, May 31, 2003

The Honorable David Dewhurst
President of the Senate

(C) a service that is offered in connection with the Trans-Texas Corridor.

(6) "Operation" includes maintenance and repair.

(7) "Public utility facility" means:

(A) a water, wastewater, natural gas, or petroleum pipeline or associated equipment;

(B) an electric transmission or distribution line or associated equipment; or

(C) telecommunications, information services, or cable television infrastructure or associated equipment, including fiber optic cable, conduit, and wireless communications equipment.

(8) "Trans-Texas Corridor" means the statewide system of facilities designated by the commission under this chapter.

(9) "Turnpike" has the meaning assigned to turnpike project under Section 361.001.

Sec. 227.002. RULES. The commission may adopt rules and the department may implement procedures and forms as necessary or convenient to implement and administer this chapter.

Sec. 227.003. APPLICABILITY. (a) All laws governing the financing, design, construction, maintenance, or operation of a highway in the state highway system apply to the financing, design, construction, maintenance, or operation of a highway under this chapter unless in conflict with this chapter.

(b) All laws governing the financing, design, construction, maintenance, or operation of a turnpike by the department apply to the financing, design, construction, maintenance, or operation of a turnpike under this chapter unless in conflict with this chapter.

(c) This chapter does not apply to real or personal property, facilities, funding, projects, operations, construction, or a project plan of a transportation authority created under Chapter 451, 452, or 460, unless the commission or its designee has signed a written agreement with the transportation authority specifying the terms and conditions under which the transportation authority may participate in the Trans-Texas Corridor.

[Sections 227.004-227.010 reserved for expansion]

SUBCHAPTER B. ESTABLISHMENT

Sec. 227.011. DESIGNATION. The commission shall designate facilities for the Trans-Texas Corridor.

Sec. 227.012. ROUTE SELECTION. The commission shall consider the following criteria when selecting a route for a segment of the Trans-Texas Corridor:

(1) current and projected traffic patterns;

(2) the safety of motorists;

(3) potential risks to persons from spills or accidents of any kind;

(4) environmental effects, including the effect on air quality;

(5) current and projected economic development;

(6) the current and projected need for additional transportation options;

and

(7) system connectivity.

Sec. 227.013. PUBLIC PARTICIPATION. Before designating a route for a segment of the Trans-Texas Corridor, the department shall hold at least one public hearing in each county through which the segment may pass.

Sec. 227.014. ESTABLISHMENT OF DISCRETE SYSTEMS. (a) If the commission determines that the mobility needs of this state would be most efficiently and economically met by jointly operating two or more facilities as one operational and financial enterprise, it may create a system composed of those facilities. The commission may create more than one system and may combine two or more systems into one system. The commission may finance, construct, and operate an additional facility as an expansion of a system if the commission determines that the facility would most efficiently and economically be constructed and operated if it were a part of the system and that the addition will benefit the system. A system may only include facilities located wholly or partly within the territory of:

(1) a metropolitan planning organization; or

(2) two adjacent department districts.

(b) The revenue of a system must be accounted for separately and may not be commingled with the revenue of a facility that is not a part of the system.

Sec. 227.015. LOCATION OF FACILITIES. Notwithstanding any other law, including Chapter 181, Utilities Code, Chapter 402, Local Government Code, and Section 49.220, Water Code, the department may:

(1) specify the location of any facility on the Trans-Texas Corridor;

(2) direct the time and manner of construction of a public utility facility on the Trans-Texas Corridor; and

(3) direct the time and manner of construction or operation of any other facility on the Trans-Texas Corridor.

[Sections 227.016-227.020 reserved for expansion]

SUBCHAPTER C. DEVELOPMENT AND OPERATION

Sec. 227.021. AUTHORITY OF DEPARTMENT. (a) The department may:

(1) construct or operate any facility as part of the Trans-Texas Corridor;

or

(2) authorize a governmental or private entity to construct or operate a facility that is part of the Trans-Texas Corridor.

(b) A governmental entity may only construct or operate a facility that is located in the geographic area within which that entity is authorized to operate.

(c) Subject to Section 227.029, the department may grant or deny access to the Trans-Texas Corridor; provided, however, the department shall grant the owner of a public utility facility that is located on the Trans-Texas Corridor reasonable access to operate and maintain the owner's public utility facility. The department may not discriminate unreasonably among users or potential users of a facility.

(d) The department may construct or contract for the construction of public utility facilities. However, the department may not directly or indirectly provide water, wastewater, natural gas, petroleum pipeline, electric transmission, electric distribution, telecommunications, information, or cable television services.

(e) Nothing in this chapter, or any contractual right obtained under a contract with the department authorized by this chapter, supersedes or renders ineffective any provision of another law applicable to the owner or operator of a public utility facility, including any provision of the Utilities Code regarding licensing, certification, and regulatory jurisdiction of the Public Utility Commission of Texas or Railroad Commission of Texas.

Sec. 227.022. PARTICIPATION BY OTHER ENTITIES. (a) A toll or non-toll highway on the Trans-Texas Corridor that is constructed or operated by another entity shall be part of the state highway system. This subsection applies even if the entity constructing or operating the highway is not independently authorized to construct or operate a highway that is part of the state highway system.

(b) If the department authorizes another governmental entity to construct or operate a facility on the Trans-Texas Corridor, that entity has each power of the department under this chapter with respect to that facility, including the right to collect fees, except that:

(1) any property acquired by the entity shall be held in the name of the state; and

(2) the entity may not file a declaration of taking and obtain early possession of real property, unless the entity is a regional mobility authority under Chapter 370.

(c) If the department authorizes another governmental entity to construct or operate a facility on the Trans-Texas Corridor, that entity is liable for a claim relating to the Trans-Texas Corridor only to the extent that the department would be liable if it were constructing or operating the facility.

Sec. 227.023. PARTICIPATION BY PRIVATE ENTITIES. (a) To the maximum extent practical and economical, the department shall encourage the participation of private entities in the planning, design, construction, and operation of facilities.

(b) The department shall contract with a private entity to operate a railroad using rail facilities owned by the department and may not use department employees to operate a railroad. The department may maintain a rail facility directly or through a private entity.

(c) To the extent and in the manner that the department may enter into comprehensive development agreements under Chapter 361 with regard to turnpikes, the department may enter into comprehensive development agreements under this chapter with regard to facilities on the Trans-Texas Corridor. All provisions of Chapter 361 relating to comprehensive development agreements for turnpikes apply to comprehensive development agreements for facilities under this chapter, including provisions relating to the confidentiality of information. Claims arising under an comprehensive development agreement are subject to Section 201.112.

Sec. 227.024. HIGHWAYS. A highway, including a turnpike, on the Trans-Texas Corridor is a part of the state highway system.

Sec. 227.025. VEHICLE SIZE AND WEIGHT LIMITS. (a) The commission may authorize the operation of a vehicle that exceeds the height, length, or gross weight limitations of Subchapter C, Chapter 621, on a segment of a highway on the Trans-Texas Corridor if supported by an engineering and traffic study that includes an analysis of the structural capacity of bridges and pavements, current and projected traffic patterns and volume, and potential effects on public safety.

(b) This section does not authorize the operation of a vehicle that exceeds a maximum axle weight authorized by Chapter 621, 622, or 623.

Sec. 227.026. ACQUISITION OF PERSONAL PROPERTY. (a) The department may acquire personal property, except rolling stock, under a conditional sales contract, lease, equipment trust certificate, or other form of contract or trust agreement for use in connection with a facility.

(b) The department may enter into an agreement with a rail operator, transportation common carrier, transportation system, or any other entity for the common use of any facility.

(c) The department may enter into agreements with a public or private utility, the owner or operator of a communications system, utility common carrier, or transportation system, or another entity for the common use of a public utility facility in the Trans-Texas Corridor if the department has adopted rules requiring each common user to avoid damaging any equipment that the common user does not own or operate.

Sec. 227.027. ENVIRONMENTAL REVIEW. (a) The department shall conduct or approve each environmental evaluation or study required for an activity associated with the Trans-Texas Corridor. This subsection does not prohibit an owner of a public utility facility or a proposed public utility facility from conducting any necessary environmental evaluation for the public utility facility. The department is entitled to review and give final approval regarding the sufficiency of any environmental evaluation conducted for a facility within the Trans-Texas Corridor.

(b) The commission may allocate responsibilities for conducting environmental evaluations or studies or preparing environmental documentation among entities involved in the construction or operation of any facility of the Trans-Texas Corridor.

Sec. 227.028. ENVIRONMENTAL MITIGATION. (a) The department may acquire, maintain, hold, restore, enhance, develop, or redevelop property for the purpose of mitigating a past, present, or future adverse environmental effect arising from the construction or operation of any part of the Trans-Texas Corridor without regard to whether the need for mitigation is established for a particular project.

(b) The department may contract with a governmental or private entity to maintain, control, hold, restore, enhance, develop, or redevelop property for the mitigation of a past, present, or future adverse environmental effect arising from the construction or operation of any part of the Trans-Texas Corridor without regard to whether the need for mitigation has already been established for a particular project.

(c) If authorized by the applicable regulatory authority, the department may pay a sum of money to an appropriate governmental or private entity instead of acquiring or managing property for the mitigation of a past, present, or future adverse environmental effect arising from construction or operation of any part of the Trans-Texas Corridor without regard to whether the need for mitigation has already been established for a particular project.

Sec. 227.029. RELOCATION OF EXISTING FACILITIES. (a) The department may construct a grade separation at an intersection of a Trans-Texas Corridor facility with another facility and may change the line or grade of a facility to accommodate the facility to the design of a grade separation. The department shall pay the cost of a grade separation and any damage incurred in changing a line or grade of a facility.

(b) If the department finds it necessary to change the location of a portion of a facility, it shall reconstruct the facility at the location the department determines to be most favorable. The reconstructed facility must be of substantially the same type and in as good condition as the original facility. The department shall determine and pay the cost of the reconstruction and any damage incurred in changing the location of a facility.

(c) Except as provided in Subsections (d)-(l), this section does not apply to the conversion of any highway that is a part of the state highway system to a highway of the Trans-Texas Corridor.

(d) Notwithstanding Subsections (a) and (b), this subsection and Subsections (e)-(i) govern the relocation of a public utility facility. If the department determines that a public utility facility must be relocated, including a relocation caused by the conversion of any road that is part of the state highway system to a highway on the Trans-Texas Corridor, the utility and the department shall negotiate in good faith to establish reasonable terms and conditions concerning the responsibilities of the parties with regard to sharing of information about the project and the planning and implementation of any necessary relocation of the public utility facility.

(e) The department shall use its best efforts to provide an affected utility with plans and drawings of the project that are sufficient to enable the utility to develop plans for, and determine the cost of, the necessary relocation of the public utility facilities. If the department and the affected utility enter into an agreement after negotiations under Subsection (d), the terms and conditions of the agreement govern the relocation of each public utility facility covered by the agreement.

(f) If the department and an affected utility do not enter into an agreement under Subsection (d), the department shall provide to the affected utility:

(1) written notice of the department's determination that the public utility facility must be removed;

(2) a final plan for relocation of the public utility facility; and

(3) reasonable terms and conditions for an agreement with the utility for the relocation of the public utility facility.

(g) Not later than the 90th day after the date a utility receives the notice from the department, including the plan and agreement terms and conditions under Subsection (f), the utility shall enter into an agreement with the department that provides for the relocation.

(h) If the utility fails to enter into an agreement within the 90-day period under Subsection (g), the department may relocate the public utility facility at the sole cost and expense of the utility less any reimbursement of costs that would have been payable to the utility under applicable law. A relocation by the department under this subsection shall be conducted in full compliance with applicable law, using standard equipment and construction practices compatible with the utility's existing facilities, and in a manner that minimizes disruption of utility service.

(i) The 90-day period under Subsection (g) may be extended:

(1) by mutual agreement between the department and the utility; or

(2) for any period during which the utility is negotiating in good faith with the department to relocate its facility.

(j) Notwithstanding Subsections (d)-(i), an owner of a public utility facility is not obligated to relocate its public utility facility on the Trans-Texas Corridor if it determines that another location is feasible.

(k) If a public utility facility is relocated on the Trans-Texas Corridor, the department shall grant the owner reasonable entry and access to operate and maintain that owner's public utility facility.

(l) Subject to Subsections (a)-(k), the department, as part of the cost of the project, shall pay the cost of the relocation, removal, or grade separation of a public utility facility under Subsections (d)-(i).

Sec. 227.030. UNAUTHORIZED USE. The department may remove unauthorized personal property, including a vehicle, from the Trans-Texas Corridor without notice and at the owner's expense. Removed property may be stored until claimed by the owner. If a removed motor vehicle is not claimed by the owner within 72 hours after the date and time of removal, it shall be considered abandoned within the meaning of Chapter 683. The department and its employees are not liable for damage to property that is removed from the Trans-Texas Corridor under this section. Any removal or relocation of a public utility facility is governed by Sections 227.029(d)-(i) and is not governed by this section.

Sec. 227.031. EXCLUSIVE LANES. The department may dedicate one or more lanes of a highway on the Trans-Texas Corridor to the exclusive use of designated classes of vehicles.

[Sections 227.032-227.040 reserved for expansion]

SUBCHAPTER D. RIGHT-OF-WAY ACQUISITION

Sec. 227.041. POWERS AND PROCEDURES. (a) Except as otherwise provided by this subchapter, the commission has the same powers and duties relating to the condemnation and acquisition of real property for a facility of the Trans-Texas Corridor that the commission and the department have relating to the condemnation or purchase of real property under Subchapter D, Chapter 361, and Section 361.233 for a turnpike project. The commission may purchase an option

to purchase property other than real property, a property right, or a right-of-way used for a public utility facility that the commission is considering for possible use as part of the Trans-Texas Corridor even if it has not been finally decided that the Trans-Texas Corridor will be located on that property. Property may be purchased along alternative potential routes for the Trans-Texas Corridor even if only one of those potential routes will be selected as the final route.

(b) An interest in real property or a property right is necessary or convenient for the construction or operation of a facility if it is located in or contiguous to an existing or planned segment of the Trans-Texas Corridor and if its acquisition will further the primary purposes of the Trans-Texas Corridor. Primary purposes include:

(1) providing right-of-way or a location for a facility;
(2) providing land for mitigation of adverse environmental effects;
(3) providing buffer zones for scenic or safety purposes;
(4) allowing for possible future expansion of any facility; and
(5) generating revenue, directly or indirectly, for use in constructing or operating the Trans-Texas Corridor from or for ancillary facilities that directly benefit users of the Trans-Texas Corridor.

(c) Unless in conflict with this chapter, all laws governing the acquisition of right-of-way for a state highway apply to the acquisition of right-of-way for the Trans-Texas Corridor. Sections 203.056, 203.057, and 203.058 apply to an acquisition by the department from a state agency. Compensation to a state agency under those sections shall be reasonable and may take the form of a single payment, a participation payment under Section 227.042, or both a single payment and a participation payment.

Sec. 227.042. CORRIDOR PARTICIPATION PAYMENT FOR REAL PROPERTY. (a) As an alternative to paying for an interest in real property or a real property right with a single fixed payment, the department may, with the owner's consent, pay the owner by means of a corridor participation payment.

(b) A right to receive a corridor participation payment under this section is subordinate to any right to receive a fee as payment on the principal of or interest on a bond that is issued for the construction of the applicable segment of the Trans-Texas Corridor.

(c) In this section, "corridor participation payment" means an intangible legal right to receive a percentage of one or more identified fees related to a segment of the Trans-Texas Corridor.

Sec. 227.043. PURCHASE AND LEASEBACK. The department may acquire real property for the Trans-Texas Corridor and immediately lease it back to the former owner for a fixed or indefinite term.

Sec. 227.044. RIGHT OF ENTRY TO PROPERTY WITH PUBLIC UTILITY FACILITY. To ensure the safety and convenience of the public, the department shall, when entering any real property, water, or premises on which is located a public utility facility:

(1) comply with applicable industry standard safety codes and practices; and

(2) give the owner or operator of the facility not less than 10 days' notice before entering the real property, water, or premises.

Sec. 227.045. OTHER GOVERNMENTAL ENTITIES. If the department authorizes another governmental entity to construct or operate a segment of or a facility on the Trans-Texas Corridor, that entity has all the powers and duties of the department under this subchapter, except that the entity:

(1) may only construct or operate a facility that is located in the geographic area within which that entity is authorized to operate; and

(2) may not file a declaration of taking and obtain early possession of real property.

Sec. 227.046. COST OF RELOCATING PUBLIC UTILITY FACILITY.

(a) An owner of a public utility facility holding a certificate of convenience and necessity, certificate of authority, or service provider certificate of authority shall recover from the department its reasonable costs to relocate a public utility facility to accommodate the development or construction of the Trans-Texas Corridor.

(b) An owner of a public utility facility is not obligated to relocate the utility facility on the Trans-Texas Corridor if the owner determines that another location is feasible.

(c) If a public utility facility is located on the Trans-Texas Corridor, the department shall grant the owner reasonable access to operate and maintain the utility facility in accordance with industry standard safety codes and practices.

(d) Relocation of facilities pursuant to this section is subject to the department's reasonable regulations pertaining to public health, safety, and welfare.

[Sections 227.047-227.060 reserved for expansion]

SUBCHAPTER E. FINANCING

Sec. 227.061. PERMISSIBLE SOURCES OF FUNDING. Subject to Section 227.062, the department may use any available source of funding in acquiring property for, constructing, and operating the Trans-Texas Corridor, including:

(1) an appropriation from the state highway fund for construction or maintenance of highways;

(2) a fee;

(3) proceeds from a bond secured by fees;

(4) proceeds from an obligation secured by the Texas Mobility Fund;

(5) a donation, in kind or in cash;

(6) a private investment;

(7) money transferred from the state infrastructure bank;

(8) a contribution from or contractual obligation of a governmental entity; and

(9) a loan, grant, or reimbursement from the federal government, subject to Section 227.062.

Sec. 227.062. LIMITATIONS ON DEPARTMENT FINANCIAL PARTICIPATION. (a) Each fiscal year, the total amount disbursed by the department out of the state highway fund for the following activities on the Trans-Texas Corridor may not exceed 20 percent of the obligation authority under the federal-aid highway program that is distributed to this state in that year:

- (1) acquisition of right of way;
 - (2) initial construction of toll and nontoll highways; and
 - (3) grading and bed preparation for non-highway facilities.
- (b) The limitation under Subsection (a) does not apply to:
- (1) money spent for:
 - (A) feasibility studies, environmental studies, and preliminary engineering conducted before the initial construction of a facility; or
 - (B) operation and maintenance of a facility;
 - (2) the proceeds of bonds or other public securities issued to pay the cost of a facility if those proceeds are deposited to the credit of the state highway fund;
 - (3) revenue attributable to a facility if that revenue is deposited to the credit of the state highway fund;
 - (4) loans deposited to the credit of the state highway fund; or
 - (5) contributions from a public or private entity that are deposited to the credit of the state highway fund.

(c) Each fiscal year, the total amount disbursed by the department out of state and federal funds shall not exceed \$25 million for the construction or purchase of non-highway facilities on the Trans-Texas Corridor. This subsection does not apply to funds derived from the issuance of bonds, private investment, donations, the Federal Transit Administration, or the Federal Railroad Administration. This subsection also does not apply to:

- (1) activities that are subject to the limitation in Subsection (a); and
 - (2) activities described in Subsection (b)(1).
- (d) The commission may not disburse money out of the state highway fund for the initial construction of a facility of the Trans-Texas Corridor unless the commission finds that the disbursement will reduce traffic congestion to an extent that is comparable to the reduction in traffic congestion that would likely be achieved by spending the same amount of money on the project that is the most reasonable alternative. This subsection does not apply to the disbursement of money out of the state highway fund for environmental studies or for the acquisition of right of way.

(e) The commission may not disburse money from the state highway fund or the Texas mobility fund to construct a portion of the Trans-Texas Corridor unless it would replace or supplement a project identified in the department's unified transportation program or a transportation corridor identified in the statewide transportation plan.

(f) The commission may not authorize the construction of rail facilities unless it finds that the construction will reduce congestion and improve mobility.

(g) The commission may not disburse money from the state highway fund that is dedicated under Sections 7-a and 7-b, Article VIII, Texas Constitution, for activities on the Trans-Texas Corridor if as a result, the amount expended each year from those funds on the addition of capacity to the state highway system would be less than the average annual expenditure from those funds for the addition of capacity to the state highway system over the previous five years. This subsection does not apply to past expenditures for activities on the Trans-Texas Corridor.

Sec. 227.063. FINANCING OF FACILITIES AND SYSTEMS. (a) The commission and the department have the same powers and duties relating to the financing of a facility or a system established under Section 227.014 as the commission and the department have under Subchapter E, Chapter 361, relating to the financing of a turnpike project, including the ability to deposit the proceeds of bonds or other obligations and to pledge, encumber, and expend such proceeds and revenues as provided by Chapter 361.

(b) The powers held by the commission and the department include the powers to:

(1) authorize the issuance of bonds to pay all or part of the cost of a facility or system or to pay for all or part of the cost of a facility or system that will become a part of another system;

(2) maintain separate accounts for bond proceeds and the revenues of a facility or system, and pledge those revenues and proceeds to the payment of bonds or other obligations issued or entered into with respect to the facility or system;

(3) impose a toll or other fee for the use of a facility or system; and

(4) obtain from another source the fees and other revenue necessary to pay all or part of the principal and interest on bonds issued under this chapter.

(c) For purposes of this section, a reference in Subchapter E, Chapter 361 to:

(1) a turnpike project means a facility or system; and

(2) revenue includes a fee established under this chapter.

(d) The proceeds of bonds issued under this chapter may be held in trust by a banking institution chosen by the department or, at the discretion of the department, in trust in the state treasury outside the general revenue fund and the state highway fund.

Sec. 227.064. LOANS AND OTHER FUNDING. The department may borrow money from the United States or use money in the state infrastructure bank created under Subchapter D, Chapter 222, to fund the construction or operation of a facility under this chapter. Money borrowed under this section may be evidenced by the issuance of bonds.

[Sections 227.065-227.080 reserved for expansion]

SUBCHAPTER F. REVENUE

Sec. 227.081. FEES. (a) Notwithstanding any other law, including Chapters 161, 162, 163, and 181, Utilities Code, Chapter 402, Local Government Code, and Chapter 49, Water Code, and except as provided in Subsection (e), the department may require a person, including a governmental or private entity, to pay a fee as a condition of using any part of the Trans-Texas Corridor.

(b) The commission may establish fees to be imposed by the department under this chapter. Fees may be set as absolute amounts, as a percentage of revenue, as a percentage of actual use or throughput, as a designated portion or percentage of initial facility funding, or on any other reasonable basis. Subject to approval by a body having jurisdiction and authority to establish a tariff, the commission may establish joint fees and divisions of fees.

(c) A fee may exceed the department's costs, but the commission may not establish a fee that is prohibitive or that discriminates unreasonably among users or potential users of a facility.

(d) In establishing a fee or the amount of a fee under this section, the commission shall consider:

(1) the acquisition cost of the property being used;

(2) if applicable, the value of the property being transported or of the service being offered;

(3) any cost to the department or to the public occasioned by the use, including environmental effects;

(4) comparable fees set by the competitive marketplace; and

(5) the desirable effects of full use of the Trans-Texas Corridor on the state's economy and its residents.

(e) If a public road is replaced or eliminated by the Trans-Texas Corridor and a facility used the right-of-way of that road under Chapter 161, 162, 163, or 181, Utilities Code, Chapter 402, Local Government Code, or Chapter 49, Water Code, the department may not require the owner of that facility to pay a fee as a condition of using a segment of the Trans-Texas Corridor for the location of a replacement facility.

(f) The department may not require the owner of a public utility facility to pay a fee as a condition of crossing the Trans-Texas Corridor. The department may not require the owner of a public utility facility to pay a fee for placing a facility along or within the Trans-Texas Corridor specifically to provide service to customers within the Trans-Texas Corridor pursuant to an obligation as a provider of last resort. The department may not require payment of a fee for use of the Trans-Texas Corridor by a public utility facility in existence before the establishment of the Trans-Texas Corridor or for use by a facility that replaces a facility in existence before the establishment of the Trans-Texas Corridor unless the owner of the existing public utility facility relocates the public utility facility into the Trans-Texas Corridor of its own volition. For use of the Trans-Texas Corridor by a public utility facility whose owner places the facility in the Trans-Texas Corridor of its own volition, the department may charge the owner a fee as negotiated between the department and the owner. The fee shall be competitively neutral and nondiscriminatory among similarly situated owners of public utility facilities.

Sec. 227.082. LEASE OF PROPERTY OR RIGHTS. (a) The department may lease property on the Trans-Texas Corridor to any public or private entity. A lease may be for a term not longer than 50 years.

(b) The department may grant a franchise to use or operate a facility on the Trans-Texas Corridor. A franchise under this section may be granted for a term not longer than 50 years.

(c) The department may grant an exclusive or nonexclusive license to access or use any portion of the Trans-Texas Corridor for any purpose. A license granted under this section may be for a definite or indefinite term. The department may not grant an exclusive license to access or use a highway on the Trans-Texas Corridor. The department may not grant an exclusive license for use of the Trans-Texas Corridor by an owner of a public utility facility if the exclusive use is prohibited by other law.

(d) Property may be leased or a franchise or license granted for any purpose, including use as a facility and use for unrelated commercial, industrial, or agricultural purposes.

(e) In return for a lease, franchise, or license, the department may accept anything of value as consideration, including:

(1) a cash payment;

(2) installment payments;

(3) one or more payments based on percentages of use or throughput;

and

(4) an interest in real or personal property, or an intangible legal right.

Sec. 227.083. DISPOSITION OF FEES. To the extent that it is not dedicated to another purpose by the constitution, by statute, or by contract, or deposited to a separate account under this chapter revenue received by the department under this chapter shall be deposited to the credit of the state highway fund and may be used for any purpose authorized by this chapter. Subchapter D, Chapter 316, Government Code, and Section 403.095, Government Code, do not apply to revenue received under this chapter.

SECTION 1.02. Subchapter H, Chapter 545, Transportation Code, is amended by adding Section 545.3531 to read as follows:

Sec. 545.3531. AUTHORITY OF TEXAS TRANSPORTATION COMMISSION TO ESTABLISH SPEED LIMITS ON TRANS-TEXAS CORRIDOR. (a) Notwithstanding Section 545.352, the Texas Transportation Commission, by order recorded in its minutes and except as provided by Subsection (d), may determine and declare on a highway segment of the Trans-Texas Corridor designated under Chapter 227 a reasonable and safe prima facie speed limit in excess of a prima facie speed limit established by Section 545.352.

(b) In determining whether a prima facie speed limit is reasonable and safe, the commission shall conduct an engineering and traffic investigation and shall consider the width and condition of the pavement, the usual traffic on the highway segment, the suitability of existing safety features, and other circumstances.

(c) A prima facie speed limit that is declared by the commission under this section is effective when the department erects signs giving notice of the new limit. A new limit that is enacted under this section is effective at all times or at other times as determined.

(d) The commission may not:

(1) modify the rules established by Section 545.351(b); or

(2) establish a speed limit of more than 85 miles per hour.

(e) The commission, in conducting the engineering and traffic investigation specified by Subsection (b), shall follow the "Procedures for Establishing Speed Zones" as adopted by the commission.

SECTION 1.03. This article takes effect immediately if this Act receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this article takes effect September 1, 2003.

ARTICLE 2. REGIONAL MOBILITY AUTHORITIES

SECTION 2.01. Subtitle G, Title 6, Transportation Code, is amended by adding Chapter 370 to read as follows:

CHAPTER 370. REGIONAL MOBILITY AUTHORITIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 370.001. SHORT TITLE. This chapter may be cited as the Regional Mobility Authority Act.

Sec. 370.002. PURPOSES; LIBERAL CONSTRUCTION. The purposes of this chapter are:

(1) to expand and improve transportation facilities and systems in this state;

(2) to promote the consideration and use of multimodal forms of transportation to address transportation needs in regions of the state;

(3) to create regional mobility authorities to secure and acquire rights-of-way for urgently needed transportation systems and to plan, design, construct, operate, expand, extend, and modify those systems; and

(4) to reduce burdens and demands on the limited money available to the commission and to increase the effectiveness and efficiency of the commission.

Sec. 370.003. DEFINITIONS. In this chapter:

(1) "Authority" means a regional mobility authority organized under this chapter or under Section 361.003, as that section existed before September 1, 2003.

(2) "Board" means the board of directors of an authority.

(3) "Bond" includes a bond, certificate, note, or other obligation of an authority authorized by this chapter, another statute, or the Texas Constitution.

(4) "Bond proceeding" includes a bond resolution and a bond indenture authorized by the bond resolution, a credit agreement, loan agreement, or other agreement entered into in connection with the bond or the payments to be made under the agreement, and any other agreement between an authority and another person providing security for the payment of a bond.

(5) "Bond resolution" means an order or resolution of a board authorizing the issuance of a bond.

(6) "Bondholder" means the owner of a bond and includes a trustee acting on behalf of an owner of a bond under the terms of a bond indenture.

(7) "Comprehensive development agreement" means an agreement under Section 370.305.

(8) "Governmental entity" means a political subdivision of the state, including a municipality or a county, a political subdivision of a county, a group of adjoining counties, a district organized or operating under Section 52, Article III, or Section 59, Article XVI, Texas Constitution, the department, a rail district, a transit authority, a nonprofit corporation, including a transportation corporation, that is created under Chapter 431, or any other public entity or instrumentality.

(9) "Highway" means a road, highway, farm-to-market road, or street under the supervision of the state or a political subdivision of this state.

(9-a) "Intermodal hub" means a central location where cargo containers can be easily and quickly transferred between trucks, trains, and airplanes.

(10) "Public utility facility" means:

(A) a water, wastewater, natural gas, or petroleum pipeline or associated equipment;

(B) an electric transmission or distribution line or associated equipment; or

(C) telecommunications information services, or cable television infrastructure or associated equipment, including fiber optic cable, conduit, and wireless communications facilities.

(11) "Revenue" means fares, fees, rents, tolls, and other money received by an authority from the ownership or operation of a transportation project.

(12) "Surplus revenue" means revenue that exceeds:

(A) an authority's debt service requirements for a transportation project, including the redemption or purchase price of bonds subject to redemption or purchase as provided in the applicable bond proceedings;

(B) coverage requirements of a bond indenture for a transportation project;

(C) costs of operation and maintenance for a transportation project;

(D) cost of repair, expansion, or improvement of a transportation project;

(E) funds allocated for feasibility studies; and

(F) necessary reserves as determined by the authority.

(13) "System" means a transportation project or a combination of transportation projects designated as a system by the board under Section 370.034.

(14) "Transportation project" means:

(A) a turnpike project;

(B) a system;

(C) a passenger or freight rail facility, including:

(i) tracks;

- (ii) a rail line;
- (iii) switching, signaling, or other operating equipment;
- (iv) a depot;
- (v) a locomotive;
- (vi) rolling stock;
- (vii) a maintenance facility; and
- (viii) other real and personal property associated with a rail

operation;

(D) a roadway with a functional classification greater than a local road or rural minor collector;

(E) a ferry;

(F) an airport;

(G) a pedestrian or bicycle facility;

(H) an intermodal hub;

(I) an automated conveyor belt for the movement of freight;

(J) a border crossing inspection station;

(K) an air quality improvement initiative;

(L) a public utility facility; and

(M) if applicable, projects and programs listed in the most recently approved state implementation plan for the area covered by the authority, including an early action compact.

(14-a) "Transportation project" does not include a border inspection facility that serves a bridge system that had more than 900,000 commercial border crossings during the state fiscal year ending August 31, 2002.

(15) "Turnpike project" means a highway of any number of lanes, with or without grade separations, owned or operated by an authority under this chapter and any improvement, extension, or expansion to that highway, including:

(A) an improvement to relieve traffic congestion or promote safety;

(B) a bridge, tunnel, overpass, underpass, interchange, service road, ramp, entrance plaza, approach, or tollhouse;

(C) an administration, storage, or other building the authority considers necessary for the operation of a turnpike project;

(D) a parking area or structure, rest stop, park, and other improvement or amenity the authority considers necessary, useful, or beneficial for the operation of a turnpike project; and

(E) a property right, easement, or interest the authority acquires to construct or operate the turnpike project.

Sec. 370.004. CONSTRUCTION COSTS DEFINED. (a) The cost of acquisition, construction, improvement, extension, or expansion of a transportation project under this chapter includes the cost of:

(1) the actual acquisition, construction, improvement, extension, or expansion of the transportation project;

(2) the acquisition of real property, rights-of-way, property rights, easements, and other interests in real property;

(3) machinery and equipment;

(4) interest payable before, during, and for not more than three years after acquisition, construction, improvement, extension, or expansion as provided in the bond proceedings;

(5) traffic estimates, revenue estimates, engineering and legal services, plans, specifications, surveys, appraisals, construction cost estimates, and other expenses necessary or incidental to determining the feasibility of the acquisition, construction, improvement, extension, or expansion;

(6) necessary or incidental administrative, legal, and other expenses;

(7) compliance with laws, regulations, and administrative rulings, including any costs associated with necessary environmental mitigation measures;

(8) financing; and

(9) expenses related to the initial operation of the transportation project.

(b) Costs attributable to a transportation project and incurred before the issuance of bonds to finance the transportation project may be reimbursed from the proceeds of sale of the bonds.

[Sections 370.005-370.030 reserved for expansion]

SUBCHAPTER B. CREATION AND POWERS OF REGIONAL MOBILITY AUTHORITIES

Sec. 370.031. CREATION OF A REGIONAL MOBILITY AUTHORITY.

(a) At the request of one or more counties, the commission by order may authorize the creation of a regional mobility authority for the purposes of constructing, maintaining, and operating transportation projects in a region of this state. An authority is governed in accordance with Subchapter F.

(b) An authority may not be created without the approval of the commission under Subsection (a) and the approval of the commissioners court of each county that will be a part of the municipality.

Sec. 370.0315. ADDITION AND WITHDRAWAL OF COUNTIES. (a) One or more counties may petition the commission for approval to become part of an existing authority. The commission may approve the petition only if:

(1) the board has agreed to the addition; and

(2) the commission finds that the affected political subdivisions in the county or counties will be adequately represented on the board.

(b) One or more counties may petition the commission for approval to withdraw from an authority. The commission may approve the petition only if:

(1) the authority has no bonded indebtedness; or

(2) the authority has debt other than bonded indebtedness, but the board has agreed to the withdrawal.

(c) A county may not become part of an authority or withdraw from an authority without the approval of the commission.

Sec. 370.032. NATURE OF REGIONAL MOBILITY AUTHORITY. (a) An authority is a body politic and corporate and a political subdivision of this state.

(b) An authority is a governmental unit as that term is defined in Section 101.001, Civil Practice and Remedies Code.

(c) The exercise by an authority of the powers conferred by this chapter in the acquisition, design, financing, construction, operation, and maintenance of a transportation project or system is:

(1) in all respects for the benefit of the people of the counties in which an authority operates and of the people of this state, for the increase of their commerce and prosperity, and for the improvement of their health, living conditions, and public safety; and

(2) an essential governmental function of the state.

(d) The operations of an authority are governmental, not proprietary, functions.

Sec. 370.033. GENERAL POWERS. (a) An authority, through its board, may:

(1) adopt rules for the regulation of its affairs and the conduct of its business;

(2) adopt an official seal;

(3) study, evaluate, design, finance, acquire, construct, maintain, repair, and operate transportation projects, individually or as one or more systems, provided that a transportation project that is subject to Subpart C, 23 C.F.R. Part 450, is:

(A) included in the plan approved by the applicable metropolitan planning organization; and

(B) consistent with the statewide transportation plan and the statewide transportation improvement program;

(4) acquire, hold, and dispose of property in the exercise of its powers and the performance of its duties under this chapter;

(5) enter into contracts or operating agreements with a similar authority, another governmental entity, or an agency of the United States, a state of the United States, the United Mexican States, or a state of the United Mexican States;

(6) enter into contracts or agreements necessary or incidental to its powers and duties under this chapter;

(7) cooperate and work directly with property owners and governmental entities and officials to support an activity required to promote or develop a transportation project;

(8) employ and set the compensation and benefits of administrators, consulting engineers, attorneys, accountants, construction and financial experts, superintendents, managers, full-time and part-time employees, agents, consultants, and other persons as the authority considers necessary or useful;

(9) notwithstanding Sections 221.003 and 222.031 and subject to Subsections (j) and (m), apply for, directly or indirectly receive and spend loans, gifts, grants, and other contributions for any purpose of this chapter, including the construction of a transportation project, and receive and spend contributions of money, property, labor, or other things of value from any source, including the United States, a state of the United States, the United Mexican States, a state of the United Mexican States, the commission, the department, a subdivision of this

state, or a governmental entity or private entity, to be used for the purposes for which the grants, loans, or contributions are made, and enter into any agreement necessary for the grants, loans, or contributions;

(10) install, construct, or contract for the construction of public utility facilities, direct the time and manner of construction of a public utility facility in, on, along, over, or under a transportation project, or request the removal or relocation of a public utility facility in, on, along, over, or under a transportation project;

(11) organize a corporation under Chapter 431 for the promotion and development of transportation projects;

(12) adopt and enforce rules not inconsistent with this chapter for the use of any transportation project, including tolls, fares, or other user fees, speed and weight limits, and traffic and other public safety rules, provided that an authority must consider the same factors that the Texas Turnpike Authority division of the department must consider in altering a prima facie speed limit under Section 545.354;

(13) enter into leases, operating agreements, service agreements, licenses, franchises, and similar agreements with a public or private party governing the party's use of all or any portion of a transportation project and the rights and obligations of the authority with respect to a transportation project;

(14) borrow money from or enter into a loan agreement or other arrangement with the state infrastructure bank; and

(15) do all things necessary or appropriate to carry out the powers and duties expressly granted or imposed by this chapter.

(b) Except as provided by this subsection, property that is a part of a transportation project of an authority is not subject to condemnation or the exercise of the power of eminent domain by any person, including a governmental entity. The department may condemn property that is a part of a transportation project of an authority if the property is needed for the construction, reconstruction, or expansion of a state highway or rail facility.

(c) An authority may, if requested by the commission, perform any function not specified by this chapter to promote or develop a transportation project in this state.

(d) An authority may sue and be sued and plead and be impleaded in its own name.

(e) An authority may rent, lease, franchise, license, or make portions of its properties available for use by others in furtherance of its powers under this chapter by increasing the feasibility or the revenue of a transportation project. If the transportation project is a project other than a public utility facility an authority may rent, lease, franchise or make property available only to the extent that the renting, lease or franchise benefits the users of the project.

(f) An authority and a governmental entity may enter into a contract, agreement, interlocal agreement, or other similar arrangement under which the authority may plan, design, construct, or operate a transportation project on

behalf of the governmental entity. An authority may enter into a contract with the department under which the authority will plan, develop, operate, or maintain a transportation project on behalf of the department.

(g) Payments to be made to an authority under a contract described by Subsection (f) constitute operating expenses of the transportation project or system that is to be operated under the contract. The contract may extend for the number of years as agreed to by the parties.

(h) An authority shall adopt a written drug and alcohol policy restricting the use of controlled substances by officers and employees of the authority, prohibiting the consumption of alcoholic beverages by employees while on duty, and prohibiting employees from working for the authority while under the influence of a controlled substance or alcohol. An authority may adopt policies regarding the testing of employees suspected of being in violation of the authority's drug and alcohol policy. The policy shall provide that, unless required by court order or permitted by the person who is the subject of the testing, the authority shall keep the results of the test confidential.

(i) An authority shall adopt written procedures governing its procurement of goods and services that are consistent with general laws applicable to the authority.

(j) An authority may not apply for federal highway or rail funds without the approval of the department.

(k) An authority may not directly provide water, wastewater, natural gas, petroleum pipeline, electric transmission, electric distribution, telecommunications, information, or cable television services.

(l) If an authority establishes an airport in Central Texas, the authority may not establish the airport at a location prohibited to the department by Section 21.069(c).

(m) If an authority receives money from the general revenue fund or the state highway fund it may use the money only to acquire, design, finance, construct, operate, or maintain a turnpike project under Section 370.003(14)(A) or (D).

(n) Nothing in this chapter or any contractual right obtained under a contract with an authority under this chapter supersedes or renders ineffective any provision of another law applicable to the owner or operator of a public utility facility, including any provision of the utilities code regarding licensing, certification, or regulatory jurisdiction of the Public Utility Commission of Texas or the Railroad Commission of Texas.

Sec. 370.034. ESTABLISHMENT OF TRANSPORTATION SYSTEMS.

(a) If an authority determines that the traffic needs of the counties in which it operates and the traffic needs of the surrounding region could be most efficiently and economically met by jointly operating two or more transportation projects as one operational and financial enterprise, it may create a system made up of those transportation projects. An authority may create more than one system and may combine two or more systems into one system. An authority may finance, acquire, construct, and operate additional transportation projects as additions to or

expansions of a system if the authority determines that the transportation project could most efficiently and economically be acquired or constructed if it were a part of the system and that the addition will benefit the system.

(b) The revenue of a system shall be accounted for separately and may not be commingled with the revenue of a transportation project that is not a part of the system or with the revenue of another system.

Sec. 370.035. CONVERSION AND TRANSFER OF STATE HIGHWAY SYSTEM PROJECTS. (a) The commission by order may convert a segment of the free state highway system to a turnpike project and transfer that segment to an authority, or may transfer an existing turnpike project that is part of the state highway system, whether previously tolled or not, to an authority if:

(1) the commission determines that the proposed transfer is an integral part of the region's overall plan to improve mobility in the region;

(2) the commission determines that the public has a reasonable alternative route on nontoll roads;

(3) the authority agrees to assume all liability and responsibility for the maintenance and operation of the turnpike project on its transfer; and

(4) approved by the governor.

(b) An authority shall reimburse the commission for the cost of a transferred turnpike project unless the commission determines that the transfer will result in a substantial net benefit to the state, the department, and the traveling public that equals or exceeds that cost.

(c) In computing the cost of the turnpike project, the commission shall:

(1) include the total amount spent by the department for the original construction of the turnpike project, including the costs associated with the preliminary engineering and design engineering for plans, specifications, and estimates, the acquisition of necessary rights-of-way, and actual construction of the turnpike project and all necessary appurtenant facilities; and

(2) consider the anticipated future costs of expanding, improving, maintaining, operating, or extending the turnpike project to be incurred by the authority and not by the department if the turnpike project is transferred.

(d) The commission may, at the time a turnpike project is transferred, remove the turnpike project from the state highway system. After a transfer, the commission has no liability, responsibility, or duty for the maintenance or operation of the turnpike project.

(e) Before transferring a turnpike project that is part of the state highway system under this section, the commission shall conduct a public hearing at which interested persons shall be allowed to speak on the proposed transfer. Notice of the hearing must be published in the Texas Register, one or more newspapers of general circulation in the counties in which the turnpike project is located, and a newspaper, if any, published in the counties of the applicable authority.

(f) The commission shall adopt rules to implement this section. The rules shall include criteria and guidelines for the approval of a transfer of a segment of a highway.

(g) An authority shall adopt rules providing criteria and guidelines for approval of the transfer of a turnpike project under this section.

(h) The commission may not transfer the Queen Isabella Causeway in Cameron County to an authority under this section.

Sec. 370.036. TRANSFER OF BONDED TURNPIKE PROJECT TO DEPARTMENT. (a) An authority may transfer to the department a turnpike project of the authority that has outstanding bonded indebtedness if the commission:

(1) agrees to the transfer; and

(2) agrees to assume the outstanding bonded indebtedness.

(b) The commission may assume the outstanding bonded indebtedness only if the assumption:

(1) is not prohibited under the terms of an existing trust agreement or indenture securing bonds or other obligations issued by the commission for another project;

(2) does not prevent the commission from complying with covenants of the commission under an existing trust agreement or indenture; and

(3) does not cause a rating agency maintaining a rating on outstanding obligations of the commission to lower the existing rating.

(c) If the commission agrees to the transfer under Subsection (a), the authority shall convey the turnpike project and any real property acquired to construct or operate the turnpike project to the department.

(d) At the time of a conveyance under this section, the commission shall designate the turnpike project as part of the state highway system. After the designation, the authority has no liability, responsibility, or duty to maintain or operate the transferred turnpike project.

Sec. 370.037. TRANSFER OF FERRY CONNECTING STATE HIGHWAYS. (a) The commission by order may transfer a ferry operated under Section 342.001 to an authority if:

(1) the commission determines that the proposed transfer is an integral part of the region's overall plan to improve mobility in the region; and

(2) the authority:

(A) agrees to the transfer; and

(B) agrees to assume all liability and responsibility for the maintenance and operation of the ferry on its transfer.

(b) An authority shall reimburse the commission for the cost of a transferred ferry unless the commission determines that the transfer will result in a substantial net benefit to the state, the department, and the traveling public that equals or exceeds that cost.

(c) In computing the cost of the ferry, the commission shall:

(1) include the total amount spent by the department for the original construction of the ferry, including the costs associated with the preliminary engineering and design engineering for plans, specifications, and estimates, the acquisition of necessary rights-of-way, and actual construction of the ferry and all necessary appurtenant facilities; and

(2) consider the anticipated future costs of expanding, improving, maintaining, or operating the ferry to be incurred by the authority and not by the department if the ferry is transferred.

(d) The commission shall, at the time the ferry is transferred, remove the ferry from the state highway system. After a transfer, the commission has no liability, responsibility, or duty for the maintenance or operation of the ferry.

(e) Before transferring a ferry that is a part of the state highway system under this section, the commission shall conduct a public hearing at which interested persons shall be allowed to speak on the proposed transfer. Notice of the hearing must be published in the Texas Register, one or more newspapers of general circulation in the counties in which the ferry is located, and a newspaper, if any, published in the counties of the applicable authority.

(f) The commission shall adopt rules to implement this section. The rules must include criteria and guidelines for the approval of a transfer of a ferry.

(g) An authority shall adopt rules establishing criteria and guidelines for approval of the transfer of a ferry under this section.

(h) An authority may temporarily charge a toll for use of a ferry transferred under this section to pay the costs necessary for an expansion of the ferry. An authority may permanently charge a toll for use of ferry facilities that are an expansion of the ferry transferred under this section.

(i) The commission may not transfer a ferry under this section if the ferry is located in a municipality with a population of 5,000 or less unless the city council of the municipality approves the transfer.

Sec. 370.038. COMMISSION RULES. (a) The commission shall adopt rules that:

(1) govern the creation of an authority;

(2) govern the commission's approval of a project under Section 370.187 and other commission approvals required by this chapter;

(3) establish design and construction standards for a transportation project that will connect with a highway in the state highway system or a department rail facility;

(4) establish minimum audit and reporting requirements and standards;

(5) establish minimum ethical standards for authority directors and employees; and

(6) govern the authority of an authority to contract with the United Mexican States or a state of the United Mexican States.

(b) The commission shall appoint a rules advisory committee to advise the department and the commission on the development of the commission's initial rules required by this section. The committee must include one or more members representing an existing authority, if applicable. Chapter 2110, Government Code, does not apply to the committee. This subsection expires on the date the commission adopts initial rules under this section.

[Sections 370.039-370.070 reserved for expansion]

SUBCHAPTER C. FEASIBILITY OF REGIONAL TRANSPORTATION PROJECTS

Sec. 370.071. EXPENDITURES FOR FEASIBILITY STUDIES. (a) An authority may pay the expenses of studying the cost and feasibility and any other expenses relating to the preparation and issuance of bonds for a proposed transportation project by:

(1) using legally available revenue derived from an existing transportation project;

(2) borrowing money and issuing bonds or entering into a loan agreement payable out of legally available revenue anticipated to be derived from the operation of an existing transportation project; or

(3) pledging to the payment of the bonds or a loan agreement legally available revenue anticipated to be derived from the operation of transportation projects or revenue legally available to the authority from another source.

(b) Money spent under this section for a proposed transportation project must be reimbursed to the transportation project from which the money was spent from the proceeds of bonds issued for the acquisition and construction of the proposed transportation project.

(c) The use of any money of a transportation project to study the feasibility of another transportation project or used to repay any money used for that purpose does not constitute an operating expense of the transportation project producing the revenue and may be paid only from the surplus money of the transportation project as determined by the authority.

Sec. 370.072. FEASIBILITY STUDY FUND. (a) An authority may maintain a feasibility study fund. The fund is a revolving fund held in trust by a banking institution chosen by the authority and shall be kept separate from the money for a transportation project.

(b) An authority may transfer an amount from a surplus fund established for a transportation project to the authority's feasibility study fund if the remainder of the surplus fund after the transfer is not less than any minimum amount required by the bond proceedings to be retained for that transportation project.

(c) Money in the feasibility study fund may be used only to pay the expenses of studying the cost and feasibility and any other expenses relating to:

(1) the preparation and issuance of bonds for the acquisition and construction of a proposed transportation project;

(2) the financing of the improvement, extension, or expansion of an existing transportation project; and

(3) private participation, as authorized by law, in the financing of a proposed transportation project, the refinancing of an existing transportation project or system, or the improvement, extension, or expansion of a transportation project.

(d) Money spent under Subsection (c) for a proposed transportation project must be reimbursed from the proceeds of revenue bonds issued for, or other proceeds that may be used for, the acquisition, construction, improvement, extension, expansion, or operation of the transportation project.

(e) For a purpose described by Subsection (c), an authority may borrow money and issue promissory notes or other interest-bearing evidences of indebtedness payable out of its feasibility study fund, pledging money in the fund or to be placed in the fund.

Sec. 370.073. FEASIBILITY STUDY BY MUNICIPALITY, COUNTY, OTHER GOVERNMENTAL ENTITY, OR PRIVATE GROUP. (a) One or more municipalities, counties, or other governmental entities, a combination of

municipalities, counties, and other governmental entities, or a private group or combination of individuals in this state may pay all or part of the expenses of studying the cost and feasibility and any other expenses relating to:

(1) the preparation and issuance of bonds for the acquisition or construction of a proposed transportation project by an authority;

(2) the improvement, extension, or expansion of an existing transportation project of the authority; or

(3) the use of private participation under applicable law in connection with the acquisition, construction, improvement, expansion, extension, maintenance, repair, or operation of a transportation project by an authority.

(b) Money spent under Subsection (a) for a proposed transportation project is reimbursable without interest and with the consent of the authority to the person paying the expenses described in Subsection (a) out of the proceeds from revenue bonds issued for or other proceeds that may be used for the acquisition, construction, improvement, extension, expansion, maintenance, repair, or operation of the transportation project.

[Sections 370.074-370.110 reserved for expansion]

SUBCHAPTER D. TRANSPORTATION PROJECT FINANCING

Sec. 370.111. TRANSPORTATION REVENUE BONDS. (a) An authority, by bond resolution, may authorize the issuance of bonds to pay all or part of the cost of a transportation project, to refund any bonds previously issued for the transportation project, or to pay for all or part of the cost of a transportation project that will become a part of another system.

(b) As determined in the bond resolution, the bonds of each issue shall:

(1) be dated;

(2) bear interest at the rate or rates provided by the bond resolution and beginning on the dates provided by the bond resolution and as authorized by law, or bear no interest;

(3) mature at the time or times provided by the bond resolution, not exceeding 40 years from their date or dates; and

(4) be made redeemable before maturity at the price or prices and under the terms provided by the bond resolution.

(c) An authority may sell the bonds at public or private sale in the manner and for the price it determines to be in the best interest of the authority.

(d) The proceeds of each bond issue shall be disbursed in the manner and under any restrictions provided in the bond resolution.

(e) Additional bonds may be issued in the same manner to pay the costs of a transportation project. Unless otherwise provided in the bond resolution, the additional bonds shall be on a parity, without preference or priority, with bonds previously issued and payable from the revenue of the transportation project. In addition, an authority may issue bonds for a transportation project secured by a lien on the revenue of the transportation project subordinate to the lien on the revenue securing other bonds issued for the transportation project.

(f) If the proceeds of a bond issue exceed the cost of the transportation project for which the bonds were issued, the surplus shall be segregated from the other money of the authority and used only for the purposes specified in the bond resolution.

(g) Bonds issued and delivered under this chapter and interest coupons on the bonds are a security under Chapter 8, Business & Commerce Code.

(h) Bonds issued under this chapter and income from the bonds, including any profit made on the sale or transfer of the bonds, are exempt from taxation in this state.

(i) Bonds issued under this chapter shall be considered authorized investments under Chapter 2256, Government Code, for this state, any governmental entity, and any other public entity proposing to invest in the bonds.

Sec. 370.112. INTERIM BONDS. (a) An authority may, before issuing definitive bonds, issue interim bonds, with or without coupons, exchangeable for definitive bonds.

(b) The interim bonds may be authorized and issued in accordance with this chapter, without regard to a requirement, restriction, or procedural provision in any other law.

(c) A bond resolution authorizing interim bonds may provide that the interim bonds recite that the bonds are issued under this chapter. The recital is conclusive evidence of the validity and the regularity of the bonds' issuance.

Sec. 370.113. PAYMENT OF BONDS; STATE AND COUNTY CREDIT.

(a) The principal of, interest on, and any redemption premium on bonds issued by an authority are payable solely from:

(1) the revenue of the transportation project for which the bonds are issued;

(2) payments made under an agreement with the commission, the department, or other governmental entity as provided by Subchapter G;

(3) money derived from any other source available to the authority, other than money derived from a transportation project that is not part of the same system or money derived from a different system, except to the extent that the surplus revenue of a transportation project or system has been pledged for that purpose; and

(4) amounts received under a credit agreement relating to the transportation project for which the bonds are issued.

(b) Bonds issued under this chapter do not constitute a debt of this state or of a governmental entity, or a pledge of the faith and credit of this state or of a governmental entity. Each bond must contain on its face a statement to the effect that the state, the authority, or any governmental entity is not obligated to pay the bond or the interest on the bond from a source other than the amount pledged to pay the bond and the interest on the bond, and neither the faith and credit and taxing power of this state or of any governmental entity are pledged to the payment of the principal of or interest on the bond. This subsection does not apply to a governmental entity that has entered into an agreement under Section 370.303.

(c) An authority may not incur a financial obligation that cannot be paid from revenue derived from owning or operating the authority's transportation projects or from other revenue provided by law.

Sec. 370.114. EFFECT OF LIEN. (a) A lien on or a pledge of revenue from a transportation project under this chapter or on a reserve, replacement, or other fund established in connection with a bond issued under this chapter:

(1) is enforceable at the time of payment for and delivery of the bond;
(2) applies to each item on hand or subsequently received;
(3) applies without physical delivery of an item or other act; and
(4) is enforceable against any person having a claim, in tort, contract, or other remedy, against the applicable authority without regard to whether the person has notice of the lien or pledge.

(b) A bond resolution is not required to be recorded except in the regular records of the authority.

Sec. 370.115. BOND INDENTURE. (a) Bonds issued by an authority under this chapter may be secured by a bond indenture between the authority and a corporate trustee that is a trust company or a bank that has the powers of a trust company.

(b) A bond indenture may pledge or assign the revenues to be received but may not convey or mortgage any part of a transportation project.

(c) A bond indenture may:
(1) set forth the rights and remedies of the bondholders and the trustee;
(2) restrict the individual right of action by bondholders as is customary in trust agreements or indentures of trust securing corporate bonds and debentures; and

(3) contain provisions the authority determines reasonable and proper for the security of the bondholders, including covenants:

(A) establishing the authority's duties relating to:
(i) the acquisition of property;
(ii) the construction, maintenance, operation, and repair of and insurance for a transportation project; and

(iii) custody, safeguarding, and application of money;
(B) prescribing events that constitute default;

(C) prescribing terms on which any or all of the bonds become or may be declared due before maturity; and

(D) relating to the rights, powers, liabilities, or duties that arise on the breach of a duty of the authority.

(d) An expense incurred in carrying out a trust agreement may be treated as part of the cost of operating the transportation project.

(e) In addition to all other rights by mandamus or other court proceeding, an owner or trustee of a bond issued under this chapter may enforce the owner's rights against an issuing authority, the authority's employees, the authority's board, or an agent or employee of the authority's board and is entitled to:

(1) require the authority or the board to impose and collect tolls, fares, fees, charges, and other revenue sufficient to carry out any agreement contained in the bond proceedings; and

(2) apply for and obtain the appointment of a receiver for the transportation project or system.

Sec. 370.116. APPROVAL OF BONDS BY ATTORNEY GENERAL. (a) An authority shall submit to the attorney general for examination the record of proceedings relating to bonds authorized under this chapter. The record shall include the bond proceedings and any contract securing or providing revenue for the payment of the bonds.

(b) If the attorney general determines that the bonds, the bond proceedings, and any supporting contract are authorized by law, the attorney general shall approve the bonds and deliver to the comptroller:

(1) a copy of the legal opinion of the attorney general stating the approval; and

(2) the record of proceedings relating to the authorization of the bonds.

(c) On receipt of the legal opinion of the attorney general and the record of proceedings relating to the authorization of the bonds, the comptroller shall register the record of proceedings.

(d) After approval by the attorney general, the bonds, the bond proceedings, and any supporting contract are valid, enforceable, and incontestable in any court or other forum for any reason and are binding obligations according to their terms for all purposes.

Sec. 370.117. FURNISHING OF INDEMNIFYING BONDS OR PLEDGES OF SECURITIES. (a) A bank or trust company incorporated under the laws of this state that acts as depository of the proceeds of bonds or of revenue may furnish indemnifying bonds or pledge securities that an authority requires.

(b) Bonds of an authority may secure the deposit of public money of this state or a political subdivision of this state to the extent of the lesser of the face value of the bonds or their market value.

Sec. 370.118. APPLICABILITY OF OTHER LAW; CONFLICTS. All laws affecting the issuance of bonds by local governmental entities, including Chapters 1201, 1202, 1204, and 1371, Government Code, apply to bonds issued under this chapter. To the extent of a conflict between those laws and this chapter, the provisions of this chapter prevail.

[Sections 370.119-370.160 reserved for expansion]

SUBCHAPTER E. ACQUISITION, CONSTRUCTION, AND OPERATION OF TRANSPORTATION PROJECTS

Sec. 370.161. TRANSPORTATION PROJECTS EXTENDING INTO OTHER COUNTIES. (a) An authority may acquire, construct, operate, maintain, expand, or extend a transportation project only in:

(1) a county that is a part of the authority;

(2) a county in this state that is not a part of the authority if:

(A) the transportation project in that county is a continuation of a transportation project of the authority extending from a county adjacent to that county;

(B) the county is given an opportunity to become part of the authority on terms and conditions acceptable to the authority and that county; and

(C) the commissioners court of the county agrees to the proposed acquisition, construction, operation, maintenance, expansion, or extension of the transportation project in that county; or

(3) a county in another state or the United Mexican States if:

(A) each governing body of a political subdivision in which the project will be located agrees to the proposed acquisition, construction, operation, maintenance, expansion, or extension;

(B) the project will bring significant benefits to the counties in this state that are part of the authority;

(C) the county in the other state is adjacent to a county that is:

(i) part of the authority constructing, operating, maintaining, expanding, or extending the transportation project; and

(ii) has a municipality with a population of 500,000 or more;

and

(D) the governor approves the proposed construction, operation, maintenance, expansion, or extension.

(b) An authority, under an agreement with another governmental entity, may construct, operate, maintain, expand, or extend a transportation project in a county that is not part of the authority and is not owned by the authority.

(c) A municipality that borders the United Mexican States and has a population of 500,000 or more has the same authority as a county to create and participate in an authority. A municipality creating or participating in an authority has the same powers and duties as a county participating in an authority, the governing body of the municipality has the same powers and duties as the commissioners court of a county participating in an authority, and an elected member of the municipality's governing body has the same powers and duties as a commissioner of a county that is participating in an authority.

Sec. 370.162. POWERS AND PROCEDURES OF AUTHORITY IN ACQUIRING PROPERTY. (a) An authority may construct or improve a transportation project on real property, including a right-of-way acquired by the authority or provided to the authority for that purpose by the commission, a political subdivision of this state, or any other governmental entity.

(b) Except as provided by this chapter, an authority has the same powers and may use the same procedures as the commission in acquiring property.

Sec. 370.163. ACQUISITION OF PROPERTY. (a) Except as otherwise provided by this subchapter, the governing body of an authority has the same powers and duties relating to the condemnation and acquisition of real property for a transportation project that the commission and the department have under Subchapter D, Chapter 361, and Section 361.233 relating to the condemnation or purchase of real property for a turnpike project. An authority does not have the powers and duties under Section 361.164 or 361.165. Notwithstanding Section 361.135(a), the concurrence of the commission is not a prerequisite to the exercise of the power of condemnation by the governing body of the authority.

(b) An authority's acquisition of any property of the commission under this or another section of this chapter or an authority's relocation, rerouting, disruption, or alteration of a facility of the commission is considered a conversion of a state highway system under Section 370.035 and is subject to each requirement, condition, or limitation provided by that section.

(c) The authority granted under this section does not include the authority to condemn a bridge connecting this state to the United Mexican States that is owned by a county or municipality.

Sec. 370.164. DECLARATION OF TAKING. (a) An authority may file a declaration of taking with the clerk of the court:

(1) in which the authority files a condemnation petition under Chapter 21, Property Code; or

(2) to which the case is assigned.

(b) An authority may file the declaration of taking concurrently with or subsequent to the filing of the condemnation petition but may not file the declaration after the special commissioners have made an award in the condemnation proceeding.

(c) An authority may not file a declaration of taking before the completion of all:

(1) environmental documentation, including a final environmental impact statement or a record of decision, that is required by federal or state law;

(2) public hearings and meetings, including those held in connection with the environmental rules adopted by the authority under Section 370.188, that are required by federal or state law; and

(3) notifications required by the rules adopted by the authority under Section 370.188.

(d) The declaration of taking must include:

(1) a specific reference to the legislative authority for the condemnation;

(2) a description and plot plan of the real property to be condemned, including the following information if applicable:

(A) the municipality in which the property is located;

(B) the street address of the property; and

(C) the lot and block number of the property;

(3) a statement of the property interest to be condemned;

(4) the name and address of each property owner that the authority can obtain after reasonable investigation and a description of the owner's interest in the property; and

(5) a statement that immediate possession of all or part of the property to be condemned is necessary for the timely construction of a transportation project.

(e) A deposit to the registry of the court of an amount equal to the appraised value as determined by the authority of the property to be condemned must accompany the declaration of taking.

(f) The date on which the declaration is filed is the date of taking for the purpose of assessing damages to which a property owner is entitled.

(g) After a declaration of taking is filed, the case shall proceed as any other case in eminent domain under Chapter 21, Property Code.

Sec. 370.165. POSSESSION OF PROPERTY. (a) Immediately on the filing of a declaration of taking, the authority shall serve a copy of the declaration on each person possessing an interest in the condemned property by a method prescribed by Section 21.016(d), Property Code. The authority shall file evidence of the service with the clerk of the court. On filing of that evidence, the authority may take possession of the property pending the litigation.

(b) If the condemned property is a homestead or a portion of a homestead as defined by Section 41.002, Property Code, the authority may not take possession before the 91st day after the date of service under Subsection (a).

(c) A property owner or tenant who refuses to vacate the property or yield possession is subject to forcible entry and detainer under Chapter 24, Property Code.

Sec. 370.166. PARTICIPATION PAYMENT FOR REAL PROPERTY. (a) As an alternative to paying for an interest in real property or a real property right with a single fixed payment, the authority may, with the owner's consent, pay the owner by means of a participation payment.

(b) A right to receive a participation payment under this section is subordinate to any right to receive a fee as payment on the principal of or interest on a bond that is issued for the construction of the applicable segment.

(c) In this section, "participation payment" means an intangible legal right to receive a percentage of one or more identified fees related to a segment constructed by the authority.

Sec. 370.167. SEVERANCE OF REAL PROPERTY. (a) If a transportation project of an authority severs a property owner's real property, the authority shall pay:

(1) the value of the property acquired; and

(2) the damages, if any, to the remainder of the owner's property caused by the severance, including damages caused by the inaccessibility of one tract from the other.

(b) At its option, an authority may negotiate for and purchase the severed real property or any part of the severed real property if the authority and the property owner agree on terms for the purchase. An authority may sell and dispose of severed real property that it determines is not necessary or useful to the authority. Severed property must be appraised before being offered for sale by the authority.

Sec. 370.168. ACQUISITION OF RIGHTS IN PUBLIC REAL PROPERTY. (a) An authority may use real property, including submerged land, streets, alleys, and easements, owned by this state or a local government that the authority considers necessary for the construction or operation of a transportation project.

(b) This state or a local government having charge of public real property may consent to the use of the property for a transportation project.

(c) Except as provided by Section 370.035, this state or a local government may convey, grant, or lease to an authority real property, including highways and other real property devoted to public use and rights or easements in real property, that may be necessary or convenient to accomplish a purpose of the authority, including the construction or operation of a transportation project. A conveyance, grant, or lease under this section may be made without advertising, court order, or other action other than the normal action of this state or local government necessary for a conveyance, grant, or lease.

(d) This section does not deprive the School Land Board of the power to execute a lease for the development of oil, gas, and other minerals on state-owned real property adjoining a transportation project or in tidewater limits. A lease may provide for directional drilling from the adjoining property or tidewater area.

(e) This section does not affect the obligation of the authority under another law to compensate this state for acquiring or using property owned by or on behalf of this state. An authority's use of property owned by or on behalf of this state is subject to any covenants, conditions, restrictions, or limitations affecting that property.

Sec. 370.169. COMPENSATION FOR AND RESTORATION OF PUBLIC PROPERTY. (a) Except as provided by Section 370.035, an authority may not pay compensation for public real property, parkways, streets, highways, alleys, or reservations it takes, other than:

(1) a park, playground, or designated environmental preserve;

(2) property owned by or on behalf of this state that under law requires compensation to this state for the use or acquisition of the property; or

(3) as provided by this chapter.

(b) Public property damaged in the exercise of a power granted by this chapter shall be restored or repaired and placed in its original condition as nearly as practicable.

(c) An authority has full easements and rights-of-way through, across, under, and over any property owned by the state or any local government that are necessary or convenient to construct, acquire, or efficiently operate a transportation project or system under this chapter. This subsection does not affect the obligation of the authority under other law to compensate this state for the use or acquisition of an easement or right-of-way on property owned by or on behalf of this state. An authority's use of property owned by or on behalf of this state is subject to any covenants, conditions, restrictions, or limitations affecting that property.

Sec. 370.170. PUBLIC UTILITY FACILITIES. (a) An authority may adopt rules for the authority's approval of the installation, construction, relocation, and removal of a public utility facility in, on, along, over, or under a transportation project.

(b) If the authority determines that a public utility facility located in, on, along, over, or under a transportation project must be relocated, the utility and the authority shall negotiate in good faith to establish reasonable terms and

conditions concerning the responsibilities of the parties with regard to sharing of information about the project and the planning and implementation of any necessary relocation of the public utility facility.

(c) The authority shall use its best efforts to provide an affected utility with plans and drawings of the project that are sufficient to enable the utility to develop plans for, and determine the cost of, the necessary relocation of a public utility facility. If the authority and the affected utility enter into an agreement after negotiations under Subsection (b), the terms and conditions of the agreement govern the relocation of each public utility facility covered by the agreement.

(d) If the authority and an affected utility do not enter into an agreement under Subsection (b), the authority shall provide to the affected utility:

(1) written notice of the authority's determination that the public utility facility must be removed;

(2) a final plan for relocation of the public utility facility; and

(3) reasonable terms and conditions for an agreement with the utility for the relocation of the public utility facility.

(e) Not later than the 90th day after the date a utility receives the notice from the authority, including the plan and agreement terms and conditions under Subsection (d), the utility shall enter into an agreement with the authority that provides for the relocation.

(f) If the utility fails to enter into an agreement within the 90-day period under Subsection (e), the authority may relocate the public utility facility at the sole cost and expense of the utility less any reimbursement of costs that would have been payable to the utility under applicable law. A relocation by the authority under this subsection shall be conducted in full compliance with applicable law, using standard equipment and construction practices compatible with the utility's existing facilities, and in a manner that minimizes disruption of utility service.

(g) The 90-day period under Subsection (e) may be extended:

(1) by mutual agreement between the authority and the utility; or

(2) for any period of time during which the utility is negotiating in good faith with the authority to relocate its facility.

(h) Subject to Subsections (a)-(g), the authority, as a part of the cost of the transportation project or the cost of operating the transportation project, shall pay the cost of the relocation, removal, or grade separation of a public utility facility under Subsection (a).

(i) The authority may reduce the total costs to be paid by the authority under Subsection (h) by 10 percent for each 30-day period or portion of a 30-day period by which the relocation or removal exceeds the reasonable limit specified by agreement between the authority and the owner or operator of the public utility facility, unless the failure of the owner or operator of the facility to timely relocate or remove the facility results directly from:

(1) a material action or inaction of the authority;

(2) an inability of the public utility facility owner or operator to obtain necessary line clearances to perform the removal or relocation; or

(3) conditions beyond the reasonable control of the owner or operator of the facility, including:

(A) an act of God; or

(B) a labor shortage or strike.

(j) The owner or operator of a public utility facility relocated or removed under Subsection (f) shall reimburse the authority for the expenses the authority reasonably incurred for the relocation or removal of the facility, less any costs that would have been payable to the owner or operator under Subsection (h) had the owner or operator relocated or removed the facility, except that the owner or operator is not required to reimburse the authority if the failure of the owner or operator to timely relocate or remove the facility was the result of circumstances beyond the control of the owner or operator.

(k) Subchapter C, Chapter 181, Utilities Code, applies to the erection, construction, maintenance, and operation of a line or pole owned by an electric utility, as that term is defined by Section 181.041, Utilities Code, over, under, across, on, and along a transportation project or system constructed by an authority. An authority has the powers and duties delegated to the commissioners court by that subchapter.

(l) Subchapter B, Chapter 181, Utilities Code, applies to the laying and maintenance of facilities used for conducting gas by a gas utility, as that term is defined by Section 181.021, Utilities Code, through, under, along, across, and over a transportation project or system constructed by an authority except as otherwise provided by this section. An authority has the powers and duties delegated to the commissioners court by that subchapter.

(m) The laws of this state applicable to the use of public roads, streets, and waters by a telephone or telegraph corporation apply to the erection, construction, maintenance, location, and operation of a line, pole, or other fixture by a telephone or telegraph corporation over, under, across, on, and along a transportation project constructed by an authority under this chapter.

Sec. 370.171. LEASE, SALE, OR CONVEYANCE OF TRANSPORTATION PROJECT. An authority may lease, sell, or convey in any other manner a transportation project to a governmental entity with the approval of the governing body of the governmental entity to which the project is transferred.

Sec. 370.172. REVENUE. (a) An authority may:

(1) impose tolls, fees, fares, or other charges for the use of each of its transportation projects and the different parts or sections of each of its transportation projects; and

(2) subject to Subsection (j), contract with a person for the use of part of a transportation project, or lease or sell part of a transportation project, including the right-of-way adjoining the portion used to transport people and property, for any purpose, including placing on the adjoining right-of-way a gas station, garage, store, hotel, restaurant, parking facility, railroad track, billboard, livestock pasturage, telephone line or facility, telecommunication line or facility, data transmission line or facility, or electric line or facility, under terms set by the authority.

(b) Tolls, fees, fares, or other charges must be set at rates or amounts so that the aggregate of tolls, fees, fares, or other charges from an authority's transportation project, together with other revenue of the transportation project:

(1) provides revenue sufficient to pay:

(A) the cost of maintaining, repairing, and operating the transportation project; and

(B) the principal of and interest on any bonds issued for the transportation project as those bonds become due and payable; and

(2) creates reserves for a purpose listed under Subdivision (1).

(c) Any toll, fee, fare, or other charge imposed on an owner of a public utility facility under this section must be imposed in a manner that is competitively neutral and nondiscriminatory among similarly situated users of the transportation project.

(d) Tolls, fees, fares, or other usage charges are not subject to supervision or regulation by any agency of this state or another governmental entity.

(e) Revenue derived from tolls, fees, and fares, and other revenue derived from a transportation project for which bonds are issued, other than any part necessary to pay the cost of maintenance, repair, and operation and to provide reserves for those costs as provided in the bond proceedings, shall be set aside at regular intervals as provided in the bond resolution or trust agreement in a sinking fund that is pledged to and charged with the payment of:

(1) interest on the bonds as it becomes due;

(2) principal of the bonds as it becomes due;

(3) necessary charges of paying agents for paying principal and interest;

(4) the redemption price or the purchase price of bonds retired by call or purchase as provided in the bond proceedings; and

(5) any amounts due under credit agreements.

(f) Use and disposition of money deposited to the credit of the sinking fund is subject to the bond proceedings.

(g) To the extent permitted under the applicable bond proceedings, revenue from one transportation project of an authority may be used to pay the cost of another transportation project of the authority.

(h) An authority may not use revenue from a transportation project in a manner not authorized by this chapter. Except as provided by this chapter, revenue derived from a transportation project may not be applied for a purpose or to pay a cost other than a cost or purpose that is reasonably related to or anticipated to be for the benefit of a transportation project.

(i) An authority may not require the owner of a public utility facility to pay a fee as a condition of placing a facility across the rights-of-way.

(j) An authority may contract for the use of part of a transportation project other than a public utility facility or lease or sell part of a transportation project other than a public utility facility under Subsection (a)(2) only to the extent that the contract, lease, or sale benefits the users of the transportation project.

Sec. 370.173. AUTHORITY REVOLVING FUND. (a) An authority may maintain a revolving fund to be held in trust by a banking institution chosen by the authority separate from any other funds and administered by the authority's board.

(b) An authority may transfer into its revolving fund money from any permissible source, including:

(1) money from a transportation project if the transfer does not diminish the money available for the project to less than any amount required to be retained by the bond proceedings pertaining to the project;

(2) money received by the authority from any source and not otherwise committed, including money from the transfer of a transportation project or system or sale of authority assets;

(3) money received from the state highway fund; and

(4) contributions, loans, grants, or assistance from the United States, another state, another political subdivision of this state, a foreign governmental entity, including the United Mexican States or a state of the United Mexican States, a local government, any private enterprise, or any person.

(c) The authority may use money in the revolving fund to:

(1) finance the acquisition, construction, maintenance, or operation of a transportation project, including the extension, expansion, or improvement of a transportation project;

(2) provide matching money required in connection with any federal, state, local, or private aid, grant, or other funding, including aid or funding by or with public-private partnerships;

(3) provide credit enhancement either directly or indirectly for bonds issued to acquire, construct, extend, expand, or improve a transportation project;

(4) provide security for or payment of future or existing debt for the design, acquisition, construction, operation, maintenance, extension, expansion, or improvement of a transportation project or system;

(5) borrow money and issue promissory notes or other indebtedness payable out of the revolving fund for any purpose authorized by this chapter; and

(6) provide for any other reasonable purpose that assists in the financing of an authority as authorized by this chapter.

(d) Money spent or advanced from the revolving fund for a transportation project must be reimbursed from the money of that transportation project. There must be a reasonable expectation of repayment at the time the expenditure or advancement is authorized.

Sec. 370.174. USE OF SURPLUS REVENUE. (a) Each year, if an authority determines that it has surplus revenue from transportation projects, it shall reduce tolls, spend the surplus revenue on other transportation projects in the counties of the authority in accordance with Subsection (b), or deposit the surplus revenue to the credit of the Texas Mobility Fund.

(b) Consistent with other law and commission rule, an authority may spend surplus revenue on other transportation projects by:

(1) constructing a transportation project located within the counties of the authority;

(2) assisting in the financing of a toll or toll-free transportation project of another governmental entity; or

(3) with the approval of the commission, constructing a toll or toll-free transportation project and, on completion of the project, transferring the project to another governmental entity if:

(A) the other governmental entity authorizes the authority to construct the project and agrees to assume all liability and responsibility for the maintenance and operation of the project on its transfer; and

(B) the project is constructed in compliance with all laws applicable to the governmental entity.

Sec. 370.175. EXEMPTION FROM TAXATION OR ASSESSMENT. (a) An authority is exempt from taxation of or assessments on:

(1) a transportation project or system;

(2) property the authority acquires or uses under this chapter for a transportation project or system; or

(3) income from property described by Subdivision (1) or (2).

(b) An authority is exempt from payment of development fees, utility connection fees, assessments, and service fees imposed or assessed by any governmental entity or any property owners' or homeowners' association. This subsection does not apply to fees or assessments charged under approved rate schedules or line extension policies of a municipally-owned electric or gas utility.

Sec. 370.176. ACTIONS AFFECTING EXISTING ROADS. (a) An authority may impose a toll for transit over an existing free road, street, or public highway transferred to the authority under this chapter.

(b) An authority may construct a grade separation at an intersection of a transportation project with a railroad or highway and change the line or grade of a highway to accommodate the design of the grade separation. The action may not affect a segment of the state highway system without the department's consent. The authority shall pay the cost of a grade separation and any damage incurred in changing a line or grade of a railroad or highway as part of the cost of the transportation project.

(c) If feasible, an authority shall provide access to properties previously abutting a county road or other public road that is taken for a transportation project and shall pay abutting property owners the expenses or any resulting damages for a denial of access to the road.

(d) If an authority changes the location of a segment of a county road as part of its development of a transportation project, the authority shall, on the request of the county, reconstruct that segment of the road at a location that the authority determines, in its discretion, restores the utility of the road. The reconstruction and its associated costs are in furtherance of a transportation project.

Sec. 370.177. FAILURE OR REFUSAL TO PAY TURNPIKE PROJECT TOLL; OFFENSE; ADMINISTRATIVE PENALTY. (a) The operator of a vehicle, other than an authorized emergency vehicle as defined by Section 541.201, that is driven or towed through a toll collection facility of a turnpike project shall pay the proper toll. The operator of a vehicle who drives or tows a

vehicle through a toll collection facility and does not pay the proper toll commits an offense. An offense under this subsection is a misdemeanor punishable by a fine not to exceed \$250.

(b) In the event of nonpayment of the proper toll as required by Subsection (a), on issuance of a written notice of nonpayment, the registered owner of the nonpaying vehicle is liable for the payment of both the proper toll and an administrative fee.

(c) The authority may impose and collect the administrative fee to recover the cost of collecting the unpaid toll, not to exceed \$100. The authority shall send a written notice of nonpayment to the registered owner of the vehicle at that owner's address as shown in the vehicle registration records of the department by first class mail not later than the 30th day after the date of the alleged failure to pay and may require payment not sooner than the 30th day after the date the notice was mailed. The registered owner shall pay a separate toll and administrative fee for each event of nonpayment under Subsection (a).

(d) The registered owner of a vehicle for which the proper toll was not paid who is mailed a written notice of nonpayment under Subsection (c) and fails to pay the proper toll and administrative fee within the time specified by the notice of nonpayment commits an offense. Each failure to pay a toll or administrative fee under this subsection is a separate offense.

(e) It is an exception to the application of Subsection (b) or (d) that the registered owner of the vehicle is a lessor of the vehicle and not later than the 30th day after the date the notice of nonpayment is mailed provides to the authority a copy of the rental, lease, or other contract document covering the vehicle on the date of the nonpayment under Subsection (a), with the name and address of the lessee clearly legible. If the lessor provides the required information within the period prescribed, the authority may send a notice of nonpayment to the lessee at the address shown on the contract document by first class mail before the 30th day after the date of receipt of the required information from the lessor. The lessee of the vehicle for which the proper toll was not paid who is mailed a written notice of nonpayment under this subsection and fails to pay the proper toll and administrative fee within the time specified by the notice of nonpayment commits an offense. The lessee shall pay a separate toll and administrative fee for each event of nonpayment. Each failure to pay a toll or administrative fee under this subsection is a separate offense.

(f) It is an exception to the application of Subsection (b) or (d) that the registered owner of the vehicle transferred ownership of the vehicle to another person before the event of nonpayment under Subsection (a) occurred, submitted written notice of the transfer to the department in accordance with Section 520.023, and before the 30th day after the date the notice of nonpayment is mailed, provides to the authority the name and address of the person to whom the vehicle was transferred. If the former owner of the vehicle provides the required information within the period prescribed, the authority may send a notice of nonpayment to the person to whom ownership of the vehicle was transferred at the address provided by the former owner by first class mail before the 30th day after the date of receipt of the required information from the former owner. The

subsequent owner of the vehicle for which the proper toll was not paid who is mailed a written notice of nonpayment under this subsection and fails to pay the proper toll and administrative fee within the time specified by the notice of nonpayment commits an offense. The subsequent owner shall pay a separate toll and administrative fee for each event of nonpayment under Subsection (a). Each failure to pay a toll or administrative fee under this subsection is a separate offense.

(g) An offense under Subsection (d), (e), or (f) is a misdemeanor punishable by a fine not to exceed \$250.

(h) The court in which a person is convicted of an offense under this section shall also collect the proper toll and administrative fee and forward the toll and fee to the authority.

(i) In the prosecution of an offense under this section, proof that the vehicle passed through a toll collection facility without payment of the proper toll together with proof that the defendant was the registered owner or the driver of the vehicle when the failure to pay occurred, establishes the nonpayment of the registered owner. The proof may be by testimony of a peace officer or authority employee, video surveillance, or any other reasonable evidence.

(j) It is a defense to prosecution under this section that the motor vehicle in question was stolen before the failure to pay the proper toll occurred and was not recovered by the time of the failure to pay, but only if the theft was reported to the appropriate law enforcement authority before the earlier of:

(1) the occurrence of the failure to pay; or

(2) eight hours after the discovery of the theft.

(k) In this section, "registered owner" means the owner of a vehicle as shown on the vehicle registration records of the department or the analogous department or agency of another state or country.

Sec. 370.178. USE AND RETURN OF TRANSPONDERS. (a) For purposes of this section, "transponder" means a device placed on or within an automobile that is capable of transmitting or receiving information used to assess or collect tolls. A transponder is insufficiently funded if there is no money in the account for which the transponder was issued.

(b) Any law enforcement or peace officer of an entity with which an authority has contracted under Section 370.181(c) may seize a stolen or insufficiently funded transponder and return it to the authority that issued the transponder. An insufficiently funded transponder may not be seized before the 30th day after the date that an authority has sent a notice of delinquency to the holder of the account.

(c) The following entities shall consider offering motor vehicle operators the option of using a transponder to pay tolls without stopping, to mitigate congestion at toll locations, to enhance traffic flow, and to otherwise increase the efficiency of operations:

(1) the authority;

(2) an entity to which a project authorized by this chapter is transferred;

or

(3) a third-party service provider under contract with an entity described by Subdivision (1) or (2).

Sec. 370.179. CONTROLLED ACCESS TO TURNPIKE PROJECTS. (a) An authority by order may designate a turnpike project or a portion of a project as a controlled-access toll road.

(b) An authority by order may:

(1) prohibit the use of or access to or from a turnpike project by a motor vehicle, bicycle, another classification or type of vehicle, or a pedestrian;

(2) deny access to or from:

(A) a turnpike project;

(B) real property adjacent to a turnpike project; or

(C) a street, road, alley, highway, or other public or private way intersecting a turnpike project;

(3) designate locations on a turnpike project at which access to or from the toll road is permitted;

(4) control, restrict, and determine the type and extent of access permitted at a designated location of access to a turnpike project; or

(5) erect appropriate protective devices to preserve the utility, integrity, and use of a turnpike project.

(c) Denial of access to or from a segment of the state highway system is subject to the approval of the commission.

Sec. 370.180. PROMOTION OF TRANSPORTATION PROJECT. An authority may promote the use of a transportation project, including a project that it operates on behalf of another entity, by appropriate means, including advertising or marketing as the authority determines appropriate.

Sec. 370.181. OPERATION OF TRANSPORTATION PROJECT. (a) An authority shall operate a transportation project with employees of the authority or by using services contracted under Subsection (b) or (c).

(b) An authority may enter into an agreement with one or more persons to provide, on terms and conditions approved by the authority, personnel and services to design, construct, operate, maintain, expand, enlarge, or extend the transportation project of the authority.

(c) An authority may contract with any state or local government for the services of peace officers of that agency.

(d) An authority may not directly provide water, wastewater, natural gas, petroleum pipeline, electric transmission, electric distribution, telecommunications, information, or cable television services.

(e) Nothing in this chapter, or any contractual right obtained under a contract with an authority authorized by this chapter, supersedes or renders ineffective any provision of another law applicable to the owner or operator of a public utility facility, including any provision of the Utilities Code regarding licensing, certification, and regulatory jurisdiction of the Public Utility Commission of Texas or Railroad Commission of Texas.

Sec. 370.182. AUDIT. (a) An authority shall have a certified public accountant audit the authority's books and accounts at least annually. The cost of the audit may be treated as part of the cost of construction or operation of a transportation project.

(b) The commission may initiate an independent audit of the authority or any of its activities at any time the commission considers appropriate. An audit under this subsection shall be conducted at the expense of the department.

Sec. 370.183. DISADVANTAGED BUSINESSES. (a) Consistent with general law, an authority shall:

(1) set goals for the award of contracts to disadvantaged businesses and attempt to meet the goals;

(2) attempt to identify disadvantaged businesses that provide or have the potential to provide supplies, materials, equipment, or services to the authority; and

(3) give disadvantaged businesses full access to the authority's contract bidding process, inform the businesses about the process, offer the businesses assistance concerning the process, and identify barriers to the businesses' participation in the process.

(b) This section does not exempt an authority from competitive bidding requirements provided by other law.

Sec. 370.184. PROCUREMENT. An authority shall adopt rules governing the award of contracts for goods and services. Notwithstanding any other provision of state law, an authority may procure goods and services, including materials, engineering, design, construction, operations, maintenance, and other goods and services, through any procedure authorized by this chapter. Procurement of professional services is governed by Chapter 2254, Government Code.

Sec. 370.185. COMPETITIVE BIDDING. A contract made by an authority may be let by a competitive bidding procedure in which the contract is awarded to the lowest responsible bidder that complies with the authority's criteria.

Sec. 370.186. CONTRACTS WITH GOVERNMENTAL ENTITIES. (a) An authority may not construct, maintain, or operate a turnpike or toll project in an area having a governmental entity established under Chapter 284 or 366 unless the governmental entity and the authority enter into a written agreement specifying the terms and conditions under which the project shall be undertaken. An authority may not construct, maintain, or operate a transportation project that another governmental entity has determined to be a project under Chapter 451, 452, or 460 unless the governmental entity and the authority enter into a written agreement specifying the terms and conditions under which the project shall be undertaken.

(b) An authority may not receive or be paid revenue derived by another governmental entity operating under Chapter 284, 366, 451, 452, or 460 unless the governmental entity and the authority enter into a written agreement specifying the terms and conditions under which the revenue shall be received by or paid to the authority.

Sec. 370.187. PROJECT APPROVAL. (a) An authority may not begin construction of a transportation project that will connect to the state highway system or to a department rail facility without the approval of the commission.

(b) The commission by rule shall establish procedures and criteria for an approval under this section. The rules must require the commission to consider a request for project approval not later than the 60th day after the date the department receives all information reasonably necessary to review the request.

Sec. 370.188. ENVIRONMENTAL REVIEW OF AUTHORITY PROJECTS. (a) An authority shall adopt rules for environmental review of a transportation project that is not subject to review under the National Environmental Policy Act (42 U.S.C. Section 4321 et seq.), as amended. The rules must:

(1) specify the types of projects for which a public hearing is required;

(2) establish procedures for public comment on the environmental review, including a procedure for requesting a public hearing on an environmental review for which a public hearing is not required; and

(3) require:

(A) an evaluation of any direct or indirect environmental effect of the project;

(B) an analysis of project alternatives; and

(C) a written report that briefly explains the authority's review of the project and that specifies any mitigation measures on environmental harm on which the project is conditioned.

(b) An environmental review of a project must be conducted before the authority may approve the location or alignment of the project.

(c) The authority shall consider the results of the environmental review in executing its duties.

(d) The authority shall coordinate with the Texas Commission on Environmental Quality and the Parks and Wildlife Department in the preparation of an environmental review.

(e) This section does not prohibit an owner of a public utility facility or a proposed public utility facility from conducting any necessary environmental evaluation for the public utility facility. The authority is entitled to review and give final approval regarding the sufficiency of any environmental evaluation conducted for a facility that is part of a transportation project.

Sec. 370.189. DEPARTMENT MAINTENANCE AND OPERATION. (a) If requested by an authority, the department may agree to assume all or part of the duty to maintain or operate a turnpike project or ferry of the authority.

(b) The authority shall reimburse the department for necessary costs of maintaining or operating the turnpike project or ferry as agreed by the department and the authority.

(c) Money received by the department under Subsection (b) shall be deposited to the credit of the state highway fund and is exempt from the application of Sections 403.095 and 404.071, Government Code.

(d) If the department assumes all of the duty to maintain or operate a turnpike project or ferry under Subsection (a), the authority is not liable for damages resulting from the maintenance or operation of the turnpike project or ferry.

(e) An agreement under this section is not a joint enterprise for purposes of liability.

Sec. 370.190. PROPERTY OF CERTAIN TRANSPORTATION AUTHORITIES. An authority may not condemn or purchase real property of a transportation authority operating under Chapter 451, 452, or 460 unless the authority has entered into a written agreement with the transportation authority specifying the terms and conditions under which the condemnation or the purchase of the real property will take place.

Sec. 370.191. COMMERCIAL TRANSPORTATION PROCESSING SYSTEMS. (a) In this section, "port of entry" means a place designated by executive order of the president of the United States, by order of the United States secretary of the treasury, or by act of the United States Congress at which a customs officer is authorized to accept entries of merchandise, to collect duties, and to enforce the various provisions of the customs and navigation laws.

(b) This section applies only to a port of entry for land traffic from the United Mexican States and does not apply to a port of entry for marine traffic.

(c) To the extent an authority considers appropriate to expedite commerce and based on the Texas ITS/CVO Business Plan prepared by the department, the Department of Public Safety, and the comptroller, the authority shall provide for implementation by the appropriate agencies of the use of Intelligent Transportation Systems for Commercial Vehicle Operations (ITS/CVO) in any new commercial motor vehicle inspection facility constructed by the authority and in any existing facility located at a port of entry to which this section applies. The authority shall coordinate with other state and federal transportation officials to develop interoperability standards for the systems.

(d) If an authority constructs a facility at which commercial vehicle safety inspections are conducted, the facility may not be used solely for the purpose of conducting commercial motor vehicle inspections by the Department of Public Safety and the facility must include implementation of ITS/CVO technology by the appropriate agencies to support all commercial motor vehicle regulation and enforcement functions.

(e) As part of its implementation of technology under this section, an authority shall to the greatest extent possible as a requirement of the construction of the facility:

(1) enhance efficiency and reduce complexity for motor carriers by providing a single point of contact between carriers and regulating state and federal government officials and providing a single point of information, available to wireless access, about federal and state regulatory and enforcement requirements;

(2) prevent duplication of state and federal procedures and locations for regulatory and enforcement activities, including consolidation of collection of applicable fees;

(3) link information systems of the authority, the department, the Department of Public Safety, the comptroller, and, to the extent possible, the United States Department of Transportation and other appropriate regulatory and enforcement entities; and

(4) take other necessary action to:

(A) facilitate the flow of commerce;

(B) assist federal interdiction efforts;

(C) protect the environment by reducing idling time of commercial motor vehicles at the facilities;

(D) prevent highway damage caused by overweight commercial motor vehicles; and

(E) seek federal funds to assist in the implementation of this section.

(f) Construction of a facility to which this section applies is subject to the availability of federal funding for that purpose.

Sec. 370.192. PROPERTY OF RAPID TRANSIT AUTHORITIES. An authority may not condemn or purchase real property of a rapid transit authority operating pursuant to Chapter 451 that was confirmed before July 1, 1985, and in which the principal municipality has a population of less than 750,000, unless the authority has entered into a written agreement with the rapid transit authority specifying the terms and conditions under which the condemnation or the purchase of the real property will take place.

[Sections 370.193-370.250 reserved for expansion]

SUBCHAPTER F. GOVERNANCE

Sec. 370.251. BOARD OF DIRECTORS. (a) The governing body of an authority is a board of directors consisting of representatives of each county in which a transportation project of the authority is located or is proposed to be located. The commissioners court of each county that initially forms the authority shall appoint at least two directors to the board. Additional directors may be appointed to the board at the time of initial formation by agreement of the counties creating the authority to ensure fair representation of political subdivisions in the counties of the authority that will be affected by a transportation project of the authority, provided that the number of directors must be an odd number. The commissioners court of a county that is subsequently added to the authority shall appoint one director to the board. The governor shall appoint one director to the board who shall serve as the presiding officer of the board and shall appoint an additional director to the board if an appointment is necessary to maintain an odd number of directors on the board.

(b) Unless the commissioners courts of the counties of the authority unanimously agree otherwise, the commissioners court of each county of an authority that contains an operating transportation project of the authority shall appoint one additional director.

(c) Directors serve staggered six-year terms, with the terms of no more than one-third of the directors expiring on February 1 of each odd-numbered year.

(d) One director appointed to the initial board of an authority by the commissioners court of a county shall be designated by the court to serve a term of two years and one director designated to serve a term of four years. If one or more directors are subsequently appointed to the board, the directors other than the subsequent appointees shall determine the length of the appointees' terms, to comply with Subsection (c).

(e) If a vacancy occurs on the board, the appointing authority shall promptly appoint a successor to serve for the unexpired portion of the term.

(f) All appointments to the board shall be made without regard to race, color, disability, sex, religion, age, or national origin.

(g) The following individuals are ineligible to serve as a director:

(1) an elected official;

(2) a person who is not a resident of a county within the geographic area of the authority;

(3) a department employee;

(4) an employee of a governmental entity any part of which is located within the geographic boundaries of the authority; and

(5) a person owning an interest in real property that will be acquired for an authority project, if it is known at the time of the person's proposed appointment that the property will be acquired for the authority project.

(h) Each director has equal status and may vote.

(i) The vote of a majority attending a board meeting is necessary for any action taken by the board. If a vacancy exists on a board, the majority of directors serving on the board is a quorum.

(j) The commission may refuse to authorize the creation of an authority if the commission determines that the proposed board will not fairly represent political subdivisions in the counties of the authority that will be affected by the creation of the authority.

Sec. 370.2515. BOARD COMPOSITION PROPOSAL BY TURNPIKE AUTHORITY. If a county in which a turnpike authority under Chapter 366 operates or a county owning or operating a toll project under Chapter 284 is part of an authority, the turnpike authority or the county may submit to the commission a proposed structure for the board and a method of appointment to the board:

(1) at the creation of the authority if the county is a county that initially forms an authority;

(2) when a new county is added to the authority; and

(3) when the county is initially added to the authority.

Sec. 370.252. PROHIBITED CONDUCT FOR DIRECTORS AND EMPLOYEES. (a) A director or employee of an authority may not:

(1) accept or solicit any gift, favor, or service that:

(A) might reasonably influence the director or employee in the discharge of an official duty; or

(B) the director or employee knows or should know is being offered with the intent to influence the director's or employee's official conduct;

(2) accept other employment or engage in a business or professional activity that the director or employee might reasonably expect would require or induce the director or employee to disclose confidential information acquired by reason of the official position;

(3) accept other employment or compensation that could reasonably be expected to impair the director's or employee's independence of judgment in the performance of the director's or employee's official duties;

(4) make personal investments that could reasonably be expected to create a substantial conflict between the director's or employee's private interest and the interest of the authority;

(5) intentionally or knowingly solicit, accept, or agree to accept any benefit for having exercised the director's or employee's official powers or performed the director's or employee's official duties in favor of another; or

(6) have a personal interest in an agreement executed by the authority.

(b) A person is not eligible to serve as a director or chief administrative officer of an authority if the person or the person's spouse:

(1) is employed by or participates in the management of a business entity or other organization, other than a governmental entity, that is regulated by or receives funds from the authority or the department;

(2) directly or indirectly owns or controls more than a 10 percent interest in a business or other organization that is regulated by or receives funds from the authority or the department;

(3) uses or receives a substantial amount of tangible goods, services, or funds from the authority or the department; or

(4) 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 authority or the department.

(c) A person is not eligible to serve as a director or chief administrative officer of an authority if the person is an officer, employee, or paid consultant of a Texas trade association in the field of road construction or maintenance, public transportation, or aviation, or if the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of road construction or maintenance, public transportation, or aviation.

(d) In this section, "Texas trade association" means a nonprofit, 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 interests.

(e) A person is not ineligible to serve as a director or chief administrative officer of an authority if the person has received funds from the department for acquisition of highway right-of-way unless the acquisition was for a project of the authority.

Sec. 370.253. SURETY BONDS. (a) Before beginning a term, each director shall execute a surety bond in the amount of \$25,000, and the secretary and treasurer shall execute a surety bond in the amount of \$50,000.

(b) Each surety bond must be:

(1) conditioned on the faithful performance of the duties of office;

(2) executed by a surety company authorized to transact business in this state; and

(3) filed with the secretary of state's office.

(c) The authority shall pay the expense of the bonds.

Sec. 370.254. REMOVAL OF DIRECTOR. (a) It is a ground for removal of a director from the board if the director:

(1) did not have at the time of appointment the qualifications required by Section 370.251;

(2) at the time of appointment or at any time during the director's term, is ineligible under Section 370.251 or 370.252 to serve as a director;

(3) cannot discharge the director's duties for a substantial part of the term for which the director is appointed because of illness or disability; or

(4) is absent from more than half of the regularly scheduled board meetings that the director is eligible to attend during a calendar year.

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

(c) If the chief administrative officer of the authority has knowledge that a potential ground for removal exists, that person shall notify the presiding officer of the board of the ground. The presiding officer shall then notify the person that appointed the director that a potential ground for removal exists.

Sec. 370.255. COMPENSATION OF DIRECTOR. Each director is entitled to reimbursement for the director's actual expenses necessarily incurred in the performance of the director's duties. A director is not entitled to any additional compensation for the director's services.

Sec. 370.256. EVIDENCE OF AUTHORITY ACTIONS. Actions of an authority are the actions of its board and may be evidenced in any legal manner, including a board resolution.

Sec. 370.257. PUBLIC ACCESS. An authority shall:

(1) make and implement policies that provide the public with a reasonable opportunity to appear before the board to speak on any issue under the jurisdiction of the authority; and

(2) prepare and maintain a written plan that describes how an individual who does not speak English or who has a physical, mental, or developmental disability may be provided reasonable access to the authority's programs.

Sec. 370.258. INDEMNIFICATION. (a) An authority may indemnify one or more of its directors or officers for necessary expenses and costs, including attorney's fees, incurred by the directors or officers in connection with any claim asserted against the directors or officers in their respective capacities as directors or officers.

(b) If an authority does not fully indemnify a director or officer as provided by Subsection (a), the court in a proceeding in which any claim against the director or officer is asserted or any court with jurisdiction of an action instituted by the director or officer on a claim for indemnity may assess indemnity against the authority, its receiver, or trustee only if the court finds that, in connection with the claim, the director or officer is not guilty of negligence or misconduct.

(c) A court may not assess indemnity under Subsection (b) for an amount paid by the director or officer to the authority.

(d) This section applies to a current or former director or officer of the authority.

Sec. 370.259. PURCHASE OF LIABILITY INSURANCE. (a) An authority shall insure its officers and employees from liability arising from the use, operation, or maintenance of equipment that is used or may be used in connection with the laying out, construction, or maintenance of the authority's transportation projects.

(b) Insurance coverage under this section must be provided by the purchase of a policy of liability insurance from a reliable insurance company authorized to do business in this state. The form of the policy must be approved by the commissioner of insurance.

(c) This section is not a waiver of immunity of the authority or the counties in an authority from liability for the torts or negligence of an officer or employee of an authority.

(d) In this section, "equipment" includes an automobile, motor truck, trailer, aircraft, motor grader, roller, tractor, tractor power mower, locomotive, rail car, and other power equipment.

Sec. 370.260. CERTAIN CONTRACTS AND SALES PROHIBITED. (a) A director, agent, or employee of an authority may not:

(1) contract with the authority; or

(2) be directly or indirectly interested in:

(A) a contract with the authority; or

(B) the sale of property to the authority.

(b) A person who violates Subsection (a) is liable for a civil penalty to the authority in an amount not to exceed \$1,000.

Sec. 370.261. STRATEGIC PLANS AND ANNUAL REPORTS. (a) An authority shall make a strategic plan for its operations. A majority of the commissioners courts of the counties of the authority shall by concurrent resolution determine the types of information required to be included in the strategic plan. Each even-numbered year, an authority shall issue a plan covering the succeeding five fiscal years, beginning with the next odd-numbered fiscal year.

(b) Not later than March 31 of each year, an authority shall file with the commissioners court of each county of the authority a written report on the authority's activities describing all transportation revenue bond issuances anticipated for the coming year, the financial condition of the authority, all project schedules, and the status of the authority's performance under the most recent strategic plan. At the invitation of a commissioners court of a county of the authority, representatives of the board and the administrative head of an authority shall appear before the commissioners court to present the report and receive questions and comments.

(c) The authority shall give notice to the commissioners court of each county of the authority not later than the 90th day before the date of issuance of revenue bonds.

Sec. 370.262. MEETINGS BY TELEPHONE CONFERENCE CALL. (a) Chapter 551, Government Code, does not prohibit any open or closed meeting of the board, a committee of the board, or the staff, or any combination of the board or staff, from being held by telephone conference call.

(b) A telephone conference call meeting is subject to the notice requirements applicable to other meetings.

(c) Notice of a telephone conference call meeting that by law must be open to the public must specify the location of the meeting. The location must be a conference room of the authority or other facility in a county of the authority that is accessible to the public.

(d) Each part of the telephone conference call meeting that by law must be open to the public shall be audible to the public at the location specified in the notice and shall be tape-recorded or documented by written minutes. On conclusion of the meeting, the tape recording or the written minutes of the meeting shall be made available to the public.

[Sections 370.263-370.300 reserved for expansion]

SUBCHAPTER G. PARTICIPATION IN FINANCING, CONSTRUCTION,
AND OPERATION OF TRANSPORTATION PROJECTS

Sec. 370.301. DEPARTMENT CONTRIBUTIONS TO TURNPIKE PROJECTS. (a) The department may agree with an authority to provide for or contribute to the payment of costs of financial or engineering and traffic feasibility studies and the design, financing, acquisition, construction, operation, or maintenance of a turnpike project or system on terms agreed on by the commission or department, as applicable, and the authority. The agreement may not be inconsistent with the rights of the bondholders or persons operating the turnpike project under a lease or other contract.

(b) The department may use its engineering and other personnel, including consulting engineers and traffic engineers, to conduct feasibility studies under Subsection (a).

(c) An obligation or expense incurred by the commission or department under this section is a part of the cost of the turnpike project for which the obligation or expense was incurred. The commission or department may require money contributed by the commission or department under this section to be repaid from tolls or other revenue of the turnpike project on which the money was spent. Money repaid as required by the commission or department shall be deposited to the credit of the fund from which the contribution was made. Money deposited as required by this section is exempt from the application of Section 403.095, Government Code.

(d) The commission or department may use federal money for any purpose described by this chapter.

(e) A turnpike project developed by an authority may not be part of the state highway system unless otherwise agreed to by the authority and the department.

(f) The commission may grant or loan department money to an authority for the acquisition of land for or the construction, maintenance, or operation of a turnpike project. The commission may require the authority to repay money provided under this section from toll revenue or other sources on terms established by the commission.

(g) Money repaid as required by the commission shall be deposited to the credit of the fund from which the money was provided. Money deposited as required by this section is exempt from the application of Section 403.095, Government Code.

Sec. 370.302. AGREEMENTS TO CONSTRUCT, MAINTAIN, AND OPERATE TRANSPORTATION PROJECTS. (a) An authority may enter into an agreement with a public or private entity, including a toll road corporation, the United States, a state of the United States, the United Mexican States, a state of the United Mexican States, another governmental entity, or a political subdivision, to permit the entity, independently or jointly with the authority, to study the feasibility of a transportation project or to acquire, design, finance, construct, maintain, repair, operate, extend, or expand a transportation project. An authority and a private entity jointly may enter into an agreement with another governmental entity to study the feasibility of a transportation project or to acquire, design, finance, construct, maintain, repair, operate, extend, or expand a transportation project.

(b) An authority has broad discretion to negotiate provisions in a development agreement with a private entity. The provisions may include provisions relating to:

(1) the design, financing, construction, maintenance, and operation of a transportation project in accordance with standards adopted by the authority; and

(2) professional and consulting services to be rendered under standards adopted by the authority in connection with a transportation project.

(c) An authority may not incur a financial obligation on behalf of, or guarantee the obligations of, a private entity that constructs, maintains, or operates a transportation project.

(d) An authority or a county in an authority is not liable for any financial or other obligation of a transportation project solely because a private entity constructs, finances, or operates any part of a transportation project.

(e) An authority may authorize the investment of public and private money, including debt and equity participation, to finance a function described by this section.

(f) An authority may not directly provide water, wastewater, natural gas, petroleum pipeline, electric transmission, electric distribution, telecommunications, information, or cable television services.

(g) Nothing in this chapter, or any contractual right obtained under a contract with an authority authorized by this chapter, supersedes or renders ineffective any provision of another law applicable to the owner or operator of a public utility facility, including any provision of the Utilities Code regarding licensing, certification, and regulatory jurisdiction of the Public Utility Commission of Texas or Railroad Commission of Texas.

Sec. 370.303. AGREEMENTS BETWEEN AUTHORITY AND LOCAL GOVERNMENTAL ENTITIES. (a) A governmental entity other than a nonprofit corporation may, consistent with the Texas Constitution, issue bonds, notes, or other obligations or enter into and make payments under agreements with an authority to acquire, construct, maintain, or operate a transportation project, whether inside or outside the geographic boundaries of the governmental entity, including agreements to pay the principal of, and interest on, bonds, notes, or other obligations issued by the authority and make payments under any related credit agreements. The entity may impose and collect taxes to pay the interest on the bonds and to provide a sinking fund for the redemption of the bonds.

(b) In addition to the powers provided by Subsection (a), a governmental entity may, to the extent constitutionally permitted, agree with an authority to issue bonds, notes, or other obligations, create a taxing district or an entity to promote economic development, fund public improvements to promote economic development, or enter into and make payments under an agreement to acquire, construct, maintain, or operate any portion of a transportation project of the authority. An agreement may include a means for a local governmental entity to provide funds for a transportation project that benefits the governmental entity to be developed by the authority.

(c) To make payments under an agreement under Subsection (b), to pay the interest on bonds issued under Subsection (b), or to provide a sinking fund for the bonds or the agreement, a governmental entity may:

(1) pledge revenue from any available source, including annual appropriations;

(2) impose and collect taxes; or

(3) pledge revenue and impose and collect taxes.

(d) The term of an agreement under this section may not exceed 40 years.

(e) An election required to authorize action under this subchapter must be held in conformity with Chapter 1251, Government Code, or other law applicable to the governmental entity.

(f) The governing body of any governmental entity issuing bonds, notes, or other obligations or entering into agreements under this section may exercise the authority granted to the governing body of an issuer with regard to issuance of obligations under Chapter 1371, Government Code, except that the prohibition in that chapter on the repayment of an obligation with ad valorem taxes does not apply to an issuer exercising the authority granted by this section.

Sec. 370.304. ADDITIONAL AGREEMENTS OF AUTHORITY. An authority may enter into any agreement necessary or convenient to achieve the purposes of this subchapter.

Sec. 370.305. COMPREHENSIVE DEVELOPMENT AGREEMENTS. (a) An authority may use a comprehensive development agreement with a private entity to construct, maintain, repair, operate, extend, or expand a transportation project.

(b) A comprehensive development agreement is an agreement with a private entity that, at a minimum, provides for the design and construction of a transportation project and may also provide for the financing, acquisition, maintenance, or operation of a transportation project.

(c) An authority may negotiate provisions relating to professional and consulting services provided in connection with a comprehensive development agreement.

(d) This section expires on August 31, 2011.

Sec. 370.306. PROCESS FOR ENTERING INTO COMPREHENSIVE DEVELOPMENT AGREEMENTS. (a) If an authority enters into a comprehensive development agreement, the authority shall use a competitive procurement process that provides the best value for the authority. The authority may accept unsolicited proposals for a proposed transportation project or solicit proposals in accordance with this section.

(b) An authority shall establish rules and procedures for accepting unsolicited proposals that require the private entity to include in the proposal:

(1) information regarding the proposed project location, scope, and limits;

(2) information regarding the private entity's qualifications, experience, technical competence, and capability to develop the project; and

(3) a proposed financial plan for the proposed project that includes, at a minimum:

(A) projected project costs; and

(B) proposed sources of funds.

(c) An authority shall publish a request for competing proposals and qualifications in the Texas Register that includes the criteria used to evaluate the proposals, the relative weight given to the criteria, and a deadline by which proposals must be received if:

(1) the authority decides to issue a request for qualifications for a proposed project; or

(2) the authority authorizes the further evaluation of an unsolicited proposal.

(d) A proposal submitted in response to a request published under Subsection (c) must contain, at a minimum, the information required by Subsections (b)(2) and (3).

(e) An authority may interview a private entity submitting an unsolicited proposal or responding to a request under Subsection (c). The authority shall evaluate each proposal based on the criteria described in the notice. The authority must qualify at least two private entities to submit detailed proposals for a project under Subsection (f) unless the authority does not receive more than one proposal or one response to a request under Subsection (c).

(f) An authority shall issue a request for detailed proposals from all private entities qualified under Subsection (e) if the authority proceeds with the further evaluation of a proposed project. A request under this subsection may require additional information relating to:

(1) the private entity's qualifications and demonstrated technical competence;

(2) the feasibility of developing the project as proposed;

(3) detailed engineering or architectural designs;

(4) the private entity's ability to meet schedules;

(5) costing methodology; or

(6) any other information the authority considers relevant or necessary.

(g) In issuing a request for proposals under Subsection (f), an authority may solicit input from entities qualified under Subsection (e) or any other person. An authority may also solicit input regarding alternative technical concepts after issuing a request under Subsection (f).

(h) An authority shall rank each proposal based on the criteria described in the request for proposals and select the private entity whose proposal offers the best value to the authority.

(i) An authority may enter into discussions with the private entity whose proposal offers the apparent best value. The discussions shall be limited to:

(1) incorporation of aspects of other proposals for the purpose of achieving the overall best value for the authority;

(2) clarifications and minor adjustments in scheduling, cash flow, and similar items; and

(3) matters that have arisen since the submission of the proposal.

(j) If at any point in discussions under Subsection (i), it appears to the authority that the highest ranking proposal will not provide the authority with the overall best value, the authority may enter into discussions with the private entity submitting the next-highest ranking proposal.

(k) An authority may withdraw a request for competing proposals and qualifications or a request for detailed proposals at any time. The authority may then publish a new request for competing proposals and qualifications.

(l) An authority may require that an unsolicited proposal be accompanied by a nonrefundable fee sufficient to cover all or part of its cost to review the proposal.

(m) An authority shall pay an unsuccessful private entity that submits a response to a request for detailed proposals under Subsection (f) a stipulated amount of the final contract price for any costs incurred in preparing that proposal. The stipulated amount must be stated in the request for proposals and may not exceed the value of any work product contained in the proposal that can, as determined by the authority, be used by the authority in the performance of its functions. The use by the authority of any design element contained in an unsuccessful proposal is at the sole risk and discretion of the authority and does not confer liability on the recipient of the stipulated amount under this subsection. After payment of the stipulated amount:

(1) the authority owns the exclusive rights to, and may make use of any work product contained in, the proposal, including the technologies, techniques, methods, processes, and information contained in the project design; and

(2) the work product contained in the proposal becomes the property of the authority.

(n) An authority shall prescribe the general form of a comprehensive development agreement and may include any matter the authority considers advantageous to the authority. The authority and the private entity shall negotiate the specific terms of a comprehensive development agreement.

(o) Subchapter A, Chapter 223, of this code and Chapter 2254, Government Code, do not apply to a comprehensive development agreement entered into under Section 370.305.

Sec. 370.307. CONFIDENTIALITY OF NEGOTIATIONS FOR COMPREHENSIVE DEVELOPMENT AGREEMENTS. (a) To encourage private entities to submit proposals under Section 370.306, the following information is confidential, is not subject to disclosure, inspection, or copying under Chapter 552, Government Code, and is not subject to disclosure, discovery, subpoena, or other means of legal compulsion for its release until a final contract for a proposed project is entered into:

(1) all or part of a proposal submitted by a private entity for a comprehensive development agreement, except information provided under Sections 370.306(b)(1) and (2);

(2) supplemental information or material submitted by a private entity in connection with a proposal for a comprehensive development agreement; and

(3) information created or collected by an authority or its agent during consideration of a proposal for a comprehensive development agreement.

(b) After an authority completes its final ranking of proposals under Section 370.306(h), the final rankings of each proposal under each of the published criteria are not confidential.

Sec. 370.308. PERFORMANCE AND PAYMENT SECURITY. (a) Notwithstanding Section 223.006 and the requirements of Subchapter B, Chapter 2253, Government Code, an authority shall require a private entity entering into a comprehensive development agreement under Section 370.305 to provide a performance and payment bond or an alternative form of security in an amount sufficient to:

(1) ensure the proper performance of the agreement; and

(2) protect:

(A) the authority; and

(B) payment bond beneficiaries who have a direct contractual relationship with the private entity or a subcontractor of the private entity to supply labor or material.

(b) A performance and payment bond or alternative form of security shall be in an amount equal to the cost of constructing or maintaining the project.

(c) If an authority determines that it is impracticable for a private entity to provide security in the amount described by Subsection (b), the authority shall set the amount of the bonds or the alternative forms of security.

(d) A payment or performance bond or alternative form of security is not required for the portion of an agreement that includes only design or planning services, the performance of preliminary studies, or the acquisition of real property.

(e) The amount of the payment security must not be less than the amount of the performance security.

(f) In addition to performance and payment bonds, an authority may require the following alternative forms of security:

(1) a cashier's check drawn on a financial entity specified by the authority;

(2) a United States bond or note;

(3) an irrevocable bank letter of credit; or

(4) any other form of security determined suitable by the authority.

(g) An authority by rule shall prescribe requirements for alternative forms of security provided under this section.

Sec. 370.309. OWNERSHIP OF TRANSPORTATION PROJECTS. (a) A transportation project other than a public utility facility that is the subject of a development agreement with a private entity, including the facilities acquired or constructed on the project, is public property and belongs to the authority.

(b) Notwithstanding Subsection (a), an authority may enter into an agreement that provides for the lease of rights-of-way, the granting of easements, the issuance of franchises, licenses, or permits, or any lawful uses to enable a private entity to construct, operate, and maintain a transportation project, including supplemental facilities. At the termination of the agreement, the transportation project, including the facilities, must be in a state of proper maintenance as determined by the authority and shall be returned to the authority in satisfactory condition at no further cost.

Sec. 370.310. LIABILITY FOR PRIVATE OBLIGATIONS. An authority may not incur a financial obligation for a private entity that constructs, maintains, or operates a transportation project. The authority or a political subdivision of the state is not liable for any financial or other obligation of a transportation project solely because a private entity constructs, finances, or operates any part of the project.

Sec. 370.311. TERMS OF PRIVATE PARTICIPATION. (a) An authority shall negotiate the terms of private participation in a transportation project, including:

(1) methods to determine the applicable cost, profit, and project distribution between the private equity investors and the authority;

(2) reasonable methods to determine and classify toll rates or user fees;

(3) acceptable safety and policing standards; and

(4) other applicable professional, consulting, construction, operation, and maintenance standards, expenses, and costs.

(b) A comprehensive development agreement entered into under Section 370.305 must include a provision authorizing the authority to purchase, under terms agreed to by the parties, the interest of a private equity investor in a transportation project.

(c) An authority may only enter into a comprehensive development agreement under Section 370.305 with a private equity investor if the project is identified in the department's unified transportation program or is located on a transportation corridor identified in the statewide transportation plan.

Sec. 370.312. RULES, PROCEDURES, AND GUIDELINES GOVERNING NEGOTIATING PROCESS. (a) An authority shall adopt rules, procedures, and other guidelines governing selection and negotiations to promote fairness, obtain private participants in transportation projects, and promote confidence among those participants. The rules must contain criteria relating to the qualifications of the participants and the award of the contracts.

(b) An authority shall have up-to-date procedures for participation in negotiations on transportation projects.

(c) An authority has exclusive judgment to determine the terms of an agreement.

Sec. 370.313. PARTICIPATION ON CERTAIN OTHER BOARDS, COMMISSIONS, OR PUBLIC BODIES. (a) An authority may participate in and designate board members to serve as representatives on boards, commissions, or public bodies, the purposes of which are to promote the development of joint toll facilities in this state, between this state and other states of the United States, or between this state and the United Mexican States or states of the United Mexican States.

(b) A fee or expense associated with authority participation under this section may be reimbursed from money in the authority's feasibility study fund.

Sec. 370.314. COMBINATION OF ENGINEERING, DESIGN, AND CONSTRUCTION SERVICES. An authority may procure a combination of engineering, design, and construction services in a single procurement for a transportation project provided that any contract awarded must be the one that results in the best value to the authority.

Sec. 370.315. PERFORMANCE AND PAYMENT BONDS AND SECURITY. Notwithstanding Chapter 2253, Government Code, an authority shall require any party to an agreement to operate or maintain a transportation project to provide performance and payment bonds or other forms of security, including corporate guarantee, in amounts considered by the authority to be adequate to protect the authority and to assure performance of all obligations to the authority and to subcontractors providing materials or labor for a transportation project.

Sec. 370.316. TRANS-TEXAS CORRIDOR PROJECTS. In the event that an authority is requested by the commission to participate in the development of a transportation project that has been designated as part of the Trans-Texas Corridor, the authority shall have, in addition to all powers granted in this chapter, all powers of the department related to the development of Trans-Texas Corridor projects.

[Sections 370.317-370.330 reserved for expansion]

SUBCHAPTER H. DISSOLUTION OF AUTHORITY

Sec. 370.331. VOLUNTARY DISSOLUTION. (a) An authority may not be dissolved unless the dissolution is approved by the commission.

(b) A board may submit a request to the commission for approval to dissolve.

(c) The commission may approve a request to dissolve only if:

(1) all debts, obligations, and liabilities of the authority have been paid and discharged or adequate provision has been made for the payment of all debts, obligations, and liabilities;

(2) there are no suits pending against the authority, or adequate provision has been made for the satisfaction of any judgment, order, or decree that may be entered against it in any pending suit; and

(3) the authority has commitments from other governmental entities to assume jurisdiction of all authority transportation facilities.

Sec. 370.332. INVOLUNTARY DISSOLUTION. (a) The commission by order may require an authority to dissolve if the commission determines that the authority has not substantially complied with the requirements of a commission rule or an agreement between the department and the authority.

(b) The commission may not require dissolution unless:

(1) the conditions described in Sections 370.331(c)(1) and (2) have been met; and

(2) the holders of any indebtedness have evidenced their agreement to the dissolution.

SECTION 2.02. Section 361.003, Transportation Code, is repealed.

SECTION 2.03. (a) This article takes effect immediately if this Act receives a vote of two-thirds of all 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 article takes effect September 1, 2003.

(b) This article does not affect the term of a member of the board of directors of a regional mobility authority serving on the effective date of this article.

ARTICLE 3. ADVANCE ACQUISITION OF PROPERTY

SECTION 3.01. The heading to Chapter 202, Transportation Code, is amended to read as follows:

CHAPTER 202. CONTROL OF TRANSPORTATION ~~[HIGHWAY]~~ ASSETS

SECTION 3.02. Chapter 202, Transportation Code, is amended by adding Subchapter F to read as follows:

SUBCHAPTER F. ADVANCE ACQUISITION OF PROPERTY

Sec. 202.111. DEFINITION. In this subchapter, "advance acquisition" means an acquisition by the commission under Section 202.112.

Sec. 202.112. ADVANCE ACQUISITIONS. (a) The commission may purchase an option to acquire property for possible use in or in connection with a transportation facility, including a facility as defined by Section 227.001, before a final decision has been made as to whether the transportation facility will be located on that property.

(b) An advance acquisition shall be made by the commission using the procedures authorized under Subchapter D of Chapter 203 or other law authorizing the commission or the department to acquire real property or an interest in real property for a transportation facility. If the commission acquires real property or an interest in real property under Subchapter D of Chapter 203 or other law, the commission may make an advance acquisition in the manner provided by this subchapter.

(c) The commission may not make an advance acquisition by condemnation.

Sec. 202.113. DISPOSAL OF SURPLUS PROPERTY. The commission shall dispose of property acquired by advance acquisition that is not needed for a transportation facility in the manner provided by Subchapter B.

Sec. 202.114. MANAGEMENT. If requested by the department, property acquired by advance acquisition may be managed by the General Land Office on behalf of the department as the department and the General Land Office may agree. Subchapter E, Chapter 31, Natural Resources Code, does not apply to property acquired under this subchapter.

ARTICLE 4. RAIL FACILITIES

SECTION 4.01. Title 5, Transportation Code, is amended by adding Subtitle A to read as follows:

SUBTITLE A. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 91. RAIL FACILITIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 91.001. DEFINITIONS. In this chapter:

(1) "Commission" means the Texas Transportation Commission.

(2) "Construction" includes design, planning, and preliminary studies.

(3) "Department" means the Texas Department of Transportation.

(4) "Maintenance facility" includes:

(A) a workshop;

(B) a service, storage, security, or personnel facility; and

(C) equipment for a facility described by Paragraph (A) or (B).

(5) "Operation" includes policing.

(6) "Rail facility" means real or personal property, or any interest in that property, that is determined to be necessary or convenient for the provision of a freight or passenger rail facility or system, including commuter rail, intercity rail, and high-speed rail. The term includes all property or interests necessary or convenient for the acquiring, providing, using, or equipping of a rail facility or system, including rights-of-way, trackwork, train controls, stations, and maintenance facilities.

(7) "Revenue" includes a charge, toll, rent, payment, user fee, franchise fee, license fee, fare, tariff, and other consideration:

(A) received in return for the use of:

(i) a rail facility; or

(ii) a service offered in connection with the operation of a rail

facility; or

(B) resulting from a sale or conveyance of a rail facility.

(8) "Right-of-way" means a strip of land of a length and width determined by the commission to be required, necessary, or convenient for the provision of a rail facility or system and the space over, under, or on the land where trackwork is to be located.

(9) "Station" means a passenger or freight service building, terminal, station, ticketing facility, waiting area, platform, concession, elevator, escalator, facility for handicapped access, access road, parking facility for passengers, baggage handling facility, or local maintenance facility, together with any interest in real property necessary or convenient for those items.

(10) "Surplus revenue" means:

(A) revenue that exceeds the department's debt service requirements, coverage requirements of any bond indenture, costs of operation and maintenance, and cost of expansion or improvement of a rail facility or system; and

(B) reserves and reserve funds maintained by the department under this chapter.

(11) "Trackwork" means track, track beds, track bed preparation, ties, rail fasteners, slabs, rails, emergency crossovers, setout tracks, storage tracks, drains, fences, ballast, switches, bridges, and structures.

(12) "Train controls" includes:

(A) signals, lights, and other signaling;

(B) interlocking equipment;

(C) speed monitoring equipment;

(D) braking systems;

(E) central traffic control facilities; and

(F) communication systems.

Sec. 91.002. PUBLIC PURPOSE. The following functions are public and governmental functions, exercised for a public purpose, and matters of public necessity:

(1) the acquisition, financing, construction, operation, and maintenance of a rail facility under this chapter;

(2) the sale, lease, or license of a rail facility to a rail operator and other public or private persons under this chapter; and

(3) the exercise of any other power granted under this chapter to the commission and the department.

Sec. 91.003. RULES. The commission may adopt rules and the department may adopt procedures and prescribe forms necessary to implement this chapter.

Sec. 91.004. GENERAL POWERS. The department may:

(1) plan and make policies for the location, construction, maintenance, and operation of a rail facility or system in this state;

(2) acquire, finance, construct, maintain, and subject to Section 91.005, operate a passenger or freight rail facility, individually or as one or more systems;

(3) for the purpose of acquiring or financing a rail facility or system, accept a grant or loan from a:

(A) department or agency of the United States;

(B) department, agency, or political subdivision of this state; or

(C) public or private person;

(4) contract with a public or private person to finance, construct, maintain, or operate a rail facility under this chapter; or

(5) perform any act necessary to the full exercise of the department's powers under this chapter.

Sec. 91.005. RELIANCE ON PRIVATE ENTITIES. The department shall contract with a private entity to operate a railroad using facilities owned by the department and may not use department employees to operate a railroad. The department may maintain a railroad facility directly or through a private entity. The department may not own rolling stock.

Sec. 91.006. COOPERATION OF STATE AGENCIES AND POLITICAL SUBDIVISIONS. Within available resources, an agency or political subdivision of this state shall cooperate with and assist the department in exercising its powers and duties under this chapter.

Sec. 91.007. NOTIFICATION OF INTENT TO ABANDON OR DISCONTINUE SERVICE. On receipt of notice of intent to abandon or discontinue rail service served under 49 C.F.R. Section 1152.20, as amended, the department shall coordinate with the governing body of a municipality, county, or rural rail transportation district in which all or a segment of the line is located to determine whether:

(1) the department should acquire the rail facility to which the notice relates; or

(2) any other actions should be taken to provide for continued rail transportation service.

[Sections 91.008-91.030 reserved for expansion]

SUBCHAPTER B. ACQUISITION AND DEVELOPMENT OF RAIL FACILITIES

Sec. 91.031. ESTABLISHMENT OF RAIL SYSTEMS. (a) If the commission determines that the provision of rail transportation services would be most efficiently and economically met by jointly operating two or more rail facilities as one operational and financial enterprise, it may create a system composed of those facilities.

(b) The commission may create more than one system and may combine two or more systems into one system.

(c) The department may finance, acquire, construct, and operate additional rail facilities as additions to and expansions of the system if the commission determines that the facility would most efficiently and economically be acquired and constructed if it were a part of the system and that the addition will benefit the system.

(d) The revenue of a system shall be accounted for separately and may not be commingled with the revenue of a rail facility that is not part of the system.

Sec. 91.032. ACQUISITION OF RAIL FACILITIES. (a) The commission may authorize the department to acquire an existing rail facility at a location and on a route the commission determines to be feasible and viable for rail transportation service.

(b) The department may enter into an agreement with the owner of an operating railroad for the acquisition or use of a rail facility on terms the department considers to be in the best interest of the state.

Sec. 91.033. ENVIRONMENTAL REVIEW. (a) The department shall conduct or approve all environmental evaluations or studies required for the construction, maintenance, or operation of a rail facility.

(b) The commission may adopt rules to allocate responsibility for conducting an environmental evaluation or study or preparing environmental documentation among entities involved in the construction, maintenance, or operation of a rail facility under this chapter.

Sec. 91.034. ENVIRONMENTAL MITIGATION. (a) The department may acquire, maintain, hold, restore, enhance, develop, or redevelop property for the purpose of mitigating a past, present, or future adverse environmental effect arising from the construction, maintenance, or operation of a rail facility without regard to whether the need for mitigation has already been established for a particular project.

(b) The department may contract with a governmental or private entity to maintain, control, hold, restore, enhance, develop, or redevelop property for the mitigation of a past, present, or future adverse environmental effect arising from the construction, maintenance, or operation of a rail facility without regard to whether the need for mitigation has already been established for a particular project.

(c) If authorized by the applicable regulatory authority, the department may pay an amount of money to an appropriate governmental or private entity instead of acquiring or managing property for the mitigation of a past, present, or future adverse environmental effect arising from construction, maintenance, or operation of a rail facility without regard to whether the need for mitigation has already been established for a particular project.

Sec. 91.035. USE OF FACILITIES BELONGING TO PUBLIC OR PRIVATE ENTITY. (a) The department, for the purpose of acquiring, constructing, maintaining, and operating freight or passenger rail facilities and systems in this state, may:

(1) use a street, alley, road, highway, or other public way of a municipality, county, or other political subdivision with the consent of that political subdivision; and

(2) at the expense of the department, relocate, raise, reroute, or change the grade of the construction of a street, alley, highway, road, railroad, electric line and facility, telegraph and telephone property and facility, pipeline and facility, conduit and facility, and other properties, whether publicly or privately owned, as necessary or useful in the construction, maintenance, and operation of a rail facility or system.

(b) The department shall provide reasonable notice to the owner of the applicable facility of the need for the alteration under Subsection (a)(2) and allow that owner the opportunity to complete the alteration.

Sec. 91.036. EXPENDITURE OF FUNDS. Subject to Section 91.071(b), the department may receive, accept, and expend funds from this state, a federal agency, or other public or private source for:

(1) rail planning;

(2) studies to determine the viability of a rail facility for rail transportation service;

(3) studies to determine the necessity for the department's acquisition or construction of a rail facility; and

(4) the acquisition, construction, maintenance, or operation of a rail facility under this chapter, including the assessment and remediation of environmental contamination existing in or on a rail facility.

Sec. 91.0361. CERTAIN FREIGHT RAILROAD PROJECTS. (a) If sufficient funds from bonds sold to construct the Central Texas turnpike project or from the Texas mobility fund are available, the department may, and is strongly encouraged to, use the funds for engineering, design, grading, and construction necessary to create a grade-separated freight rail line capable of being safely traveled by trains operating at not less than 80 miles per hour in or adjacent to the State Highway 130 corridor.

(b) The department may, and is strongly encouraged to, enter into negotiations with any Class I railroad concerning building and operating a freight railroad in or adjacent to the State Highway 130 corridor. The department may explore with any Class I railroad the possibility of operating the freight railroad line in or adjacent to the State Highway 130 corridor as a revenue-producing partnership that could benefit this state and the current holders of bonds used in the financing of State Highway 130.

(c) This amendment may not be construed to allow any delay in the current published schedule for the construction and completion of State Highway 130.

Sec. 91.037. CONTRACTS WITH GOVERNMENTAL ENTITIES. This chapter does not apply to real or personal property, facilities, funding, projects, operations, construction, or a project plan of a transportation authority created under Chapter 451, 452, or 460 unless the commission or its designee has signed a written agreement with the transportation authority specifying the terms and conditions under which the transportation authority may participate.

[Sections 91.038-91.050 reserved for expansion]

SUBCHAPTER C. CONTRACTS

Sec. 91.051. AWARDING OF CONTRACTS. Unless otherwise provided by this subchapter, a contract made by the department for the construction, maintenance, or operation of a rail facility must be let by a competitive bidding procedure in which the contract is awarded to the lowest responsible bidder that complies with the department's criteria.

Sec. 91.052. AGREEMENTS TO CONSTRUCT, MAINTAIN, AND OPERATE RAIL FACILITIES. The department may enter into an agreement with a public entity, including a political subdivision of this state, to permit the entity, independently or jointly with the department, to acquire, construct, maintain, or operate a rail facility or system.

Sec. 91.053. SMALL AND DISADVANTAGED BUSINESSES. (a) The department shall:

(1) set goals for the award of contracts to small and disadvantaged businesses and attempt to meet the goals;

(2) attempt to identify small and disadvantaged businesses that provide or have the potential to provide supplies, materials, equipment, or services to the department; and

(3) give small and disadvantaged businesses full access to the department's contract bidding process and other contracting processes, inform the businesses about those processes, offer the businesses assistance concerning those processes, and identify barriers to the businesses' participation in those processes.

(b) This section does not exempt the department from competitive bidding requirements imposed by other law.

[Sections 91.054-91.070 reserved for expansion]

SUBCHAPTER D. FINANCING OF RAIL FACILITIES

Sec. 91.071. PERMISSIBLE SOURCES OF FUNDING. (a) The department may use any legally permissible source of funding in acquiring, constructing, maintaining, and operating a rail facility or system, including:

(1) appropriations from the state highway fund that are not dedicated for another purpose by Section 7-a or 7-b, Article VIII, Texas Constitution;

(2) proceeds from bonds secured by the Texas Mobility Fund;

(3) donations, whether in kind or in cash; and

(4) loans from the state infrastructure bank.

(b) Each fiscal year, the total amount disbursed by the department out of federal and state funds shall not exceed \$12.5 million. This subsection does not apply to:

(1) disbursements for the acquisition or construction of rail lines on the Trans-Texas Corridor;

(2) the acquisition of abandoned rail facilities described in Section 91.007;

(3) funding derived from the issuance of bonds, private investment, donations, and grants or loans from the Federal Railroad Administration or Federal Transit Administration; and

(4) grading and bed preparation.

Sec. 91.072. FINANCING OF RAIL FACILITIES AND SYSTEMS. (a) The commission and the department have the same powers and duties relating to the financing of a rail facility or a system established under Section 91.031 as the commission and the department have under Subchapter E, Chapter 361, relating to the financing of a turnpike project, including the ability to deposit the proceeds of bonds or other obligations and to pledge, encumber, and expand such proceeds and revenues as provided in Chapter 361.

(b) The powers held by the commission and the department include the power to:

(1) authorize the issuance of bonds to pay all or part of the cost of acquiring, constructing, maintaining, or operating a rail facility or system;

(2) maintain separate accounts for bond proceeds and the revenues of a rail facility or system, and pledge those revenues and proceeds to the payment of bonds or other obligations issued or entered into with respect to the facility or system;

(3) impose fees, rents, and other charges for the use of a rail facility or system; and

(4) obtain from another source the fees and other revenue necessary to pay all or part of the principal and interest on bonds issued under this chapter.

(c) For purposes of this section, a reference in Subchapter E, Chapter 361 to:

(1) a turnpike project means a rail facility or system; and

(2) revenue includes a fee, rent, or other usage charge established under this chapter or other money received under Sections 91.073 and 91.074.

Sec. 91.073. GRANTS AND LOANS. The department may apply for, accept, and expend money from grants, loans, or reimbursements for any purpose of this chapter, including paying for the cost of the acquisition, construction, maintenance, and operation of a rail facility or system.

Sec. 91.074. REVENUE. (a) The department may require a person, including any public or private entity, to pay a fee as a condition of using any part of a rail facility or system. The department may not require a person to pay a fee in connection with the placement, maintenance, or other use of a public utility facility.

(b) The department shall establish and maintain rents or other compensation for the use of rail facilities or systems in an amount that is, together with other revenue of the department received under this chapter, sufficient to enable the department to comply with the requirements of Section 91.072.

(c) The department may contract with a person for the use of all or part of a rail facility or system or may lease or sell all or part of a rail facility or system, including all or any part of the right-of-way adjoining trackwork, for any purpose, including placing on the adjoining right-of-way a storage or transfer facility, warehouse, garage, parking facility, telecommunication line or facility, restaurant, or gas station.

(d) The department shall not unreasonably discriminate in deciding who may use any part of a rail facility or system.

(e) All revenue received by the department under this chapter:

(1) shall be deposited to the credit of the state highway fund and may be used for any purpose authorized by this chapter; and

(2) is exempt from the application of Section 403.095, Government Code.

[Sections 91.075-91.090 reserved for expansion]

SUBCHAPTER E. ACQUISITION AND DISPOSAL OF PROPERTY

Sec. 91.091. ACQUISITION OF REAL PROPERTY. (a) The commission may authorize the department to acquire in the name of the state a right-of-way, a property right, or other interest in real property determined to be necessary or convenient for the department's acquisition, construction, maintenance, or operation of rail facilities.

(b) The commission may authorize the department to acquire property by any method, including purchase and condemnation. Property may be purchased under any terms determined by the department to be in the best interest of the state.

(c) Property may be purchased along alternative potential routes for a rail facility even if only one of those potential routes will ultimately be chosen as the final route.

Sec. 91.092. PROPERTY NECESSARY OR CONVENIENT FOR RAIL FACILITIES. Property necessary or convenient for the department's acquisition, construction, maintenance, or operation of rail facilities includes an interest in real property or a property right the commission determines is necessary or convenient to provide:

(1) right-of-way for a location for:

(A) a rail facility; or

(B) the future expansion of a rail facility;

(2) land for mitigation of adverse environmental effects;

(3) buffer zones for scenic or safety purposes; and

(4) revenue for use in acquiring, constructing, maintaining, or operating a rail facility or system, including revenue received under a contract described by Section 91.074(c).

Sec. 91.093. RIGHT OF ENTRY. (a) To acquire property necessary or convenient for a rail facility, the department may enter any premises or real property, including a body of water, to make a survey, geotechnical evaluation, sounding, or examination.

(b) An entry under Subsection (a) or (d) is not:

(1) a trespass; or

(2) an entry under a pending condemnation procedure.

(c) The department shall make reimbursements for actual damages that result from an entry under Subsection (a) or (d).

(d) To ensure the safety and convenience of the public, the department shall, when entering any real property, water, or premises on which is located a public utility facility:

(1) comply with applicable industry standard safety codes and practices; and

(2) notwithstanding Subsection (a), give the owner or operator of the public utility facility not less than 10 days' notice before entering the real property, water, or premises.

Sec. 91.094. CONVEYANCE OF PROPERTY BELONGING TO POLITICAL SUBDIVISION OR PUBLIC AGENCY. The governing body of a municipality, county, political subdivision, or public agency may, without advertisement, convey the title to or a right in property determined to be necessary or convenient by the department under this subchapter.

Sec. 91.095. DISPOSAL OF PROPERTY. The department may sell, convey, or otherwise dispose of any rights or other interests in real property acquired under this subchapter that the commission determines are no longer needed for department purposes.

[Sections 91.096-91.100 reserved for expansion]

SUBCHAPTER F. OPERATION AND USE OF RAIL FACILITIES

Sec. 91.101. CONTRACTS FOR RAIL TRANSPORTATION SERVICES.

The department may contract with a county or other political subdivision of the state for the department to provide rail transportation services on terms agreed to by the parties.

Sec. 91.102. CONTRACTS WITH RAIL OPERATORS. (a) The department may lease all or part of a rail facility or system to a rail operator. The department may contract with a rail operator for the use or operation of all or part of a rail facility or system.

(b) The department shall encourage to the maximum extent practical the participation of private enterprise in the operation of rail facilities and systems.

(c) A lease agreement shall provide for the department's monitoring of a rail operator's service and performance.

(d) The department may enter into an agreement with a rail operator to sell all or any part of state-owned rail facilities on terms the department considers to be in the best interest of the state.

Sec. 91.103. JOINT USE OF RAIL FACILITIES. The department may:

(1) enter into an agreement with a rail operator, public utility, private utility, communication system, common carrier, or transportation system for the common use of its facilities, installations, or properties; and

(2) establish through routes, joint fares, and, subject to approval of a tariff-regulating body having jurisdiction, divisions of tariffs.

Sec. 91.104. ROUTINGS. The department may determine routings for rail facilities acquired, constructed, or operated by the department under this chapter.

Sec. 91.105. PLACEMENT OF UTILITY FACILITIES, LINES, AND EQUIPMENT. (a) A utility has the same right to place its facilities, lines, or equipment in, over, or across right-of-way that is part of a state-owned rail facility as the utility has with respect to the right-of-way of a state highway under Chapter 181, Utilities Code. A utility shall notify the department of the utility's intention to exercise authority over right-of-way that is part of state-owned rail facilities.

(b) On receipt of notice under Subsection (a), the department may designate the location in the right-of-way where the utility may place its facilities, lines, or equipment.

(c) The department may require a utility to relocate the utility's facilities, lines, or equipment, at the utility's expense, to allow for the expansion or relocation of rail facilities owned by the state. A relocation under this subsection must be accomplished pursuant to Subsections (e)-(j). The department shall pay for the cost of the relocation. If a utility facility is replaced, the cost of replacement is limited to an amount equal to the cost of replacing the facility with a comparable facility, less the net salvage value of the replaced facility.

(d) A utility may use and operate a facility required to be relocated under this section at the new location for the same period and on the same terms as the utility had the right to do at the previous location of the facility.

(e) If the department determines that a public utility facility must be relocated, the utility and the department shall negotiate in good faith to establish reasonable terms and conditions concerning the responsibilities of the parties with regard to sharing of information about the project and the planning and implementation of any necessary relocation of a public utility facility.

(f) The department shall use its best efforts to provide an affected utility with plans and drawings of the project that are sufficient to enable the utility to develop plans for, and determine the cost of, the necessary relocation of the public utility facility. If the department and the affected utility enter into an agreement after negotiations under Subsection (e), the terms and conditions of the agreement govern the relocation of public utility facilities covered by the agreement.

(g) If the department and an affected utility do not enter into an agreement under Subsection (e), the department shall provide to the affected utility:

(1) written notice of the department's determination that the public utility facility must be removed;

(2) a final plan for relocation of the public utility facility; and

(3) reasonable terms and conditions for an agreement with the utility for the relocation of the public utility facility.

(h) Not later than the 90th day after the date a utility receives the notice from the department, including the plan and agreement terms and conditions under Subsection (g), the utility shall enter into an agreement with the department that provides for the relocation.

(i) If the utility fails to enter into an agreement within the 90-day period under Subsection (h), the department may relocate the public utility facility at the sole cost and expense of the utility less any reimbursement of costs that would have been payable to the utility under applicable law. A relocation by the department under this subsection shall be conducted in full compliance with applicable law, using standard equipment and construction practices compatible with the utility's existing facilities, and in a manner that minimizes disruption of utility service.

(j) The 90-day period under Subsection (h) may be extended:

(1) by mutual agreement between the department and the utility; or

(2) for any period during which the utility is negotiating in good faith with the department to relocate its facility.

SECTION 4.02. Section 2, Chapter 1244, Acts of the 77th Legislature, Regular Session, 2001 (Article 6550c-2, Vernon's Texas Civil Statutes), is repealed.

SECTION 4.03. This article takes effect immediately if this Act receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this article takes effect September 1, 2003.

ARTICLE 5. ISSUANCE OF BONDS AND OTHER PUBLIC SECURITIES

SECTION 5.01. Subchapter A, Chapter 222, Transportation Code, is amended by adding Section 222.003 to read as follows:

Sec. 222.003. ISSUANCE OF BONDS SECURED BY STATE HIGHWAY FUND. (a) The commission may issue bonds and other public securities secured by a pledge of and payable from revenue deposited to the credit of the state highway fund.

(b) The aggregate principal amount of the bonds and other public securities that are issued may not exceed \$3 billion. The commission may only issue bonds or other public securities in an aggregate principal amount of not more than \$1 billion each year.

(c) Proceeds from the sale of bonds and other public securities issued under this section shall be used to fund state highway improvement projects.

(d) Of the aggregate principal amount of bonds and other public securities that may be issued under this section, the commission shall issue bonds or other public securities in an aggregate principal amount of \$600 million to fund projects that reduce accidents or correct or improve hazardous locations on the state highway system. The commission by rule shall prescribe criteria for selecting projects eligible for funding under this section. In establishing criteria for the projects, the commission shall consider accident data, traffic volume, pavement geometry, and other conditions that can create or exacerbate hazardous roadway conditions.

(e) The proceeds of bonds and other public securities issued under this section may not be used for any purpose other than any costs related to the bonds and other public securities and the purposes for which revenues are dedicated under Section 7-a, Article VIII, Texas Constitution. The proceeds of bonds and other public securities issued under this section may not be used for the construction of a state highway or other facility on the Trans-Texas Corridor. For purposes of this section, the "Trans-Texas Corridor" means the statewide system of multimodal facilities under the jurisdiction of the department that is designated by the commission, notwithstanding the name given to that corridor.

(f) The commission may enter into credit agreements, as defined by Chapter 1371, Government Code, relating to the bonds and other public securities authorized by this section. The agreements may be secured by and payable from the same sources as the bonds and other public securities.

(g) All laws affecting the issuance of bonds and other public securities by governmental entities, including Chapters 1201, 1202, 1204, 1207, 1231, and 1371, Government Code, apply to the issuing of bonds and other public securities and the entering into of credit agreements under this section.

(h) The proceeds of bonds and other public securities issued under this section may be used to:

(1) finance other funds relating to the public security, including debt service reserve and contingency; and

(2) pay the cost or expense of the issuance of the public security.

(i) Bonds and other public securities and credit agreements authorized by this section may not have a principal amount or terms that, at the time the bonds or other public securities are issued or the agreements entered into, are expected

by the commission to cause annual expenditures with respect to the obligations to exceed 10 percent of the amount deposited to the credit of the state highway fund in the immediately preceding year.

(j) Bonds and other public securities issued under this section may be sold in such manner and subject to such terms and provisions as set forth in the order authorizing their issuance, and such bonds and other public securities must mature not later than 20 years after their dates of issuance, subject to any refundings or renewals.

(k) The comptroller shall withdraw from the state highway fund and forward at the direction of the commission to another person the amounts as determined by the commission to permit timely payment of:

(1) the principal of and interest on the bonds and other public securities that mature or become due; and

(2) any cost related to the bonds and other public securities that become due, including payments under credit agreements.

SECTION 5.02. This article takes effect on the date on which the constitutional amendment proposed by the 78th Legislature, Regular Session, 2003, that authorizes the legislature to provide for the issuance of bonds and other public securities secured by the state highway fund for highway improvement projects takes effect. If that amendment is not approved by the voters, this article has no effect.

ARTICLE 6. PASS-THROUGH TOLLS

SECTION 6.01. Subchapter E, Chapter 222, Transportation Code, is amended by adding Section 222.104 to read as follows:

Sec. 222.104. PASS-THROUGH TOLLS. (a) In this section, "pass-through toll" means a per vehicle fee or a per vehicle mile fee that is determined by the number of vehicles using a highway.

(b) The department may enter into an agreement with a public or private entity that provides for the payment of pass-through tolls to the public or private entity as reimbursement for the construction, maintenance, or operation of a toll or nontoll facility on the state highway system by the public or private entity.

(c) The department may enter into an agreement with a regional mobility authority, a regional tollway authority, or a county acting under Chapter 284 that provides for the payment of pass-through tolls to the authority or county as compensation for the payment of all or a portion of the costs of maintaining a state highway or a portion of a state highway converted to a toll facility of the authority or county that the department estimates it would have incurred if the highway had not been converted.

(d) The department may use any available funds for the purpose of making a pass-through toll payment under this section.

(e) The commission may adopt rules necessary to implement this section. Rules adopted under this subsection may establish criteria for:

(1) determining the amount of pass-through tolls to be paid under this section; and

(2) allocating the risk that traffic volume will be higher or lower than the parties to an agreement under this section anticipated in entering the agreement.

SECTION 6.02. This article takes effect immediately if this Act receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this article takes effect September 1, 2003.

ARTICLE 7. CONVERSION OF NONTOLL STATE HIGHWAY

SECTION 7.01. Subchapter A, Chapter 284, Transportation Code, is amended by adding Section 284.009 to read as follows:

Sec. 284.009. CONVEYANCE OF STATE HIGHWAY TO COUNTY. (a) The commission may convey a nontoll state highway or a segment of a nontoll state highway, including real property acquired to construct or operate the highway, to a county for operation and maintenance as a project under this chapter if:

(1) the proposed conveyance is approved by the commissioners court of each county within which the highway is located;

(2) the commission determines that the proposed conveyance will improve overall mobility in the region or is the most feasible and economic means of accomplishing necessary improvements to the highway;

(3) any funds paid by the department for the construction, maintenance, and operation of the conveyed highway are repaid to the department; and

(4) the county agrees to assume all liability and responsibility for the maintenance and operation of the conveyed highway on its conveyance.

(b) The commission may only make a conveyance under this section if the commission determines that the conveyance is the most feasible and economic means to accomplish necessary expansions, extensions, or improvements of the conveyed segment of the highway. Tolls may not be collected by an authority from a conveyed segment of highway except to finance the expansion, extension, operation, and maintenance of that highway segment.

(c) A county that receives a nontoll state highway or a segment of a nontoll state highway under Subsection (a) may own, operate, and maintain the highway as a pooled project under Section 284.065.

(d) The commission shall, at the time of a conveyance, remove the highway or segment of highway from the state highway system. After a conveyance, the department has no liability, responsibility, or duty for the maintenance or operation of the highway or segment.

(e) The commission may waive all or a portion of an amount due under Subsection (a)(3) if it finds that the conveyance will result in substantial net benefits to the state, the department, and the traveling public that equal or exceed the amount of payment waived.

(f) Before conveying a nontoll state highway or a segment of a nontoll state highway under this section, the commission shall conduct a public hearing to receive comments from interested persons concerning the proposed conveyance.

Notice of the hearing shall be published in the Texas Register and in one or more newspapers of general circulation in any county in which the highway or segment is located.

(g) The commission shall adopt rules implementing this section, including criteria and guidelines for approval of a conveyance of a highway or segment.

(h) Funds received by the department under this section:

(1) shall be deposited to the credit of the state highway fund; and

(2) are exempt from the application of Section 403.095, Government

Code.

SECTION 7.02. Section 362.0041, Transportation Code, is amended by amending Subsections (a), (c), and (d) and adding Subsections (e)-(g) to read as follows:

(a) Except as provided in Subsections [Subsection] (d) and (g), [¶] the commission may by order convert [finds that the conversion of] a segment of the free state highway system to a toll facility if it determines that the conversion will improve overall mobility in the region or is the most feasible and economic means to accomplish necessary expansion, improvements, or extensions to that segment of the state highway system[~~, that segment may be converted by order of the commission to a turnpike project under Chapter 361~~].

(c) The commission shall adopt rules implementing this section, including [such rules to include] criteria and guidelines for the approval of a conversion of a highway.

(d) The commission may not convert the Queen Isabella Causeway in Cameron County to a toll facility [turnpike project].

(e) Subchapter G, Chapter 361, applies to a highway converted to a toll facility under this section.

(f) Toll revenue collected under this section:

(1) shall be deposited in the state highway fund;

(2) may be used by the department to finance the improvement, extension, expansion, or operation of the converted segment of highway and may not be collected except for those purposes; and

(3) is exempt from the application of Section 403.095, Government Code.

(g) The commission may only convert a segment of the state highway system under this section if the conversion is approved by the commissioners court of each county within which the segment is located.

ARTICLE 8. COMMERCIAL DRIVER'S LICENSES

SECTION 8.01. Section 522.003(25), Transportation Code, is amended to read as follows:

(25) "Serious traffic violation" means:

(A) a conviction arising from the driving of a commercial motor vehicle, other than a parking, vehicle weight, or vehicle defect violation, for:

(i) [~~A~~] excessive speeding, involving a single charge of driving 15 miles per hour or more above the posted speed limit;

(ii) [~~B~~] reckless driving, as defined by state or local law;

(iii) ~~(C)~~ a violation of a state or local law related to motor vehicle traffic control, including a law regulating the operation of vehicles on highways, arising in connection with a fatal accident;

(iv) ~~(D)~~ improper or erratic traffic lane change;

(v) ~~(E)~~ following the vehicle ahead too closely; or

(vi) ~~(F) operating~~ a ~~commercial motor vehicle in~~ violation of ~~Sections~~ ~~[Section]~~ 522.011 or 522.042; or

(B) a violation of Section 522.015.

SECTION 8.02. Section 522.081, Transportation Code, is amended to read as follows:

Sec. 522.081. DISQUALIFICATION. (a) This subsection applies ~~only~~ to a violation committed while operating any motor vehicle, including a commercial motor vehicle. A person who holds a commercial driver's license is disqualified from driving a commercial motor vehicle for:

(1) 60 days if convicted of:

(A) two serious traffic violations that occur within a three-year period; or

(B) one violation of a law that regulates the operation of a motor vehicle at a railroad grade crossing; or

(2) 120 days if convicted of:

(A) three serious traffic violations arising from separate incidents occurring within a three-year period; or

(B) two violations of a law that regulates the operation of a motor vehicle at a railroad grade crossing that occur within a three-year period~~;~~ or

~~[(3) one year if convicted of three violations of a law that regulates the operation of a motor vehicle at a railroad grade crossing that occur within a three-year period].~~

(b) This subsection applies to a violation committed while operating any motor vehicle, including a commercial motor vehicle, except as provided by this subsection. A person who holds a commercial driver's license is disqualified from driving a commercial motor vehicle for one year:

(1) if convicted of three violations of a law that regulates the operation of a motor vehicle at a railroad grade crossing that occur within a three-year period;

(2) on first conviction of:

(A) ~~(1)~~ driving a ~~commercial~~ motor vehicle under the influence of alcohol or a controlled substance, including a violation of Section 49.04 or 49.07, Penal Code;

(B) ~~(2) driving a commercial motor vehicle while the person's alcohol concentration was 0.04 or more;~~

~~[(3) intentionally]~~ leaving the scene of an accident involving a ~~commercial~~ motor vehicle driven by the person;

(C) ~~(4)~~ using a ~~commercial~~ motor vehicle in the commission of a felony, other than a felony described by Subsection (d)(2);

(D) [(5) refusing to submit to a test to determine the person's alcohol concentration or the presence in the person's body of a controlled substance or drug while driving a commercial motor vehicle;

[(6)] causing the death of another person through the negligent or criminal operation of a [commercial] motor vehicle; or

(E) [(7) driving a commercial motor vehicle while the person's commercial driver's license is revoked, suspended, or canceled, or while the person is disqualified from driving a commercial motor vehicle, for an action or conduct that occurred while operating a commercial motor vehicle;

(3) for refusing to submit to a test under Chapter 724 to determine the person's alcohol concentration or the presence in the person's body of a controlled substance or drug while operating a motor vehicle in a public place; or

(4) if an analysis of the person's blood, breath, or urine under Chapter 724 determines that the person:

(A) had an alcohol concentration of 0.04 or more, or that a controlled substance or drug was present in the person's body, while operating a commercial motor vehicle in a public place; or

(B) had an alcohol concentration of 0.08 or more while operating a motor vehicle, other than a commercial motor vehicle, in a public place.

(c) A person who holds a commercial driver's license is disqualified from operating a commercial motor vehicle for three years if:

(1) the person:

(A) is convicted of an offense [If a violation] listed in Subsection (b)(2) and the vehicle being operated by the person was transporting a hazardous material required to be placarded; or

(B) refuses to submit to a test under Chapter 724 to determine the person's alcohol concentration or the presence in the person's body of a controlled substance or drug while operating a motor vehicle in a public place and the vehicle being operated by the person was transporting a hazardous material required to be placarded; or

(2) an analysis of the person's blood, breath, or urine under Chapter 724 determines that while transporting a hazardous material required to be placarded the person:

(A) while operating a commercial motor vehicle in a public place had an alcohol concentration of 0.04 or more, or a controlled substance or drug present in the person's body; or

(B) while operating a motor vehicle, other than a commercial motor vehicle, in a public place had an alcohol concentration of 0.08 or more [(b) occurred while the person was transporting a hazardous material required to be placarded, the person is disqualified for three years].

(d) A person is disqualified from driving a commercial motor vehicle for life:

(1) if the person [±

[(±)] is convicted [of] two or more times [violations] of an offense specified by Subsection (b)(2) [(b)], or a combination of those offenses, arising from two or more separate incidents; [of]

(2) if the person uses a [~~commercial~~] motor vehicle in the commission of a felony involving:

(A) the manufacture, distribution, or dispensing of a controlled substance; or

(B) possession with intent to manufacture, distribute, or dispense a controlled substance; or

(3) for any combination of two or more of the following, arising from two or more separate incidents:

(A) a conviction of the person for an offense described by Subsection (b)(2);

(B) a refusal by the person described by Subsection (b)(3); and

(C) an analysis of the person's blood, breath, or urine described by Subsection (b)(4).

(e) A person may not be issued a commercial driver's license and is disqualified from operating a commercial motor vehicle if, in connection with the person's operation of a commercial motor vehicle, the person commits an offense or engages in conduct that would disqualify the holder of a commercial driver's license from operating a commercial motor vehicle, or is determined to have had an alcohol concentration of 0.04 or more or to have had a controlled substance or drug present in the person's body. The period of prohibition under this subsection is equal to the appropriate period of disqualification required by Subsections (a)-(d).

(f) In this section, "felony" means an offense under state or federal law that is punishable by death or imprisonment for a term of more than one year.

SECTION 8.03. Section 522.087, Transportation Code, is amended to read as follows:

Sec. 522.087. PROCEDURES APPLICABLE TO DISQUALIFICATION.

(a) A person is automatically disqualified under Section 522.081(a)(1)(B), Section 522.081(b)(2) [~~522.081(b)(1), (3), (4), (6), or (7)~~], or Section 522.081(d)(2). An appeal may not be taken from the disqualification.

(b) Disqualifying a person under Section 522.081(a), other than under Subdivision (1)(B) of that subsection, Section 522.081(b)(1), or Section 522.081(d)(1) or (3) is subject to the notice and hearing procedures of Sections 521.295-521.303. An appeal of the disqualification is subject to Section 521.308.

SECTION 8.04. Section 543.202(b), Transportation Code, is amended to read as follows:

(b) The record must be made on a form or by a data processing method acceptable to the department and must include:

(1) the name, address, physical description, including race or ethnicity, date of birth, and driver's license number of the person charged;

(2) the registration number of the vehicle involved;

(3) whether the vehicle was a commercial motor vehicle as defined by Chapter 522 or was involved in transporting hazardous materials;

(4) the person's social security number, if the person was operating a commercial motor vehicle or was the holder of a commercial driver's license or commercial driver learner's permit;

(5) the date and nature of the offense, including whether the offense was a serious traffic violation as defined by Chapter 522;

(6) whether a search of the vehicle was conducted and whether consent for the search was obtained;

(7) the plea, the judgment, whether the individual was adjudicated under Article 45.0511, Code of Criminal Procedure, and whether bail was forfeited;

(8) the date of conviction; and

(9) the amount of the fine or forfeiture.

SECTION 8.05. Section 543.101, Transportation Code, is repealed.

SECTION 8.06. (a) This article takes effect June 1, 2005.

(b) Sections 522.081 and 522.087, Transportation Code, as amended by this article, apply only to conduct that is engaged in or to an offense that is committed on or after the effective date of this article. Conduct that is engaged in or an offense committed before the effective date of this article is governed by Sections 522.081 and 522.087, Transportation Code, as those sections existed immediately before the effective date of this article, and the former law is continued in effect for that purpose.

ARTICLE 9. MOTOR VEHICLE SALES TAX

SECTION 9.01. Chapter 152, Tax Code, is amended by amending Section 152.121 and adding Section 152.123 to read as follows:

Sec. 152.121. TAX SENT TO COMPTROLLER. (a) After crediting the amounts as provided by Section 152.123, a ~~[The]~~ county tax assessor-collector shall send ~~[the]~~ money collected from taxes and penalties imposed by this chapter to the comptroller as follows:

(1) on the 10th day of each month if during the last preceding state fiscal year less than \$2 million of the taxes and penalties imposed by this chapter was collected by the office of the county tax assessor-collector;

(2) once each week if during the last preceding state fiscal year \$2 million or more, but less than \$10 million, of the taxes and penalties imposed by this chapter was collected by the office of the county tax assessor-collector; or

(3) daily (as collected) if during the last preceding state fiscal year \$10 million or more of the taxes and penalties imposed by this chapter was collected by the office of the county tax assessor-collector.

(b) Taxes on metal dealer plates collected by the Texas Department of Transportation shall be deposited by the department in the state treasury in the same manner as are other taxes collected under this chapter[-].

~~[(e) If the amount of net collections under Chapter 502, Transportation Code, is insufficient to cover the amount of those net collections authorized to be retained by a county as a percentage of the tax and penalties collected under this chapter, the comptroller shall on request of the county tax assessor collector authorize the county to retain a portion of the tax and penalties collected under this chapter to cover the deficiency].~~

Sec. 152.123. TAX RETAINED BY COUNTY. (a) The county tax assessor-collector shall calculate five percent of the tax and penalties collected by the county tax assessor-collector under this chapter. In addition, the county tax assessor-collector shall calculate each calendar year an amount equal to five percent of the tax and penalties that the comptroller:

- (1) collected under Section 152.047 in the preceding calendar year; and
- (2) determines are attributable to sales in the county.

(b) The county shall retain the following percentage of the amounts calculated under subsection (a) during each of the following fiscal years:

- (1) in fiscal year 2006, 10 percent;
- (2) in fiscal year 2007, 20 percent;
- (3) in fiscal year 2008, 30 percent;
- (4) in fiscal year 2009, 40 percent;
- (5) in fiscal year 2010, 50 percent;
- (6) in fiscal year 2011, 60 percent;
- (7) in fiscal year 2012, 70 percent;
- (8) in fiscal year 2013, 80 percent;
- (9) in fiscal year 2014, 90 percent;
- (10) in fiscal year 2015 and succeeding years, 100 percent.

(c) The county shall credit the amounts retained under Subsection (b) to the county 's general fund.

SECTION 9.02. Section 502.102(b), Transportation Code, is amended to read as follows:

(b) Each Monday, a county assessor-collector shall credit to the county road and bridge fund an amount equal to the net collections made during the preceding week until the amount so credited for the calendar year equals the total of:

- (1) \$60,000;
- (2) \$350 for each mile of county road maintained by the county, according to the most recent information available from the department, not to exceed 500 miles; and
- (3) an additional amount of fees equal to the amount calculated under Section 502.1025 ~~[an amount equal to five percent of the tax and penalties collected by the assessor-collector under Chapter 152, Tax Code, in the preceding calendar year; and~~

~~[(4) an amount equal to five percent of the tax and penalties collected by the comptroller under Section 152.047, Tax Code, in the preceding calendar year].~~

SECTION 9.03. Chapter 502, Transportation Code, is amended by adding Section 502.1025 to read as follows:

Sec. 502.1025. CALCULATION OF ADDITIONAL FEE AMOUNTS RETAINED BY A COUNTY. (a) The county tax assessor-collector shall calculate five percent of the tax and penalties collected by the county tax assessor-collector under Chapter 152, Tax Code. In addition, the county tax assessor-collector shall calculate each calendar year an amount equal to five percent of the tax and penalties that the comptroller:

(1) collected under Section 152.047, Tax Code, in the preceding calendar year; and

(2) determines are attributable to sales in the county.

(b) A county tax assessor-collector shall retain under Section 502.102(b) fees based on the following percentage of the amounts calculated under subsection (a) during each of the following fiscal years:

(1) in fiscal year 2006, 90 percent;

(2) in fiscal year 2007, 80 percent;

(3) in fiscal year 2008, 70 percent;

(4) in fiscal year 2009, 60 percent;

(5) in fiscal year 2010, 50 percent;

(6) in fiscal year 2011, 40 percent;

(7) in fiscal year 2012, 30 percent;

(8) in fiscal year 2013, 20 percent;

(9) in fiscal year 2014, 10 percent;

(10) in fiscal year 2015 and succeeding years, 0 percent.

(c) The county shall credit the amounts retained under Subsection (b) to the county road and bridge fund. Money credited to the fund under this section may only be used for:

(1) county road construction, maintenance, and repair;

(2) bridge construction, maintenance, and repair;

(3) the purchase of right-of-way for road or highway purposes; or

(4) the relocation of utilities for road or highway purposes.

SECTION 9.04. Section 502.108(e), Transportation Code, is repealed.

SECTION 9.05. This article takes effect September 1, 2005.

ARTICLE 10. DRIVER RESPONSIBILITY

SECTION 10.01. Subtitle I, Title 7, Transportation Code, is amended by adding Chapter 708 to read as follows:

CHAPTER 708. DRIVER RESPONSIBILITY PROGRAM

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 708.001. DEFINITIONS. In this chapter, "department" and "license" have the meanings assigned by Section 521.001.

Sec. 708.002. RULES. The department shall adopt and enforce rules to implement and enforce this chapter.

Sec. 708.003. FINAL CONVICTIONS. For purposes of this chapter, a conviction for an offense to which this chapter applies is a final conviction, regardless of whether the sentence is probated.

[Sections 708.004-708.050 reserved for expansion]

SUBCHAPTER B. DRIVER'S LICENSE POINTS SURCHARGE

Sec. 708.051. NONAPPLICABILITY. This subchapter does not apply to:

(1) a conviction that became final before September 1, 2003; or

(2) an offense covered by Subchapter C.

Sec. 708.052. ASSIGNMENT OF POINTS FOR CERTAIN CONVICTIONS. (a) The driver's license of a person accumulates a point under this subchapter as of the date the department records a conviction of the person under Section 521.042 or other applicable law.

(b) For each conviction arising out of a separate transaction, the department shall assign points to a person's license as follows:

(1) two points for a moving violation of the traffic law of this state or another state that is not described by Subdivision (2); and

(2) three points for a moving violation of the traffic law of this state, another state, or a political subdivision of this or another state that resulted in an accident.

(c) The department by rule shall designate the offenses that constitute a moving violation of the traffic law under this section.

(d) Notwithstanding Subsection (b), the department may not assign points to a person's driver's license if the offense of which the person was convicted is the offense of speeding and the person was at the time of the offense driving less than 10 percent faster than the posted speed limit. This subsection does not apply to an offense committed in a school crossing zone as defined by Section 541.302.

(e) Notwithstanding Subsection (b), the department may not assign points to a person's license if the offense committed by the person was adjudicated under Article 45.051 or 45.0511, Code of Criminal Procedure.

Sec. 708.053. ANNUAL SURCHARGE FOR POINTS. Each year, the department shall assess a surcharge on the license of a person who has accumulated six or more points under this subchapter during the preceding 36-month period.

Sec. 708.054. AMOUNT OF POINTS SURCHARGE. The amount of a surcharge under this chapter is \$100 for the first six points and \$25 for each additional point.

Sec. 708.055. NOTICE OF ASSIGNMENT OF FIFTH POINT. The department shall notify the holder of a driver's license of the assignment of a fifth point on that license by first class mail sent to the person's most recent address as shown on the records of the department.

[Sections 708.056-708.100 reserved for expansion]

SUBCHAPTER C. SURCHARGES FOR CERTAIN CONVICTIONS AND LICENSE SUSPENSIONS

Sec. 708.101. NONAPPLICABILITY. This subchapter does not apply to a conviction that became final before September 1, 2003.

Sec. 708.102. SURCHARGE FOR CONVICTION OF CERTAIN INTOXICATED DRIVER OFFENSES. (a) In this section, "offense relating to the operating of a motor vehicle while intoxicated" has the meaning assigned by Section 49.09, Penal Code.

(b) Each year the department shall assess a surcharge on the license of each person who during the preceding 36-month period has been finally convicted of an offense relating to the operating of a motor vehicle while intoxicated.

(c) The amount of a surcharge under this section is \$1,000 per year, except that the amount of the surcharge is:

(1) \$1,500 per year for a second or subsequent conviction within a 36-month period; and

(2) \$2,000 for a first or subsequent conviction if it is shown on the trial of the offense that an analysis of a specimen of the person's blood, breath, or urine showed an alcohol concentration level of 0.16 or more at the time the analysis was performed.

(d) A surcharge under this section for the same conviction may not be assessed in more than three years.

Sec. 708.103. SURCHARGE FOR CONVICTION OF DRIVING WHILE LICENSE INVALID OR WITHOUT FINANCIAL RESPONSIBILITY. (a) Each year the department shall assess a surcharge on the license of each person who during the preceding 36-month period has been convicted of an offense under Section 521.457, 601.191, or 601.371.

(b) The amount of a surcharge under this section is \$250 per year.

Sec. 708.104. SURCHARGE FOR CONVICTION OF DRIVING WITHOUT VALID LICENSE. (a) Each year the department shall assess a surcharge on the license of a person who during the preceding 36-month period has been convicted of an offense under Section 521.021.

(b) The amount of a surcharge under this section is \$100 per year.

(c) A surcharge under this section for the same conviction may not be assessed in more than three years.

[Sections 708.105-708.150 reserved for expansion]

SUBCHAPTER D. COLLECTION OF SURCHARGES

Sec. 708.151. NOTICE OF SURCHARGE. The department shall notify the holder of a driver's license of the assessment of a surcharge on that license by first class mail sent to the person's most recent address as shown on the records of the department. The notice must specify the date by which the surcharge must be paid and state the consequences of a failure to pay the surcharge.

Sec. 708.152. FAILURE TO PAY SURCHARGE. (a) If before the 30th day after the date the department sends a notice under Section 708.151 the person fails to pay the amount of a surcharge on the person's license or fails to enter into an installment payment agreement with the department, the license of the person is automatically suspended.

(b) A license suspended under this section remains suspended until the person pays the amount of the surcharge and any related costs.

Sec. 708.153. INSTALLMENT PAYMENT OF SURCHARGE. (a) The department by rule shall provide for the payment of a surcharge in installments.

(b) A rule under this section:

(1) may not permit a person to pay a surcharge:

(A) of less than \$2,300 over a period of more than 12 consecutive months; or

(B) of \$2,300 or more over a period of more than 24 consecutive months; and

(2) may provide that if the person fails to make a required installment payment, the department may declare the amount of the unpaid surcharge immediately due and payable.

Sec. 708.154. CREDIT CARD PAYMENT OF SURCHARGE. (a) The department by rule may authorize the payment of a surcharge by use of a credit card. The rules shall require the person to pay all costs incurred by the department in connection with the acceptance of the credit card.

(b) If a surcharge or a related cost is paid by credit card and the amount is subsequently reversed by the issuer of the credit card, the license of the person is automatically suspended.

(c) A license suspended under this section remains suspended until the person pays the amount of the surcharge and any related costs.

Sec. 708.155. CONTRACTS FOR COLLECTION OF SURCHARGES. The department may enter into a contract with a private attorney or a public or private vendor for the provision of services for the collection of surcharges receivable under this chapter. The total amount of compensation may not exceed the amount set in Article 103.0031, Code of Criminal Procedure.

Sec. 708.156. REMITTANCE OF SURCHARGES COLLECTED TO COMPTROLLER. Each surcharge collected by the department under this chapter shall be remitted to the comptroller as required by Section 780.002, Health and Safety Code.

SECTION 10.02. Subtitle B, Title 9, Health and Safety Code, is amended by adding Chapter 780 to read as follows:

CHAPTER 780. TRAUMA FACILITIES AND EMERGENCY MEDICAL SERVICES

Sec. 780.001. DEFINITIONS. In this chapter:

(1) "Account" means the designated trauma facility and emergency medical services account established under Section 780.003.

(2) "Commissioner" means the commissioner of public health.

(3) "Department" means the Texas Department of Health.

Sec. 780.002. DEPOSITS TO ACCOUNT. (a) On the first Monday of each month, the Department of Public Safety shall remit the surcharges collected during the previous month under the driver responsibility program operated by that department under Chapter 708, Transportation Code, to the comptroller.

(b) The comptroller shall deposit 49.5 percent of the money received under Subsection (a) to the credit of the account established under this chapter and 49.5 percent of the money to the general revenue fund. The remaining one percent of the amount of the surcharges shall be deposited to the general revenue fund and may be appropriated only to the Department of Public Safety for administration of the driver responsibility program operated by that department under Chapter 708, Transportation Code.

(c) Notwithstanding Subsection (b), in any state fiscal year the comptroller shall deposit 49.5 percent of the surcharges collected under Chapter 708, Transportation Code, to the credit of the general revenue fund only until the total amount of the surcharges deposited to the credit of the general revenue fund under Subsection (b), and the court costs deposited to the credit of that fund under Section 542.4031(g)(1), Transportation Code, equals \$250 million for that year. If in any state fiscal year the amount received by the comptroller under those laws exceeds \$250 million, the comptroller shall deposit 49.5 percent of the

additional amount received under Subsection (a) to the account established under this chapter and 49.5 percent of the additional amount to the credit of the Texas mobility fund.

Sec. 780.003. ACCOUNT. (a) The designated trauma facility and emergency medical services account is created as a dedicated account in the general revenue fund of the state treasury. Money in the account may be appropriated only to the department for the purposes described by Section 780.004.

(b) The account is composed of money deposited to the credit of the account under Section 780.002, and the earnings of the account.

(c) Sections 403.095 and 404.071, Government Code, do not apply to the account.

Sec. 780.004. PAYMENTS FROM THE ACCOUNT. (a) The commissioner, with advice and counsel from the chairpersons of the trauma service area regional advisory councils, shall use money appropriated from the account established under this chapter to fund designated trauma facilities, county and regional emergency medical services, and trauma care systems in accordance with this section.

(b) The commissioner shall maintain a reserve of \$500,000 of money appropriated from the account for extraordinary emergencies.

(c) In any fiscal year, the commissioner shall use at least 96 percent of the money appropriated from the account, after any amount necessary to maintain the reserve established by Subsection (b) is deducted, to fund a portion of the uncompensated trauma care provided at facilities designated as state trauma facilities by the department or an undesignated facility in active pursuit of designation. Funds may be disbursed under this subsection based on a proportionate share of uncompensated trauma care provided in the state and may be used to fund innovative projects to enhance the delivery of patient care in the overall emergency medical services and trauma care system.

(d) In any fiscal year, the commissioner shall use not more than two percent of the money appropriated from the account, after any amount necessary to maintain the reserve established by Subsection (b) is deducted, to fund, in connection with an effort to provide coordination with the appropriate trauma service area, the cost of supplies, operational expenses, education and training, equipment, vehicles, and communications systems for local emergency medical services. The money shall be distributed on behalf of eligible recipients in each county to the trauma service area regional advisory council for that county. To receive a distribution under this subsection, the regional advisory council must be incorporated as an entity that is exempt from federal income tax under Section 501(a), Internal Revenue Code of 1986, and its subsequent amendments, by being listed as an exempt organization under Section 501(c)(3) of that code. The share of the money allocated to the eligible recipients in a county's geographic area shall be based on the relative geographic size and population of the county and on the relative number of emergency or trauma care runs performed by eligible recipients in the county. Money that is not disbursed by a regional

advisory council to eligible recipients for approved functions by the end of the fiscal year in which the funds were disbursed shall be returned to the department to be used in accordance with Subsection (c).

(e) In any fiscal year, the commissioner may use not more than one percent of the money appropriated from the account, after any amount necessary to maintain the reserve established by Subsection (b) is deducted, for operation of the 22 trauma service areas and for equipment, communications, and education and training for the areas. Money distributed under this subsection shall be distributed on behalf of eligible recipients in each county to the trauma service area regional advisory council for that county. To receive a distribution under this subsection, the regional advisory council must be incorporated as an entity that is exempt from federal income tax under Section 501(a), Internal Revenue Code of 1986, and its subsequent amendments, by being listed as an exempt organization under Section 501(c)(3) of that code. A regional advisory council's share of money distributed under this section shall be based on the relative geographic size and population of each trauma service area and on the relative amount of trauma care provided. Money that is not disbursed by a regional advisory council to eligible recipients for approved functions by the end of the fiscal year in which the funds were disbursed shall be returned to the department to be used in accordance with Subsection (c).

(f) In any fiscal year, the commissioner may use not more than one percent of money appropriated from the account, after any amount necessary to maintain the reserve established by Subsection (b) is deducted, to fund the administrative costs of the bureau of emergency management of the department associated with administering the trauma program, the state emergency medical services program, and the account and to fund the costs of monitoring and providing technical assistance for those programs and that account.

(g) In a trauma service area that includes a county with a population of 3.3 million or more, a trauma service area regional advisory council may enter into an agreement with a regional council of governments to execute its responsibilities and functions under this chapter.

(h) For purposes of this section "pursuit of designation" means:

(1) submission of an application with the state or appropriate agency for trauma verification and designation not later than December 31, 2003;

(2) submission of data to the department trauma registry, provided that only data submitted to the trauma registry on or after September 1, 2003, will qualify for consideration of reimbursement under this program;

(3) participation in trauma service area regional advisory council initiatives on or before December 31, 2003; and

(4) creation of a hospital trauma performance committee not later than December 31, 2003.

(i) If trauma designation is not attained by an undesignated facility in active pursuit of designation on or before December 31, 2005, any funds received by the undesignated facility for unreimbursed trauma services must be returned to the state.

Sec. 780.005. CONTROL OF EXPENDITURES FROM THE ACCOUNT. Money distributed under Section 780.004 shall be used in compliance with Section 780.004 on the authorization of the executive committee of the trauma service area regional advisory council.

Sec. 780.006. LOSS OF FUNDING ELIGIBILITY. For a period of not less than one year or more than three years, as determined by the commissioner, the department may not disburse money under Section 780.004 to a county, municipality, or local recipient that the commissioner finds used money in violation of that section.

Sec. 780.007. This chapter expires September 1, 2007.

SECTION 10.03. Not later than December 1, 2004, the Texas Department of Health shall submit to the lieutenant governor and the speaker of the house of representatives a report concerning the use of money under Chapter 780, Health and Safety Code, as added by this article, and any recommended changes to law to ensure appropriate funding and coordination of services.

ARTICLE 11. DISPOSITION OF DEPARTMENT OF PUBLIC SAFETY FEES

SECTION 11.01. Subchapter C, Chapter 521, Transportation Code, is amended by adding Section 521.058 to read as follows:

Sec. 521.058. DISPOSITION OF FEES. Each fee collected under this subchapter shall be deposited to the credit of the Texas mobility fund.

SECTION 11.02. Section 521.313, Transportation Code, is amended by adding Subsection (c) to read as follows:

(c) Each fee collected under this section shall be deposited to the credit of the Texas mobility fund.

SECTION 11.03. Section 521.3466, Transportation Code, is amended by adding Subsection (e) to read as follows:

(e) Each fee collected under this section shall be deposited to the credit of the Texas mobility fund.

SECTION 11.04. Subchapter R, Chapter 521, Transportation Code, is amended by adding Section 521.427 to read as follows:

Sec. 521.427. DISPOSITION OF FEES. (a) Except as provided by Subsections (b) and (c), each fee collected under this subchapter shall be deposited to the credit of the Texas mobility fund.

(b) Subsection (a) does not apply to:

(1) the portion of a fee collected under Section 521.421(b) or Section 521.421(f), as added by Chapter 1156, Acts of the 75th Legislature, Regular Session, 1997, that is required by Section 662.011 to be deposited to the credit of the motorcycle education fund account;

(2) a fee collected under Section 521.421(f), as added by Chapter 510, Acts of the 75th Legislature, Regular Session, 1997;

(3) a fee collected under Section 521.421(g); or

(4) a fee collected under Section 521.422(b) or (c).

(c) The first \$90,500,254 of fees to which Subsection (a) applies that are collected during the state fiscal biennium ending August 31, 2005, shall be deposited to the credit of the general revenue fund. This subsection expires September 1, 2005.

SECTION 11.05. Section 522.029, Transportation Code, is amended by adding Subsection (i) to read as follows:

(i) Except as provided by Section 662.011, each fee collected under this section shall be deposited to the credit of the Texas mobility fund.

SECTION 11.06. Section 524.051, Transportation Code, is amended by adding Subsection (c) to read as follows:

(c) Each fee collected under this section shall be deposited to the credit of the Texas mobility fund.

SECTION 11.07. Subchapter H, Chapter 548, Transportation Code, is amended by adding Section 548.508 to read as follows:

Sec. 548.508. DISPOSITION OF FEES. Except as provided by Sections 382.037 and 382.0622, Health and Safety Code, and Section 548.5055, each fee collected by the department under this subchapter shall be deposited to the credit of the Texas mobility fund.

SECTION 11.08. Section 644.153, Transportation Code, is amended by adding Subsection (i) to read as follows:

(i) Each penalty collected under this section shall be deposited to the credit of the Texas mobility fund.

SECTION 11.09. Section 724.046, Transportation Code, is amended by adding Subsection (c) to read as follows:

(c) Each fee collected under this section shall be deposited to the credit of the Texas mobility fund.

SECTION 11.10. Section 521.055(d), Transportation Code, is repealed.

SECTION 11.11. This article applies only to a fee or penalty collected on or after the effective date of this Act.

ARTICLE 12. ADDITIONAL COURT COSTS

SECTION 12.01. (a) Subchapter D, Chapter 542, Transportation Code, is amended by adding Section 542.4031 to read as follows:

Sec. 542.4031. ADDITIONAL COURT COST. (a) In addition to other costs, including a cost under Section 542.403, a person convicted of an offense under this subtitle shall pay \$30 as a court cost.

(b) An officer collecting a cost due under this section in a case in municipal court shall keep separate records of the money collected and shall deposit the money in the municipal treasury.

(c) An officer collecting a cost due under this section in a justice, county, or district court shall keep separate records of the money collected and shall deposit the money in the county treasury.

(d) Each calendar quarter, an officer collecting a cost due under this section shall submit a report to the comptroller. The report must comply with Articles 103.005(c) and (d), Code of Criminal Procedure. If no money due as a cost under this section is collected in any quarter, the report required for that quarter shall be filed in the regular manner, and the report shall state that no money due under this section was collected.

(e) The custodian of money in a municipal or county treasury may deposit money collected under this section in an interest-bearing account. The custodian shall:

(1) keep records of the amount of money collected under this section that is on deposit in the treasury; and

(2) not later than the last day of the month following each calendar quarter, remit to the comptroller money collected under this section during the preceding quarter, as required by the comptroller.

(f) A municipality or county may retain five percent of the money collected under this section as a service fee for the collection if the municipality or county remits the funds to the comptroller within the period prescribed in Subsection (e). The municipality or county may retain any interest accrued on the money if the custodian of the money deposited in the treasury keeps records of the amount of money collected under this section that is on deposit in the treasury and remits the funds to the comptroller within the period prescribed in Subsection (e).

(g) Of the money received by the comptroller under this section, the comptroller shall deposit:

(1) 67 percent to the credit of the undedicated portion of the general revenue fund; and

(2) 33 percent to the credit of the designated trauma facility and emergency medical services account under Section 780.003, Health and Safety Code.

(h) Notwithstanding Subsection (g), in any state fiscal year the comptroller shall deposit court costs received under that subsection to the credit of the general revenue fund only until the total amount of the court costs deposited to the credit of the general revenue fund under that subsection and the surcharges deposited to the credit of that fund under Section 780.002(b), Health and Safety Code, equals \$250 million for that year. If in any state fiscal year the amount received by the comptroller under those laws exceeds \$250 million, the comptroller shall deposit the additional amount received under Subsection (g) to the credit of the Texas mobility fund.

(i) Money collected under this section is subject to audit by the comptroller. Money spent is subject to audit by the state auditor.

(j) In this section a person is considered to have been convicted in a case if:

(1) a sentence is imposed;

(2) the person receives community supervision or deferred adjudication; or

(3) the court defers final disposition of the case.

(k) This section expires September 1, 2007.

(b) The change in law made by this section applies only to an offense committed on or after the effective date of this section. For the purposes of this section, an offense was committed before the effective date of this section if any element of the offense occurred before that date. An offense committed before the effective date of this section is governed by the law in effect when the offense was committed, and the former law is continued in effect for that purpose.

ARTICLE 13. STATEWIDE COORDINATION OF PUBLIC TRANSPORTATION

SECTION 13.01. Subtitle K, Title 6, Transportation Code, is amended by adding Chapter 461 to read as follows:

CHAPTER 461. STATEWIDE COORDINATION OF PUBLIC
TRANSPORTATION

Sec. 461.001. LEGISLATIVE INTENT AND CONSTRUCTION. (a) Public transportation services are provided in this state by many different entities, both public and private. The multiplicity of public transportation providers and services, coupled with a lack of coordination between state oversight agencies, has generated inefficiencies, overlaps in service, and confusion for consumers. It is the intent of this chapter:

- (1) to eliminate waste in the provision of public transportation services;
- (2) to generate efficiencies that will permit increased levels of service;

and

- (3) to further the state's efforts to reduce air pollution.

(b) This chapter shall be liberally construed to achieve its purposes.

Sec. 461.002. DEFINITIONS. In this chapter:

(1) "Public transportation provider" means any entity that provides public transportation services if it is a governmental entity or if it receives financial assistance from a governmental entity, whether state, local, or federal. The term does not include private carriers that do not receive financial assistance from a governmental entity. It also does not include a person who provides intercity rail or bus service, commercial air transportation, water transportation, or nonstop service to or from a point located outside this state. If a person provides both public transportation services and services that are not public transportation services, that person is included within the term only with regard to the provision of public transportation services and to the extent of those public transportation services.

(2) "Public transportation services" means any conveyance of passengers and their hand-carried baggage by a governmental entity or by a private entity if the private entity receives financial assistance for that conveyance from any governmental entity. It does not include intercity rail or bus service, commercial air transportation, water transportation, or nonstop service to or from a point located outside this state.

Sec. 461.003. RULES OF TEXAS TRANSPORTATION COMMISSION.

(a) The commission by rule may:

(1) require a state agency that is responsible for ensuring the provision of public transportation services to contract with the department for the department to assume the responsibilities of that agency relating to the provision of public transportation services; and

(2) require a public transportation provider to provide detailed information on its provision of public transportation services, including revenues, routes, maps, categories of passengers served, number of passengers served, and equipment use and condition.

(b) Except with regard to health and human services programs funded by this state, the commission may not direct the planning or operations of an authority created or operating under Chapter 451, 452, 453, or 460.

(c) The commission shall adopt other rules, including rules defining terms, necessary to implement this chapter.

Sec. 461.004. DUTIES OF TEXAS DEPARTMENT OF TRANSPORTATION. (a) The department shall identify:

(1) overlaps and gaps in the provision of public transportation services, including services that could be more effectively provided by existing, privately funded transportation resources;

(2) underused equipment owned by public transportation providers; and

(3) inefficiencies in the provision of public transportation services by any public transportation provider.

(b) The department may contract with any public or private transportation provider for the department to arrange for the provision of public transportation services.

Sec. 461.005. ELIMINATION OF OVERLAPPING SERVICE. (a) To eliminate waste and maximize efficiency, the department shall encourage public transportation providers to agree on the allocation of specific services and service areas among the providers. The department may incorporate these discussions in planning processes such as the development of the statewide transportation improvement program or a local transportation improvement plan.

(b) If public transportation providers do not reach an agreement on a service plan under Subsection (a), the department may develop an interim service plan for that area.

(c) The department may require that all or a percentage of the vehicles used to provide public transportation services comply with specified emissions standards. The standards may vary among geographic areas based on the need of each area to reduce levels of air pollution. This subsection does not apply to an authority created under Chapter 451, 452, 453, or 460.

Sec. 461.006. DUTIES OF PUBLIC TRANSPORTATION PROVIDERS. Each public transportation provider shall cooperate with the department in eliminating waste and ensuring efficiency and maximum coverage in the provision of public transportation services.

Sec. 461.007. INCENTIVES FOR EFFICIENCY. (a) Notwithstanding any other law, including a law establishing a formula for the allocation of public transportation grants, the commission may increase or reduce the amount of a grant made to a public transportation provider based on whether the public transportation provider is complying fully with this chapter.

(b) Notwithstanding any other law, the commission may consider whether a public transportation provider in a geographic area of this state is complying fully with this chapter in executing the commission's other responsibilities relating to that area.

SECTION 13.02. Section 455.0015, Transportation Code, is amended by amending Subsection (b) and adding Subsections (c) and (d) to read as follows:

(b) It is the intent of the legislature that, whenever possible, and to the maximum extent feasible, the existing network of transportation providers, and in particular the fixed route components of the existing networks, be used to meet the client transportation requirements of the state's social service agencies and their agents. The legislature recognizes the contributions of nonprofit entities dedicated to providing social services and related activities and encourages the

continued community involvement of these entities in this area. The legislature likewise recognizes the potential cost savings and other benefits of utilizing existing private sector transportation resources. The department will contract with and promote the use of private sector transportation resources to the maximum extent feasible consistent with the goals of this subsection.

(c) Each health and human services agency of this state shall contract with the department for the department to assume all responsibilities of the health and human services agency relating to the provision of transportation services for clients of eligible programs.

(d) The department may contract with any public or private transportation provider or with any regional transportation broker for the provision of public transportation services.

SECTION 13.03. Section 455.004, Transportation Code, is amended to read as follows:

Sec. 455.004. PUBLIC TRANSPORTATION ADVISORY COMMITTEE.

(a) A public transportation advisory committee consisting of nine members shall:

(1) advise the commission on the needs and problems of the state's public transportation providers, including the methods for allocating state public transportation money;

(2) comment on rules involving public transportation during development of the rules and before the commission finally adopts the rules unless an emergency requires immediate commission action; ~~and~~

(3) advise the commission on the implementation of Chapter 461; and

(4) perform any other duty determined by the commission.

(b) The commission shall appoint members of the advisory committee. The membership of the committee shall ~~[governor, the lieutenant governor, and the speaker of the house of representatives each shall appoint three members of the committee. The appointing officers shall allocate among themselves the authority for appointment of members with different types of qualifications. The committee must]~~ include:

(1) four members who ~~[one member to]~~ represent a diverse cross-section of public transportation providers ~~[in rural areas];~~

(2) three members who ~~[one member to]~~ represent a diverse cross-section of transportation users ~~[municipal transit systems in urban areas with populations of less than 200,000]; and~~

(3) two members who ~~[one member to represent metropolitan transit authorities in urban areas with populations of 200,000 or more;~~

~~[(4) one member to represent transportation providers for persons with disabilities and the elderly; and~~

~~[(5) five members who have a knowledge of and interest in public transportation to]~~ represent the general public.

(c) A member serves at the pleasure of the commission ~~[officer appointing the member]~~. A member is not entitled to compensation for service on the committee but is entitled to reimbursement for reasonable expenses the member incurs in performing committee duties.

(d) The public transportation advisory committee shall meet ~~quarterly or~~ as requested by the commission.

(e) The commission may adopt rules to govern the operation of the advisory committee.

SECTION 13.04. Section 461.012, Health and Safety Code, is amended by adding Subsection (g) to read as follows:

(g) The commission shall contract with the Texas Department of Transportation for the Texas Department of Transportation to assume all responsibilities of the commission relating to the provision of transportation services for clients of eligible programs.

SECTION 13.05. Section 533.012, Health and Safety Code, is amended to read as follows:

Sec. 533.012. COOPERATION OF STATE AGENCIES. (a) At the department's request, all state departments, agencies, officers, and employees shall cooperate with the department in activities that are consistent with their functions.

(b) The department shall contract with the Texas Department of Transportation for the Texas Department of Transportation to assume all responsibilities of the department relating to the provision of transportation services for clients of eligible programs.

SECTION 13.06. Section 22.001, Human Resources Code, is amended by adding Subsection (e) to read as follows:

(e) The department shall contract with the Texas Department of Transportation for the Texas Department of Transportation to assume all responsibilities of the department relating to the provision of transportation services for clients of eligible programs.

SECTION 13.07. Section 40.002, Human Resources Code, is amended by adding Subsection (f) to read as follows:

(f) The department may contract with the Texas Department of Transportation for the Texas Department of Transportation to assume all responsibilities of the department relating to the provision of transportation services for clients of eligible programs.

SECTION 13.08. Section 91.021, Human Resources Code, is amended by adding Subsection (g) to read as follows:

(g) The commission shall contract with the Texas Department of Transportation for the Texas Department of Transportation to assume all responsibilities of the commission relating to the provision of transportation services for clients of eligible programs.

SECTION 13.09. Section 101.0256, Human Resources Code, is amended to read as follows:

Sec. 101.0256. COORDINATED ACCESS TO LOCAL SERVICES. (a) The department and the Texas Department of Human Services shall develop standardized assessment procedures to share information on common clients served in a similar service region.

(b) The department shall contract with the Texas Department of Transportation for the Texas Department of Transportation to assume all responsibilities of the department relating to the provision of transportation services for clients of eligible programs.

SECTION 13.10. Section 111.0525, Human Resources Code, is amended by adding Subsection (d) to read as follows:

(d) The commission shall contract with the Texas Department of Transportation for the Texas Department of Transportation to assume all responsibilities of the commission relating to the provision of transportation services for clients of eligible programs.

SECTION 13.11. Section 301.063, Labor Code, is amended by adding Subsection (f) to read as follows:

(f) The commission shall contract with the Texas Department of Transportation for the Texas Department of Transportation to assume all responsibilities of the commission relating to the provision of transportation services for clients of eligible programs.

SECTION 13.12. It is the intent of the legislature that the provision of health and human service transportation through the Texas Department of Transportation will improve the delivery of transportation services to clients and enhance their access to transportation services. Furthermore, it is the intent of the legislature that these services be provided in a manner that will generate efficiencies in operation, control costs, and permit increased levels of service. The Texas Department of Transportation shall encourage cooperation and coordination among transportation providers, regional transportation brokers, and actual and potential clients in an effort to achieve the stated legislative goals.

SECTION 13.13. Any funds that are used by the Texas Department of Transportation to implement the transportation services provided in Sections 13.02, 13.04, 13.05, 13.06, 13.07, 13.08, 13.09, 13.10, and 13.11 shall be accounted for and budgeted separately from other funds appropriated to the Texas Department of Transportation for any other public transportation program or budget strategy.

ARTICLE 14. CONDITIONAL GRANT PROGRAM

SECTION 14.01. Section 56.141(4), Education Code, is amended to read as follows:

(4) "Eligible profession" means the profession of engineering or another profession as defined [identified] by [the] department rule for which the department determines there is a need ~~[as having a significant statistical underrepresentation of minorities or women]~~ in the department's workforce.

SECTION 14.02. Section 56.142(a), Education Code, is amended to read as follows:

(a) The department shall establish and administer a conditional grant program under this subchapter to provide financial assistance to eligible ~~[women and minority]~~ students who agree to work for the department in an eligible profession for the two academic years immediately following the date of the student's receipt of an eligible degree.

SECTION 14.03. Section 56.143, Education Code, is amended to read as follows:

Sec. 56.143. ELIGIBLE STUDENT. (a) To be eligible for a conditional grant under this subchapter, a student must:

(1) complete and file with the department, on forms prescribed by the department, a conditional grant application and a declaration of intent to become a member of an eligible profession and work for the department for the two academic years immediately following the date of the student's receipt of an eligible degree;

(2) enroll in an institution;

(3) be a Texas resident, as defined by Texas Higher Education Coordinating Board rule;

(4) be economically disadvantaged [~~a minority~~], as defined by department rule [~~or a woman~~]; and

(5) have complied with any other requirements adopted by the department under this subchapter.

(b) In determining who should receive a grant under this program, the department:

(1) shall give highest priority to students who demonstrate the greatest financial need; and

(2) may consider whether the applicant would be the first generation of the applicant's family to attend or graduate from an undergraduate program or from a graduate or professional program.

SECTION 14.04. Section 56.147, Education Code, is amended by reenacting and amending Subsection (b), as amended by Chapters 151 and 165, Acts of the 74th Legislature, Regular Session, 1995, and by adding Subsection (c) to read as follows:

(b) The department shall issue not less than \$400,000 annually in conditional grants under this subchapter from money available to fund the conditional grant program [~~gifts, grants, and funds described by Subsection (a)~~].

(c) The department may provide outreach programs to recruit students into the conditional grant program.

SECTION 14.05. The change in law made by this article does not affect the eligibility of a person awarded a grant under Subchapter I, Chapter 56, Education Code, before the effective date of this article to receive the grant or to participate in the conditional grant program under Subchapter I, Chapter 56, Education Code, as that subchapter existed when the person was awarded the grant, and the former law is continued in effect for that purpose.

ARTICLE 15. TEXAS TURNPIKE AUTHORITY

SECTION 15.01. Section 201.112(a), Transportation Code, is amended to read as follows:

(a) The commission may by rule establish procedures for the informal resolution of a claim arising out of a contract described by:

(1) Section 22.018;

(2) Chapter 223; [~~or~~]

(3) Chapter 361; or

(4) Chapter 2254, Government Code.

SECTION 15.02. The heading to Chapter 361, Transportation Code, is amended to read as follows:

CHAPTER 361. STATE HIGHWAY [TEXAS] TURNPIKE PROJECTS
[AUTHORITY]

SECTION 15.03. Sections 361.001(2), (3), (4), and (5), Transportation Code, are amended to read as follows:

(2) [~~"Board" means the board of directors of the authority.~~

[~~(3)~~] "Owner" includes a person having title to or an interest in any property, rights, easements, and interests authorized to be acquired under this chapter.

(3) [~~(4)~~] "Turnpike project" means a toll highway constructed, maintained, or operated under this chapter as part of the state highway system and any improvement, extension, or expansion to the highway and includes:

(A) a facility to relieve traffic congestion and promote safety;

(B) a bridge, tunnel, overpass, underpass, interchange, entrance plaza, approach, toll house, service road, ramp, or service station;

(C) an administration, storage, or other building the department [authority] considers necessary to operate the project;

(D) property rights, easements, and interests the department [authority] acquires to construct or operate the project;

(E) a parking area or structure, rest stop, park, and any other improvement or amenity the department [authority] considers necessary, useful, or beneficial for the operation of a turnpike project; and

(F) a toll-free facility that is appurtenant to and necessary for the efficient operation of a turnpike project, including a service road, access road, ramp, interchange, bridge, or tunnel.

(4) [~~(5)~~] "Regional tollway authority" means a regional tollway authority created under Chapter 366.

SECTION 15.04. The heading to Subchapter B, Chapter 361, Transportation Code, is amended to read as follows:

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS [~~TEXAS TURNPIKE~~
AUTHORITY]

SECTION 15.05. Section 361.031, Transportation Code, as amended by Chapters 920 and 1237, Acts of the 77th Legislature, Regular Session, 2001, is reenacted and amended to read as follows:

Sec. 361.031. TEXAS TURNPIKE AUTHORITY. (a) The Texas Turnpike Authority is a division of the Texas Department of Transportation. The [that has full] authority is responsible for promoting and coordinating the development of turnpike projects under this chapter. The commission and the director shall assign duties to [exercise all powers granted to it under this chapter. Powers granted to the department under this chapter and Chapter 362 to study, design, construct, operate, expand, enlarge, or extend a turnpike project as a part of the state highway system shall be exercised by the department acting by and through] the authority and other offices of the department as appropriate for the proper administration of this chapter and other law.

(b) The exercise by the department ~~[authority]~~ of the powers conferred by this chapter in the construction, operation, and maintenance of a turnpike project is:

(1) in all respects for the benefit of the people of this state, for the increase of their commerce and prosperity, and for the improvement of their health and living conditions and public safety; and

(2) an essential governmental function of the state.

SECTION 15.06. Section 361.042, Transportation Code, is redesignated as Section 361.032, Transportation Code, and amended to read as follows:

Sec. 361.032 ~~[361.042]~~. GENERAL POWERS AND DUTIES. (a) The commission ~~[board]~~ shall[-

~~[(1) on its own initiative or at the request of the commission, consider, study, plan, and develop turnpike projects under this chapter;~~

~~[(2)] adopt rules for the implementation and administration of this chapter [regulation of its affairs and the conduct of its business; and~~

~~[(3) undertake such other duties as are delegated to it by the commission].~~

(b) The department ~~[authority]~~ may:

(1) construct, maintain, repair, and operate turnpike projects in this state;

(2) acquire, hold, and dispose of property in the exercise of its powers and the performance of its duties under this chapter;

(3) with the approval of the governor and the commission, enter into contracts or operating agreements with similar authorities or agencies of another state, including a state of the United Mexican States;

(4) enter into contracts or agreements necessary or incidental to its duties and powers under this chapter;

(5) employ consulting engineers, accountants, construction and financial experts, superintendents, managers, and other employees and agents the department ~~[authority]~~ considers necessary and set their compensation;

~~[(6) employ attorneys to advance or defend legal actions pertaining to the division's activities, notwithstanding any other law to the contrary, including Section 402.0212, Government Code;~~

~~[(7)] receive grants for the construction of a turnpike project and receive contributions of money, property, labor, or other things of value from any source to be used for the purposes for which the grants or contributions are made;~~

~~[(8) notwithstanding Chapter 2113, Government Code, adopt and enforce rules not inconsistent with this chapter for the use of any turnpike project, including rules establishing speed limits and maximum allowable vehicle and load weight limits for turnpike projects;~~

~~[(9)] engage in marketing, advertising, and other activities to promote the development and use of turnpike projects and may enter into contracts or agreements necessary to procure marketing, advertising, or other promotional services from outside service providers;~~

~~[(10) with the concurrence of the commission, form, develop, or utilize a corporation created under Chapter 431 for the promotion and development of turnpike projects;] and~~

~~(8) [(11)]~~ do all things necessary or appropriate to carry out the powers expressly granted by this chapter.

SECTION 15.07. Section 361.054, Transportation Code, is redesignated as Section 361.033, Transportation Code, and amended to read as follows:

Sec. 361.033 ~~[361.054]~~. AUDIT. Notwithstanding any other law to the contrary, the department ~~[authority]~~ shall have an independent certified public accountant audit the department's ~~[authority's]~~ books and accounts for activities under this chapter at least annually. The audit shall be conducted in accordance with the requirements of any trust agreement securing bonds issued under this chapter that is in effect at the time of the audit. The cost of the audit may be treated as part of the cost of construction or operation of a turnpike project. This section does not affect the ability of a state agency to audit the department's ~~[authority's]~~ books and accounts.

SECTION 15.08. The heading to Subchapter C, Chapter 361, Transportation Code, is amended to read as follows:

SUBCHAPTER C. DEVELOPMENT ~~[APPROVAL]~~ OF TURNPIKE PROJECTS

SECTION 15.09. Section 361.101, Transportation Code, is amended to read as follows:

Sec. 361.101. DETERMINATION OF TURNPIKE PROJECTS. The department ~~[authority]~~ may:

- (1) construct, maintain, repair, and operate a turnpike project to:
 - (A) facilitate vehicular traffic throughout this state;
 - (B) promote the agricultural and industrial development of this state;
 - (C) effect traffic safety; or
 - (D) improve connections between highways of this state, adjoining states, and the United Mexican States; and

(2) at any time determine to undertake a turnpike project, except that the commission by order must approve ~~[the location of the project before]~~ final designation.

SECTION 15.10. Section 361.103, Transportation Code, is amended to read as follows:

Sec. 361.103. APPLICATION OF OTHER LAW. All other law applicable to the department, the commission, or the state highway system shall apply to the development, construction, maintenance, and operation of a turnpike project under this chapter unless in conflict with a provision of this chapter. ~~[ENVIRONMENTAL REVIEW. (a) The authority by rule shall provide for the authority's environmental review of turnpike projects. The rules must provide for:~~

~~(1) public comment on environmental reviews of turnpike projects, including the types of projects for which public hearings are required, and a procedure for requesting a public hearing on an environmental review for which a public hearing is not required;~~

~~[(2) the environmental factors and impacts the authority will evaluate in its environmental reviews; and~~

~~[(3) environmental review of alternate routes for a proposed turnpike project.~~

~~[(b) The environmental review of a turnpike project must be conducted before the location or alignment of the project is adopted.~~

~~[(c) The commission must approve each environmental review under this section before construction of a turnpike project begins.~~

~~[(d) At least once during each five year period, the authority, after a public hearing, shall review the rules relating to environmental review and make appropriate changes.]~~

SECTION 15.11. Subchapter C, Chapter 361, Transportation Code, is amended by adding Section 361.104 to read as follows:

Sec. 361.104. ENTRANCES AND EXITS OF TURNPIKE PROJECT. The department shall:

(1) designate the location of and establish, limit, and control the entrances and exits of a turnpike project as considered necessary or desirable to ensure the proper operation and maintenance of the project; and

(2) prohibit entrance to a project at any place not designated as an entrance.

SECTION 15.12. Section 361.131, Transportation Code, is amended to read as follows:

Sec. 361.131. POWERS AND PROCEDURES OF DEPARTMENT [AUTHORITY] IN ACQUIRING PROPERTY. Except as otherwise provided by this chapter, the department [authority, acting by and through the board,] has the same powers and may use the same procedures:

(1) in acquiring property under this chapter as the commission or the department in acquiring property under Subchapter D, Chapter 203; and

(2) in disposing of surplus property acquired under this chapter as the commission or the department under Subchapter B, Chapter 202.

SECTION 15.13. Section 361.132, Transportation Code, is amended to read as follows:

Sec. 361.132. ACQUISITION OF PROPERTY. (a) The department [authority] may acquire, in the name of the state, public or private real property it determines necessary or convenient for the construction, expansion, enlargement, extension, improvement, or operation of a turnpike project or for otherwise carrying out this chapter.

(b) The real property the department [authority] may acquire under this subchapter includes:

(1) public parks, playgrounds, or reservations;

(2) parts of or rights in public parks, playgrounds, or reservations;

(3) rights-of-way;

(4) property rights, including:

(A) a right of ingress or egress; and

(B) a reservation right in real property that restricts or prohibits for not more than seven years the:

- (i) addition of a new improvement on the real property;
- (ii) addition to or modification of an existing improvement on the real property; or
- (iii) subdivision of the real property;
- (5) franchises;
- (6) easements; and
- (7) other interests in real property.

(c) The department [~~authority~~] may acquire the real property by any method, including purchase and condemnation. The department [~~authority~~] may purchase public or private real property on the terms and at the price the department [~~authority~~] and the owner consider reasonable.

(d) Property necessary or convenient for the construction or operation of a turnpike project under Subsection (a) includes an interest in real property, a property right, or materials that the department [~~authority~~] determines are necessary or convenient to:

- (1) protect a turnpike project;
- (2) drain a turnpike project;
- (3) divert a stream, river, or other watercourse from the right-of-way of a turnpike project;
- (4) store materials or equipment used in the construction or maintenance of a turnpike project;
- (5) provide a location for an ancillary facility that generates revenue for use in the construction, maintenance, or operation of a turnpike project, including a gas station, garage, store, hotel, or restaurant;
- (6) construct or operate a warehouse, toll house, toll plaza, service station, or other facility used in connection with the construction, maintenance, or operation of a turnpike project;
- (7) [~~(6)~~] lay out, construct, or maintain a roadside park;
- (8) [~~(7)~~] lay out, construct, or maintain a parking lot that will contribute to the maximum use of a turnpike project with the least possible congestion;
- (9) [~~(8)~~] mitigate an adverse environmental effect that directly results from the construction or maintenance of a turnpike project; or
- (10) [~~(9)~~] accomplish any other purpose related to the location, construction, improvement, maintenance, beautification, preservation, or operation of a turnpike project.

(e) The department [~~authority~~] shall comply with all relocation assistance procedures applicable to the department in connection with any displacement of owners or tenants as a consequence of the department's [~~authority's~~] acquisition of real property under this chapter.

(f) The department [~~authority~~] may acquire timber, earth, stone, gravel, or other materials as necessary to carry out a purpose under this chapter.

SECTION 15.14. Sections 361.133(b) and (c), Transportation Code, are amended to read as follows:

(b) The governing body of a political subdivision or public agency may without advertising convey title to or rights or easements in real property the department ~~[authority]~~ needs in connection with the construction or operation of a turnpike project.

(c) Notwithstanding any law to the contrary, a political subdivision or a state agency may lease, lend, grant, or convey to the department ~~[authority]~~ at its request real property, including highways and other real property already devoted to public use, that may be necessary or appropriate to accomplish the department's ~~[authority's]~~ purposes. The political subdivision or state agency may lease, lend, grant, or convey the property:

(1) on terms the subdivision or agency determines reasonable and fair; and

(2) without advertisement, court order, or other action or formality other than the regular and formal action of the subdivision or agency concerned.

SECTION 15.15. Section 361.134, Transportation Code, is amended to read as follows:

Sec. 361.134. DESCRIPTION OF REAL PROPERTY. Real property acquired by the department under this chapter ~~[authority]~~ shall be described so as to locate the boundary line of the property with reference to:

(1) lot and block lines and corners of all existing and recorded subdivision properties, if applicable; or

(2) survey lines and corners.

SECTION 15.16. Section 361.135, Transportation Code, is amended to read as follows:

Sec. 361.135. CONDEMNATION OF REAL PROPERTY. (a) The ~~[board, with the concurrence of the]~~ commission[;] may approve the acquisition of ~~[acquire]~~ public or private real property in the name of the state by the exercise of the power of condemnation under the laws applicable to the exercise of that power on property for public use if:

(1) the department ~~[authority]~~ and the owner cannot agree on a reasonable price for the property; or

(2) the owner is legally incapacitated, absent, unknown, or unable to convey title.

(b) The ~~[board, with the concurrence of the]~~ commission[;] may approve the condemnation of ~~[condemn]~~ real property that the commission ~~[authority]~~ determines is:

(1) necessary or convenient for the construction or operation of ~~[appropriate to construct or to efficiently operate]~~ a turnpike project, as described by Section 361.132(d);

(2) necessary to restore public or private property damaged or destroyed, including property necessary or convenient to mitigate an environmental effect that directly results from the construction, operation, or maintenance of a turnpike project;

(3) necessary for access, approach, service, and interchange roads;

(4) necessary to provide proper drainage and ground slope for a turnpike project; or

(5) necessary otherwise to carry out this chapter.

(c) ~~The authority may construct a supplemental facility only on real property the authority purchases.~~

~~(d)~~ The court having jurisdiction of a condemnation proceeding may:

(1) make orders as are just to the department [authority] and the owners of the real property; and

(2) require an undertaking or other security to secure the owners against any loss or damage by reason of the department's [board's] failure to accept and pay for the real property.

(d) ~~(e)~~ An undertaking or security under Subsection (c)(2) ~~(d)(2)~~ or an act or obligation of the department [authority] or the commission [board] does not impose any liability on the state, the department [authority], or the commission [board] except liability that may be paid from the money authorized by this chapter.

SECTION 15.17. Section 361.136, Transportation Code, is amended to read as follows:

Sec. 361.136. SEVERANCE OF REAL PROPERTY. (a) If a turnpike project severs an owner's real property, the department [authority] shall pay:

(1) the value of the property acquired; and

(2) the damages to the remainder of the owner's property caused by the severance, including damages caused by the inaccessibility of one tract from the other.

(b) The department [authority] may negotiate for and purchase the severed real property or either part of the severed real property if the department [authority] and the owner agree on terms for the purchase. Instead of a single fixed payment for the real property, the department may agree to a payment to the owner in the form of:

(1) an intangible legal right to receive a percentage of identified revenue attributable to the applicable segment of the turnpike project; or

(2) an exclusive or nonexclusive right to use or operate a segment or part of the turnpike project.

(c) A right to a payment under Subsection (b)(1) is subject to any pledge of the revenue under the term of a trust agreement securing bonds issued for the project.

SECTION 15.18. Section 361.137, Transportation Code, is amended by amending Subsections (a) through (d) and adding Subsection (d-1) to read as follows:

(a) The department [authority] may file a declaration of taking with the clerk of the court:

(1) in which the department [authority] files a condemnation petition under Chapter 21, Property Code; or

(2) to which the case is assigned.

(b) The department [authority] may file the declaration of taking concurrently with or subsequent to the petition but may not file the declaration after the special commissioners have made an award in the condemnation proceeding.

(c) The department may not file a declaration of taking before the completion of:

(1) all environmental documentation, including a final environmental impact statement or a record of decision, that is required by federal or state law;

(2) all public hearings and meetings, including those held in connection with the environmental process and under Sections 201.604 and 203.021, that are required by federal or state law; and

(3) all notifications required by Section 203.022.

(d) ~~(e)~~ The declaration of taking must include:

(1) a specific reference to the legislative authority for the condemnation;

(2) a description and plot plan of the real property to be condemned, including the following information if applicable:

(A) the municipality in which the property is located;

(B) the street address of the property; and

(C) the lot and block number of the property;

(3) a statement of the property interest to be condemned;

(4) the name and address of each property owner that the department [authority] can obtain after reasonable investigation and a description of the owner's interest in the property; and

(5) a statement that immediate possession of all or part of the property to be condemned is necessary for the timely construction of a turnpike project.

(d-1) ~~(d)~~ A deposit to the registry of the court of an amount equal to the appraised value, as determined by the department [authority], of the property to be condemned must accompany the declaration of taking.

SECTION 15.19. Sections 361.138(a) and (b), Transportation Code, are amended to read as follows:

(a) Immediately on the filing of a declaration of taking, the department [authority] shall serve a copy of the declaration on each person possessing an interest in the condemned property by a method prescribed by Section 21.016(d), Property Code. The department [authority] shall file evidence of the service with the clerk of the court. On filing of that evidence, the department [authority] may take possession of the property pending the litigation.

(b) If the condemned property is a homestead or a portion of a homestead as defined by Section 41.002, Property Code, the department [authority] may not take possession sooner than the 91st ~~31st~~ day after the date of service under Subsection (a).

SECTION 15.20. Section 361.141(a), Transportation Code, is amended to read as follows:

(a) The department [authority] may not pay compensation for public real property, parkways, streets, highways, alleys, or reservations it takes, except for:

(1) parks and playgrounds; and

(2) property acquired under restrictions and limitations requiring payment of compensation.

SECTION 15.21. Section 361.142, Transportation Code, is amended to read as follows:

Sec. 361.142. COVENANTS, CONDITIONS, RESTRICTIONS, OR LIMITATIONS. Covenants, conditions, restrictions, or limitations affecting property acquired in any manner by the department ~~[authority]~~ are not binding against the department ~~[authority]~~ and do not impair the department's ~~[authority's]~~ ability to use the property for a purpose authorized by this chapter. The beneficiaries of the covenants, conditions, restrictions, or limitations are not entitled to enjoin the department ~~[authority]~~ from using the property for a purpose authorized under this chapter, but this section does not affect the right of a person to seek damages to the person's property under Section 17, Article I, Texas Constitution.

SECTION 15.22. Section 361.171, Transportation Code, is amended to read as follows:

Sec. 361.171. TURNPIKE REVENUE BONDS. (a) The commission ~~[authority]~~ by order ~~[resolution]~~ may authorize ~~[provide for]~~ the issuance of turnpike revenue bonds to pay all or part of the cost of a turnpike project. Each project shall be financed and built by a separate bond issue. The proceeds of a bond issue may be used solely for the payment of the project for which the bonds were issued and may not be divided between or among two or more projects. Each project is a separate undertaking, the cost of which shall be determined separately.

(b) As determined in the order authorizing the issuance, the ~~[The]~~ bonds of each issue shall:

- (1) ~~[must]~~ be dated;
- (2) bear interest at the rate or rates provided by the order and beginning on the dates provided by the order and as authorized by law, or bear no interest;
- (3) mature at the time or times provided by the order, not exceeding 40 years from their date or dates, ~~[determined by the authority]~~; and
- (4) ~~[may]~~ be made redeemable before maturity, at the price or prices and under the terms provided by the order ~~[set by the authority in the proceeding authorizing the issuance of the bonds]~~.

(c) The commission ~~[authority]~~ may sell the bonds at public or private sale in the manner and for the price it determines to be in the best interest of the department ~~[authority]~~.

(d) The proceeds of each bond issue shall be disbursed in the manner and under the restrictions, if any, the commission ~~[authority]~~ provides in the order ~~[resolution]~~ authorizing the issuance of the bonds or in the trust agreement securing the bonds.

(e) If the proceeds of a bond issue are less than the turnpike project cost, additional bonds may ~~[in like manner]~~ be issued in the same manner to pay the costs of a turnpike project ~~[provide the amount of the deficit]~~. Unless otherwise provided in the order ~~[resolution]~~ authorizing the issuance of the bonds or in the trust agreement securing the bonds, the additional bonds are on a parity with and are payable, without preference of priority, from the same fund as ~~[without preference or priority of]~~ the bonds first issued. In addition, the commission may

issue bonds for a turnpike project secured by a lien on the revenue of the turnpike project subordinate to the lien on the revenue securing other bonds issued for the turnpike project.

(f) If the proceeds of a bond issue exceed the cost of the turnpike project for which the bonds were issued, the surplus shall be segregated from the other money of the commission and used only for the purposes specified in the order authorizing the issuance [~~deposited to the credit of the sinking fund for the bonds~~].

(g) In addition to other permitted uses, the proceeds of a bond issue may be used to pay costs incurred before the issuance of the bonds, including costs of environmental review, design, planning, acquisition of property, relocation assistance, construction, and operation.

(h) Bonds issued and delivered under this chapter and interest coupons on the bonds are a security under Chapter 8, Business & Commerce Code.

(i) Bonds issued under this chapter and income from the bonds, including any profit made on the sale or transfer of the bonds, are exempt from taxation in this state.

SECTION 15.23. Section 361.172, Transportation Code, is amended to read as follows:

Sec. 361.172. APPLICABILITY OF OTHER LAW; CONFLICTS. All [~~LAWs. (a) Except as provided by Subsection (b), the authority may issue turnpike revenue bonds or turnpike revenue refunding bonds under this chapter without complying with any other law applicable to the issuance of bonds.~~

[(b) Notwithstanding any other provisions of this chapter, the following] laws affecting the issuance of bonds by governmental entities, including Chapters 1201, 1202, 1204, 1207, and 1371, Government Code, apply to bonds issued under this chapter. To the extent of a conflict between those laws and this chapter, the provisions of this chapter prevail [~~by the authority:~~

[(1) Chapters 1201, 1202, 1204, and 1371, Government Code; and

[(2) Subchapters A-C, Chapter 1207, Government Code].

SECTION 15.24. Section 361.173, Transportation Code, is amended to read as follows:

Sec. 361.173. PAYMENT OF BONDS; CREDIT OF STATE NOT PLEDGED. (a) The principal of, interest on, and any redemption premium on bonds issued by the commission under this chapter [~~authority~~] are payable solely from:

(1) [~~the money authorized for their payment under this chapter or other law; and~~

[(2)] the revenue of the turnpike project for which the bonds were issued, including tolls pledged to pay the bonds; and

(2) amounts received under a credit agreement relating to the turnpike project for which the bonds are issued.

(b) Bonds issued under this chapter do not constitute a debt of the state or a pledge of the faith and credit of the state. Each bond must contain on its face a statement to the effect that:

(1) the state, the commission, and the department [~~authority~~] are not obligated to pay the bond or the interest on the bond from a source other than the amount pledged to pay the bond and the interest on the bond; and

(2) the faith and credit and the taxing power of the state are not pledged to the payment of the principal of or interest on the bond.

(c) The commission and the department [~~authority~~] may not incur financial obligations that cannot be paid from tolls or revenue derived from owning or operating turnpike projects or from money provided by law.

SECTION 15.25. Section 361.174, Transportation Code, is amended to read as follows:

Sec. 361.174. SOURCES OF PAYMENT OF AND SECURITY FOR TURNPIKE PROJECT BONDS. Notwithstanding any other provisions of this chapter, turnpike project bonds issued by the commission [~~authority~~] may[~~:~~

~~(1)]~~ be payable from and secured by payments made under an agreement with a local governmental entity as provided by Subchapter A, Chapter 362, and may state on their faces any pledge of revenue or taxes and any security for the bonds under the agreement[~~; and~~

~~(2) be payable from and secured by money derived from any other source available to the authority, other than money derived from a different turnpike project].~~

SECTION 15.26. Section 361.175, Transportation Code, is amended to read as follows:

Sec. 361.175. TURNPIKE REVENUE REFUNDING BONDS. (a) The commission [~~authority~~] by order [~~resolution~~] may provide for the issuance of turnpike revenue refunding bonds to:

(1) refund any outstanding bonds issued under this chapter for a turnpike project, including the payment of any redemption premium on the bonds and any interest accrued as of the date of redemption of the bonds; and

(2) construct improvements, extensions, or enlargements to the turnpike project for which the outstanding bonds were issued.

(b) This chapter, to the extent applicable, governs:

(1) the issuance of the refunding bonds;

(2) the maturities and other details of the bonds;

(3) the rights of the bondholders; and

(4) the rights and obligations of the commission and the department [~~authority~~] with respect to the bonds and the bondholders.

(c) The commission [~~authority~~] may:

(1) issue refunding bonds in exchange for outstanding bonds; or

(2) sell refunding bonds and use the proceeds to pay or provide for the payment of the outstanding bonds.

SECTION 15.27. Subchapter E, Chapter 361, Transportation Code, is amended by adding Sections 361.1751-361.1753 to read as follows:

Sec. 361.1751. INTERIM BONDS. (a) The commission may, before issuing definitive bonds, issue interim bonds, with or without coupons, exchangeable for definitive bonds.

(b) An order authorizing interim bonds may provide that the interim bonds recite that the bonds are issued under this chapter. The recital is conclusive evidence of the validity and the regularity of the bonds' issuance.

Sec. 361.1752. EFFECT OF LIEN. (a) A lien on or a pledge of revenue from a turnpike project or on a reserve, replacement, or other fund established in connection with a bond issued under this chapter:

(1) is enforceable at the time of payment for and delivery of the bond;

(2) applies to each item on hand or subsequently received;

(3) applies without physical delivery of an item or other act; and

(4) is enforceable against any person having a claim, in tort, contract, or other remedy, against the commission or the department without regard to whether the person has notice of the lien or pledge.

(b) An order authorizing the issuance of bonds is not required to be recorded except in the regular records of the department.

Sec. 361.1753. APPROVAL OF BONDS BY ATTORNEY GENERAL. (a) The commission shall submit to the attorney general for examination the record of proceedings relating to bonds authorized under this chapter. The record shall include the bond proceedings and any contract securing or providing revenue for the payment of the bonds.

(b) If the attorney general determines that the bonds, the bond proceedings, and any supporting contract are authorized by law, the attorney general shall approve the bonds and deliver to the comptroller:

(1) a copy of the legal opinion of the attorney general stating the approval; and

(2) the record of proceedings relating to the authorization of the bonds.

(c) On receipt of the legal opinion of the attorney general and the record of proceedings relating to the authorization of the bonds, the comptroller shall register the record of proceedings.

(d) After approval by the attorney general, the bonds, the bond proceedings, and any supporting contract are valid, enforceable, and incontestable in any court or other forum for any reason and are binding obligations according to their terms for all purposes.

SECTION 15.28. Sections 361.176(a) and (e), Transportation Code, are amended to read as follows:

(a) Bonds issued under this chapter may be secured by a trust agreement between the commission [~~authority~~] and a corporate trustee that is a trust company or a bank that has the powers of a trust company.

(e) A trust agreement may:

(1) set forth the rights and remedies of the bondholders and the trustee;

(2) restrict the individual right of action by bondholders as is customary in trust agreements or trust indentures securing corporate bonds and debentures; and

(3) contain provisions the commission [~~authority~~] determines reasonable and proper for the security of the bondholders.

SECTION 15.29. Section 361.177, Transportation Code, is amended to read as follows:

Sec. 361.177. PROVISIONS PROTECTING AND ENFORCING RIGHTS AND REMEDIES OF BONDHOLDERS. A trust agreement or order [~~resolution~~] providing for the issuance of bonds may contain [~~reasonable~~] provisions to protect and enforce the rights and remedies of the bondholders, including:

(1) covenants establishing the commission's [~~stating the~~] duties relating [~~of the authority in relation~~] to:

(A) the acquisition of property;

(B) [~~and~~] the construction, improvement, expansion, maintenance, repair, operation, and insurance of the turnpike project in connection with which the bonds were authorized; and

(C) [~~and~~] the custody, safeguarding, and application of money;

(2) covenants prescribing events that constitute default;

(3) covenants prescribing terms on which any or all of the bonds become or may be declared due before maturity;

(4) covenants relating to the rights, powers, liabilities, or duties that arise on the breach of a duty of the commission; and

(5) [~~and~~] provisions for the employment of consulting engineers in connection with the construction or operation of the turnpike project.

SECTION 15.30. Section 361.178, Transportation Code, is amended to read as follows:

Sec. 361.178. FURNISHING OF INDEMNIFYING BONDS OR PLEDGE OF SECURITIES. A bank or trust company incorporated under the laws of [~~that has its main office or a branch office in~~] this state and that acts as depository of the proceeds of bonds or of revenue may furnish indemnifying bonds or pledge securities that the department [~~authority~~] requires.

SECTION 15.31. Sections 361.179(a), (b), (d), (e), and (g), Transportation Code, are amended to read as follows:

(a) The department [~~authority~~] may:

(1) impose tolls for the use of each turnpike project and the different parts or sections of each turnpike project; and

(2) notwithstanding anything in Chapter 202 to the contrary, contract with a person for the use of part of a turnpike project or lease [~~or sell~~] part of a turnpike project[, including the right of way adjoining the paved portion,] for [~~any purpose, including placing on the adjoining right of way~~] a gas station, garage, store, hotel, restaurant, railroad tracks, utilities, and [~~telephone line, telecommunication line,~~] telecommunications facilities and equipment[, and electric line,] and set the terms for the use or [,] lease[, or sale].

(b) The tolls shall be set so that the aggregate of tolls from the turnpike project:

(1) provides a fund sufficient with other revenue and contributions, if any, to pay:

(A) the cost of maintaining, repairing, and operating the project; and

(B) the principal of and interest on the bonds issued for the project as those bonds become due and payable; and

(2) creates reserves for the purposes listed under Subdivision (1).

(d) The tolls and other revenue derived from the turnpike project for which bonds were issued, except the part necessary to pay the cost of maintenance, repair, and operation and to provide reserves for those costs as may be provided in the order [~~resolution~~] authorizing the issuance of the bonds or in the trust agreement securing the bonds, shall be set aside at regular intervals as may be provided in the order [~~resolution~~] or trust agreement in a sinking fund that is pledged to and charged with the payment of:

- (1) interest on the bonds as it becomes due;
- (2) principal of the bonds as it becomes due;
- (3) necessary charges of paying agents for paying principal and interest;

and

(4) the redemption price or the purchase price of bonds retired by call or purchase as provided by the bonds.

(e) Use and disposition of money to the credit of the sinking fund are subject to the order [~~resolution~~] authorizing the issuance of the bonds or to the trust agreement.

(g) Money in the sinking fund, less the reserve provided by the order [~~resolution~~] or trust agreement, if not used within a reasonable time to purchase bonds for cancellation, shall be applied to the redemption of bonds at the applicable redemption price.

SECTION 15.32. Section 361.183(b), Transportation Code, is amended to read as follows:

(b) Money spent under Subsection (a) for a proposed turnpike is reimbursable, with the consent of the commission [~~authority~~], to the person paying the expenses out of the proceeds from turnpike revenue bonds issued for or other proceeds that may be used for the construction, improvement, extension, expansion, or operation of the project.

SECTION 15.33. Section 361.185, Transportation Code, is amended to read as follows:

Sec. 361.185. TRUST FUND. (a) All money received under this chapter, whether as proceeds from the sale of bonds or as revenue, is a trust fund to be held and applied as provided by this chapter. Notwithstanding any other law, including Section 9, Chapter 1123, Acts of the 75th Legislature, Regular Session, 1997, and without the prior approval of the comptroller, funds held under this chapter shall be held in trust by a banking institution chosen by the department [~~authority~~] or, at the discretion of the department [~~authority~~], in trust in the state treasury outside the general revenue fund.

(b) The order [~~resolution~~] authorizing the issuance of bonds or the trust agreement securing the bonds shall provide that an officer to whom or a bank or trust company to which the money is paid shall act as trustee of the money and shall hold and apply the money for the purpose of the order [~~resolution~~] or trust agreement, subject to this chapter and the order [~~resolution~~] or trust agreement.

SECTION 15.34. Section 361.186, Transportation Code, is amended to read as follows:

Sec. 361.186. REMEDIES. Except to the extent restricted by a trust agreement, a holder of a bond issued under this chapter [~~or of a coupon incident to a bond~~] and a trustee under a trust agreement may:

- (1) protect and enforce by a legal proceeding a right under:
 - (A) this chapter or another law of this state;
 - (B) the trust agreement; or
 - (C) the order [~~resolution~~] authorizing the issuance of the bond; and
- (2) compel the performance of a duty this chapter, the trust agreement, or the order [~~resolution~~] requires the commission or the department [~~authority~~] or an officer of the commission or the department [~~authority~~] to perform, including the imposing of tolls.

SECTION 15.35. Section 361.187(a), Transportation Code, is amended to read as follows:

(a) The commission [~~authority~~] is exempt from taxation of or assessments on:

- (1) a turnpike project;
- (2) property the department [~~authority~~] acquires or uses under this chapter; or
- (3) income from property described by Subdivision (1) or (2).

SECTION 15.36. Section 361.188, Transportation Code, is amended to read as follows:

Sec. 361.188. VALUATION OF BONDS SECURING DEPOSIT OF PUBLIC FUNDS. Bonds of the commission [~~authority, when they are accompanied by the unmatured coupons incident to the bonds,~~] may secure the deposit of public funds of the state or a political subdivision of the state to the extent of the lesser of the face value of the bonds or their market value.

SECTION 15.37. Section 361.189, Transportation Code, is amended to read as follows:

Sec. 361.189. USE OF SURPLUS REVENUE. The commission by order [~~resolution~~] may authorize the use of surplus revenue of a turnpike project to pay the costs of another turnpike project within the region [~~other than a project financed under Subchapter I, or a toll-free project~~]. The commission may in the order [~~resolution~~] prescribe terms for the use of the revenue, including the pledge of the revenue, but may not take an action under this section that violates, impairs, or is inconsistent with a bond order [~~resolution~~], trust agreement, or indenture governing the use of the surplus revenue.

SECTION 15.38. Section 361.191, Transportation Code, is amended to read as follows:

Sec. 361.191. EXPENDITURE OF MONEY AUTHORIZED BY COMMISSION [~~DEPARTMENT OF TRANSPORTATION~~]. (a) The commission [~~Texas Department of Transportation~~] may provide for the expenditure of money for the cost of the acquisition, construction, maintenance, or operation of a turnpike project [~~by the authority~~]. The commission [~~department~~] may require the repayment of [~~authority to repay~~] money provided under this section from toll revenue or other sources on terms established by the commission.

(b) Money repaid as required by the commission [~~department~~] shall be deposited to the credit of the fund from which the money was provided. Money deposited as required by this section is exempt from the application of Section 403.095, Government Code.

SECTION 15.39. Section 361.231(a), Transportation Code, is amended to read as follows:

~~(a)~~ A contract of the department [~~authority~~] for the construction, improvement, repair, or maintenance of a turnpike project shall ~~[to the extent applicable,]~~ be awarded under the same terms as a contract of the department under Sections 223.001-223.007 [~~223.009,~~] and 223.009-223.011 [~~223.010~~].

SECTION 15.40. Sections 361.232(b), (c), and (d), Transportation Code, are amended to read as follows:

(b) The department [~~authority~~] may construct a grade separation at an intersection of a turnpike project with a railroad or highway and change the line or grade of a highway to accommodate it to the design of a grade separation. The department [~~authority~~] shall pay the cost of a grade separation and any damage incurred in changing a line or grade of a railroad or highway as part of the cost of the turnpike project.

(c) If feasible, the department [~~authority~~] shall provide access to properties previously abutting a county or other public road that is taken for a turnpike project and shall pay abutting property owners the expenses or any resulting damages for denial of access to the road.

(d) If the department [~~authority~~] finds it necessary to change the location of a portion of a highway, it shall reconstruct the highway at the location the [~~authority and the~~] department determines [~~determine~~] to be most favorable. The reconstructed highway must be of substantially the same type and in as good condition as the original highway. The department [~~authority~~] shall determine and pay the cost of the reconstruction and any damage incurred in changing the location of a highway as part of the cost of the turnpike project.

SECTION 15.41. Sections 361.233(a) and (c), Transportation Code, are amended to read as follows:

(a) The department [~~authority~~] and its authorized agents may enter any real property, water, or premises in this state to make a survey, sounding, drilling, or examination it determines necessary or appropriate for the purposes of this chapter.

(c) The department [~~authority~~] shall make reimbursement for any actual damages to real property, water, or premises that result from an activity described by Subsection (a).

SECTION 15.42. Sections 361.234(a), (b), (d), (e), (f), and (g), Transportation Code, are amended to read as follows:

(a) The commission [~~authority~~] may adopt rules for the installation, construction, maintenance, repair, renewal, relocation, and removal of a public utility facility in, on, along, over, or under a turnpike project.

(b) If the department [~~authority~~] determines it is necessary that a public utility facility located in, on, along, over, or under a turnpike project be relocated in the project, removed from the project, or carried along or across the turnpike

by grade separation, the owner or operator of the facility shall relocate or remove the facility in accordance with the order of the department [authority]. The department [authority], as a part of the cost of the turnpike project or the cost of operating the project, shall pay the cost of the relocation, removal, or grade separation, including the cost of:

- (1) installing the facility in a new location or locations;
- (2) interests in real property, and other rights acquired to accomplish the relocation or removal; and
- (3) maintenance of grade separation structures.

(d) The department [authority] and the public utility shall have 90 days from the date the department [authority] provides written notice to the public utility of the need for relocation of utility facilities to reach an agreement concerning the period for completion of the relocation. The 90-day period may be extended by mutual written agreement. If the parties are unable to reach an agreement for the period for completion of the relocation, the department [authority] may specify a reasonable period. The department [authority] may reduce the total costs to be paid by the department [authority] by 10 percent for each 30-day period or portion of a 30-day period that the relocation exceeds the period specified by agreement between the department [authority] and public utility or as reasonably specified by the department [authority] if no agreement is reached, unless the public utility's failure to timely perform results from a material action or inaction by the department [authority] or from conditions that were beyond the reasonable control of the utility. If an owner or operator of a public utility facility does not timely remove or relocate the facility as required under Subsection (b) and the department [authority] relocates the facility, the department [authority] shall relocate the facility in a safe manner that complies with applicable law and utility construction standards recognized by the department [authority] and that minimizes disruption of utility service and shall notify the public utility and other appropriate regulatory agencies of the relocation. A public utility shall reimburse the department [authority] for expenses reasonably incurred for the relocation of a public utility facility unless the failure of the public utility to timely relocate the facility was the result of circumstances beyond the control of the utility, in which case the department [authority] shall pay the cost of the relocation.

(e) Notwithstanding anything in this chapter to the contrary, ¹

~~(1)~~ Subchapter B, Chapter 181, Utilities Code, applies to the laying and maintenance of pipes, mains, conductors, and other facilities used for conducting gas by a gas utility described in that subchapter through, under, along, across, and over a turnpike project constructed by the department [authority]; and ~~(2) the authority has the powers and duties assigned to the commission by Subchapter B, Chapter 181, Utilities Code].~~

(f) Notwithstanding anything in this chapter to the contrary, Subchapter C, Chapter 181, Utilities Code, applies to the erection, construction, maintenance, and operation of lines and poles owned by an electric utility, as that term is defined by Section 181.041, Utilities Code, over, under, across, on, and along a

turnpike project constructed by the department ~~[authority. The authority has the powers and duties delegated to the commission by Subchapter C, Chapter 181, Utilities Code].~~

(g) Notwithstanding anything in this chapter to the contrary, the laws of this state applicable to the use of public roads, streets, and waters of this state by a telephone and telegraph corporation apply to the erection, construction, maintenance, location, and operation of a line, pole, or other fixture by a telephone and telegraph corporation over, under, across, on, and along a turnpike project constructed by the department ~~[authority].~~

SECTION 15.43. Section 361.235(a), Transportation Code, is amended to read as follows:

(a) The department ~~[authority]~~ may use real property owned by the state, including submerged land, that the department ~~[authority]~~ considers necessary for the construction or operation of a turnpike project.

SECTION 15.44. Section 361.236, Transportation Code, is amended to read as follows:

Sec. 361.236. MAINTENANCE OF TURNPIKE PROJECT. The department ~~[authority]~~ shall maintain and keep in good condition and repair each turnpike project opened to traffic.

SECTION 15.45. Section 361.238(b) and (c), Transportation Code, are amended to read as follows:

(b) If the conditions of Subsections (a)(1) and (2) are met, the commission may continue to charge a toll to fund the construction, maintenance, and operation of other turnpike projects in the region in which the turnpike project is located ~~[sufficient to pay the costs of maintaining the facility].~~

(c) The following entities shall consider offering motor vehicle operators the option of using a transponder to pay tolls without stopping, to mitigate congestion at toll locations, to enhance traffic flow, and to otherwise increase the efficiency of operations:

- (1) the department ~~[authority]~~;
- (2) an entity to which a project authorized by this chapter is transferred;

or

(3) a third party service provider under contract with an entity described by Subdivision (1) or (2).

SECTION 15.46. Section 361.251, Transportation Code, is amended to read as follows:

Sec. 361.251. TURNPIKE PROJECT A STATE ~~[PUBLIC]~~ HIGHWAY. A turnpike project is a state highway subject to all laws applicable to the regulation and control of traffic on a state ~~[public]~~ highway.

SECTION 15.47. Section 361.253, Transportation Code, is amended by amending Subsections (b), (d), (e), and (g) and adding Subsection (i) to read as follows:

(b) The department ~~[authority]~~ may impose and collect the administrative fee, so as to recover the cost of collecting the unpaid toll, not to exceed \$100. The department ~~[authority]~~ shall send a written notice of nonpayment to the registered owner of the vehicle at that owner's address as shown in the vehicle registration

records of the department by first class mail not later than the 30th day after the date of the alleged failure to pay and may require payment not sooner than the 30th day the date the notice was mailed. The registered owner shall pay a separate toll and administrative fee for each event of nonpayment under Section 361.252.

(d) It is an exception to the application of Subsection (a) or (c) if the registered owner of the vehicle is a lessor of the vehicle and not later than the 30th day after the date the notice of nonpayment is mailed provides to the department [authority] a copy of the rental, lease, or other contract document covering the vehicle on the date of the nonpayment under Section 361.252, with the name and address of the lessee clearly legible. If the lessor provides the required information within the period prescribed, the department [authority] may send a notice of nonpayment to the lessee at the address shown on the contract document by first class mail before the 30th day after the date of receipt of the required information from the lessor. The lessee of the vehicle for which the proper toll was not paid who is mailed a written notice of nonpayment under this subsection and fails to pay the proper toll and administrative fee within the time specified by the notice of nonpayment commits an offense. The lessee shall pay a separate toll and administrative fee for each event of nonpayment. Each failure to pay a toll or administrative fee under this subsection is a separate offense.

(e) It is an exception to the application of Subsection (a) or (c) if the registered owner of the vehicle transferred ownership of the vehicle to another person before the event of nonpayment under Section 361.252 occurred, submitted written notice of the transfer to the department in accordance with Section 520.023, and, before the 30th day after the date the notice of nonpayment is mailed, provides to the department [authority] the name and address of the person to whom the vehicle was transferred. If the former owner of the vehicle provides the required information within the period prescribed, the department [authority] may send a notice of nonpayment to the person to whom ownership of the vehicle was transferred at the address provided the former owner by first class mail before the 30th day after the date of receipt of the required information from the former owner. The subsequent owner of the vehicle for which the proper toll was not paid who is mailed a written notice of nonpayment under this subsection and fails to pay the proper toll and administrative fee within the time specified by the notice of nonpayment commits an offense. The subsequent owner shall pay a separate toll and administrative fee for each event of nonpayment under Section 361.252. Each failure to pay a toll or administrative fee under this subsection is a separate offense.

(g) The court in which a person is convicted of an offense under this section shall also collect the proper toll and administrative fee and forward the toll and fee to the department for deposit in the depository bank used for that purpose [authority].

(i) The department may contract, in accordance with Section 2107.003, Government Code, with a person to collect the unpaid toll and administrative fee before referring the matter to a court with jurisdiction over the offense.

SECTION 15.48. Section 361.255(b), Transportation Code, is amended to read as follows:

(b) Any peace officer of this state may seize a stolen or insufficiently funded transponder and return it to the department [authority], except that an insufficiently funded transponder may not be seized sooner than the 30th day after the date the department [authority] has sent a notice of delinquency to the holder of the account.

SECTION 15.49. Sections 361.256(a), (b), and (d), Transportation Code, are amended to read as follows:

(a) To aid in the collection of tolls and in the enforcement of toll violations, the department [authority] may use automated enforcement technology that it determines is necessary, including automatic vehicle license plate identification photography and video surveillance, by electronic imaging or photographic copying.

(b) Automated enforcement technology approved by the department [authority] under Subsection (a) may be used only for the purpose of producing, depicting, photographing, or recording an image of a license plate attached to the front or rear of a vehicle.

(d) Evidence obtained from technology approved by the department [authority] under Subsection (a) may not be used in the prosecution of an offense other than under Section 361.252 or 361.253.

SECTION 15.50. The heading to Subchapter H, Chapter 361, Transportation Code, is amended to read as follows:

SUBCHAPTER H. TRANSFER OF TURNPIKE PROJECT [~~TO COUNTY,~~
~~MUNICIPALITY, REGIONAL TOLLWAY AUTHORITY,~~
~~OR LOCAL GOVERNMENT CORPORATION]~~

SECTION 15.51. Section 361.281, Transportation Code, is amended to read as follows:

Sec. 361.281. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to:

- (1) a county with a population of more than 1.5 million;
- (2) a local government corporation serving a county with a population of more than 1.5 million;
- (3) an adjacent county in a joint turnpike authority with a county with a population of more than 1.5 million;
- (4) a municipality with a population of more than 170,000 that is adjacent to the United Mexican States; ~~or~~
- (5) a regional tollway authority created under Chapter 366; or
- (6) a regional mobility authority created under Section 361.003.

SECTION 15.52. Section 361.282, Transportation Code, is amended to read as follows:

Sec. 361.282. LEASE, SALE, OR CONVEYANCE OF TURNPIKE PROJECT. (a) The department [authority] may lease, sell, or convey in another manner a turnpike project to a county, a municipality, regional tollway authority, regional mobility authority, or a local government corporation created under Chapter 431.

(b) The ~~[authority, the]~~ commission[;] and the governor must approve the transfer of the turnpike project as being in the best interests of the state and the entity receiving the turnpike project.

SECTION 15.53. Section 361.283, Transportation Code, is amended to read as follows:

Sec. 361.283. DISCHARGE OF ~~[AUTHORITY'S]~~ OUTSTANDING BONDED INDEBTEDNESS. An agreement to lease, sell, or convey a turnpike project under Section 361.282 must provide for the discharge and final payment or redemption of the department ~~[authority's]~~ outstanding bonded indebtedness for the project.

SECTION 15.54. Subchapter H, Chapter 361, Transportation Code, is amended by adding Section 361.284 to read as follows:

Sec. 361.284. REPAYMENT OF DEPARTMENT'S EXPENDITURES. (a) Except as provided by Subsection (b), an agreement to lease, sell, or convey a turnpike project under Section 361.282 must provide for the repayment of any expenditures of the department for the design, construction, operation, and maintenance of the project that have not been reimbursed with the proceeds of bonds issued for the project.

(b) The commission may waive repayment of all or a portion of the expenditures if it finds that the transfer will result in substantial net benefits to the state, the department, and the public that equal or exceed the amount of repayment waived.

SECTION 15.55. Section 361.285(a), Transportation Code, is amended to read as follows:

(a) An agreement for the lease, sale, or conveyance of a turnpike project under this subchapter shall be submitted to the attorney general for approval as part of the records of proceedings relating to the issuance of bonds of the county, municipality, regional tollway authority, regional mobility authority, or local government corporation.

SECTION 15.56. Section 361.301, Transportation Code, is amended to read as follows:

Sec. 361.301. AGREEMENTS WITH PUBLIC OR PRIVATE ENTITIES TO CONSTRUCT, MAINTAIN, REPAIR, AND OPERATE TURNPIKE PROJECTS. (a) Notwithstanding Section 361.231 and Subchapter A, Chapter 2254, Government Code, the department ~~[The authority]~~ may enter into an agreement with a public or private entity, including a toll road corporation, to permit the entity, independently or jointly with the department ~~[authority]~~, to construct, maintain, repair, and operate turnpike projects.

(b) The department ~~[authority]~~ may authorize the investment of public and private money, including debt and equity participation, to finance a function described by this section.

SECTION 15.57. Section 361.302, Transportation Code, is amended to read as follows:

Sec. 361.302. COMPREHENSIVE ~~[EXCLUSIVE]~~ DEVELOPMENT AGREEMENTS ~~[WITH PUBLIC OR PRIVATE ENTITIES]~~. (a) Subject to Section 361.3021, the department ~~[The authority]~~ may enter into a comprehensive ~~[use an exclusive]~~ development agreement with a private entity to construct, maintain, repair, operate, extend, or expand a turnpike project.

(b) In this subchapter, "comprehensive development agreement" means an agreement with a private entity that, at a minimum, provides for the design and construction of a turnpike project and may also provide for the financing, acquisition, maintenance, or operation of a turnpike project ~~[by invested private funding or by public and private funding].~~

(c) The department ~~[authority:~~

[1) has broad discretion to negotiate the terms of financing; and

[2) may negotiate provisions relating to professional and consulting services provided in connection with a comprehensive development agreement ~~[regard to the turnpike project and to the construction, maintenance, and operation of the project, including provisions for combining those services].~~

(d) Money disbursed by the department under a comprehensive development agreement is not included in the amount:

(1) required to be spent in a biennium for engineering and design contracts under Section 223.041; or

(2) appropriated in Strategy A.1.1. Plan/Design/Manage of the General Appropriations Act for that biennium for the purpose of making the computation under Section 223.041.

(e) The authority to enter into comprehensive development agreements provided by this section expires on August 31, 2011.

SECTION 15.58. Subchapter I, Chapter 361, Transportation Code, is amended by adding Sections 361.3021-361.3024 to read as follows:

Sec. 361.3021. LIMITATION ON DEPARTMENT FINANCIAL PARTICIPATION. The amount of money disbursed by the department from the state highway fund and the Texas mobility fund during a federal fiscal year to pay the costs under comprehensive development agreements may not exceed 40 percent of the obligation authority under the federal-aid highway program that is distributed to this state for the fiscal year.

Sec. 361.3022. PROCESS FOR ENTERING INTO COMPREHENSIVE DEVELOPMENT AGREEMENTS. (a) If the department enters into a comprehensive development agreement, the department shall use a competitive procurement process that provides the best value for the department. The department may accept unsolicited proposals for a proposed project or solicit proposals in accordance with this section.

(b) The department shall establish rules and procedures for accepting unsolicited proposals that require the private entity to include in the proposal:

(1) information regarding the proposed project location, scope, and limits;

(2) information regarding the private entity's qualifications, experience, technical competence, and capability to develop the project; and

(3) a proposed financial plan for the proposed project that includes, at a minimum:

(A) projected project costs; and

(B) proposed sources of funds.

(c) The department shall publish a request for competing proposals and qualifications in the Texas Register that includes the criteria used to evaluate the proposals, the relative weight given to the criteria, and a deadline by which proposals must be received if:

(1) the department decides to issue a request for qualifications for a proposed project; or

(2) the department authorizes the further evaluation of an unsolicited proposal.

(d) A proposal submitted in response to a request published under Subsection (c) must contain, at a minimum, the information required by Subsections (b)(2) and (3).

(e) The department may interview a private entity submitting an unsolicited proposal or responding to a request under Subsection (c). The department shall evaluate each proposal based on the criteria described in the notice. The department must qualify at least two private entities to submit detailed proposals for a project under Subsection (f) unless the department does not receive more than one proposal or one response to a request under Subsection (c).

(f) The department shall issue a request for detailed proposals from all private entities qualified under Subsection (e) if the department proceeds with the further evaluation of a proposed project. A request under this subsection may require additional information relating to:

(1) the private entity's qualifications and demonstrated technical competence;

(2) the feasibility of developing the project as proposed;

(3) detailed engineering or architectural designs;

(4) the private entity's ability to meet schedules;

(5) costing methodology; or

(6) any other information the department considers relevant or necessary.

(g) In issuing a request for proposals under Subsection (f), the department may solicit input from entities qualified under Subsection (e) or any other person. The department may also solicit input regarding alternative technical concepts after issuing a request under Subsection (f).

(h) The department shall rank each proposal based on the criteria described in the request for proposals and select the private entity whose proposal offers the apparent best value to the department.

(i) The department may enter into discussions with the private entity whose proposal offers the apparent best value. The discussions shall be limited to:

(1) incorporation of aspects of other proposals for the purpose of achieving the overall best value for the department;

(2) clarifications and minor adjustments in scheduling, cash flow, and similar items; and

(3) matters that have arisen since the submission of the proposal.

(j) If at any point in discussions under Subsection (i), it appears to the department that the highest ranking proposal will not provide the department with the overall best value, the department may enter into discussions with the private entity submitting the next-highest ranking proposal.

(k) The department may withdraw a request for competing proposals and qualifications or a request for detailed proposals at any time. The department may then publish a new request for competing proposals and qualifications.

(l) The department may require that an unsolicited proposal be accompanied by a nonrefundable fee sufficient to cover all or part of its cost to review the proposal.

(m) The department shall pay an unsuccessful private entity that submits a response to a request for detailed proposals under Subsection (f) a stipulated amount of the final contract price for any costs incurred in preparing that proposal. The stipulated amount must be stated in the request for proposals and may not exceed the value of any work product contained in the proposal that can, as determined by the department, be used by the department in the performance of its functions. The use by the department of any design element contained in an unsuccessful proposal is at the sole risk and discretion of the department and does not confer liability on the recipient of the stipulated amount under this section. After payment of the stipulated amount:

(1) the department owns with the unsuccessful proposer jointly the rights to, and may make use of any work product contained in, the proposal, including the technologies, techniques, methods, processes, and information contained in the project design; and

(2) the use by the unsuccessful proposer of any portion of the work product contained in the proposal is at the sole risk of the unsuccessful proposer and does not confer liability on the department.

(n) The department may prescribe the general form of a comprehensive development agreement and may include any matter the department considers advantageous to the department. The department and the private entity shall finalize the specific terms of a comprehensive development agreement.

(o) Subchapter A, Chapter 223, and Chapter 2254, Government Code, do not apply to a comprehensive development agreement entered into under Section 361.302.

Sec. 361.3023. CONFIDENTIALITY OF INFORMATION RELATING TO COMPREHENSIVE DEVELOPMENT AGREEMENTS. (a) To encourage private entities to submit proposals under Section 361.3022, the following information is confidential, is not subject to disclosure, inspection, or copying under Chapter 552, Government Code, and is not subject to disclosure, discovery, subpoena, or other means of legal compulsion for its release until a final contract for a proposed project is entered into:

(1) all or part of a proposal that is submitted by a private entity for a comprehensive development agreement, except information provided under Section 361.3022(b)(1) and (2);

(2) supplemental information or material submitted by a private entity in connection with a proposal for a comprehensive development agreement; and
(3) information created or collected by the department or its agent during consideration of a proposal for a comprehensive development agreement.

(b) After the department completes its final ranking of proposals under Section 361.3022(h), the final rankings of each proposal under each of the published criteria are not confidential.

Sec. 361.3024. PERFORMANCE AND PAYMENT SECURITY. (a) Notwithstanding Section 223.006 and the requirements of Subchapter B, Chapter 2253, Government Code, the department shall require a private entity entering into a comprehensive development agreement under Section 361.302 to provide a performance and payment bond or an alternative form of security in an amount sufficient to:

(1) ensure the proper performance of the agreement; and

(2) protect:

(A) the department; and

(B) payment bond beneficiaries who have a direct contractual relationship with the private entity or a subcontractor of the private entity to supply labor or material.

(b) A performance and payment bond or alternative form of security shall be in an amount equal to the cost of constructing or maintaining the project.

(c) If the department determines that it is impracticable for a private entity to provide security in the amount described by Subsection (b), the department shall set the amount of the bonds or the alternative forms of security.

(d) A payment or performance bond or alternative form of security is not required for the portion of an agreement that includes only design or planning services, the performance of preliminary studies, or the acquisition of real property.

(e) The amount of the payment security must not be less than the amount of the performance security.

(f) In addition to performance and payment bonds, the department may require the following alternate forms of security:

(1) a cashier's check drawn on a financial entity specified by the department;

(2) a United States bond or note;

(3) an irrevocable bank letter of credit; or

(4) any other form of security determined suitable by the department.

(g) The department by rule shall prescribe requirements for alternate forms of security provided under this section.

SECTION 15.59. Section 361.303, Transportation Code, is amended to read as follows:

Sec. 361.303. OWNERSHIP OF TURNPIKE PROJECT. (a) A turnpike project that is the subject of a comprehensive development agreement with a private entity, including the facilities acquired or constructed on the project, is public property and belongs to the department [~~authority~~].

(b) Notwithstanding Subsection (a), the department [~~authority~~] may enter into an agreement that provides for the lease of rights-of-way, the granting of easements, the issuance of franchises, licenses, or permits, or any lawful uses to enable a private entity to construct, operate, and maintain a turnpike project, including supplemental facilities. At the termination of the agreement, the turnpike project, including the facilities, is to be in a state of proper maintenance as determined by the department [~~authority~~] and shall be returned to the department [~~authority~~] in satisfactory condition at no further cost.

SECTION 15.60. Section 361.304, Transportation Code, is amended to read as follows:

Sec. 361.304. LIABILITY FOR PRIVATE OBLIGATIONS. The department [~~authority~~] may not incur a financial obligation for a private entity that constructs, maintains, or operates a turnpike project. The state[~~, the authority,~~] or a political subdivision of the state is not liable for any financial or other obligations of a turnpike project solely because a private entity constructs, finances, or operates any part of the project.

SECTION 15.61. Section 361.305, Transportation Code, is amended to read as follows:

Sec. 361.305. TERMS OF PRIVATE PARTICIPATION. (a) The department [~~authority~~] shall negotiate the terms of private participation in a turnpike project, including:

- (1) methods to determine the applicable cost, profit, and project distribution between the private equity investors and the department [~~authority~~];
- (2) reasonable methods to determine and classify toll rates;
- (3) acceptable safety and policing standards; and
- (4) other applicable professional, consulting, construction, operation, and maintenance standards, expenses, and costs.

(b) A comprehensive development agreement entered into under Section 361.302 must include a provision authorizing the department to purchase, under terms and conditions agreed to by the parties, the interest of a private equity investor in a turnpike agreement.

(c) The department may only enter into a comprehensive development agreement under Section 361.302 with a private equity investor if the project is identified in the department's unified transportation program or is located on a transportation corridor identified in the statewide transportation plan.

SECTION 15.62. Section 361.306, Transportation Code, is amended to read as follows:

Sec. 361.306. RULES, PROCEDURES, AND GUIDELINES GOVERNING SELECTION AND NEGOTIATING PROCESS. (a) The commission [~~authority~~] shall adopt rules, procedures, and guidelines governing selection and negotiations to promote fairness, obtain private participants in turnpike projects, and promote confidence among those participants. The rules must contain criteria relating to the qualifications of the participants and the award of the contracts [~~and may authorize the authority to impose a fee for reviewing proposals for private involvement in a turnpike project~~].

(b) The department [~~authority~~] shall have up-to-date procedures for participation in negotiations on turnpike projects.

(c) The department [~~authority~~] has exclusive judgment to determine the terms of an agreement.

(d) The department [~~authority~~] shall include the attorney general or the attorney general's designated representative in a negotiation with a private participant.

SECTION 15.63. Section 361.307, Transportation Code, is amended to read as follows:

Sec. 361.307. AGREEMENTS WITH PRIVATE ENTITIES AND OTHER GOVERNMENTAL AGENCIES. (a) The department [~~authority~~] and a private entity jointly may enter into an agreement with another governmental agency or entity, including a federal agency, an agency of this or another state, including the United Mexican States or a state of the United Mexican States, or a political subdivision, to independently or jointly provide services, to study the feasibility of a turnpike project, or to finance, construct, operate, and maintain a turnpike project.

(b) The department may not enter into an agreement with the United Mexican States or a state of the United Mexican States without the approval of the governor.

SECTION 15.64. Section 361.331(a), Transportation Code, is amended to read as follows:

(a) After the department [~~authority~~] conducts a public hearing in each affected county, [~~and with the approval of~~] the commission[~~, the authority~~] may designate as a pooled turnpike project two or more turnpike projects that are wholly or partly located in the territory of:

- (1) a metropolitan planning organization; or
- (2) two adjacent districts of the department.

SECTION 15.65. Section 361.333, Transportation Code, is amended to read as follows:

Sec. 361.333. ISSUANCE OF TURNPIKE REVENUE BONDS; PLEDGE OF PROJECT REVENUE. Subject to this chapter, the commission [~~authority~~] may:

- (1) provide by order [~~resolution~~] for the issuance of turnpike revenue bonds to pay all or part of the cost of a pooled turnpike project; and
- (2) pledge all or part of the revenue of the project.

SECTION 15.66. Sections 361.334(a) and (e), Transportation Code, are amended to read as follows:

(a) The commission [~~authority~~] by order [~~resolution~~] may issue turnpike revenue refunding bonds to:

- (1) refund any outstanding bonds issued under this chapter for a pooled turnpike project, including any redemption premium on the bonds and any interest accrued as of the date of redemption of the bonds; and
- (2) construct an improvement, extension, or enlargement to a pooled turnpike project.

(e) The commission [~~authority~~] may:

- (1) issue refunding bonds in exchange for outstanding bonds; or
- (2) sell refunding bonds and use the proceeds to redeem outstanding bonds.

SECTION 15.67. Section 361.335, Transportation Code, is amended to read as follows:

Sec. 361.335. ISSUANCE OF BONDS AND PLEDGE OF TURNPIKE PROJECT REVENUE WITHOUT REGARD TO WHETHER BONDS ARE REFUNDED. Without regard to whether bonds are refunded, the commission [~~authority~~] by order [~~resolution~~] may:

- (1) issue bonds, of parity or otherwise, to:
 - (A) pay all or part of the cost of a pooled turnpike project; or
 - (B) construct an improvement, extension, or enlargement to a pooled turnpike project; and
- (2) pledge all or part of the revenue of the pooled turnpike project to the payment of the bonds.

SECTION 15.68. Sections 362.003(b) and (c), Transportation Code, are amended to read as follows:

(b) This chapter is cumulative of all laws affecting the commission, the department, and the local governmental entities, except that in the event any other law conflicts with this chapter, the provisions of this chapter prevail. Chapters 1201 and 1371, Government Code, and Subchapters A, B, and C, Chapter 1207, Government Code, apply to bonds issued by the commission under this chapter.

(c) The department may [~~This chapter is cumulative of all laws affecting the authority, and the authority is authorized to~~] enter into all agreements necessary or convenient to effectuate the purposes of this chapter. [~~Particularly, but not by way of limitation, the provisions of Chapters 1201 and 1371, Government Code, and Subchapters A C, Chapter 1207, Government Code, and Chapter 361 are applicable to the bonds issued by the authority under this chapter.~~]

SECTION 15.69. Sections 362.007(a) and (b), Transportation Code, are amended to read as follows:

(a) Under authority of Section 52, Article III, Texas Constitution, a local governmental entity other than a nonprofit corporation may, upon the required vote of the qualified voters, in addition to all other debts, issue bonds or enter into and make payments under agreements with the department [~~authority~~], not to exceed 40 years in term, in any amount not to exceed one-fourth of the assessed valuation of real property within the local governmental entity, except that the total indebtedness of any municipality shall never exceed the limits imposed by other provisions of the constitution, and levy and collect taxes to pay the interest thereon and provide a sinking fund for the redemption thereof, for the purposes of construction, maintenance, and operation of turnpike projects of the department [~~authority~~], or in aid thereof.

(b) In addition to Subsection (a), a local governmental entity may, within any applicable constitutional limitations, agree with the department [~~authority~~] to issue bonds or enter into and make payments under an agreement to construct, maintain, or operate any portion of a turnpike project of the department [~~authority~~].

SECTION 15.70. Section 362.008, Transportation Code, is amended to read as follows:

Sec. 362.008. ADDITIONAL AGREEMENTS OF DEPARTMENT [~~AUTHORITY~~]. The department [~~authority~~] may enter into any agreement necessary or convenient to achieve the purposes of this subchapter.

SECTION 15.71. The heading to Section 545.354, Transportation Code, is amended to read as follows:

Sec. 545.354. ~~AUTHORITY OF [TEXAS TURNPIKE AUTHORITY AND] REGIONAL TOLLWAY AUTHORITIES TO ALTER SPEED LIMITS ON TURNPIKE PROJECTS.~~

SECTION 15.72. Section 545.354(a)(1), Transportation Code, is amended to read as follows:

(1) In this section, "authority" means [~~the Texas Turnpike Authority or~~] a regional tollway authority governed by Chapter 366.

SECTION 15.73. Section 621.102(a), Transportation Code, is amended to read as follows:

(a) ~~The [Except as provided by Subsection (h), the]~~ commission may set the maximum single axle weight, tandem axle weight, or gross weight of a vehicle, or maximum single axle weight, tandem axle weight, or gross weight of a combination of vehicles and loads, that may be moved over a state highway or a farm or ranch road if the commission finds that heavier maximum weight would rapidly deteriorate or destroy the road or a bridge or culvert along the road. A maximum weight set under this subsection may not exceed the maximum set by statute for that weight.

SECTION 15.74. Sections 222.103(i) and (j), 361.005, 361.043, 361.046, 361.0485, 361.049, 361.051, 361.052, 361.053, 361.055, 361.102, 361.181, 361.182, 361.184, 361.231(b), 361.237, 361.308, 362.001(1), 362.052, 362.053, and 621.102(h), Transportation Code, are repealed.

SECTION 15.75. This article takes effect immediately if this Act receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this article takes effect September 1, 2003.

ARTICLE 16. COMMERCIAL MOTOR VEHICLE SAFETY STANDARDS

SECTION 16.01. Subdivision (1), Section 548.001, Transportation Code, is amended to read as follows:

(1) "Commercial motor vehicle" means a self-propelled or towed vehicle, other than a farm vehicle with a gross weight, registered weight, or gross weight rating of less than 48,000 pounds, that is used on a public highway to transport passengers or cargo if:

(A) the vehicle, including a school activity bus as defined in Section 541.201, or combination of vehicles has a gross weight, registered weight, or gross weight rating of more than 26,000 pounds;

(B) the vehicle, including a school activity bus as defined in Section 541.201, is designed or used to transport more than 15 passengers, including the driver; or

(C) the vehicle is used to transport hazardous materials in a quantity requiring placarding by a regulation issued under the Hazardous Materials Transportation Act (49 U.S.C. Section 5101 [~~4804~~] et seq.).

SECTION 16.02. Subdivisions (1) and (5), Section 644.001, Transportation Code, are amended to read as follows:

(1) "Commercial motor vehicle" means:

(A) a commercial motor vehicle as defined by 49 C.F.R. Section 390.5, if operated interstate; or

(B) a commercial motor vehicle as defined [described] by Section 548.001, if operated intrastate.

(5) "Federal motor carrier safety regulation" means a federal regulation in Subtitle A, Title 49, or Subchapter B, Chapter III, Subtitle B, Title 49, Code of Federal Regulations.

SECTION 16.03. Subsections (a) through (d), Section 644.103, Transportation Code, are amended to read as follows:

(a) An officer of the department may stop, enter, or detain on a highway or at a port of entry a motor vehicle that is subject to this chapter.

(b) A municipal police officer who is certified under Section 644.101 may stop, enter, or detain on a highway or at a port of entry within the territory of the municipality a motor vehicle that is subject to this chapter. A sheriff or deputy sheriff who is certified under Section 644.101 may stop, enter, or detain on a highway or at a port of entry within the territory of the county a motor vehicle that is subject to this chapter.

(c) A person [~~An officer~~] who detains a vehicle under this section may prohibit the further operation of the vehicle on a highway if the vehicle or operator of the vehicle is in violation of a federal safety regulation or a rule adopted under this chapter.

(d) A noncommissioned employee of the department who is certified for the purpose by the director and who is supervised by an officer of the department may, at a fixed-site facility, stop, enter, or detain a motor vehicle that is subject to this chapter. If the employee's inspection shows that an enforcement action, such as the issuance of a citation, is warranted, the noncommissioned employee may take enforcement action only if the employee is under the supervision of an [~~supervising~~] officer of the department [~~must take the action~~].

SECTION 16.04. Section 644.153, Transportation Code, is amended to read as follows:

Sec. 644.153. ADMINISTRATIVE PENALTY. (a) The department may impose an administrative penalty against a person who violates:

(1) a rule adopted under this chapter; or

(2) a provision of Subchapter [~~Subtitle~~] C that the department by rule subjects to administrative penalties.

(b) To be designated as subject to an administrative penalty under Subsection (a)(2), a provision must relate to the safe operation of a commercial motor vehicle.

(c) The department shall:

(1) designate one or more employees to investigate violations and conduct audits of persons subject to this chapter; and

(2) impose an administrative penalty if the department discovers a violation that is covered by Subsection (a) or (b).

(d) A penalty under this section[;

[~~(4)~~] may not exceed the maximum penalty provided for a violation of a similar federal safety regulation[; and

[~~(2)~~ shall be administered in the same manner as a penalty under Section 643.251, except that the amount of a penalty shall be determined under Subdivision (1)].

(e) If the department determines to impose a penalty, the department shall issue a notice of claim. The department shall send the notice of claim by certified mail, registered mail, personal delivery, or another manner of delivery that records the receipt of the notice by the person responsible. The notice of claim must include a brief summary of the alleged violation and a statement of the amount of the recommended penalty and inform the person that the person is entitled 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. [~~(d)~~] A person who is subject to an administrative penalty imposed by the department under this section [subchapter] is required to pay the penalty [administrative penalties] or respond to the department within 20 days of receipt of the department's notice of claim.

(f) Before the 21st day after the date the person receives the notice of claim, the person may:

(1) accept the determination and pay the recommended penalty; or

(2) make a written request for an informal hearing or an administrative 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.

(g) At the conclusion of an informal hearing requested under Subsection (f), the department may modify the recommendation for a penalty.

(h) If the person requests an administrative hearing, the department shall set a hearing and give notice of the hearing to the person. The hearing shall be held by an administrative law judge of the State Office of Administrative Hearings. The administrative law judge shall make findings of fact and conclusions of law and promptly issue to the director a proposal for a decision as to the occurrence of the violation and the amount of a proposed penalty.

(i) If a penalty is proposed under Subsection (h), the administrative law judge shall include in the proposal for a decision a finding setting out costs, fees, expenses, and reasonable and necessary attorney's fees incurred by the state in bringing the proceeding. The director may adopt the finding and make it a part of a final order entered in the proceeding.

(j) Based on the findings of fact, conclusions of law, and proposal for a decision, the director by order may find that a violation has occurred and impose a penalty or may find that no violation occurred. The director may, pursuant to

Section 2001.058(e), Government Code, increase or decrease the amount of the penalty recommended by the administrative law judge within the limits prescribed by this chapter.

(k) Notice of the director's order shall be given to the affected person in the manner required by Chapter 2001, Government Code, and must include a statement that the person is entitled to seek a judicial review of the order.

(l) Before the 31st day after the date the director's order becomes final as provided by Section 2001.144, Government Code, the person must:

(1) pay the amount of the penalty;

(2) pay the amount of the penalty and file a petition for judicial review contesting:

(A) the occurrence of the violation;

(B) the amount of the penalty; or

(C) both the occurrence of the violation and the amount of the penalty; or

(3) without paying the amount of the penalty, file a petition for judicial review contesting:

(A) the occurrence of the violation;

(B) the amount of the penalty; or

(C) both the occurrence of the violation and the amount of the penalty.

(m) Within the 30-day period under Subsection (l), a person who acts under Subsection (l) may:

(1) stay enforcement of the penalty by:

(A) paying the amount of the penalty to the court for placement in an escrow account; or

(B) filing with the court a supersedeas bond approved by the court for the amount of the penalty that is effective until all judicial review of the director's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court an 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) sending a copy of the affidavit to the director by certified mail.

(n) Before the sixth day after the date the director receives a copy of an affidavit filed under Subsection (m)(2), the department may file with the court 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 if the court finds that the alleged facts are true. The person who files an affidavit under Subsection (m)(2) has the burden of proving that the person is financially unable to:

(1) pay the amount of the penalty; and

(2) file the supersedeas bond.

(o) If the person does not pay the amount of the penalty and the enforcement of the penalty is not stayed, the director may:

(1) refer the matter to the attorney general for collection of the amount of the penalty;

(2) initiate an impoundment proceeding under Subsection (q); or

(3) refer the matter to the attorney general and initiate the impoundment proceeding.

(p) [~~(e)~~] A person who fails to pay, or becomes delinquent in the payment of an administrative penalty [~~], the administrative penalties~~ imposed by the department under this subchapter may [~~shall~~] not operate or direct the operation of a commercial motor vehicle on the highways of this state until [~~such time as~~] the administrative penalty has [~~penalties have~~] been remitted to the department.

(q) [~~(f)~~] The department shall impound any commercial motor vehicle owned or operated by a person in violation of Subsection (p) [~~(e)~~] after the department has first served the person with a notice of claim. Service of the notice may be by certified mail, registered mail, personal delivery, or any other manner of delivery showing receipt of the notice.

(r) [~~(g)~~] A commercial motor vehicle impounded by the department under Subsection (q) [~~this section~~] shall remain impounded until [~~such time as~~] the administrative penalties imposed against the person are remitted to the department, except that an impounded commercial motor vehicle left at a vehicle storage facility controlled by the department or any other person shall be considered an abandoned motor vehicle on the 11th day after the date of impoundment if the delinquent administrative penalty is not remitted to the department before that day. Chapter 683 applies to the commercial motor vehicle, except that the department is entitled to receive from the proceeds of the sale the amount of the delinquent administrative penalty and costs.

(s) [~~(h)~~] All costs associated with the towing and storage of the commercial motor vehicle and load shall be the responsibility of the person and not the department or the State of Texas.

(t) A proceeding under this section is subject to Chapter 2001, Government Code.

SECTION 16.05. Section 644.155, Transportation Code, is amended to read as follows:

Sec. 644.155. COMPLIANCE REVIEW AND SAFETY AUDIT PROGRAM. The department shall implement and enforce a compliance review and safety audit program similar to the federal program established under 49 C.F.R. Part 385 for any person who owns or operates a commercial motor vehicle that is domiciled in this state.

SECTION 16.06. Subsection (a), Section 683.002, Transportation Code, is amended to read as follows:

(a) For the purposes of this chapter, a motor vehicle is abandoned if the motor vehicle:

(1) is inoperable, is more than five years old, and has been left unattended on public property for more than 48 hours;

(2) has remained illegally on public property for more than 48 hours;

(3) has remained on private property without the consent of the owner or person in charge of the property for more than 48 hours;

(4) has been left unattended on the right-of-way of a designated county, state, or federal highway for more than 48 hours; [✕]

(5) has been left unattended for more than 24 hours on the right-of-way of a turnpike project constructed and maintained by the Texas Turnpike Authority division of the Texas Department of Transportation or a controlled access highway; or

(6) is considered an abandoned motor vehicle under Section 644.153(r).

SECTION 16.07. Subsection (b), Section 683.012, Transportation Code, is amended to read as follows:

(b) The notice under Subsection (a) must:

(1) be sent by certified mail not later than the 10th day after the date the agency:

(A) takes the abandoned motor vehicle, watercraft, or outboard motor into custody; or

(B) receives the report under Section 683.031;

(2) specify the year, make, model, and identification number of the item;

(3) give the location of the facility where the item is being held;

(4) inform the owner and lienholder of the right to claim the item not later than the 20th day after the date of the notice on payment of:

(A) towing, preservation, and storage charges; or

(B) garagekeeper's charges and fees under Section 683.032 and, if the vehicle is a commercial motor vehicle impounded under Section 644.153(q), the delinquent administrative penalty and costs; and

(5) state that failure of the owner or lienholder to claim the item during the period specified by Subdivision (4) is:

(A) a waiver by that person of all right, title, and interest in the item; and

(B) consent to the sale of the item at a public auction.

SECTION 16.08. Section 683.015, Transportation Code, is amended by adding Subsection (e) to read as follows:

(e) If the vehicle is a commercial motor vehicle impounded under Section 644.153(q), the Department of Public Safety is entitled from the proceeds of the sale to an amount equal to the amount of the delinquent administrative penalty and costs.

SECTION 16.09. (a) This article takes effect September 1, 2003.

(b) The changes in law made in Section 16.04 of this article apply only to an administrative penalty for a violation that occurs on or after the effective date of this article.

(c) An administrative penalty for a violation that occurred before the effective date of this article is governed by the law in effect at the time of the violation, and the former law is continued in effect for that purpose.

ARTICLE 17. NONREPAIRABLE AND SALVAGE MOTOR VEHICLES; SALVAGE VEHICLE DEALERS

SECTION 17.01. Section 501.0234(b), Transportation Code, is amended to read as follows:

(b) This section does not apply to a motor vehicle:

(1) that has been declared a total loss by an insurance company in the settlement or adjustment of a claim;

(2) for which the certificate of title has been surrendered in exchange for:

(A) a salvage vehicle [~~certificate of~~] title issued under this chapter;

(B) a nonrepairable [~~motor~~] vehicle [~~certificate of~~] title issued under this chapter;

(C) a certificate of authority issued under Subchapter D, Chapter 683; or

(D) an ownership document issued by another state that is comparable to a document described by Paragraphs (A)-(C); or

(3) with a gross weight in excess of 11,000 pounds.

SECTION 17.02. Subchapter E, Chapter 501, Transportation Code, is amended to read as follows:

SUBCHAPTER E. NONREPAIRABLE AND SALVAGE MOTOR VEHICLES

Sec. 501.091 [~~501.0911~~]. DEFINITIONS. [~~(a)~~] In this subchapter:

(1) "Actual cash value" means the market value of a motor vehicle [~~as determined:~~

~~(A) from publications commonly used by the automotive and insurance industries to establish the values of motor vehicles; or~~

~~(B) if the entity determining the value is an insurance company, by any other procedure recognized by the insurance industry, including market surveys, that is applied by the company in a uniform manner].~~

(2) [~~"Automobile recycler" means a person in the business of dealing in salvage motor vehicles for the purpose of dismantling the vehicles to sell used parts or a person otherwise engaged in the business of acquiring, selling, or dealing in salvage parts for reuse or resale as parts. The term includes a dealer in used motor vehicle parts.~~

~~(3)~~ "Casual sale" means the sale by a salvage vehicle dealer or an insurance company [~~at auction~~] of not more than five [~~one~~] nonrepairable motor vehicles [~~vehicle~~] or [~~late model~~] salvage motor vehicles [~~vehicle~~] to the same person during a calendar year. The term does not include:

(A) a sale at auction to a salvage vehicle dealer; or

(B) the sale of an export-only motor vehicle to a person who is not a resident of the United States.

(3) "Damage" means sudden damage to a motor vehicle caused by the motor vehicle being wrecked, burned, flooded, or stripped of major component parts. The term does not include gradual damage from any cause, sudden damage caused by hail, or any damage caused only to the exterior paint of the motor vehicle.

(4) "Export-only motor vehicle" means a motor vehicle described by Section 501.099.

(5) [~~(4)~~] "Insurance company" means:

(A) a person authorized to write automobile insurance in this state;

or

(B) an out-of-state insurance company that pays a loss claim for a motor vehicle in this state.

~~[(5) "Late model motor vehicle" means a motor vehicle with the same model year as the current calendar year or one of the five calendar years preceding that calendar year.]~~

~~(6) ["Late model salvage motor vehicle" or "salvage motor vehicle" means a late model motor vehicle, other than a late model vehicle that is a nonrepairable motor vehicle, that is damaged to the extent that the total estimated cost of repairs, other than repairs related to hail damage but including parts and labor, is equal to or greater than an amount equal to 75 percent of the actual cash value of the vehicle in its predamaged condition.]~~

~~[(7) "Major component part" means one of the following parts of a motor vehicle:~~

- ~~(A) the engine;~~
- ~~(B) the transmission;~~
- ~~(C) the frame;~~
- ~~(D) a the right or left front fender;~~
- ~~(E) the hood;~~
- ~~(F) a door allowing entrance to or egress from the passenger compartment of the motor vehicle;~~
- ~~(G) a the front or rear bumper;~~
- ~~(H) a the right or left quarter panel;~~
- ~~(I) a the deck lid, tailgate, or hatchback;~~
- ~~(J) the cargo box of a one-ton or smaller truck, including a pickup truck;~~

~~(K) the cab of a truck; ~~or~~~~

~~(L) the body of a passenger motor vehicle;~~

~~(M) the roof or floor pan of a passenger motor vehicle, if separate from the body of the motor vehicle.~~

~~(7) "Metal recycler" means a person who:~~

~~(A) is predominately engaged in the business of obtaining ferrous or nonferrous metal that has served its original economic purpose to convert the metal, or sell the metal for conversion, into raw material products consisting of prepared grades and having an existing or potential economic value;~~

~~(B) has a facility to convert ferrous or nonferrous metal into raw material products consisting of prepared grades and having an existing or potential economic value, by method other than the exclusive use of hand tools, including the processing, sorting, cutting, classifying, cleaning, baling, wrapping, shredding, shearing, or changing the physical form or chemical content of the metal; and~~

~~(C) sells or purchases the ferrous or nonferrous metal solely for use as raw material in the production of new products.~~

~~(8) "Motor vehicle" has the meaning assigned by Section 501.002(14).~~

~~(9) ~~(8)~~ "Nonrepairable motor vehicle" means a ~~[late model]~~ motor vehicle that:~~

(A) is damaged, wrecked, or burned to the extent that the only residual value of the vehicle is as a source of parts or scrap metal; or

(B) comes into this state under a title or other ownership document that indicates that the vehicle is nonrepairable, junked, or for parts or dismantling only [or missing a major component part to the extent that the total estimated cost of repairs to rebuild or reconstruct the vehicle, including parts and labor other than the costs of materials and labor for repainting the vehicle and excluding sales taxes on the total cost of the repairs, and excluding the cost of repairs to repair hail damage, is equal to or greater than an amount equal to 95 percent of the actual cash value of the vehicle in its predamaged condition].

(10) [(9)] "Nonrepairable [motor] vehicle [certificate of] title" means a document issued by the department that evidences ownership of a nonrepairable motor vehicle.

~~[(10) "Older model motor vehicle" means a motor vehicle that was manufactured in a model year before the sixth preceding model year, including the current model year.]~~

~~(11) ["Other negotiable evidence of ownership" means a document other than a Texas certificate of title or a salvage certificate of title that relates to a motor vehicle that the department considers sufficient to support issuance of a Texas certificate of title for the vehicle.]~~

~~[(12)] "Out-of-state buyer" means a person licensed in an automotive business by another state or jurisdiction if the department has listed the holders of such a license as permitted purchasers of salvage motor vehicles or nonrepairable motor vehicles based on substantially similar licensing requirements and on whether salvage vehicle dealers licensed in Texas are permitted to purchase salvage motor vehicles or nonrepairable motor vehicles in the other state or jurisdiction.~~

(12) "Out-of-state ownership document" means a negotiable document issued by another state or jurisdiction that the department considers sufficient to prove ownership of a nonrepairable motor vehicle or salvage motor vehicle and to support the issuance of a comparable Texas certificate of title for the motor vehicle. The term does not include a title issued by the department, including a regular certificate of title, a nonrepairable vehicle title, a salvage vehicle title, a Texas Salvage Certificate, Certificate of Authority to Demolish a Motor Vehicle, or another ownership document issued by the department.

(13) "Public highway" has the meaning assigned by Section 502.001.

(14) [(13)] "Rebuilder" means a person who acquires and repairs, rebuilds, or reconstructs for operation on a public highway [highways], three [five] or more [late model] salvage motor vehicles in a calendar year [any 12-month period].

(15) "Salvage motor vehicle":

(A) means a motor vehicle that:

(i) is damaged to the extent that the cost of repair exceeds the actual cash value of the motor vehicle immediately before the damage; or

(ii) is damaged and that comes into this state under an out-of-state salvage motor vehicle certificate of title or similar out-of-state ownership document that states on its face "accident damage," "flood damage," "inoperable," "rebuildable," "salvageable," or similar notation; and

(B) does not include an out-of-state motor vehicle with a "rebuilt," "prior salvage," "salvaged," or similar notation, a nonrepairable motor vehicle, or a motor vehicle for which an insurance company has paid a claim for:

(i) the cost of repairing hail damage; or

(ii) theft, unless the motor vehicle was damaged during the theft and before recovery to the extent described by Paragraph (A)(i).

(16) [(14)] "Salvage [motor] vehicle [certificate of] title" means a [any] document issued by the department that evidences ownership of a salvage motor vehicle.

(17) [(15)] "Salvage vehicle dealer" means a person engaged in this state in the business of acquiring, selling, dismantling, repairing, rebuilding, reconstructing, or otherwise dealing in nonrepairable motor vehicles, salvage motor vehicles, or used parts. The term does not include a person who casually repairs, rebuilds, or reconstructs fewer than three salvage motor vehicles in the same calendar year. The term includes a person engaged in the business of:

(A) a salvage vehicle dealer, regardless of whether the person holds a license issued by the department to engage in that business;

(B) dealing in nonrepairable motor vehicles or salvage motor vehicles, regardless of whether the person deals in used parts; or

(C) dealing in used parts regardless of whether the person deals in nonrepairable motor vehicles or salvage motor vehicles [has the meaning assigned by Section 1.01, Article 6687 1a, Revised Statutes].

(18) "Self-insured motor vehicle" means a motor vehicle for which the evidence of ownership is a manufacturer's certificate of origin or for which the department or another state or jurisdiction has issued a regular certificate of title, is self-insured by the owner, and is owned by an individual, a business, or a governmental entity, without regard to the number of motor vehicles they own or operate. The term does not include a motor vehicle that is insured by an insurance company.

(19) "Used part" means a part that is salvaged, dismantled, or removed from a motor vehicle for resale as is or as repaired. The term includes a major component part but does not include a rebuildable or rebuilt core, including an engine, block, crankshaft, transmission, or other core part that is acquired, possessed, or transferred in the ordinary course of business [(b) For purposes of this subchapter:

[(1) the estimated cost of repair parts shall be determined by using a manual of repair costs or other instrument that is generally recognized and commonly used in the motor vehicle insurance industry to determine those costs or an estimate of the actual cost of the repair parts; and

[(2) the estimated labor costs shall be computed by using the hourly rate and time allocations that are reasonable and commonly assessed in the repair industry in the community in which the repairs are performed].

Sec. 501.092 [~~501.0912~~]. INSURANCE COMPANY TO SURRENDER CERTIFICATES OF TITLE TO CERTAIN [~~LATE MODEL~~] SALVAGE MOTOR VEHICLES OR NONREPAIRABLE MOTOR VEHICLES. (a) An insurance company that is licensed to conduct business in this state and that acquires, through payment of a claim, ownership or possession of a [~~late model~~] salvage motor vehicle or nonrepairable motor vehicle covered by a certificate of title issued by this state or a manufacturer's certificate of origin [~~through payment of a claim~~] shall surrender a properly assigned [~~certificate of~~] title or manufacturer's certificate of origin to the department, on a form prescribed by the department, except that not earlier than the 46th day after the date of payment of the claim the insurance company may surrender a certificate of title, on a form prescribed by the department, and receive a salvage certificate of title or a nonrepairable certificate of title without obtaining a properly assigned certificate of title if the insurance company:

- (1) has obtained the release of all liens on the motor vehicle;
- (2) is unable to locate one or more owners of the motor vehicle; and
- (3) has provided notice to the last known address in the department's records to each owner that has not been located:

(A) by registered or certified mail, return receipt requested; or

(B) if a notice sent under Paragraph (A) is returned unclaimed, by publication in a newspaper of general circulation in the area where the unclaimed mail notice was sent.

(b) For a salvage motor vehicle [~~described by Section 501.0911(6) but not by Section 501.0911(8)~~], the insurance company shall apply for a salvage [~~motor~~] vehicle [~~certificate of~~] title. For a nonrepairable motor vehicle [~~described by Section 501.0911(8)~~], the insurance company shall apply for a nonrepairable [~~motor~~] vehicle [~~certificate of~~] title.

(c) An insurance company may not sell a [~~late model salvage~~] motor vehicle to which this section applies unless the department has issued a salvage [~~motor~~] vehicle [~~certificate of~~] title or a nonrepairable [~~motor~~] vehicle [~~certificate of~~] title for the motor vehicle or a comparable ownership document has been issued by another state or jurisdiction for the motor vehicle.

(d) An insurance company may sell a [~~late model salvage~~] motor vehicle to which this section applies, or assign a salvage [~~motor~~] vehicle [~~certificate of~~] title or a nonrepairable [~~motor~~] vehicle [~~certificate of~~] title for the motor vehicle, only to a salvage vehicle dealer, an out-of-state buyer, a buyer in a casual sale at auction, or a metal recycler [~~person described by Subsection (g), Article 6687 2b, Revised Statutes~~]. If the motor vehicle is not a [~~late model~~] salvage motor vehicle or a nonrepairable motor vehicle, the insurance company is not required to surrender the regular certificate of title for the vehicle or to be issued a salvage [~~motor~~] vehicle [~~certificate of~~] title or a nonrepairable [~~motor~~] vehicle [~~certificate of~~] title for the motor vehicle.

(e) An insurance company or other person who acquires ownership of a motor vehicle other than a nonrepairable or salvage motor vehicle may voluntarily and on proper application obtain a salvage vehicle title or a nonrepairable vehicle title for the vehicle.

Sec. 501.093 [501.0915]. INSURANCE COMPANY [TO SUBMIT] REPORT ON CERTAIN VEHICLES [TO DEPARTMENT]. (a) If an insurance company pays [after payment of] a [total loss] claim on a [late model salvage motor vehicle or a] nonrepairable motor vehicle or salvage motor vehicle and the [an] insurance company does not acquire ownership of the motor vehicle, the insurance company shall submit to the department, before the 31st day after the date of the payment of the claim, on the form prescribed by the department, a report stating that the insurance company:

(1) [the insurance company] has paid a [total loss] claim on the motor vehicle; and

(2) [the insurance company] has not acquired ownership of the motor vehicle.

(b) The owner of a [late model salvage] motor vehicle to which this section applies may not operate or permit operation of the motor vehicle on a public highway or transfer ownership of the motor vehicle by sale or otherwise unless the department has issued a salvage [motor] vehicle [certificate of] title or a nonrepairable [motor] vehicle [certificate of] title for the motor vehicle or a comparable ownership document has been issued by another state or jurisdiction for the motor vehicle.

(c) Subsection (b) does not apply if:

(1) the department has issued a nonrepairable vehicle title or salvage vehicle title for the motor vehicle; or

(2) another state or jurisdiction has issued a comparable out-of-state ownership document for the motor vehicle.

Sec. 501.094. SELF-INSURED MOTOR VEHICLE. (a) This section applies only to a motor vehicle in this state that is:

(1) a self-insured motor vehicle;

(2) damaged to the extent it becomes a nonrepairable or salvage motor vehicle; and

(3) removed from normal operation by the owner.

(b) The owner of a motor vehicle to which this section applies shall submit to the department before the 31st day after the date of the damage, on the form prescribed by the department, a report stating that the motor vehicle was self-insured, damaged, and was removed from normal operation.

(c) When the owner submits a report under Subsection (b), the owner shall:

(1) surrender the regular certificate of title or manufacturer's certificate of origin for the motor vehicle; and

(2) apply for a nonrepairable vehicle title or salvage vehicle title under this subchapter.

Sec. 501.095 [501.0916]. SALE, TRANSFER, OR RELEASE OF NONREPAIRABLE MOTOR VEHICLE OR [LATE MODEL] SALVAGE [OR NONREPAIRABLE] MOTOR VEHICLE. (a) If the department has not issued a nonrepairable vehicle title or salvage vehicle title for the motor vehicle and an out-of-state ownership document for the motor vehicle has not been issued by another state or jurisdiction, a business or governmental entity described by

Subdivisions (1)-(3) [A person] may [not] sell, transfer, or release a [late model salvage motor vehicle or a] nonrepairable motor vehicle or salvage motor vehicle only to a person who is [other than]:

(1) a licensed [person who holds a] salvage vehicle dealer or metal recycler [license issued] under Chapter 2302, Occupations Code;

(2) an insurance company that has paid a claim on the nonrepairable or salvage motor [former owner of the] vehicle;

(3) a governmental entity; or

(4) an out-of-state buyer[;

~~(5) a buyer in a casual sale at auction; or~~

~~(6) a person described by Section 2302.003, Occupations Code].~~

(b) A person, other than a salvage vehicle dealer or an insurance company licensed to do business in this state, who acquired ownership of a nonrepairable or salvage [who sells, transfers, or releases a] motor vehicle that has not been issued [under Subsection (a)] shall deliver a properly assigned certificate of title for the vehicle to the person to whom the motor vehicle is sold, transferred, or released. If the assigned certificate of title is not a salvage motor vehicle certificate of title, a nonrepairable [motor] vehicle [certificate of] title, salvage vehicle title, or a comparable ownership document issued by another state or jurisdiction[, the purchaser] shall, before selling the motor vehicle, surrender the properly assigned [not later than the 10th day after the date the purchaser receives the] certificate of title for the motor vehicle to the department and apply to the department for:

(1) a nonrepairable vehicle title if the vehicle is a nonrepairable motor vehicle [surrender the certificate of title to the department]; or [and]

(2) [apply for] a salvage [motor] vehicle [certificate of] title if the vehicle is a salvage motor vehicle [or a nonrepairable motor vehicle certificate of title for the vehicle, as appropriate].

(c) If the department has issued a nonrepairable vehicle title or salvage vehicle title for the motor vehicle or another state or jurisdiction has issued a comparable out-of-state ownership document for the motor vehicle, a person may sell, transfer, or release a nonrepairable motor vehicle or salvage motor vehicle to any person [A salvage vehicle dealer that acquires ownership of a late model salvage motor vehicle or a nonrepairable motor vehicle for the purpose of dismantling, scrapping, or destroying the vehicle shall, before the 31st day after the date the dealer acquires the vehicle, submit to the department, on the form prescribed by the department, a report stating that the vehicle will be dismantled, scrapped, or destroyed, accompanied by a properly assigned regular certificate of title, salvage motor vehicle certificate of title, nonrepairable motor vehicle certificate of title, or comparable ownership document issued by another state or jurisdiction for the vehicle].

~~(d) On receipt of the report and the certificate of title, the department shall issue the salvage vehicle dealer a receipt for the certificate of title, salvage motor vehicle certificate of title, nonrepairable motor vehicle certificate of title, or comparable ownership document issued by another state or jurisdiction.~~

~~[(e) A salvage vehicle dealer who submits a report under Subsection (e) shall report to the department after the action is taken that the vehicle was dismantled, scrapped, or destroyed.]~~

Sec. 501.096. NONREPAIRABLE MOTOR VEHICLE OR SALVAGE MOTOR VEHICLE DISMANTLED, SCRAPPED, OR DESTROYED. (a) If a salvage vehicle dealer acquires ownership of a nonrepairable motor vehicle or salvage motor vehicle for the purpose of dismantling, scrapping, or destroying the motor vehicle, the dealer shall, before the 31st day after the date the dealer acquires the motor vehicle, submit to the department a report stating that the motor vehicle will be dismantled, scrapped, or destroyed. The dealer shall:

(1) make the report on a form prescribed by the department; and

(2) submit with the report a properly assigned manufacturer's certificate of origin, regular certificate of title, nonrepairable vehicle title, salvage vehicle title, or comparable out-of-state ownership document for the motor vehicle.

(b) After receiving the report and title or document, the department shall issue the salvage vehicle dealer a receipt for the manufacturer's certificate of origin, regular certificate of title, nonrepairable vehicle title, salvage vehicle title, or comparable out-of-state ownership document.

(c) The salvage vehicle dealer shall:

~~(1) [Sec. 501.0917. SALVAGE VEHICLE DEALER TO SUBMIT REPORT TO DEPARTMENT. (a) A salvage vehicle dealer that acquires an older model vehicle for the purpose of dismantling, scrapping, or destroying the vehicle and that receives a properly assigned certificate of title for the vehicle shall, before the 31st day after the date the dealer acquires the vehicle:~~

~~[(1) submit to the department, on the form prescribed by the department, a report stating that the vehicle will be dismantled, scrapped, or destroyed, accompanied by the properly assigned regular certificate of title, salvage motor vehicle certificate of title, nonrepairable motor vehicle certificate of title, or comparable ownership document issued by another state or jurisdiction for the vehicle; and~~

~~[(2)] keep on the business premises of the dealer, until the third anniversary of the date the report on the motor vehicle is submitted to the department, a record of the vehicle, its ownership, and its condition as dismantled, scrapped, or destroyed; and~~

~~(2) [-(b) A salvage vehicle dealer that is required to submit a report under Subsection (a) shall] present to the department, on the form prescribed by the department, evidence that the motor vehicle was dismantled, scrapped, or destroyed before the 61st day after the date the dealer completed the dismantling, scrapping, or destruction of the motor vehicle.~~

Sec. 501.097 [501.0920]. APPLICATION FOR NONREPAIRABLE VEHICLE TITLE OR SALVAGE [MOTOR] VEHICLE [CERTIFICATE OF] TITLE. (a) An application for a [salvage motor vehicle certificate of title or a] nonrepairable vehicle title or salvage [motor] vehicle [certificate of] title must:

(1) be made on a form prescribed by the department and accompanied by a \$8 application fee [~~established by the department, not to exceed an amount that is sufficient, when added to other fees collected under this chapter, to recover the actual costs to the department of issuing the certificate~~]; [~~and~~]

(2) include, in addition to any other information required by the department:

(A) the name and current address of the owner;

(B) a description of the motor vehicle, including the make, style of body, model year, and vehicle identification number; and

(C) a statement describing whether the motor vehicle:

(i) was the subject of a total loss claim paid by an insurance company under Section 501.092 or 501.093;

(ii) is a self-insured motor vehicle under Section 501.094;

(iii) is an export-only motor vehicle under Section 501.099; or

(iv) was sold, transferred, or released to the owner or former owner of the motor vehicle or a buyer at a casual sale; and

(3) include the name and address of:

(A) any currently recorded lienholder, if the motor vehicle is a nonrepairable motor vehicle; or

(B) any currently recorded lienholder or a new lienholder, if the motor vehicle is a salvage motor vehicle [~~description of the damage to the vehicle;~~

~~[(D) the estimated cost of repairs to the vehicle, including parts and labor; and~~

~~[(E) the predamaged actual cash value of the vehicle].~~

(b) On receipt of a complete application, the properly assigned title or manufacturer's certificate of origin and the [~~prescribed~~] application fee, the department shall, before the sixth business day after the date the department receives the application, issue the applicant the appropriate [~~a salvage motor vehicle certificate of~~] title for the [~~or a nonrepairable~~] motor vehicle [~~certificate of title, as appropriate~~].

(c) A nonrepairable [~~motor~~] vehicle [~~certificate of~~] title must state on its face that~~[, except as provided by Sections 501.0925 and 501.0927,]~~ the motor vehicle:

(1) may not:

(A) be repaired, rebuilt, or reconstructed;

(B) be issued a regular certificate of title or registered in this state;

(C) be operated on a public highway, in addition to any other requirement of law; and

(2) may only be used as a source for used parts or scrap metal.

(d) The fee collected under Subsection (a)(1) shall be credited to the state highway fund to defray the costs of administering this subchapter and the costs to the department for issuing the title.

Sec. 501.098 ~~[501.0924]~~. RIGHTS ~~[POSSESSION AND OPERATION]~~ OF HOLDER OF NONREPAIRABLE VEHICLE TITLE OR SALVAGE ~~[MOTOR]~~ VEHICLE TITLE. (a) A person who holds a nonrepairable vehicle title for a motor vehicle:

(1) is entitled to possess, transport, dismantle, scrap, destroy, record a lien as provided for in Section 501.097(a)(3)(A), and sell, transfer, or release ownership of the motor vehicle or a used part from the motor vehicle;

(2) may not:

(A) operate or permit the operation of the motor vehicle on a public highway, in addition to any other requirement of law;

(B) repair, rebuild, or reconstruct the motor vehicle; or

(C) register the motor vehicle.

(b) A person who holds a nonrepairable certificate of title issued prior to September 1, 2003:

(1) is entitled to:

(A) repair, rebuild, or reconstruct the motor vehicle;

(B) possess, transport, dismantle, scrap, or destroy the motor vehicle; and

(C) sell, transfer, or release ownership of the vehicle or a used part from the motor vehicle; and

(2) may not:

(A) operate or permit the operation of the motor vehicle on a public highway, in addition to any other requirement of law; or

(B) register the motor vehicle.

(c) A person who holds a salvage ~~[motor]~~ vehicle ~~[certificate of]~~ title for a motor vehicle:

(1) is entitled to possess ~~[the vehicle, record a lien on the vehicle]~~, transport, dismantle, scrap, destroy, repair, rebuild, reconstruct, record a lien on ~~[the vehicle]~~, and sell, transfer, or release ownership of the motor vehicle or a used part from the motor vehicle; and [-]

(2) ~~[(b) A vehicle for which a salvage motor vehicle certificate of title is the most current title]~~ may not operate or permit the operation of the motor vehicle ~~[be operated]~~ on a public highway, in addition to any other requirement of law.

Sec. 501.099. SALE OF EXPORT-ONLY MOTOR VEHICLES. (a) This section applies to a nonrepairable motor vehicle or a salvage motor vehicle that is offered for sale in this state to a person who resides in a jurisdiction outside the United States.

(b) A person may purchase a nonrepairable motor vehicle or a salvage motor vehicle only if:

(1) the person purchases the motor vehicle from a licensed salvage vehicle dealer or a governmental entity;

(2) the motor vehicle has been issued a nonrepairable vehicle title or a salvage vehicle title; and

(3) the purchaser certifies to the seller on a form provided by the department that the purchaser will:

(A) remove the motor vehicle from the United States; and

(B) not return the motor vehicle to any state of the United States as a motor vehicle titled or registered under its manufacturer's vehicle identification number.

(c) A salvage vehicle dealer or a governmental entity that sells a nonrepairable motor vehicle or a salvage motor vehicle to a person who is not a resident of the United States shall, before the sale of the motor vehicle, obtain a copy, photocopy, or other accurate reproduction of a valid identification card, identification certificate, or an equivalent document issued to the purchaser by the appropriate authority of the jurisdiction in which the purchaser resides that bears a photograph of the purchaser and is capable of being verified using identification standards adopted by the United States or the international community.

(d) The department by rule shall establish a list of identification documents that are valid under Subsection (c) and provide a copy of the list to each holder of a salvage vehicle dealer license and to each appropriate governmental entity.

(e) A salvage vehicle dealer or a governmental entity that sells a nonrepairable motor vehicle or a salvage motor vehicle to a person who is not a resident of the United States shall:

(1) stamp on the face of the title so as not to obscure any name, date, or mileage statement on the title the words "FOR EXPORT ONLY" in capital letters that are black; and

(2) stamp in each unused reassignment space on the back of the title the words "FOR EXPORT ONLY" and print the number of the dealer's salvage vehicle license or the name of the governmental entity, as applicable.

(f) The words "FOR EXPORT ONLY" required by Subsection (e) must be at least two inches wide and clearly legible.

(g) A salvage vehicle dealer or governmental entity who sells a nonrepairable motor vehicle or a salvage motor vehicle under this section to a person who is not a resident of the United States shall keep on the business premises of the dealer or entity until the third anniversary of the date of the sale:

(1) a copy of each document related to the sale of the vehicle; and

(2) a list of all vehicles sold under this section that contains:

(A) the date of the sale;

(B) the name of the purchaser;

(C) the name of the country that issued the identification document provided by the purchaser, as shown on the document; and

(D) the vehicle identification number.

(h) This section does not prevent a person from exporting or importing a used part obtained from an export-only motor vehicle.

Sec. 501.100 [~~501.0922~~]. APPLICATION FOR REGULAR CERTIFICATE OF TITLE FOR SALVAGE [~~MOTOR~~] VEHICLE. (a) A vehicle for which a nonrepairable certificate of title issued prior to September 1, 2003 or a salvage [~~motor~~] vehicle [~~certificate of~~] title has been issued may be issued a regular certificate of title [~~only~~] after the motor vehicle has been repaired, rebuilt,

or reconstructed by a person described by Section 501.104(a) [application] and, in addition to any other requirement of law, only if the application is accompanied by a separate form that:

(1) describes each major component part used to repair the motor vehicle; and

(2) shows the identification number required by federal law to be affixed to or inscribed on the part; ~~and~~

~~[(2) is accompanied by a written statement signed by a specially trained commissioned officer of the Department of Public Safety certifying to the department that:~~

~~[(A) the vehicle identification numbers and parts identification numbers are accurate;~~

~~[(B) the applicant has proof that the applicant owns the parts used to repair the vehicle; and~~

~~[(C) the vehicle may be safely operated and complies with all applicable motor vehicle safety standards of this state].~~

(b) ~~[The Department of Public Safety may impose a fee, in an amount not to exceed the lesser of \$200 or the actual cost to that department, for conducting an inspection and providing the written statement required by Subsection (a).~~

~~[Sec. 501.0923. ISSUANCE OF CERTIFICATE OF TITLE FOR REBUILT SALVAGE MOTOR VEHICLE. (a)]~~ On receipt of a complete application under this section ~~[Section 501.0922,]~~ accompanied by the \$13 ~~[peace officer's statement and the appropriate]~~ fee for the certificate of title, the department shall issue the applicant a regular certificate of title for the motor vehicle.

(c) ~~[(b)]~~ A regular certificate of title issued under this section must:

(1) ~~[bear on its face the words "REBUILT SALVAGE"; and~~

~~[(2)]~~ describe or disclose the motor vehicle's former condition in a manner reasonably understandable to a potential purchaser of the motor vehicle; and

that:

(A) are red;

(B) are centered on and occupy at least 15 percent of the face of the certificate of title; and

(C) do not prevent any other words on the title from being read or copied.

(d) In addition to the fee described by Subsection (b), the applicant shall pay a \$65 rebuilder fee.

(e) On or after the 31st day after the date the department receives a rebuilder fee under Subsection (d), the department shall deposit \$50 of the fee to the credit of the state highway fund to be used only by the Department of Public Safety to enforce this chapter and \$15 to the credit of the general revenue fund.

(f) The department may not issue a regular certificate of title for a motor vehicle based on a:

(1) nonrepairable vehicle title or comparable out-of-state ownership document;

(2) receipt issued under Section 501.096(b); or

(3) certificate of authority.

Sec. 501.101 [~~501.0924~~]. ISSUANCE OF [CERTIFICATE OF] TITLE TO MOTOR VEHICLE [CERTAIN VEHICLES] BROUGHT INTO STATE. (a) This section applies only to [On proper application by the owner of] a motor vehicle brought into this state from another state or jurisdiction that has on any certificate of title or comparable out-of-state ownership document issued by the other state or jurisdiction:

(1) a "rebuilt," "salvage," ["nonrepairable,"] or similar [analogous] notation; or

(2) a "nonrepairable," "dismantle only," "parts only," "junked," "scrapped," or similar notation.

(b) On receipt of a complete application from the owner of the motor vehicle, the department shall issue the applicant the appropriate [a] certificate of title [or other appropriate document] for the motor vehicle.

(c) [(b)] A certificate of title [or other appropriate document] issued under this section must show on its face:

(1) the date of issuance;

(2) the name and address of the owner;

(3) any registration number assigned to the motor vehicle; and

(4) a description of the motor vehicle or other [as determined by the department; and

[(5) any] notation the department considers necessary or appropriate.

Sec. 501.102 [~~501.0926~~]. OFFENSES [OFFENSE]. (a) A [Except as provided by Section 501.0927, a] person commits an offense if the person:

(1) applies to the department for a regular certificate of title for a motor vehicle; and

(2) knows or reasonably should know that:

(A) the vehicle is a nonrepairable motor vehicle that has been repaired, rebuilt, or reconstructed;

(B) the vehicle identification number assigned to the motor vehicle belongs to a nonrepairable motor vehicle that has been repaired, rebuilt, or reconstructed;

(C) the title issued to the motor vehicle belongs to a nonrepairable motor vehicle that has been repaired, rebuilt, or reconstructed;

(D) the vehicle identification number assigned to the motor vehicle belongs to an export-only motor vehicle;

(E) the motor vehicle is an export-only motor vehicle; or

(F) the motor vehicle is a nonrepairable motor vehicle or salvage motor vehicle for which a nonrepairable vehicle title, salvage vehicle title, or comparable ownership document issued by another state or jurisdiction has not been issued.

(b) A person commits an offense if the person knowingly sells, transfers, or releases a salvage motor vehicle in violation of this subchapter.

(c) A person commits an offense if the person knowingly fails or refuses to surrender a regular certificate of title after the person:

(1) receives a notice from an insurance company that the motor vehicle is a nonrepairable or salvage motor vehicle; or

(2) knows the vehicle has become a nonrepairable motor vehicle or salvage motor vehicle under Section 501.094.

(d) Except as provided by Subsection (e), an offense under this section is a Class C misdemeanor.

(e) If it is shown on the trial of an offense under this section that the defendant has been previously convicted of:

(1) one offense under this section, the offense is a Class B misdemeanor; or

(2) two or more offenses under this section, the offense is a state jail felony.

Sec. 501.103 [501.0928]. COLOR OF NONREPAIRABLE VEHICLE TITLE OR [DEPARTMENT TO PRINT] SALVAGE [AND NONREPAIRABLE MOTOR] VEHICLE [CERTIFICATES OF] TITLE. (a) The department shall print a nonrepairable vehicle title:

(1) in a color that distinguishes it from a regular certificate of title or salvage vehicle title; and

(2) so that it clearly shows that it is the negotiable ownership document for a nonrepairable motor vehicle.

(b) A nonrepairable vehicle title must state on its face that the motor vehicle:

(1) may not be:

(A) issued a regular certificate of title;

(B) registered in this state; or

(C) repaired, rebuilt, or reconstructed; and

(2) may be used only as a source for used parts or scrap metal.

(c) The department shall print a salvage [motor] vehicle [certificates of] title:

(A) [and nonrepairable motor vehicle certificates of title] in a color that distinguishes it [them] from a regular certificate of title or nonrepairable vehicle [certificates of] title; and

(B) so that each document clearly shows that it is the ownership document for a [late model] salvage motor vehicle [or a nonrepairable motor vehicle].

(d) [(b) A nonrepairable motor vehicle certificate of title for a vehicle that is nonrepairable because of damage caused exclusively by flood must bear an appropriate notation on its face.

[(e) A salvage [motor] vehicle [certificate of] title for a vehicle that is a salvage motor vehicle because of damage caused exclusively by flood must bear a [an appropriate] notation on its face that the department considers appropriate. If the title for a motor vehicle reflects the notation required by this subsection, the owner may sell, transfer, or release the motor vehicle only as provided by this subchapter.

(e) The department may provide a stamp to a person who is a licensed salvage vehicle dealer under Chapter 2302, Occupations Code, to mark the face of a title under this subchapter. The department shall provide the stamp to the person for a fee in the amount determined by the department to be necessary for the department to recover the cost of providing the stamp.

Sec. 501.104 [501.0929]. REBUILDER TO POSSESS [CERTIFICATE OF] TITLE OR OTHER DOCUMENTATION. (a) This section applies only to:

- (1) a rebuilder licensed as a salvage vehicle dealer;
- (2) a person engaged in the business of a rebuilder, regardless of whether the person is licensed to engage in that business; or
- (3) a person engaged in the casual repair, rebuilding, or reconstruction of fewer than three motor vehicles in the same 12-month period.

(b) A person described by Subsection (a) [rebuilder] must possess:

(1) a regular certificate of title, [a salvage motor vehicle certificate of title, a] nonrepairable vehicle title, salvage [motor] vehicle [certificate of] title, or [a] comparable out-of-state ownership document [issued by another state or jurisdiction] for any motor vehicle that is:

- (A) owned by the person;
- (B) [(+) in the person's [rebuilder's] inventory; and
- (C) [(2) being offered for resale; or

(2) a contract entered into with the owner, a work order, or another document that shows the authority for the person to possess any motor vehicle that is:

- (A) owned by another person;
- (B) on the person's business or casual premises; and
- (C) being repaired, rebuilt, or reconstructed for the other person.

[(b) A person who rebuilds a late model salvage motor vehicle for which the department has issued a salvage motor vehicle certificate of title, or who assembles a late model salvage motor vehicle from component parts, may apply to the department for a certificate of title for the vehicle. A certificate of title issued by the department under this subsection must bear the words "REBUILT SALVAGE."]

Sec. 501.105. RETENTION OF RECORDS RELATING TO CERTAIN CASUAL SALES. Each licensed salvage vehicle dealer or insurance company that sells a nonrepairable motor vehicle or a salvage motor vehicle at a casual sale shall keep on the business premises of the dealer or the insurance company a list of all casual sales made during the preceding 36-month period that contains:

- (1) the date of the sale;
- (2) the name of the purchaser;
- (3) the name of the jurisdiction that issued the identification document provided by the purchaser, as shown on the document; and
- (4) the vehicle identification number.

Sec. ~~501.106~~ ~~[501.0930]~~. ENFORCEMENT OF SUBCHAPTER. (a) This subchapter shall be ~~[exclusively]~~ enforced by the department and ~~[or]~~ any other governmental or law enforcement entity, including the Department of Public Safety, and the [agency or its] personnel of the entity~~[-, except]~~ as provided by this subchapter.

(b) The department, ~~[or]~~ an agent, officer, or employee of the department, or another person enforcing this subchapter is not liable to a person damaged or injured by an act or omission relating to the issuance of a regular certificate of title, [salvage motor vehicle certificate of title, or] nonrepairable [motor] vehicle [certificate of] title, or salvage vehicle title under this subchapter.

Sec. ~~501.107~~ ~~[501.0931]~~. APPLICABILITY OF SUBCHAPTER TO RECYCLER. (a) This subchapter does not apply to~~[-, and does not preclude or prohibit]~~ a sale to, purchase by, or other transaction by or with, a metal recycler [person described by Subsection (g), Article 6687 2b, Revised Statutes,] except as provided by Subsections (b) and (c).

(b) A metal recycler [person described by Subsection (g), Article 6687 2b, Revised Statutes,] shall submit to the department the properly assigned manufacturer's certificate of origin, regular certificate of title, nonrepairable vehicle title, salvage vehicle title, or comparable out-of-state ownership [equivalent] document that the person receives in conjunction with the purchase of a motor vehicle not later than the 60th day after the date the metal recycler [person] receives the ~~[certificate of] title or out-of-state ownership [equivalent]~~ document.

(c) This subchapter applies to a transaction with a metal recycler [person described by Subsection (g), Article 6687 2b, Revised Statutes,] in which a motor vehicle:

- (1) is sold or delivered to the metal recycler [person] for the purpose of reuse or resale as a motor vehicle or as a source of used ~~[motor vehicle]~~ parts; and
- (2) ~~[if the motor vehicle]~~ is so used for that purpose.

~~[(d) This subchapter does not:~~

~~[(1) prohibit the owner of a late model salvage motor vehicle or a nonrepairable motor vehicle from selling the vehicle to any person, if the vehicle is so classified solely because of water damage caused by a flood; or~~

~~[(2) limit the ability or authority of an insurance company to adjust or settle a claim for loss on a motor vehicle.]~~

SECTION 17.03. Section 2302.001, Occupations Code, is amended to read as follows:

Sec. 2302.001. DEFINITIONS. In this chapter:

(1) ~~["Actual cash value" has the meaning assigned by Section 501.0911, Transportation Code.~~

~~[(2)]~~ "Casual sale," "damage," "insurance company," "major component part," "metal recycler," "motor vehicle," "nonrepairable motor vehicle," "nonrepairable vehicle title," "out-of-state buyer," "salvage motor vehicle," "salvage vehicle title," "salvage vehicle dealer," and "used part" have ~~[has]~~ the meanings [meaning] assigned by Section 501.091 ~~[501.0911]~~, Transportation Code.

(2) ~~(3)~~ "Commission" means the Texas Transportation Commission.

(3) ~~(4)~~ "Department" means the Texas Department of Transportation.

(4) ~~(5)~~ "Federal safety certificate" means the label or tag required under 49 U.S.C. Section 30115 that certifies that a motor vehicle or equipment complies with applicable federal motor vehicle safety standards.

(5) ~~(6)~~ "Late model motor vehicle" has the meaning assigned by Section 501.0911, Transportation Code.

(7) ~~(7)~~ "Major component part" has the meaning assigned by Section 501.0911, Transportation Code.

(8) ~~(8)~~ "Motor vehicle" has the meaning assigned by Section 541.201, Transportation Code.

(9) ~~(9)~~ "Nonrepairable motor vehicle certificate of title" has the meaning assigned by Section 501.0911, Transportation Code.

(10) ~~(10)~~ "Out of state buyer" has the meaning assigned by Section 501.0911, Transportation Code.

(11) ~~(11)~~ "Person" means an individual, partnership, corporation, trust, association, or other private legal entity.

(12) ~~(12)~~ "Salvage motor vehicle certificate of title" has the meaning assigned by Section 501.0911, Transportation Code.

(13) ~~(13)~~ "Salvage part" means a major component part of a salvage motor vehicle that is serviceable to the extent that it can be reused.

(14) ~~(14)~~ "Salvage pool operator" means a person who engages in the business of selling nonrepairable motor vehicles or salvage motor vehicles at auction, including wholesale auction, or otherwise.

(6) ~~(15)~~ "Salvage vehicle agent" means a person who acquires, sells, or otherwise deals ~~[employed by a salvage vehicle dealer to acquire, sell, or deal]~~ in nonrepairable or salvage motor vehicles or used ~~[salvage]~~ parts in this state as directed by the salvage vehicle dealer under whose license the person operates. The term does not include a person who:

(A) is a licensed salvage vehicle dealer;

(B) is a partner, owner, or officer of a business entity that holds a salvage vehicle dealer license;

(C) is an employee of a licensed salvage vehicle dealer; or

(D) only transports salvage motor vehicles for a licensed salvage vehicle dealer.

~~(16) "Salvage vehicle dealer" means a person licensed under this chapter who engages in the business of acquiring, selling, dismantling, repairing, or dealing in salvage motor vehicles or vehicle parts of a type required to be covered by a salvage motor vehicle certificate of title or nonrepairable motor vehicle certificate of title.]~~

SECTION 17.04. Subchapter A, Chapter 2302, Occupations Code, is amended by adding Section 2302.0015 to read as follows:

Sec. 2302.0015. CONSENT TO ENTRY AND INSPECTION. (a) A person consents to an entry or inspection described by Subsection (b) by:

(1) accepting a license under this chapter; or

(2) engaging in a business or activity regulated under this chapter.

(b) For the purpose of enforcing or administering this chapter or Chapter 501 or 502, Transportation Code, a member of the commission, an employee or agent of the commission or department, a member of the Public Safety Commission, an officer of the Department of Public Safety, or a peace officer may at a reasonable time:

(1) enter the premises of a business regulated under one of those chapters; and

(2) inspect or copy any document, record, vehicle, part, or other item regulated under one of those chapters.

(c) A person described by Subsection (a):

(1) may not refuse or interfere with an entry or inspection under this section; and

(2) shall cooperate fully with a person conducting an inspection under this section to assist in the recovery of stolen motor vehicles and parts and to prevent the sale or transfer of stolen motor vehicles and parts.

(d) An entry or inspection occurs at a reasonable time for purposes of Subsection (b) if the entry or inspection occurs:

(1) during normal business hours of the person or activity regulated under this chapter; or

(2) while an activity regulated under this chapter is occurring on the premises.

SECTION 17.05. Sections 2302.005, 2302.006, 2302.007, 2302.051, 2302.052, and 2302.101, Occupations Code, are amended to read as follows:

Sec. 2302.005. APPLICABILITY OF CERTAIN MUNICIPAL ORDINANCES, LICENSES, AND PERMITS. This chapter [Subchapters B-E]:

(1) is [are] in addition to any municipal ordinance relating to the regulation of a person who deals in nonrepairable or salvage motor vehicles or used parts; and

(2) does [do] not prohibit the enforcement of a requirement of a municipal license or permit that is related to an activity regulated under this chapter [those subchapters].

Sec. 2302.006. APPLICATION OF CHAPTER [SUBCHAPTERS B-E] TO METAL RECYCLERS. (a) Except as provided by Subsections [Subsection] (b) and (c), this chapter does [Subchapters B-E do] not apply to a transaction in which a metal recycler is a party.

(b) This chapter applies to [,-other than] a transaction in which a motor vehicle:

(1) is sold, transferred, released, or delivered to a [the] metal recycler for the purpose of reuse or resale as a motor vehicle or as a source of used [motor vehicle] parts; and

(2) is used for that purpose.

(c) Sections 2302.0015 and [(b) Section] 2302.205 apply [applies] to a metal recycler.

[(e) Subchapter G does not apply to a sale or purchase by a metal recycler.]

Sec. 2302.007. APPLICATION OF CHAPTER [~~SUBCHAPTERS B-E~~] TO INSURANCE COMPANIES. This chapter does [~~Subchapters B-E do~~] not apply to an insurance company [~~authorized to engage in the business of insurance in this state~~].

Sec. 2302.051. RULES AND ENFORCEMENT POWERS. The commission shall adopt rules as necessary to administer this chapter [~~subchapter and Subchapters A and C-E~~] and may take other action as necessary to enforce this chapter [~~those subchapters~~].

Sec. 2302.052. DUTY TO SET FEES. The commission shall set application fees, license fees, renewal fees, and other fees as required to implement this chapter [~~Subchapters C-E~~]. The commission shall set the fees in amounts reasonable and necessary to implement and enforce this chapter [~~those subchapters~~].

Sec. 2302.101. LICENSE REQUIRED FOR SALVAGE VEHICLE DEALER. [~~(a) In this section, "automobile recycler" has the meaning assigned by Section 501.0911, Transportation Code.~~

[~~(b)~~] Unless a person holds a salvage vehicle dealer license issued under this chapter, the person may not:

(1) act as a salvage vehicle dealer or rebuilder [~~an automobile recycler~~];
or

(2) store or display a motor vehicle as an agent or escrow agent of an insurance company.

SECTION 17.06. Section 2302.107(d), Occupations Code, is amended to read as follows:

(d) A salvage vehicle agent may acquire, sell, or otherwise deal in [~~late model salvage motor vehicles~~], nonrepairable or salvage motor vehicles or used [~~or salvage~~] parts as directed by the authorizing dealer.

SECTION 17.07. Sections 2302.201, 2302.202, 2302.204, 2302.205, 2302.251, 2302.302, 2302.351, and 2302.353, Occupations Code, are amended to read as follows:

Sec. 2302.201. DUTIES ON ACQUISITION OF SALVAGE MOTOR VEHICLE. (a) A salvage vehicle dealer who acquires ownership of a salvage motor vehicle from an owner must receive from the owner a properly [~~an~~] assigned [~~certificate of~~] title.

(b) The [~~If the assigned certificate of title is not a salvage motor vehicle certificate of title, a nonrepairable motor vehicle certificate of title, or a comparable ownership document issued by another state or jurisdiction, the~~] dealer shall comply with Subchapter E, Chapter 501 [~~Section 501.0916(b)~~], Transportation Code.

Sec. 2302.202. RECORDS OF PURCHASES. A salvage vehicle dealer [~~license holder~~] shall maintain a record of each salvage motor vehicle and each used [~~salvage~~] part purchased or sold by the dealer [~~license holder~~].

Sec. 2302.204. CASUAL SALES. ~~This chapter does [This subchapter and Subchapters B-D do]~~ not apply to a person who purchases fewer than three [a] nonrepairable motor vehicles [vehicle] or salvage motor vehicles [vehicle] from a salvage vehicle dealer, an insurance company or salvage pool operator in a casual sale at auction, except that:

(1) the commission shall adopt rules as necessary to regulate casual sales by salvage vehicle dealers, insurance companies, or salvage pool operators and to enforce this section; and

(2) a salvage vehicle dealer, insurance company, or salvage pool operator who sells a motor vehicle in a casual sale shall comply with those rules and Subchapter E, Chapter 501, Transportation Code.

Sec. 2302.205. DUTY OF METAL RECYCLER. A metal recycler who purchases a motor vehicle shall submit a regular certificate of title or a nonrepairable or salvage vehicle [not later than the 60th day after the date the recycler receives the certificate of] title or comparable out-of-state ownership [equivalent document in conjunction with the purchase, submit the certificate of] document to the department and comply with Subchapter E, Chapter 501, Transportation Code.

Sec. 2302.251. DEFINITIONS. In this subchapter:

(1) "Component part" means a major component part as defined in Section 501.091, Transportation Code, or a minor component part [:

~~(A) a front end assembly or tail section;~~

~~(B) the cab of a light or heavy truck;~~

~~(C) the bed of a one ton or lighter truck; or~~

~~(D) an interior component part, a special accessory part, or a motor vehicle part that displays or should display one or more of the following:~~

~~(i) a federal safety certificate;~~

~~(ii) a motor number;~~

~~(iii) a serial number;~~

~~(iv) a manufacturer's permanent vehicle identification number; or~~

~~(v) a derivative of a vehicle identification number].~~

(2) ["Front end assembly" means ~~a motor vehicle hood, right or left front fender, grill, bumper, radiator, or radiator support, if two or more of those parts are assembled together as one unit.~~

~~(3)] "Interior component part" means a [the front or rear] seat or [the] radio of a motor vehicle.~~

(3) "Minor component part" means an interior component part, a special accessory part, or a motor vehicle part that displays or should display one or more of the following:

(A) a federal safety certificate;

(B) a motor number;

(C) a serial number or a derivative; or

(D) a manufacturer's permanent vehicle identification number or a derivative.

(4) "Special accessory part" means a tire, wheel, tailgate, or removable glass top of a motor vehicle.

~~[(5) "Tail section" means a motor vehicle roof, floor pan, right or left rear quarter panel, deck lid, or rear bumper, if two or more of those parts are assembled together as one unit.]~~

Sec. 2302.302. LIMITS ON OPERATION OF HEAVY MACHINERY. (a) A salvage vehicle dealer may not operate heavy machinery in a motor vehicle salvage yard between the hours of 7 p.m. of one day and 7 a.m. of the following day.

(b) This section does not apply to conduct necessary to a sale or purchase by the dealer.

Sec. 2302.351. INJUNCTIONS. (a) The prosecutor in the county where a motor vehicle salvage yard is located or the city attorney in the municipality where the salvage yard is located may bring suit to enjoin for a period of less than one year a violation of this chapter ~~[Subchapter G].~~

(b) If a salvage vehicle dealer, ~~or~~ an employee of the dealer acting in the course of employment, or a salvage vehicle agent operating under the dealer's license is convicted of more than one offense under Section 2302.353(a) ~~[2302.353(a)(2) or (b)],~~ the district attorney for a ~~the~~ county in which the dealer's salvage business is located may bring an action in that county to enjoin the dealer's business operations for a period of at least one year.

(c) An action under Subsection (b) must be brought in the name of the state. If judgment is in favor of the state, the court shall:

(1) enjoin the dealer from maintaining or participating in the business of a salvage vehicle dealer for a definite period of at least one year or indefinitely, as determined by the court; and

(2) order that the dealer's place of business be closed for the same period.

Sec. 2302.353. OFFENSES. (a) A person commits an offense if the person knowingly violates:

(1) a provision of this chapter other than Subchapter G ~~[Subchapter C, D, or E or a rule adopted under Subchapter C, D, or E];~~ or

(2) a rule adopted under a provision of this chapter other than Subchapter G ~~[Subchapter F].~~

~~(b) [A person commits an offense if the person violates Subchapter F in conjunction with a violation of Section 31.03, Penal Code.]~~

~~[(c)]~~ (c) A person commits an offense if the person knowingly violates Subchapter G.

~~(c) [(d) An offense under Subsection (a) is a Class A misdemeanor.]~~

~~[(e)]~~ (e) An offense under Subsection (a) ~~[(b)]~~ is a Class A misdemeanor unless it is shown on the trial of the offense that the defendant has been previously convicted of an offense under that subsection, in which event the offense is punishable as a state jail felony ~~[of the third degree].~~

~~(d) [(f)]~~ (f) An offense under Subsection (b) ~~[(c)]~~ is a Class C misdemeanor.

SECTION 17.08. Section 152.001(4), Tax Code, is amended to read as follows:

(4) "Motor Vehicle" does not include:

(A) a device moved only by human power;

(B) a device used exclusively on stationary rails or tracks;

(C) road-building machinery;

(D) a mobile office;

(E) a vehicle with respect to which the certificate of title has been surrendered in exchange for:

(i) a salvage vehicle title [~~certificate~~] issued pursuant to Chapter 501, Transportation Code;

(ii) a certificate of authority issued pursuant to Chapter 683, Transportation Code;

(iii) a nonrepairable [~~motor~~] vehicle [~~certificate of~~] title issued pursuant to Chapter 501, Transportation Code;

(iv) an ownership document issued by another state if the document is comparable to a document issued pursuant to Subparagraph (i), (ii), or (iii); or

(F) a vehicle that has been declared a total loss by an insurance company pursuant to the settlement or adjustment of a claim.

SECTION 17.09. The following provisions are repealed:

(1) Sections 501.0913, 501.0914, 501.0918, 501.0919, 501.0925, and 501.0927, Transportation Code; and

(2) Sections 2302.002, 2302.003, 2302.004, and 2302.352, Occupations Code.

SECTION 17.10. This article takes effect September 1, 2003.

SECTION 17.11. (a) A person who owns a nonrepairable motor vehicle for which a nonrepairable motor vehicle certificate of title was issued before the effective date of this article may repair, rebuild, or reconstruct the motor vehicle and receive a regular certificate of title for the motor vehicle.

(b) On the effective date of this article, the Department of Transportation shall:

(1) deem a salvage certificate issued before the effective date of this Act to be a salvage vehicle certificate of title; and

(2) discontinue issuance of salvage certificates.

(c) On the effective date of this article, the Texas Department of Transportation shall consider a salvage motor vehicle certificate of title issued before the effective date of this article to be a salvage vehicle title.

(d) On the effective date of this article, the Texas Department of Transportation shall issue a nonrepairable vehicle title as the certificate of authority to dispose of a motor vehicle as provided for in Chapter 683, Transportation Code.

SECTION 17.12. (a) The changes in law made by this article apply only to an offense committed on or after the effective date of this article. For purposes of this section, an offense was committed before the effective date of this article if any element of the offense occurred before the effective date.

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

ARTICLE 18. FUNDING OF PORT SECURITY, PROJECTS, AND STUDIES

SECTION 18.01. The heading to Chapter 55, Transportation Code, is amended to read as follows:

CHAPTER 55. FUNDING OF PORT SECURITY, PROJECTS, AND STUDIES [~~TEXAS PORT TRANSPORTATION AND ECONOMIC DEVELOPMENT FUNDING~~]

SECTION 18.02. Section 55.001, Transportation Code, is amended to read as follows:

Sec. 55.001. DEFINITIONS. In this chapter:

- (1) "Commission" means the Texas Transportation Commission.
- (2) "Committee" means the [~~Texas~~] Port Authority [~~Transportation and Economic Development~~] Advisory Committee.
- (3) [~~(2)~~] "Department" means the Texas Department of Transportation [~~Economic Development~~].
- (4) [~~(3)~~] "Fund" means the port access account fund.
- (5) [~~(4)~~] "Port security, transportation₂, or facility project" means a project that is necessary or convenient for the proper operation of a port and that will improve the security, movement₂, and intermodal transportation of cargo or passengers in commerce and trade.

SECTION 18.03. Section 55.002, Transportation Code, is amended to read as follows:

Sec. 55.002. [~~TEXAS~~] PORT [~~TRANSPORTATION AND ECONOMIC~~] DEVELOPMENT FUNDING. (a) From [~~Using only~~] money in the fund, the department shall fund:

- (1) port security, transportation₂, or facility projects; and [~~or~~]
 - (2) port studies.
- (b) The department may not fund a port security, transportation₂, or facility project unless an amount at least equal to the amount provided by the department is invested in the [~~a~~] project by a port authority or navigation district.
- (c) Port security, transportation₂, or facility projects eligible for funding under this chapter include:
- (1) construction or improvement of transportation facilities within the jurisdiction of a port;
 - (2) the dredging or deepening of channels, turning basins, or harbors;
 - (3) the construction or improvement of wharves, docks, structures, jetties, piers, storage facilities, cruise terminals, or any facilities necessary or useful in connection with port transportation or economic development;
 - (4) the construction or improvement of facilities necessary or useful in providing port security;
 - (5) the acquisition of container cranes or other mechanized equipment used in the movement of cargo or passengers in international commerce;
 - (6) [~~(5)~~] the acquisition of land to be used for port purposes;

(7) ~~(6)~~ the acquisition, improvement, enlargement, or extension of existing port facilities; and

(8) ~~(7)~~ environmental protection projects that:

(A) are required as a condition of a state, federal, or local environmental permit or other form of ~~state~~ approval;

(B) are necessary for the acquisition of spoil disposal sites and improvements to existing and future spoil sites; or

(C) ~~that~~ result from the undertaking of eligible projects.

(d) The department, in consultation with the committee, shall review the list of projects recommended by the committee to evaluate the economic benefit of each project. The commission ~~department~~, after receiving recommendations from ~~in consultation with~~ the committee and from the department, shall approve projects or studies for funding based on its review.

SECTION 18.04. Section 55.004, Transportation Code, is amended to read as follows:

Sec. 55.004. AUDIT. The department may subject a project that receives money under this chapter to a final audit. ~~[The department may adopt rules and perform other acts necessary or convenient to ensure that the final audits are conducted and that any deficiency or questioned costs noted by the audit are resolved.]~~

SECTION 18.05. Section 55.006, Transportation Code, is amended to read as follows:

Sec. 55.006. ~~[TEXAS] PORT AUTHORITY [TRANSPORTATION AND ECONOMIC DEVELOPMENT] ADVISORY COMMITTEE.~~ (a) The committee ~~[Texas Port Transportation and Economic Development Advisory Committee]~~ consists of seven members appointed by the commission. The members shall be appointed as follows:

(1) one member from the Port of Houston Authority ~~[a member of the governing body of each of the ports that are members of the Texas Ports Association or their designees];~~ ~~[and]~~

(2) three members who represent ports on the upper Texas coast; and ~~[as a nonvoting member, the executive director or the designee of the department]~~

(3) three members who represent ports on the lower Texas coast.

(b) A committee member serves at the pleasure of the commission ~~[The committee shall develop bylaws under which it operates. The bylaws must specify the procedure by which the presiding officer of the committee is elected. A majority of voting members constitutes a quorum sufficient to conduct meetings and business of the committee. A vote of the majority of the voting members present is sufficient for any action of the committee, unless the bylaws of the committee require a greater vote for a particular action].~~

(c) ~~[The committee shall meet at the call of its presiding officer, at the request of a majority of its membership, or at times prescribed in its bylaws.]~~ The committee must meet at least semiannually.

(d) A member is not entitled to compensation for service on the committee but is entitled to reimbursement for reasonable expenses the member incurs in performing committee duties.

(e) Section [Sections] 2110.002 ~~[and 2110.008]~~, Government Code, does ~~[do]~~ not apply to the committee.

SECTION 18.06. Section 55.007, Transportation Code, is amended to read as follows:

Sec. 55.007. DUTIES OF COMMITTEE. The committee shall:

(1) prepare a port mission plan;
 (2) review each project eligible to be funded under this chapter and make recommendations for approval or disapproval to the department;

(3) maintain trade data information that will assist ports in this state and international trade;

(4) annually prepare a list of projects that have been recommended by the committee, including:

(A) the recommended funding level for each project; and

(B) if staged implementation of the project is appropriate, the funding requirements for each stage; and

(5) advise the commission and the department on matters relating to port authorities ~~[adopt rules for evaluating projects that may be funded under this chapter, providing criteria for the evaluation of the economic benefit of the project, measured by the potential for the proposed project to increase:~~

~~[(A) cargo flow;~~

~~[(B) cruise passenger movement;~~

~~[(C) international commerce;~~

~~[(D) port revenues; and~~

~~[(E) the number of jobs for the port's local community].~~

SECTION 18.07. Section 55.008, Transportation Code, is amended to read as follows:

Sec. 55.008. CAPITAL PROGRAM. (a) The committee shall prepare a two-year port capital program defining the goals and objectives of the committee concerning the development of port facilities and an intermodal transportation system. The port capital program must include projects or studies submitted to the committee by any ~~[each]~~ port ~~[that is a member of the committee]~~ and recommendations for:

(1) the construction of transportation facilities connecting any port to another transportation mode; and

(2) the efficient, cost-effective development of transportation facilities or port facilities for the purpose of:

(A) enhancing international trade;

(B) enhancing security;

(C) promoting cargo flow;

(D) ~~[(C)]~~ increasing cruise passenger movements;

(E) ~~[(D)]~~ increasing port revenues; and

(F) ~~[(E)]~~ providing economic benefits to the state.

(b) The committee shall update the port capital program annually and shall submit the capital program not later than February 1 of each year to:

(1) the governor;

(2) the lieutenant governor;

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

(4) the commission ~~[department]~~.

SECTION 18.08. Chapter 55, Transportation Code, is amended by adding Section 55.009 to read as follows:

Sec. 55.009. RULES. The commission shall adopt rules to implement this chapter.

SECTION 18.09. Chapter 53, Transportation Code, is repealed.

SECTION 18.10. This article takes effect immediately if this Act receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this article takes effect September 1, 2003.

ARTICLE 19. MISCELLANEOUS PROVISIONS

SECTION 19.01. Section 201.601, Transportation Code, is amended by adding Subsections (c) and (d) to read as follows:

(c) The plan must include a component that is not financially constrained and identifies transportation improvements designed to relieve congestion. In developing this component of the plan, the department shall seek opinions and assistance from officials who have local responsibility for modes of transportation listed in Subsection (a).

(d) The plan shall include a component, published annually, that describes the evaluation of transportation improvements based on performance measures, such as indices measuring delay reductions or travel time improvements. The department shall consider the performance measures in selecting transportation improvements.

SECTION 19.02. (a) The Texas Transportation Commission may sell the tract of land comprising the Texas Department of Transportation's Bull Creek campus at Bull Creek Road and 45th Street in Austin in accordance with the procedures for disposal of surplus land acquired for highway purposes under Subchapter B, Chapter 202, Transportation Code.

(b) The commission may retain ownership and control of:

(1) the portion of the Bull Creek campus used on the effective date of this Act for the operations of the department's motor carrier division; and

(2) the parking facilities on Bull Creek Road used to serve the Bull Creek campus and the department's Camp Hubbard campus.

(c) Revenue from the sale of this property shall be deposited to the credit of the state highway fund.

(d) Section 31.158, Natural Resources Code, does not apply to a transaction authorized by this section.

SECTION 19.03. (a) On behalf of the state, the Texas Building and Procurement Commission shall sell to the Texas Department of Transportation the following state-owned land on the site of the former Robert Mueller Municipal Airport in Austin:

(1) the 3.010-acre tract of land located at 4900 Old Manor Road; and

(2) any other portion of state-owned land that the Texas Department of Transportation needs to relocate the operations carried out at its Bull Creek Campus at Bull Creek Road and 45th Street in Austin.

(b) The Texas Department of Transportation shall purchase the land before September 1, 2005.

(c) Section 31.158, Natural Resources Code, does not apply to a real estate transaction authorized by this section.

SECTION 19.04. Section 222.103(h), Transportation Code, is amended to read as follows:

(h) Money granted by the department each ~~[federal]~~ fiscal year under this section may not exceed \$800 million ~~[30 percent of the obligation authority under the federal aid highway program that is distributed to this state in that year]~~. This limitation does not apply to money required to be repaid.

SECTION 19.05. Subchapter E, Chapter 548, Transportation Code, is amended by adding Section 548.257 to read as follows:

Sec. 548.257. LOST, STOLEN, OR DESTROYED CERTIFICATE. (a) If an inspection certificate is lost, stolen, or destroyed during the period during which the certificate is valid, the vehicle must be reinspected and any applicable fee paid before a new certificate is issued, except that the vehicle is not subject to any emissions inspection. The replacement certificate is valid for the remaining period of validity of the original certificate.

(b) The department by rule shall specify the method for establishing that:

(1) the certificate has been lost, stolen, or destroyed; and

(2) the reinspection is within the period of validity of the lost, stolen, or destroyed certificate.

(c) As part of its rules under Subsection (b), the department shall adopt measures to ensure that the reinspection procedure provided by this section is not used fraudulently to avoid any required inspection.

SECTION 19.06. Section 544.007, Transportation Code, is amended by adding Subsection (i) to read as follows:

(i) An operator of a vehicle facing a traffic-control signal that does not display an indication in any of the signal heads shall stop as provided by Section 544.010 as if the intersection had a stop sign.

SECTION 19.07. Section 545.151(a), Transportation Code, is amended to read as follows:

(a) An operator approaching an intersection:

(1) shall stop, yield, and grant immediate use of the intersection;

(A) in obedience to an official traffic-control device, including a stop sign or yield right-of-way sign; or

(B) if a traffic-control signal is present but does not display an indication in any of the signal heads; and

(2) after stopping, may proceed when the intersection can be safely entered without interference or collision with traffic using a different street or roadway.

SECTION 19.08. (a) Section 545.066(c), Transportation Code, is amended to read as follows:

(c) An offense under this section is a misdemeanor punishable by a fine of not less than \$200 or more than \$1,000, except that the offense is:

(1) a Class A misdemeanor if the person causes serious bodily injury to another; or

(2) a state jail felony if the person has been previously convicted under Subdivision (1).

(b) The change in law made by Section 545.066(c), Transportation Code, as amended by this section, applies only to an offense committed on or after the effective date of this Act. For purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before that date.

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

SECTION 19.09. Chapter 551, Transportation Code, is amended by adding Subchapter D to read as follows:

SUBCHAPTER D. NEIGHBORHOOD ELECTRIC VEHICLES AND
MOTOR-ASSISTED SCOOTERS

Sec. 551.301. DEFINITIONS. In this subchapter:

(1) "Neighborhood electric vehicle" means a vehicle subject to Federal Motor Vehicle Safety Standard 500 (49 C.F.R. Section 571.500).

(2) "Motor assisted scooter" means a self-propelled device with:

(A) at least two wheels in contact with the ground during operation;

(B) a braking system capable of stopping the device under typical operating conditions;

(C) a gas or electric motor not exceeding 40 cubic centimeters;

(D) a deck designed to allow a person to stand or sit while operating the device; and

(E) the ability to be propelled by human power alone.

Sec. 551.302. OPERATION ON ROADWAY. (a) A neighborhood electric vehicle or motor assisted scooter may be operated only on a street or highway for which the posted speed limit is 35 miles per hour or less. The vehicle may cross a road or street at an intersection where the road or street has a posted speed limit of more than 35 miles per hour.

(b) A person may operate a motor assisted scooter on a path set aside for the exclusive operation of bicycles or on a sidewalk. Except as otherwise provided by this section, a provision of this title applicable to the operation of a bicycle applies to the operation of a motor assisted scooter.

(c) A county or municipality may prohibit the operation of a neighborhood electric vehicle or motor assisted scooter on any street or highway if the governing body of the county or municipality determines that the prohibition is necessary in the interest of safety.

(d) The department may prohibit the operation of a neighborhood electric vehicle or motor assisted scooter on a highway if it determines that the prohibition is necessary in the interest of safety.

(e) A provision of this title applicable to a motor vehicle does not apply to a motor assisted scooter.

SECTION 19.10. (a) Section 681.001, Transportation Code, is amended by adding Subdivision (7) to read as follows:

(7) "Stand" or "standing" means to halt an occupied or unoccupied vehicle, other than temporarily while receiving or discharging passengers.

(b) Section 681.011, Transportation Code, is amended by amending Subsections (a)-(c), (e), and (m) to read as follows:

(a) A person commits an offense if:

(1) the person stands [~~park~~s] a vehicle on which are displayed license plates issued under Section 502.253 or 502.254 or a disabled parking placard in a parking space or area designated specifically for persons with disabilities by:

(A) a political subdivision; or

(B) a person who owns or controls private property used for parking as to which a political subdivision has provided for the application of this section under Subsection (f); and

(2) the standing [~~parking~~] of the vehicle in that parking space or area is not authorized by Section 681.006, 681.007, or 681.008.

(b) A person commits an offense if the person:

(1) stands [~~park~~s] a vehicle on which license plates issued under Section 502.253 or 502.254 are not displayed and a disabled parking placard is not displayed in a parking space or area designated specifically for individuals with disabilities by:

(A) a political subdivision; or

(B) a person who owns or controls private property used for parking as to which a political subdivision has provided for the application of this section under this Subsection (f); or

(2) stands [~~park~~s] a vehicle displaying a white on red shield disabled parking placard or license plates issued under Section 502.253 in a space designated under Section 681.009(e) for the exclusive use of vehicles displaying a white on blue shield disabled parking placard.

(c) A person commits an offense if the person stands [~~park~~s] a vehicle so that the vehicle blocks an architectural improvement designed to aid persons with disabilities, including an access aisle or curb ramp.

(e) In a prosecution under this section, it is presumed that the registered owner of the motor vehicle is the person who left [~~parked~~] the vehicle standing at the time and place the offense occurred.

(m) A person commits an offense if the person:

(1) stands [~~park~~s] a vehicle on which are displayed license plates issued under Section 502.253 or a disabled parking placard in a parking space or area for which this chapter creates an exemption from payment of a fee or penalty imposed by a governmental unit;

(2) does not have a disability;

(3) is not transporting a person with disability; and

(4) does not pay any applicable fee related to standing [~~parking~~] in the space or area imposed by a governmental unit or exceeds a limitation on the length of time for standing [~~parking~~] in the space or area.

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

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

~~SECTION 19.11. (a) Contingent on **HB 2458**, Acts of the 78th Legislature, Regular Session, 2003, being enacted and becoming law, and effective January 1, 2004, Sections 162.405(a) and (d), Tax Code, are amended to read as follows:~~

~~(a) An offense under Section 162.403(1), (2), (3), (4), (5), (6), [(7),] or (8) is a Class C misdemeanor.~~

~~(d) An offense under Section 162.403(7), (22), (23), (24), (25), (26), (27), (28), or (29) is a felony of the third degree.~~

~~SECTION 19.12. Subchapter D, Chapter 502, Transportation Code, is amended by adding Section 502.1715 to read as follows:~~

~~Sec. 502.1715. ADDITIONAL FEE FOR REENGINEERING THE DRIVER'S LICENSE SYSTEM FOR SUPPORT OF THE DRIVER RESPONSIBILITY PROGRAM. (a) In addition to other fees imposed for registration of a motor vehicle, at the time of application for registration or renewal of a motor vehicle the applicant shall pay fee of \$1.~~

~~(b) Fees collected under this section shall be deposited to the credit of the state highway fund. Subject to appropriation, the money shall be used by the Department of Public Safety to support the department's reengineering of the driver's license system to provide for the issuance of a driver's license or personal identification certificate, not to include use of biometric identification, issued by the Department of Public Safety of the State of Texas and the establishment and maintenance of a system to support the Driver Responsibility Program.~~

~~(c) After August 31, 2005, the fee collected by this subsection expires.~~

~~SECTION 19.13. Subchapter D, Chapter 203, Transportation Code, is amended by adding Section 203.066 to read as follows:~~

~~Sec. 203.066. APPLICABILITY OF OTHER LAW. Section 25.1032(e), Government Code, does not apply to a condemnation proceeding brought under this subchapter.~~

SECTION 19.11. Section 451.362, Transportation Code, is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

(a) Notwithstanding other provisions of this chapter and except as provided by Subsection (c), the board, by order or resolution, may issue bonds that are secured by revenue or taxes of the authority if the bonds:

- (1) have a term of not more than 12 months; and
- (2) are payable only from revenue or taxes received on or after the date of their issuance and before the end of the fiscal year following the fiscal year in which the bonds are issued.

(c) In an authority in which the principal municipality has a population of 1.5 million or more, bonds may have a term of not more than five years. The bonds are payable only from revenue on taxes received on or after the date of their issuance.

ARTICLE 20. GENERAL PROVISIONS; EFFECTIVE DATE

ARTICLE 19B. FINANCIAL RESPONSIBILITY REQUIREMENTS

SECTION 19B.01. Chapter 601, Transportation Code, is amended by adding Subchapter N to read as follows:

SUBCHAPTER N. DATABASE INTERFACE SYSTEM TO VERIFY FINANCIAL RESPONSIBILITY

Sec. 601.450. FEASIBILITY STUDY. (a) The department and the Texas Department of Insurance shall jointly conduct a study on the feasibility, affordability, and practicability of using a database interface software system for verification of whether owners of motor vehicles have established financial responsibility as required by this chapter. The study must include consideration of and affirmative finding that the system:

- (1) is likely to reduce the number of uninsured motorists in this state;
- (2) operates reliably;
- (3) is cost-effective;
- (4) will sufficiently protect the privacy of the motor vehicle owners;

and

(5) will sufficiently ensure the security and integrity of each database to which it is applied.

(b) Before July 1, 2004, the department and the Texas Department of Insurance shall complete the study and jointly issue an order stating a determination of whether the system should be implemented.

(c) If it is determined that the system should be implemented, the department may implement the system before January 1, 2005, and this section expires January 1, 2005. The department is not required to carry out the other sections of this subchapter before the determination is made.

(d) If it is determined that the system should not be implemented, this subchapter expires on the date of issuance of the order stating the determination.

Sec. 601.451. IMPLEMENTATION OF SYSTEM; RULES. (a) The department may establish a database interface software system for verification of whether owners of motor vehicles have established financial responsibility.

(b) The department shall adopt rules to administer this subchapter.

Sec. 601.452. AGENT. (a) The department, under a competitive bidding procedure, may select an agent to develop, implement, operate, and maintain the system.

(b) The department and the Texas Department of Insurance shall jointly enter into a contract with the selected agent.

(c) A contract under this section may not have a term of more than 10 years.

Sec. 601.453. INFORMATION PROVIDED BY INSURANCE COMPANY; PRIVACY. (a) Each insurance company providing motor vehicle liability policies in this state shall allow a chosen agent sufficient access to its

databases to allow the agent to carry out this subchapter, subject to the agent's contract with the department and the Texas Department of Insurance and rules adopted under this subchapter.

(b) The agent may have access only to information determined by the department and the Texas Department of Insurance to be necessary to carry out this subchapter.

(c) Information obtained under this subchapter is confidential. The agent may use the information only for a purpose authorized under this subchapter and may not use the information for a commercial purpose.

(d) A person commits an offense if the person knowingly uses information obtained under this subchapter for any purpose not authorized under this subchapter. An offense under this subsection is a Class B misdemeanor.

SECTION 19B.02. Section 502.104, Transportation Code, is amended to read as follows:

Sec. 502.104. DISPOSITION OF CERTAIN SPECIAL FEES. Each Monday a county assessor-collector shall send to the department an amount equal to collections for the preceding week for:

(1) each transfer fee collected under Section 502.175; and

(2) each fee collected under Section 502.169(b), 502.1715, or 502.279.

SECTION 19B.03. Subchapter D, Chapter 502, Transportation Code, is amended by adding Section 502.1715 to read as follows:

Sec. 502.1715. ADDITIONAL FEE FOR MOTOR VEHICLE FINANCIAL RESPONSIBILITY VERIFICATION PROGRAM. (a) In addition to other fees imposed for registration of a motor vehicle, at the time of application for registration or renewal of registration of a motor vehicle for which the owner is required to submit evidence of financial responsibility under Section 502.153, the applicant shall pay a fee of \$1.

(b) Prior to August 31, 2005, fees collected under this subchapter shall be deposited to the credit of the state highway fund. Subject to appropriation, the money shall be used by the Department of Public Safety to:

(1) support the Department of Public Safety's re-engineering of the driver's license system to provide for the issuance by the Department of Public Safety of a driver's license or personal identification certificate, not to include use of biometric information; and

(2) establish and maintain a system to support the driver responsibility program under Chapter 708.

(c) On or after August 31, 2005, fees collected under this section shall be deposited to the credit of the state highway fund. Subject to appropriation, the money may be used by the Department of Public Safety, the Texas Department of Insurance, and the department to carry out Subchapter N, Chapter 601.

(d) The Department of Public Safety and the Texas Department of Insurance shall adopt rules and develop forms necessary to administer this section.

ARTICLE 20. GENERAL PROVISIONS; EFFECTIVE DATE

SECTION 20.01. Money required to be deposited to a specific fund or account by a change in law made by this Act is exempt from Section 403.095, Government Code.

SECTION 20.02. (a) The comptroller shall establish the Texas Mobility Fund debt service account as dedicated account within the general revenue fund.

(b) Notwithstanding Section 780.002(a) and (b), Health and Safety Code, as added by this Act, of the money allocated to the undedicated portion of the general revenue fund by Section 780.002(a), Health and Safety Code, as added by this Act, other than money that may only be appropriated to the Department of Public Safety, in fiscal years 2004 and 2005 the comptroller shall deposit that money to the credit of the Texas Mobility Fund debt service account which is subject to the provisions of subsection (d).~~the Texas mobility fund instead of to the credit of the general revenue fund known as the Texas Mobility Fund debt service.~~

(c) ~~(b)~~ Notwithstanding Section 542.4031(g)(1), Transportation Code, as added by this Act, of the money allocated to the undedicated portion of the general revenue fund in Section 542.4031(g)(1), Transportation Code, in fiscal years 2004 ~~and 2005~~ the comptroller shall deposit that money to the credit of the Texas Mobility Fund debt service account which is subject to the provisions of subsection (d).~~the Texas mobility fund instead of to the credit of the general revenue fund.~~

(d) Funds deposited to the Texas Mobility Fund debt service account pursuant to Subsections (b) and (c) may be transferred to the Texas Mobility Fund upon certification by the Texas Transportation Commission to the comptroller that a payment is due under an obligation pursuant to Article 3, Section 49-k of the Texas Constitution. Funds in the Texas Mobility Fund debt service account are not appropriated in the state fiscal year ending August 31, 2004.

(e) ~~(c)~~ Notwithstanding Sections 521.058, 521.313(c), 521.3466(e), 521.427, 522.029(i), 524.051(c), 548.508, 644.153(i), and 724.046(c), Transportation Code, as added by this Act, to the extent that those sections allocate funds to the Texas mobility fund, in fiscal years 2004 ~~and 2005~~ the comptroller shall deposit those funds to the credit of the general revenue fund instead of to the credit of the Texas mobility fund.

SECTION 20.03. Any new court cost created by this Act takes effect September 1, ~~2004~~2003.

SECTION 20.04. Except as otherwise provided by this Act, this Act takes effect September 1, 2003.

LEAVE OF ABSENCE GRANTED

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

Garza on motion of Canales.

HB 3588 - POINT OF ORDER

Representative Thompson raised a point of order against further consideration of the conference committee report on **HB 3588** under Rule 13, Section 9(a)(4) of the House Rules on the grounds that the conference committee report has text not included in the house or senate version of the bill.

HR 1893 - ADOPTED
(by Mabry)

Representative Mabry moved to suspend all necessary rules to take up and consider at this time **HR 1893**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 1893, Honoring Donna Broughton Hart on her receipt of the Most Memorable Teacher Award for 2003 from the Baylor School of Education.

HR 1893 was adopted without objection.

On motion of Representative Gutierrez, the names of all the members of the house were added to **HR 1893** as signers thereof.

(Phillips in the chair)

HR 1869 - ADOPTED
(by Geren)

Representative Geren moved to suspend all necessary rules to take up and consider at this time **HR 1869**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 1869, In memory of Vance Godbey of Azle.

HR 1869 was unanimously adopted by a rising vote.

(King in the chair)

HR 1888 - ADOPTED
(by Y. Davis)

Representative Gattis moved to suspend all necessary rules to take up and consider at this time **HR 1888**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 1888, Commending Andrea La Shawn Medley of Houston for her service as a legislative intern in the office of Representative Yvonne Davis.

HR 1888 was adopted without objection.

HR 1889 - ADOPTED
(by Y. Davis)

Representative Gattis moved to suspend all necessary rules to take up and consider at this time **HR 1889**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 1889, Commending Ryan Richard for his service as a legislative intern in the office of Representative Yvonne Davis.

HR 1889 was adopted without objection.

HR 1890 - ADOPTED
(by Y. Davis)

Representative Gattis moved to suspend all necessary rules to take up and consider at this time **HR 1890**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 1890, Commending Anthony Sherman for his service as a legislative intern in the office of Representative Yvonne Davis.

HR 1890 was adopted without objection.

HR 1891 - ADOPTED
(by Y. Davis)

Representative Gattis moved to suspend all necessary rules to take up and consider at this time **HR 1891**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 1891, Congratulating Beverly Kerl Mitchell-Brooks on her receipt of the Non Profit Executive Award from Legal Aid of NorthWest Texas.

HR 1891 was adopted without objection.

(Speaker in the chair)

HB 3588 - (consideration continued)

HB 3588 - POINT OF ORDER DISPOSITION

The speaker overruled the point of order that was pending at this time.

HB 3588 - POINT OF ORDER

Representative Thompson raised a point of order against further consideration of **HB 3588** under Rule 13, Section 11 of the House Rules on the grounds that the conference committee report analysis is incomplete.

The speaker overruled the point of order.

Representative Krusee moved to adopt the conference committee report on **HB 3588**.

A record vote was requested.

The motion prevailed by (Record 938): 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; 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; 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.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Garza.

Absent — Castro; Dutton.

STATEMENTS OF VOTE

When Record No. 938 was taken, I was in the house but away from my desk. I would have voted yes.

Castro

When Record No. 938 was taken, my vote failed to register. I would have voted yes.

Dutton

HR 1862 - ADOPTED (by Heflin)

The following privileged resolution was laid before the house:

HR 1862

BE IT RESOLVED by the House of Representatives of the State of Texas, 78th Legislature, Regular Session, 2003, That House Rule 13, Sections 9(a) and (b), be suspended in part as provided by House Rule 13, Section 9(f), to enable the conference committee appointed to resolve the differences on **HB 7**, relating to making supplemental appropriations and making reductions in current appropriations, to consider and take action on the following matter:

(1) House Rule 13, Sections 9(a)(1) and 9(b)(2), are suspended to permit the committee to decrease the amount of the appropriation in Section 1 of the bill so that Section 1 reads as follows:

SECTION 3. HEALTH AND HUMAN SERVICES COMMISSION: MEDICAID ACUTE CARE COSTS. Out of the Economic Stabilization Fund 0599, the amount of \$406,748,606 is appropriated to the Health and Human

Services Commission for use during the remainder of the state fiscal year ending August 31, 2003, for the purpose of providing services under the state Medicaid acute care program.

Explanation: It is necessary to decrease the amount of the appropriation to take into account the unexpectedly more favorable federal match rate for Medicaid.

(2) House Rule 13, Section 9(a)(2), is suspended to permit the committee to omit Section 1(b) of the bill which reads as follows:

(b) The money described by Subsection (a) of this section may be expended only for the purpose described by Subsection (a) of this section and only if:

(1) Medicaid expenditures exceed otherwise available revenue because of changes in caseloads or costs or because of a lower federal match rate; and

(2) the Health and Human Services Commission has used all revenue available and appropriated to the Medicaid program, including but not limited to premium credits and vendor drug rebates.

Explanation: It is necessary to omit the text to ensure that the appropriations made by the bill in relation to the state Medicaid program have the effect of increasing the availability of undedicated general revenue.

(3) House Rule 13, Sections 9(a)(3) and (4), are suspended to permit the committee to add a new Section 3 of the bill to read as follows:

SECTION 3. LAPSE TO UNDEDICATED GENERAL REVENUE. This section is for informational purposes only. It is the intent of the legislature that the implementation of Sections 1 and 2 of this Act increase the availability of undedicated general revenue by approximately \$127,448,606 by the end of the state fiscal year ending August 31, 2003.

Explanation: It is necessary to add the text to ensure that the appropriations made by the bill in relation to the state Medicaid program have the effect of increasing the availability of undedicated general revenue.

(4) House Rule 13, Section 9(b)(4), is suspended to permit the committee to increase the amount of the appropriation in Section 8(a) of the bill so that Section 8(a) reads as follows:

(a) Out of the Economic Stabilization Fund 0599, and in addition to other amounts appropriated for this purpose, the amount of \$516,000,000 is appropriated to the Teacher Retirement System for use during the state fiscal biennium beginning September 1, 2003, for the purpose of funding the TRS-Care retiree health insurance program.

Explanation: It is necessary to increase the amount of the appropriation to ensure the solvency of the TRS-Care retiree health insurance program.

(5) House Rule 13, Sections 9(a)(3) and (4) and 9(b)(5), are suspended to permit the committee to make a new appropriation by adding a new Section 12 of the bill to read as follows:

SECTION 12. STATE COMMISSION ON JUDICIAL CONDUCT: MISCONDUCT PROCEEDINGS. Out of the Economic Stabilization Fund 0599, the amount of \$44,000 is appropriated to the State Commission on Judicial Conduct for use during the remainder of the state fiscal year ending August 31, 2003, for purposes related to conducting misconduct proceedings.

Explanation: It is necessary to make the new appropriation to allow the State Commission on Judicial Conduct to pay costs associated with certain misconduct proceedings.

HR 1862 was adopted.

HB 7 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Heflin submitted the following conference committee report on **HB 7** :

Austin, Texas, May 31, 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 7** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Bivins
West, Royce
Staples
Zaffirini
Nelson

Heflin
Luna
Turner
J. Keffer
Wohlgemuth

On the part of the senate

On the part of the house

HB 7, A bill to be entitled An Act relating to making supplemental appropriations and making reductions in current appropriations.

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

SECTION 1. HEALTH AND HUMAN SERVICES COMMISSION: MEDICAID ACUTE CARE COSTS. Out of the Economic Stabilization Fund 0599, the amount of \$406,748,606 is appropriated to the Health and Human Services Commission for use during the remainder of the state fiscal year ending August 31, 2003, for the purpose of providing services under the state Medicaid acute care program.

SECTION 2. DEPARTMENT OF HEALTH: TEXAS HEALTH STEPS/MEDICAL TRANSPORTATION. Out of the Economic Stabilization Fund 0599, the amount of \$6,900,000 is appropriated to the Department of Health for use during the remainder of the state fiscal year ending August 31, 2003, for the purpose of the Medicaid programs operated by the Department of Health, including Texas Health Steps and the Medical Transportation Program.

SECTION 3. LAPSE TO UNDEDICATED GENERAL REVENUE. This section is for informational purposes only. It is the intent of the legislature that the implementation of Sections 1 and 2 of this Act increase the availability of undedicated general revenue by approximately \$127,448,606 by the end of the state fiscal year ending August 31, 2003.

SECTION 4. HEALTH AND HUMAN SERVICES COMMISSION: CHILDREN'S HEALTH INSURANCE PROGRAM. Out of the Economic Stabilization Fund 0599, the amount of \$26,400,000 is appropriated to the Health and Human Services Commission for use during the remainder of the state fiscal year ending August 31, 2003, for the purpose of providing services under the Children's Health Insurance Program.

SECTION 5. DEPARTMENT OF HUMAN SERVICES: TEXAS INTEGRATED ELIGIBILITY REDESIGN SYSTEM. Out of general revenue dedicated account number 0345, Telecommunications Infrastructure Fund No. 345, the amount of \$26,400,000 is appropriated to the Department of Human Services for use during the state fiscal year ending August 31, 2003, for the purpose of funding the Texas Integrated Eligibility Redesign System (TIERS).

SECTION 6. TEXAS EDUCATION AGENCY: TECHNOLOGY ALLOTMENT. (a) Contingent on legislation being enacted by the 78th Legislature, Regular Session, 2003, that becomes law and that authorizes the use of money in the Telecommunications Infrastructure Fund to fund the per student technology allotment during the state fiscal year ending August 31, 2003, the amount of \$116,000,000 is appropriated to the Texas Education Agency out of general revenue dedicated account number 345, Telecommunications Infrastructure Fund No. 345, for use during the state fiscal year ending August 31, 2003, for the purpose of funding the existing \$30 per student technology allotment.

(b) In the event legislation described by Subsection (a) of this section does not become law, the amount of \$116,000,000 is appropriated to the Texas Education Agency out of State Textbook Fund 0003 for use during the state fiscal year ending August 31, 2003, for the purpose of funding the existing \$30 per student technology allotment.

SECTION 7. DEPARTMENT OF HUMAN SERVICES: DISASTER ASSISTANCE PAYMENTS. Out of the Economic Stabilization Fund 0599, the amount of \$6,400,000 is appropriated to the Department of Human Services for use during the state fiscal year ending August 31, 2003, for the purpose of reimbursing the Department of Human Services for previously expended disaster assistance payments.

SECTION 8. TEACHER RETIREMENT SYSTEM: TRS-CARE RETIREE HEALTH INSURANCE. (a) Out of the Economic Stabilization Fund 0599, and in addition to other amounts appropriated for this purpose, the amount of \$516,000,000 is appropriated to the Teacher Retirement System for use during the state fiscal biennium beginning September 1, 2003, for the purpose of funding the TRS-Care retiree health insurance program.

(b) This section takes effect September 1, 2003.

SECTION 9. OFFICE OF THE GOVERNOR: TEXAS ENTERPRISE FUND. Contingent on legislation being enacted by the 78th Legislature, Regular Session, 2003, that becomes law and that creates a Texas Enterprise Fund that among other things may be used by the governor for purposes related to economic development, the amount of \$295,000,000 is appropriated out of the Economic Stabilization Fund 0599, with the amounts transferred to the Texas

Enterprise Fund, for use by the office of the governor during the two-year period beginning on the date that the legislation creating the Texas Enterprise Fund takes effect for the purposes specified in the legislation creating the Texas Enterprise Fund. In the event legislation described by this section that becomes law also creates a single Other Events trust fund, the use of which is subject to the control of the governor, then out of the \$295,000,000 appropriated by this section the amount of \$10,000,000 is appropriated for deposit to the credit of the Other Events trust fund for use by the office of the governor for the purposes specified in the legislation creating the fund.

SECTION 10. COMPTROLLER FISCAL PROGRAM: PAYMENT OF HEALTH CARE JUDGMENT. Out of the Economic Stabilization Fund 0599, the amount of \$3,037,200 is appropriated to Fiscal Program - Comptroller of Public Accounts for use during the state fiscal year ending August 31, 2003, for payment of final judgment in State of Texas v. U.S. Department of Health and Human Services, No. 01-50338, U.S. Court of Appeals for the Fifth Circuit (upholding the administrative decision of Departmental Appeals Board, Department of Health and Human Services, docket number A-97-91).

SECTION 11. DEPARTMENT OF MENTAL HEALTH AND MENTAL RETARDATION: QUALITY ASSURANCE FEE. (a) Contingent on legislation being enacted by the 78th Legislature, Regular Session, 2003, that becomes law and that authorizes the imposition of a quality assurance fee on facilities owned by the Department of Mental Health and Mental Retardation, the amount of \$11,139,625 is appropriated to the Department of Mental Health and Mental Retardation out of general revenue dedicated account 5080, Quality Assurance Fund, for use during the state fiscal year ending August 31, 2003, for the purpose of providing operating funds to the state-operated facilities necessary to fund the state's portion of the quality assurance fee for the state fiscal year ending August 31, 2003.

(b) This subsection is for informational purposes only. It is the intent of the legislature that the Department of Mental Health and Mental Retardation ensure that the implementation of this section increase the availability of dedicated general revenue by \$16,702,478 by the end of the state fiscal year ending August 31, 2003.

SECTION 12. STATE COMMISSION ON JUDICIAL CONDUCT: MISCONDUCT PROCEEDINGS. Out of the Economic Stabilization Fund 0599, the amount of \$44,000 is appropriated to the State Commission on Judicial Conduct for use during the remainder of the state fiscal year ending August 31, 2003, for purposes related to conducting misconduct proceedings.

SECTION 13. CERTAIN REDUCTIONS IN APPROPRIATIONS FOR THE STATE FISCAL YEAR ENDING AUGUST 31, 2003. (a) The appropriations from the general revenue fund for the state fiscal year ending August 31, 2003, made by Chapter 1515, Acts of the 77th Legislature, Regular Session, 2001 (the General Appropriations Act), to the agencies listed in this subsection are reduced respectively for each agency, in the unencumbered amounts indicated by this subsection, for a total aggregate reduction of

\$883,977,783. Each of the following agencies shall identify the strategies and objectives out of which the indicated reductions in unencumbered amounts appropriated to the agency from the general revenue fund are made:

- (1) Aircraft Pooling Board: \$500,000 from General Revenue Fund 0001;
- (2) Commission on the Arts: \$158,000 from General Revenue Fund 0001;
- (3) Office of the Attorney General: \$7,250,000 from General Revenue Fund 0001;
- (4) Bond Review Board: \$41,248 from General Revenue Fund 0001;
- (5) Building and Procurement Commission: \$6,837,988 from General Revenue Fund 0001;
- (6) Comptroller of Public Accounts: \$6,035,228 from General Revenue Fund 0001;
- (7) Fiscal Programs - Comptroller of Public Accounts: \$8,000,000 from General Revenue Fund 0001;
- (8) Employees Retirement System: \$20,400,000 from General Revenue Fund 0001;
- (9) Texas Ethics Commission: \$135,000 from General Revenue Fund 0001;
- (10) Public Finance Authority: \$57,611,021 from General Revenue Fund 0001;
- (11) Fire Fighters' Pension Commissioner: \$10,306 from General Revenue Fund 0001;
- (12) Office of the Governor: \$1,855,374 from General Revenue Fund 0001;
- (13) Trusteed Programs within the Office of the Governor: \$1,000,000 from General Revenue Fund 0001;
- (14) Historical Commission: \$253,119 from General Revenue Fund 0001;
- (15) Commission on Human Rights: \$54,610 from General Revenue Fund 0001;
- (16) Texas Incentive and Productivity Commission: \$16,546 from General Revenue Fund 0001;
- (17) Department of Information Resources: \$205,956 from General Revenue Fund 0001;
- (18) Library and Archives Commission: \$274,979 from General Revenue Fund 0001;
- (19) Pension Review Board: \$19,200 from General Revenue Fund 0001;
- (20) Preservation Board: \$1,394,185 from General Revenue Fund 0001;
- (21) State Office of Risk Management: \$351,077 from General Revenue Fund 0001;
- (22) Secretary of State: \$1,100,000 from General Revenue Fund 0001;

- (23) Office of State-Federal Relations: \$85,233 from General Revenue Fund 0001;
- (24) Veterans Commission: \$150,573 from General Revenue Fund 0001;
- (25) Department on Aging: \$422,515 from General Revenue Fund 0001;
- (26) Commission on Alcohol and Drug Abuse: \$9,576,994 from General Revenue Fund 0001;
- (27) Commission for the Blind: \$726,434 from General Revenue Fund 0001;
- (28) Cancer Council: \$368,633 from General Revenue Fund 0001;
- (29) Commission for the Deaf and Hard of Hearing: \$6,000 from General Revenue Fund 0001;
- (30) Interagency Council on Early Childhood Intervention: \$3,046,554 from General Revenue Fund 0001;
- (31) Department of Health: \$62,263,854 from General Revenue Fund 0001;
- (32) Health and Human Services Commission: \$5,949,196 from General Revenue Fund 0001;
- (33) Department of Human Services: \$4,313,847 from General Revenue Fund 0001;
- (34) Department of Mental Health and Mental Retardation: \$32,338,079 from General Revenue Fund 0001;
- (35) Department of Protective and Regulatory Services: \$1,796,571 from General Revenue Fund 0001;
- (36) Rehabilitation Commission: \$218,260 from General Revenue Fund 0001;
- (37) Texas Education Agency: \$85,865,515 from General Revenue Fund 0001;
- (38) State Board for Educator Certification: \$1,227,725 from General Revenue Fund 0001;
- (39) School for the Blind and Visually Impaired: \$843,000 from General Revenue Fund 0001;
- (40) School for the Deaf: \$1,108,919 from General Revenue Fund 0001;
- (41) Teacher Retirement System: \$75,000,000 from General Revenue Fund 0001;
- (42) Higher Education Employees Group Insurance Contributions: \$18,813,496 from General Revenue Fund 0001;
- (43) Higher Education Coordinating Board: \$89,925,420 from General Revenue Fund 0001;
- (44) The University of Texas System Administration: \$75,000 from General Revenue Fund 0001;
- (45) The University of Texas at Arlington: \$4,544,368 from General Revenue Fund 0001;

- (46) The University of Texas at Austin: \$12,667,307 from General Revenue Fund 0001;
- (47) The University of Texas at Dallas: \$3,021,096 from General Revenue Fund 0001;
- (48) The University of Texas at El Paso: \$3,328,144 from General Revenue Fund 0001;
- (49) The University of Texas - Pan American: \$2,575,149 from General Revenue Fund 0001;
- (50) The University of Texas at Brownsville: \$890,876 from General Revenue Fund 0001;
- (51) The University of Texas of the Permian Basin: \$658,856 from General Revenue Fund 0001;
- (52) The University of Texas at San Antonio: \$3,432,800 from General Revenue Fund 0001;
- (53) The University of Texas at Tyler: \$1,095,100 from General Revenue Fund 0001;
- (54) Texas A&M University System Administrative and General: \$44,663 from General Revenue Fund 0001;
- (55) Texas A&M University: \$9,893,931 from General Revenue Fund 0001;
- (56) Texas A&M University at Galveston: \$1,076,751 from General Revenue Fund 0001;
- (57) Prairie View A&M University: \$5,188,557 from General Revenue Fund 0001;
- (58) Tarleton State University: \$2,301,386 from General Revenue Fund 0001;
- (59) Texas A&M University - Corpus Christi: \$3,671,301 from General Revenue Fund 0001;
- (60) Texas A&M University - Kingsville: \$2,794,366 from General Revenue Fund 0001;
- (61) Texas A&M International University: \$2,376,325 from General Revenue Fund 0001;
- (62) West Texas A&M University: \$2,796,163 from General Revenue Fund 0001;
- (63) Texas A&M University - Commerce: \$2,234,798 from General Revenue Fund 0001;
- (64) Texas A&M University - Texarkana: \$1,430,082 from General Revenue Fund 0001;
- (65) University of Houston System Administration: \$198,559 from General Revenue Fund 0001;
- (66) University of Houston: \$9,123,978 from General Revenue Fund 0001;
- (67) University of Houston - Clear Lake: \$1,899,602 from General Revenue Fund 0001;
- (68) University of Houston - Downtown: \$1,314,929 from General Revenue Fund 0001;

- (69) University of Houston - Victoria: \$624,838 from General Revenue Fund 0001;
- (70) Midwestern State University: \$1,211,490 from General Revenue Fund 0001;
- (71) University of North Texas System Administration: \$7,000 from General Revenue Fund 0001;
- (72) University of North Texas: \$6,590,104 from General Revenue Fund 0001;
- (73) Stephen F. Austin State University: \$2,803,238 from General Revenue Fund 0001;
- (74) Texas Southern University: \$3,044,575 from General Revenue Fund 0001;
- (75) Texas Tech University System Administration: \$35,000 from General Revenue Fund 0001;
- (76) Texas Tech University: \$7,375,114 from General Revenue Fund 0001;
- (77) Texas Woman's University: \$3,215,030 from General Revenue Fund 0001;
- (78) Texas State University System Central Office, Board of Regents: \$93,626 from General Revenue Fund 0001;
- (79) Angelo State University: \$1,545,375 from General Revenue Fund 0001;
- (80) Lamar University - Beaumont: \$2,066,995 from General Revenue Fund 0001;
- (81) Lamar Institute of Technology: \$596,126 from General Revenue Fund 0001;
- (82) Lamar State College - Orange: \$416,959 from General Revenue Fund 0001;
- (83) Lamar State College - Port Arthur: \$599,904 from General Revenue Fund 0001;
- (84) Sam Houston State University: \$2,587,908 from General Revenue Fund 0001;
- (85) Southwest Texas State University: \$4,591,981 from General Revenue Fund 0001;
- (86) Sul Ross State University: \$929,345 from General Revenue Fund 0001;
- (87) Sul Ross State University Rio Grande College: \$380,764 from General Revenue Fund 0001;
- (88) The University of Texas Southwestern Medical Center at Dallas: \$5,034,845 from General Revenue Fund 0001;
- (89) The University of Texas Medical Branch at Galveston: \$12,056,709 from General Revenue Fund 0001;
- (90) The University of Texas Health Science Center at Houston: \$6,656,182 from General Revenue Fund 0001;
- (91) The University of Texas Health Science Center at San Antonio: \$6,489,738 from General Revenue Fund 0001;

- (92) The University of Texas M. D. Anderson Cancer Center: \$7,444,406 from General Revenue Fund 0001;
- (93) The University of Texas Health Center at Tyler: \$1,771,490 from General Revenue Fund 0001;
- (94) Texas A&M University System Health Science Center: \$3,400,394 from General Revenue Fund 0001;
- (95) University of North Texas Health Science Center at Fort Worth: \$2,824,279 from General Revenue Fund 0001;
- (96) Texas Tech University Health Sciences Center: \$6,352,655 from General Revenue Fund 0001;
- (97) Texas State Technical College System Administration: \$222,022 from General Revenue Fund 0001;
- (98) Texas State Technical College - Harlingen: \$1,177,608 from General Revenue Fund 0001;
- (99) Texas State Technical College - West Texas: \$796,468 from General Revenue Fund 0001;
- (100) Texas State Technical College - Marshall: \$293,088 from General Revenue Fund 0001;
- (101) Texas State Technical College - Waco: \$1,943,106 from General Revenue Fund 0001;
- (102) Texas Agricultural Experiment Station: \$2,638,303 from General Revenue Fund 0001;
- (103) Texas Cooperative Extension: \$2,059,699 from General Revenue Fund 0001;
- (104) Texas Engineering Experiment Station: \$609,080 from General Revenue Fund 0001;
- (105) Texas Transportation Institute: \$226,228 from General Revenue Fund 0001;
- (106) Texas Engineering Extension Service: \$309,269 from General Revenue Fund 0001;
- (107) Texas Forest Service: \$564,394 from General Revenue Fund 0001;
- (108) Texas Wildlife Damage Management Service: \$166,663 from General Revenue Fund 0001;
- (109) Texas Veterinary Medical Diagnostic Laboratory: \$215,790 from General Revenue Fund 0001;
- (110) Texas Food and Fibers Commission: \$107,056 from General Revenue Fund 0001;
- (111) Supreme Court of Texas: \$281,541 from General Revenue Fund 0001;
- (112) Court of Criminal Appeals: \$825,903 from General Revenue Fund 0001;
- (113) First Court of Appeals District, Houston: \$119,363 from General Revenue Fund 0001;
- (114) Second Court of Appeals District, Fort Worth: \$38,972 from General Revenue Fund 0001;

- (115) Third Court of Appeals District, Austin: \$133,283 from General Revenue Fund 0001;
- (116) Fourth Court of Appeals District, San Antonio: \$83,175 from General Revenue Fund 0001;
- (117) Fifth Court of Appeals District, Dallas: \$259,800 from General Revenue Fund 0001;
- (118) Sixth Court of Appeals District, Texarkana: \$75,025 from General Revenue Fund 0001;
- (119) Seventh Court of Appeals District, Amarillo: \$98,168 from General Revenue Fund 0001;
- (120) Eighth Court of Appeals District, El Paso: \$102,780 from General Revenue Fund 0001;
- (121) Ninth Court of Appeals District, Beaumont: \$74,800 from General Revenue Fund 0001;
- (122) Tenth Court of Appeals District, Waco: \$77,197 from General Revenue Fund 0001;
- (123) Eleventh Court of Appeals District, Eastland: \$73,557 from General Revenue Fund 0001;
- (124) Twelfth Court of Appeals District, Tyler: \$49,249 from General Revenue Fund 0001;
- (125) Thirteenth Court of Appeals District, Corpus Christi: \$134,298 from General Revenue Fund 0001;
- (126) Fourteenth Court of Appeals District, Houston: \$181,863 from General Revenue Fund 0001;
- (127) Office of Court Administration, Texas Judicial Council: \$362,538 from General Revenue Fund 0001;
- (128) Office of the State Prosecuting Attorney: \$24,645 from General Revenue Fund 0001;
- (129) State Law Library: \$63,923 from General Revenue Fund 0001;
- (130) Court Reporters Certification Board: \$7,226 from General Revenue Fund 0001;
- (131) State Commission on Judicial Conduct: \$66,730 from General Revenue Fund 0001;
- (132) Judiciary Section, Comptroller's Department: \$2,000,000 from General Revenue Fund 0001;
- (133) Adjutant General's Department: \$650,476 from General Revenue Fund 0001;
- (134) Alcoholic Beverage Commission: \$1,875,725 from General Revenue Fund 0001;
- (135) Department of Criminal Justice: \$133,400,000 from General Revenue Fund 0001;
- (136) Criminal Justice Policy Council: \$64,622 from General Revenue Fund 0001;
- (137) Commission on Fire Protection: \$224,000 from General Revenue Fund 0001;

- (138) Commission on Jail Standards: \$51,607 from General Revenue Fund 0001;
- (139) Juvenile Probation Commission: \$1,985,283 from General Revenue Fund 0001;
- (140) Texas Military Facilities Commission: \$180,000 from General Revenue Fund 0001;
- (141) Texas Commission on Private Security: \$129,736 from General Revenue Fund 0001;
- (142) Department of Public Safety: \$3,380,525 from General Revenue Fund 0001;
- (143) Youth Commission: \$11,811,293 from General Revenue Fund 0001;
- (144) Department of Agriculture: \$3,447,858 from General Revenue Fund 0001;
- (145) Animal Health Commission: \$641,471 from General Revenue Fund 0001;
- (146) Commission on Environmental Quality: \$765,669 from General Revenue Fund 0001;
- (147) General Land Office and Veterans' Land Board: \$329,227 from General Revenue Fund 0001;
- (148) Trusteed Programs within the General Land Office: \$635,458 from General Revenue Fund 0001;
- (149) Parks and Wildlife Department: \$209,592 from General Revenue Fund 0001;
- (150) Railroad Commission: \$1,104,047 from General Revenue Fund 0001;
- (151) Texas River Compact Commissions: \$22,000 from General Revenue Fund 0001;
- (152) Soil and Water Conservation Board: \$644,171 from General Revenue Fund 0001;
- (153) Water Development Board: \$704,751 from General Revenue Fund 0001;
- (154) Debt Service Payments - Non-Self Supporting G.O. Water Bonds: \$2,500,000 from General Revenue Fund 0001;
- (155) Texas Aerospace Commission: \$107,688 from General Revenue Fund 0001;
- (156) Texas Department of Economic Development: \$1,719,429 from General Revenue Fund 0001;
- (157) Department of Housing and Community Affairs: \$753,187 from General Revenue Fund 0001;
- (158) Texas Lottery Commission: \$111,024 from General Revenue Fund 0001;
- (159) Office of Rural and Community Affairs: \$297,331 from General Revenue Fund 0001;
- (160) Department of Transportation: \$1,767,926 from General Revenue Fund 0001;

- (161) Texas Workforce Commission: \$7,786,394 from General Revenue Fund 0001;
- (162) State Office of Administrative Hearings: \$158,846 from General Revenue Fund 0001;
- (163) Board of Barber Examiners: \$8,079 from General Revenue Fund 0001;
- (164) Board of Chiropractic Examiners: \$24,874 from General Revenue Fund 0001;
- (165) Cosmetology Commission: \$127,800 from General Revenue Fund 0001;
- (166) Credit Union Department: \$109,000 from General Revenue Fund 0001;
- (167) Texas State Board of Dental Examiners: \$100,197 from General Revenue Fund 0001;
- (168) Department of Banking: \$300,000 from General Revenue Fund 0001;
- (169) Office of Consumer Credit Commissioner: \$224,600 from General Revenue Fund 0001;
- (170) Savings and Loan Department: \$118,391 from General Revenue Fund 0001;
- (171) Funeral Service Commission: \$36,000 from General Revenue Fund 0001;
- (172) Office of Public Insurance Counsel: \$90,542 from General Revenue Fund 0001;
- (173) Board of Professional Land Surveying: \$26,400 from General Revenue Fund 0001;
- (174) Department of Licensing and Regulation: \$475,992 from General Revenue Fund 0001;
- (175) Board of Medical Examiners: \$354,502 from General Revenue Fund 0001;
- (176) Board of Nurse Examiners: \$184,100 from General Revenue Fund 0001;
- (177) Board of Vocational Nurse Examiners: \$105,327 from General Revenue Fund 0001;
- (178) Optometry Board: \$25,600 from General Revenue Fund 0001;
- (179) Structural Pest Control Board: \$91,339 from General Revenue Fund 0001;
- (180) Executive Council of Physical Therapy and Occupational Therapy Examiners: \$62,965 from General Revenue Fund 0001;
- (181) Board of Plumbing Examiners: \$106,245 from General Revenue Fund 0001;
- (182) Board of Podiatric Medical Examiners: \$13,871 from General Revenue Fund 0001;
- (183) Board of Examiners of Psychologists: \$44,290 from General Revenue Fund 0001;

(184) Real Estate Commission: \$305,074 from General Revenue Fund 0001;

(185) Securities Board: \$40,000 from General Revenue Fund 0001;

(186) Board of Tax Professional Examiners: \$10,926 from General Revenue Fund 0001;

(187) Public Utility Commission of Texas: \$826,000 from General Revenue Fund 0001;

(188) Office of Public Utility Counsel: \$135,414 from General Revenue Fund 0001;

(189) Board of Veterinary Medical Examiners: \$40,400 from General Revenue Fund 0001; and

(190) agencies and entities appropriated general revenue funds by Article X, Chapter 1515, Acts of the 77th Legislature, Regular Session, 2001 (the General Appropriations Act): \$9,156,897 from General Revenue Fund 0001, subject to Section 14 of this Act.

(b) The amount of the unencumbered appropriation originally made from the general revenue fund by Chapter 637, Acts of the 77th Legislature, Regular Session, 2001 (House Bill 1333), to the Office of the Governor for the state fiscal year beginning September 1, 2001, and appropriated to the Trusteed Programs within the Office of the Governor by Chapter 1515, Acts of the 77th Legislature, Regular Session, 2001 (the General Appropriations Act), for the state fiscal biennium beginning September 1, 2001, is reduced by \$1,989,551.

(c) The amounts of the unencumbered appropriations listed below, that were appropriated from the general revenue fund by Chapter 1515, Acts of the 77th Legislature, Regular Session, 2001 (the General Appropriations Act), for Public Junior/Community Colleges, are reduced for the state fiscal year ending August 31, 2003, in the aggregate amount of \$55,204,891, as indicated by this subsection. Pursuant to Section 130.0031, Education Code, the Texas Higher Education Coordinating Board and the comptroller of public accounts shall apply the reductions in general revenue appropriations to each community or junior college in the amounts indicated:

(1) Alamo Community College: \$4,214,605;

(2) Alvin Community College: \$576,015;

(3) Amarillo College: \$1,223,511;

(4) Angelina College: \$573,615;

(5) Austin Community College: \$2,703,736;

(6) Blinn College: \$1,428,545;

(7) Brazosport College: \$435,180;

(8) Central Texas College: \$1,260,755;

(9) Cisco Junior College: \$309,318;

(10) Clarendon College: \$162,286;

(11) Coastal Bend College: \$492,350;

(12) College of the Mainland: \$448,597;

(13) Collin County Community College: \$1,528,640;

(14) Dallas County Community College: \$6,071,784;

(15) Del Mar College: \$1,335,391;

- (16) El Paso Community College: \$2,255,613;
- (17) Frank Phillips College: \$171,597;
- (18) Galveston College: \$368,098;
- (19) Grayson County College: \$447,516;
- (20) Hill College: \$376,381;
- (21) Houston Community College: \$4,592,727;
- (22) Howard College: \$729,097;
- (23) Kilgore College: \$792,044;
- (24) Laredo Community College: \$907,483;
- (25) Lee College: \$779,759;
- (26) McLennan Community College: \$810,436;
- (27) Midland College: \$636,743;
- (28) Navarro College: \$625,093;
- (29) North Central Texas College: \$515,917;
- (30) North Harris Community College: \$2,742,732;
- (31) Northeast Texas Community College: \$248,906;
- (32) Odessa College: \$610,692;
- (33) Panola College: \$250,170;
- (34) Paris Junior College: \$453,421;
- (35) Ranger College: \$162,286;
- (36) San Jacinto College: \$2,573,261;
- (37) South Plains College: \$937,288;
- (38) South Texas Community College: \$1,369,007;
- (39) Southwest Texas Junior College: \$436,733;
- (40) Tarrant County College: \$2,818,972;
- (41) Temple College: \$441,421;
- (42) Texarkana College: \$634,857;
- (43) Texas Southmost College: \$815,904;
- (44) Trinity Valley Community College: \$736,823;
- (45) Tyler Junior College: \$1,138,344;
- (46) Vernon Regional Junior College: \$393,246;
- (47) Victoria College: \$530,976;
- (48) Weatherford College: \$376,405;
- (49) Western Texas College: \$194,003; and
- (50) Wharton County Junior College: \$566,612.

(d) The appropriations from dedicated accounts in the general revenue fund for the state fiscal year ending August 31, 2003, made by Chapter 1515, Acts of the 77th Legislature, Regular Session, 2001 (the General Appropriations Act), to the agencies listed in this subsection are reduced respectively for each agency, in the unencumbered amounts indicated by this subsection from the dedicated accounts indicated by this subsection, for a total aggregate reduction of \$95,196,620. Each of the following agencies shall identify the strategies and objectives out of which the indicated reductions in unencumbered amounts appropriated to the agency from the indicated account in the general revenue fund are made:

(1) Commission on the Arts: \$138,000 from general revenue dedicated account number 0334, Commission on the Arts Operating Account;

(2) Commission on State Emergency Communications: \$762,002 from general revenue dedicated account number 5007, Advisory Commission on Emergency Communication Account;

(3) Commission on State Emergency Communications: \$2,506,635 from general revenue dedicated account number 5050, 911 Service Fees Account;

(4) Trusteed Programs within the Office of the Governor: \$1,209,725 from general revenue dedicated account number 0421, Criminal Justice Planning Account;

(5) Department of Health: \$150,000 from general revenue dedicated account number 5046, Permanent Fund for Emergency Medical Services and Trauma Care;

(6) Health and Human Services Commission: \$13,000,000 from general revenue dedicated account number 0345, Telecommunications Infrastructure Fund No. 345;

(7) Department of Protective and Regulatory Services: \$25,000 from general revenue dedicated account number 5084, Child Abuse and Neglect Prevention Operating Account;

(8) Rehabilitation Commission: \$64,417 from general revenue dedicated account number 0107, Comprehensive Rehabilitation Account;

(9) Texas Education Agency: \$5,411,024 from general revenue dedicated account number 0345, Telecommunications Infrastructure Fund No. 345;

(10) Telecommunications Infrastructure Fund Board: \$175,000 from general revenue dedicated account number 0345, Telecommunications Infrastructure Fund No. 345;

(11) Higher Education Coordinating Board: \$5,460 from general revenue dedicated account number 5079, Technology Workforce Development Account;

(12) Higher Education Coordinating Board: \$134,000 from general revenue dedicated account number 0345, Telecommunications Infrastructure Fund No. 345;

(13) Higher Education Coordinating Board: \$265,259 from general revenue dedicated account number 8021, Dental School Tuition Set Aside;

(14) Office of Court Administration, Texas Judicial Council: \$835,800 from general revenue dedicated account number 5073, Fair Defense Account;

(15) Commission on Law Enforcement Officer Standards and Education: \$180,572 from general revenue dedicated account number 0116, Law Enforcement Officer Standards and Education Account;

(16) Commission on Law Enforcement Officer Standards and Education: \$3,500 from general revenue dedicated account number 5059, Texas Peace Officer Flag Account;

(17) Department of Public Safety: \$182,377 from general revenue dedicated account number 0501, Motorcycle Education Account;

- (18) Department of Public Safety: \$126,856 from general revenue dedicated account number 5013, Breath Alcohol Testing Account;
- (19) Department of Public Safety: \$581,988 from general revenue dedicated account number 5028, Fugitive Apprehension Account;
- (20) Department of Agriculture: \$275,635 from general revenue dedicated account number 5051, Go TEXAN Partner Program;
- (21) Commission on Environmental Quality: \$29,067 from general revenue dedicated account number 0146, Used Oil Recycling Account;
- (22) Commission on Environmental Quality: \$929,338 from general revenue dedicated account number 0151, Clean Air Account;
- (23) Commission on Environmental Quality: \$365,428 from general revenue dedicated account number 0153, Water Resource Management Account;
- (24) Commission on Environmental Quality: \$53,916 from general revenue dedicated account number 0468, Occupational Licensing Account;
- (25) Commission on Environmental Quality: \$1,389,128 from general revenue dedicated account number 0549, Waste Management;
- (26) Commission on Environmental Quality: \$3,752,454 from general revenue dedicated account number 0550, Hazardous and Solid Waste Remediation Fee Account;
- (27) Commission on Environmental Quality: \$30,000,000 from general revenue dedicated account number 0655, Petroleum Storage Tank Remediation Account;
- (28) Council on Environmental Technology: \$114,245 from general revenue dedicated account number 5071, Texas Emission Reduction Plan Account;
- (29) General Land Office and Veterans' Land Board: \$481,100 from general revenue dedicated account number 0027, Coastal Protection Account;
- (30) Parks and Wildlife Department: \$2,148,668 from general revenue dedicated account number 0064, State Parks Account;
- (31) Parks and Wildlife Department: \$2,616,143 from general revenue dedicated account number 0009, Game, Fish and Water Safety Account;
- (32) Parks and Wildlife Department: \$5,600 from general revenue dedicated account number 0467, Texas Local Parks, Recreation and Open Space Account;
- (33) Railroad Commission: \$33,580 from general revenue dedicated account number 0101, Alternative Fuels Research and Education Account;
- (34) Railroad Commission: \$1,972,423 from general revenue dedicated account number 0145, Oil Field Cleanup Account;
- (35) Texas Lottery Commission: \$24,557,023 from general revenue dedicated account number 5025, Lottery Account;
- (36) Office of Rural and Community Affairs: \$157,500 from general revenue dedicated account number 5047, Permanent Fund Rural Health Facility Capital Improvement;
- (37) Department of Transportation: \$43,080 from general revenue dedicated account number 0071, Texas Highway Beautification Account;

(38) Board of Pharmacy: \$208,537 from general revenue dedicated account number 0523, Pharmacy Board Operating Account; and

(39) Racing Commission: \$306,140 from general revenue dedicated account number 0597, Texas Racing Commission Account.

(e) The appropriations from the funds and from the dedicated accounts in the general revenue fund indicated by this subsection for the state fiscal year ending August 31, 2003, made by Chapter 1515, Acts of the 77th Legislature, Regular Session, 2001 (the General Appropriations Act), to the agencies listed in this subsection are reduced respectively for each agency, in the unencumbered amounts indicated by this subsection from the funds or dedicated accounts indicated by this subsection, for a total aggregate reduction of \$549,997,150. Each of the following agencies shall identify the strategies and objectives out of which the indicated reductions in unencumbered amounts appropriated to the agency from the indicated fund or account are made:

(1) Texas Education Agency: \$3,710,000 from Available School Fund 0002;

(2) Texas Education Agency: \$131,037,247 from State Textbook Fund 0003;

(3) Texas Education Agency: \$189,949,470 from Foundation School Fund 0193;

(4) Juvenile Probation Commission: \$1,300,433 from Foundation School Fund 0193; and

(5) Telecommunications Infrastructure Fund Board: \$224,000,000 from general revenue dedicated account number 0345, Telecommunications Infrastructure Fund No. 345.

(f) The amounts of the unencumbered appropriations from appropriated receipts that were appropriated by Rider 2, page I-66, Chapter 1515, Acts of the 77th Legislature, Regular Session, 2001 (the General Appropriations Act), to the Department of Information Resources are reduced in the amount of \$3,000,000 for the state fiscal year ending August 31, 2003. The Comptroller of Public Accounts shall transfer this amount from the Department of Information Resources clearing account to undedicated General Revenue.

(g) The reduction in appropriation to Texas Southern University under Subsection (a)(74) of this section is not intended to violate any settlement agreement between the state and the United States Office for Civil Rights.

(h) The reduction in appropriation to Prairie View A&M University under Subsection (a)(57) of this section is not intended to violate any settlement agreement between the state and the United States Office for Civil Rights.

SECTION 14. REDUCTIONS FROM LEGISLATIVE AGENCIES. The lieutenant governor and the speaker of the house of representatives jointly shall identify the various Article X agencies and entities from which amounts are to be transferred and determine the amount reduced and transferred from each agency or entity, for purposes of Section 13(a)(190) of this Act.

SECTION 15. INFORMATIONAL SUMMARY. This section is for informational purposes only. Amounts reduced in Section 13 of this Act aggregate to a total reduction in appropriations from the general revenue fund and General Revenue Fund-Dedicated Accounts of \$1,589,385,995. Amounts appropriated in Sections 1-12 and Section 23 of this Act total \$1,415,569,431.

SECTION 16. REFERENCES TO COMMISSION. For purposes of identifying appropriations made in Chapter 1515, Acts of the 77th Legislature, Regular Session, 2001, all references in this Act to the Building and Procurement Commission are considered to be references to the General Services Commission.

SECTION 17. AUTHORIZATIONS RELATED TO GENERAL APPROPRIATIONS ACT LIMITATIONS. (a) In order to make the reductions to general revenue appropriations made by Section 13(a)(161) of this Act, the Texas Workforce Commission is authorized to reduce appropriations related to Project RIO in an amount approved by the Legislative Budget Board, notwithstanding the requirement to maintain a certain funding level contained in Rider 18 following the appropriations to the Texas Workforce Commission, page VII-45, Chapter 1515, Acts of the 77th Legislature, Regular Session, 2001 (the General Appropriations Act), and the amounts reduced are available for general governmental purposes.

(b) In order to make the reductions to general revenue appropriations made by Section 13(a)(31) of this Act, the Department of Health is authorized to use a portion of funds, as approved by the Legislative Budget Board, deposited to Comptroller of Public Accounts Revenue Object 3963.

(c) In order to make the reductions to general revenue appropriations made by Section 13(a)(34) of this Act, the Department of Mental Health and Mental Retardation is authorized to reduce appropriations from general revenue funds for New Generation Medications in the amount of \$750,000, notwithstanding the requirement that funds appropriated for New Generation Medications may only be used for certain purposes contained in Rider 57, pages II-102 - II-103, Chapter 1515, Acts of the 77th Legislature, Regular Session, 2001 (the General Appropriations Act), and the amounts reduced are available for general governmental purposes.

(d) In order to make the reductions to general revenue appropriations made by Section 13(a)(34) of this Act, the Department of Mental Health and Mental Retardation is authorized to reduce appropriations from general revenue funds for long-term care waiver slots in the amount of \$9,708,248, notwithstanding the requirement that funds appropriated for long-term care waiver slots may only be used for certain purposes contained in Rider 22, pages II-126 - II-127, Chapter 1515, Acts of the 77th Legislature, Regular Session, 2001 (the General Appropriations Act), and the amounts reduced are available for general governmental purposes.

(e) In order to make the reductions to general revenue appropriations made by Section 13(a)(20) of this Act, the general revenue appropriations made to the Preservation Board in Rider 6, page I-75, Chapter 1515, Acts of the 77th Legislature, Regular Session, 2001 (the General Appropriations Act), are reduced in the amount of \$1,000,000, notwithstanding the contingency appropriation for

the purpose of funding the operation of the State History Museum contained in Rider 6, page I-75 of the General Appropriations Act, and the amounts reduced are available for general governmental purposes.

(f) Notwithstanding the requirements of Rider 2, page I-66, Chapter 1515, Acts of the 77th Legislature, Regular Session, 2001 (the General Appropriations Act), the amounts reduced and transferred by Section 13(f) of this Act are available for general governmental purposes.

SECTION 18. REFERENCES TO COMMISSION. For purposes of identifying appropriations made in Chapter 1515, Acts of the 77th Legislature, Regular Session, 2001 (the General Appropriations Act), all references in this Act to the Commission on Environmental Quality are considered to be references to the Texas Natural Resource Conservation Commission.

SECTION 19. REFERENCES TO EXTENSION. For purposes of identifying appropriations made in Chapter 1515, Acts of the 77th Legislature, Regular Session, 2001 (the General Appropriations Act), all references in this Act to the Texas Cooperative Extension are considered to be references to the Texas Agricultural Extension Service.

SECTION 20. REDUCTION IN APPROPRIATIONS: SALE OF SURPLUS PROPERTY. (a) Notwithstanding Section 8.04, page IX-67, Chapter 1515, Acts of the 77th Legislature, Regular Session, 2001 (the General Appropriations Act), all receipts from the sale of surplus property, equipment, livestock, commodities, or salvage pursuant to the provisions of Chapter 2175, Government Code, that are received by a state agency during the state fiscal year ending August 31, 2003, shall be deposited to undedicated general revenue, and the amounts deposited are available for general governmental purposes.

(b) This subsection is for informational purposes only. It is the intent of the legislature that implementation of this section of this Act shall increase undedicated general revenue by \$2,500,000 in the state fiscal year ending August 31, 2003.

SECTION 21. ECONOMIC STABILIZATION FUND APPROPRIATIONS. Sections 1-2, Section 4, Section 7, Section 8, Section 9, Section 10, and Section 12 of this Act take effect only if this Act receives the vote required by Article III, Section 49-g, Texas Constitution.

SECTION 22. EFFECTIVE DATE. Except as otherwise provided by this Act, this Act takes effect immediately as provided for a general appropriations act under Article III, Section 39, Texas Constitution.

SECTION 23. Contingent on legislation being enacted by the 78th Legislature, Regular Session, 2003, that becomes law and that authorizes the issuance of revenue bonds to finance facilities in connection with The University of Texas Health Science Center at Houston's recovery from Tropical Storm Allison, the amount of \$1.5 million is appropriated out of the general revenue fund to The University of Texas Health Science Center at Houston for the purpose of reimbursing the health science center, during the state fiscal biennium beginning September 1, 2003, for debt service paid in relation to the bonds.

Representative Heflin moved to adopt the conference committee report on **HB 7**.

A record vote was requested.

The motion prevailed by (Record 939): 138 Yeas, 5 Nays, 1 Present, not voting.

Yeas — Allen; Alonzo; Bailey; Baxter; Berman; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Callegari; Campbell; Canales; Capelo; Casteel; Castro; Chavez; Chisum; Christian; Cook, B.; Cook, R.; Corte; Crabb; Crownover; Davis, J.; Davis, Y.; Dawson; Delisi; Denny; Deshotel; Driver; Dukes; Dunnam; Edwards; Eissler; Elkins; Ellis; Escobar; Farabee; Farrar; Flores; Flynn; Gallego; 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; Hupp; Jones, E.; Jones, J.; Keel; Keffer, B.; Keffer, J.; King; Kolkhorst; Krusee; Kuempel; Laney; Laubenberg; Lewis; Luna; Mabry; Madden; Marchant; Martinez Fischer; McCall; McClendon; Menendez; Mercer; Merritt; Miller; Moreno, J.; Moreno, P.; Mowery; Naishtat; Nixon; Noriega; Oliveira; Olivo; Paxton; Peña; Phillips; Pickett; Pitts; Puente; Quintanilla; Raymond; Reyna; 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.

Nays — Eiland; Howard; Isett; Jones, D.; Riddle.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Garza.

Absent — Burnam; Coleman; Dutton; McReynolds; Morrison.

The speaker stated that **HB 7** was passed subject to the provisions of Article III, Section 49a, of the Texas Constitution.

STATEMENTS OF VOTE

I was shown voting no on Record No. 939. I intended to vote yes.

Howard

When Record No. 939 was taken, my vote failed to register. I would have voted yes.

McReynolds

HR 1851 - ADOPTED (by Morrison)

The following privileged resolution was laid before the house:

HR 1851

BE IT RESOLVED by the House of Representatives of the State of Texas, 78th Legislature, Regular Session, 2003, That House Rule 13, Section 9(a), be suspended in part as provided by House Rule 13, Section 9(f), to enable the

conference committee appointed to resolve the differences on **SB 86**, relating to admissions to public institutions of higher education, to consider and take action on the following matter:

House Rule 13, Section 9(a)(4), is suspended to permit the conference committee to include the following text amending Section 28.026, Education Code, in the bill:

Sec. 28.026. NOTICE OF AUTOMATIC COLLEGE ADMISSION. (a) The board of trustees of a school district shall require each high school in the district to post appropriate signs in each counselor's office, in each principal's office, and in each administrative building indicating the substance of Section 51.803 regarding automatic college admission. To assist in the dissemination of this information, the school district shall:

(1) require that each high school counselor and class advisor be provided a detailed explanation of the substance of Section 51.803;

(2) provide each district student and the student's parent or guardian, at the time the student first registers for one or more classes required for high school graduation, with a written notification of the substance of Section 51.803;

(3) require that each high school counselor and senior class advisor explain to eligible students the substance of Section 51.803; and

(4) ~~(3)~~ provide each eligible senior student under Section 51.803 and the student's parent or guardian, at the commencement of a class's senior year, with a written notification of the student's eligibility with a detailed explanation of the substance of Section 51.803.

(b) The commissioner shall adopt forms to use in providing notice under Subsections (a)(2) and (4). In providing notice under Subsection (a)(2) or (4), a school district shall use the appropriate form adopted by the commissioner.

Explanation: These changes are necessary to ensure that information about the changes in law made by the bill is publicized to students and their parents at appropriate times.

HR 1851 was adopted.

SB 86 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Morrison submitted the conference committee report on **SB 86**.

Representative Morrison moved to adopt the conference committee report on **SB 86**.

The motion prevailed. (Alonzo and Escobar recorded voting no)

SB 4 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Morrison submitted the conference committee report on **SB 4**.

Representative Morrison moved to adopt the conference committee report on **SB 4**.

A record vote was requested.

The motion prevailed by (Record 940): 143 Yeas, 0 Nays, 1 Present, not voting.

Yeas — Allen; Alonzo; 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; Elkins; Ellis; Escobar; Farabee; Flores; Flynn; Gallego; 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; Marchant; Martinez Fischer; McCall; McClendon; McReynolds; Menendez; Mercer; Merritt; Miller; Moreno, J.; Moreno, P.; Morrison; Mowery; Naishtat; Nixon; Noriega; Oliveira; Olivo; Paxton; Peña; 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.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Garza.

Absent — Bailey; Dutton; Farrar; Hughes; Phillips.

STATEMENTS OF VOTE

When Record No. 940 was taken, I was in the house but away from my desk. I would have voted yes.

Hughes

When Record No. 940 was taken, my vote failed to register. I would have voted yes.

Phillips

BILLS AND RESOLUTIONS SIGNED BY THE SPEAKER

Notice was given at this time that the speaker had signed bills and resolutions in the presence of the house (see the addendum to the daily journal, Signed by the Speaker, Senate List No. 43).

SB 1652 - 24 HOUR LAYOUT RULE SUSPENDED

Representative Morrison moved to suspend Rule 13, Section 10 of the house rules to consider the conference committee report on **SB 1652** which was ineligible for consideration at this time.

The motion prevailed.

SB 1652 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Morrison submitted the conference committee report on **SB 1652**.

Representative Morrison moved to adopt the conference committee report on **SB 1652**.

A record vote was requested.

The motion prevailed by (Record 941): 147 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; Denny; Deshotel; Driver; Dukes; Dunnam; Dutton; Edwards; Eiland; Eissler; Elkins; Ellis; Escobar; Farabee; Farrar; Flores; Flynn; Gallego; 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.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Garza.

Absent — Chisum.

STATEMENT OF VOTE

When Record No. 941 was taken, I was in the house but away from my desk. I would have voted yes.

Chisum

**HR 1861 - ADOPTED
(by Heflin)**

The following privileged resolution was laid before the house:

HR 1861

[Please refer to the supplement to today's daily journal, at the end of this volume, for the text to **HR 1861**, suspending the limitations on conference committee jurisdiction for **HB 1**, the general appropriations bill.]

HR 1861 was adopted without objection.

HB 1 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Heflin submitted the following conference committee report on **HB 1** :

Austin, Texas, May 31, 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 1** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Bivins	Heflin
Zaffirini	Luna
Whitmire	Turner
Duncan	Pitts
Ogden	Wohlgemuth
On the part of the senate	On the part of the house

HB 1, General Appropriations Bill.

HB 1 - STATEMENT OF LEGISLATIVE INTENT

REPRESENTATIVE GUTIERREZ: Mr. Chairman, is there a rider in Article 2 of **HB 1** relating to 211-Texas, that allows local funds to be used to draw down federal monies to help fund this very important initiative?

REPRESENTATIVE HEFLIN: I believe there may be. I'll—if you want me to look it up I can—

GUTIERREZ: Oh no, I know there's one because I've got it.

HEFLIN: OK, good.

GUTIERREZ: Thank you, Mr. Chairman. Did the house committee on appropriations discuss 211-Texas and its importance in getting people non-emergency health care they need on the local level and state level?

HEFLIN: Yes, sir. I think we had quite a bit of discussion, not only in full committee but in subcommittee, and some discussion at the conference committee level.

GUTIERREZ: And, as part of those discussions, did the committee discuss the importance of continuing this public and private partnership to keep 211-Texas operating in our great State of Texas?

HEFLIN: Yes, sir. Quite a bit of discussion on that.

GUTIERREZ: Mr. Chairman, do you suggest that this body encourage the commissioner of Health and Human Services to look for existing revenues—with the reorganization of his agency—to assist, if at all possible, the role of 211?

HEFLIN: I think that that should be included with all the other priorities that the commissioner will be dealing with, and I'm sure that he will consider that as he looks at his restructuring.

REMARKS ORDERED PRINTED

Representative Gutierrez moved to print remarks between Representative Gutierrez and Representative Heflin.

The motion prevailed without objection.

HB 1 - STATEMENT OF LEGISLATIVE INTENT

REPRESENTATIVE COLEMAN: Mr. Speaker, members, I'm not going to take too much time of the body up. I asked those questions so that people could understand what things were not in the bill as opposed to things that were in the bill.

The other day we voted not to take out the \$15 on the personal needs allowance. And maybe Ms. Wohlgemuth can tell us if that's cut in the final version of the bill. We talked the other day about the personal needs allowance for our seniors in nursing homes, and whether they would be cut by \$15, from \$60 to \$45. I talked to several members on the floor who had parents in nursing homes, and they told me how they really did have to buy those diapers, those Depends, for their senior parents. In this version of the budget, it's cut by \$15, 25 percent. So we went down from \$60 to \$45. There's a 30 percent increase in health insurance premiums for retired teachers. There's a \$500 cut in the salary supplement for teachers. There's a \$750 cut in the salary supplement for part-time school employees. There's \$203 million that school districts have to put up for TRS-CARE that they didn't have to put up before. So what we're talking about are tremendous cuts in the needs of the people of the State of Texas.

In the rural areas, where you use the county indigent health care system, and in the valley, there's a \$6.3 million cut. If you look at the reduction for at-risk youth prevention programs, we're cutting out healthy families, family outreach, HIPI, gang activity programs, we're eliminating some of the technology grants for public schools.

REPRESENTATIVE GALLEGO: I know this it is a very difficult thing, because I have been a conferee before, and I want to give a lot of credit to Mr. Heflin, and the house conferees, and the senate conferees. But we've been talking a lot about education, so I want to focus my comments in the area of education. What we did this evening, for example, one of the bills deregulated tuition. And assuming that tuition and fees go up 5 percent, which they have in the past—the normal projection in terms of an annual increase in the average tuition and fees, according to the coordinating board, is 5 percent. In that event, the coordinating board estimates that under the current bill, 14,485 college students next year, and 25,000 college students in fiscal year 2005, who would otherwise be eligible for Texas Grants, would not receive a grant. That is 14,485 students next year, and 25,000 students the year after that would not receive a Texas Grant.

In addition to that, because of the deregulated tuition, the number of students that will be served will actually go down even more. So there will be more and more students left without financial aid, at a time when we're raising tuition and at a time when we're trying to do a program at the coordinating board called Closing the Gaps. In the area of public education and teachers, we've also not really met our mark, not really hit the standard that we need to as a state. This is the only bill that absolutely has to pass, and so I understand that there will be many members who vote for the bill. And I accept that, and I applaud that decision. But know that there are a lot of areas in public education and in higher education, where we fell short. And hopefully, as time goes on, we'll have an opportunity to remedy that damage that we've done in those systems as a result of our fiscal situation, and we'll have an opportunity to work together.

The other disappointment, is that as we go through these discussions on these conference committees, we find that we've reached a position that is much closer to the position that we talked about on the house floor. Amendments that were not accepted, that come back to us now, improved as a result of our interaction with the senate. And it's unfortunate that it took interaction with the senate to get us closer and closer to the goal, because that interaction should have taken place here on the house floor. I applaud Mr. Heflin and his committee for their work, and the senate and senate finance committee for their work. We still have a lot of work to do, and hopefully we can go forward from here, and work together as a body to make sure that the needs of the citizens of Texas are met.

REMARKS ORDERED PRINTED

Representative Y. Davis moved to print remarks by Representative Coleman and Representative Gallego.

The motion prevailed without objection.

Representative Heflin moved to adopt the conference committee report on **HB 1**.

A record vote was requested.

The motion prevailed by (Record 942): 105 Yeas, 41 Nays, 2 Present, not voting.

Yeas — Allen; Baxter; Berman; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Callegari; Campbell; Casteel; Chisum; Christian; Cook, B.; Cook, R.; Corte; Crabb; Crownover; Davis, J.; Dawson; Delisi; Denny; Driver; Dutton; Edwards; Eissler; Elkins; Ellis; Farabee; Flores; Flynn; Gattis; Geren; Goodman; Goolsby; Griggs; Grusendorf; Gutierrez; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Heflin; Hegar; Hilderbran; Hill; Homer; Hope; Hopson; Howard; Hughes; Hunter; Hupp; Isett; Jones, E.; Keel; Keffer, B.; Keffer, J.; King; Kolkhorst; Krusee; Kuempel; Laney; Laubenberg; Luna; Mabry; Madden; Marchant; McCall; McClendon; Mercer; Merritt; Miller; Morrison; Mowery; Nixon; Paxton; Phillips; Pickett; Pitts; Reyna; Riddle; Ritter; Rose; Seaman; Smith, T.; Smith, W.; Smithee; Solomons; Stick; Swinford; Talton; Taylor; Truitt; Turner; Van Arsdale; West; Wilson; Wohlgenuth; Wolens; Wong; Woolley; Zedler.

Nays — Alonzo; Bailey; Burnam; Canales; Capelo; Castro; Chavez; Coleman; Davis, Y.; Deshotel; Dukes; Dunnam; Eiland; Escobar; Farrar; Gallego; Giddings; Guillen; Hochberg; Hodge; Jones, J.; Lewis; Martinez Fischer; McReynolds; Menendez; Moreno, J.; Moreno, P.; Naishtat; Noriega; Oliveira; Olivo; Peña; Quintanilla; Raymond; Rodriguez; Solis; Telford; Thompson; Uresti; Villarreal; Wise.

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

Absent, Excused — Garza.

Absent — Puente.

The speaker stated that **HB 1** was passed subject to the provisions of Article III, Section 49a, of the Texas Constitution.

MESSAGE FROM THE SENATE

A message from the senate was received at this time (see the addendum to the daily journal, Messages from the Senate, Message No. 6).

HB 3459 - 24 HOUR LAYOUT RULE SUSPENDED

Representative Pitts moved to suspend Rule 13, Section 10 of the house rules to consider the conference committee report on **HB 3459** which was ineligible for consideration at this time.

A record vote was requested.

The motion prevailed by (Record 943): 106 Yeas, 30 Nays, 0 Present, not voting.

Yeas — Mr. Speaker(C); Allen; Alonzo; Bailey; Baxter; Berman; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Callegari; Campbell; Canales; Casteel; Castro; Chisum; Christian; Cook, B.; Cook, R.; Corte; Crabb; Crownover; Davis, J.; Dawson; Delisi; Denny; Driver; Dunnam; Edwards; Eissler; Elkins; Ellis; Farabee; Farrar; Flynn; Gallego; Geren; Giddings; Goolsby; Griggs; Grusendorf; Guillen; Gutierrez; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Heflin; Hegar; Hilderbran; Hill; Hochberg; Homer; Hope; Hopson; Hunter; Hupp; Isett; Jones, E.; Keel; Keffer, B.; Keffer, J.; Kolkhorst; Kuempel; Lewis; Luna; Madden; Marchant; McCall; Menendez; Mercer; Merritt; Miller; Morrison; Mowery; Naishtat; Nixon; Noriega; Pickett; Pitts; Puente; Quintanilla; Raymond; Reyna; Ritter; Rose; Seaman; Smith, W.; Smithee; Solis; Solomons; Stick; Swinford; Telford; Truitt; Turner; Uresti; Villarreal; Wilson; Wohlgemuth; Wolens; Wong; Woolley.

Nays — Capelo; Chavez; Davis, Y.; Deshotel; Dukes; Dutton; Gattis; Hodge; Howard; Jones, D.; Jones, J.; King; Laney; Laubenberg; Martinez Fischer; McClendon; McReynolds; Olivo; Paxton; Peña; Phillips; Riddle; Rodriguez; Smith, T.; Talton; Taylor; Thompson; Van Arsdale; West; Zedler.

Absent, Excused — Garza.

Absent — Burnam; Coleman; Eiland; Escobar; Flores; Goodman; Hughes; Krusee; Mabry; Moreno, J.; Moreno, P.; Oliveira; Wise.

STATEMENTS OF VOTE

I was shown voting no on Record No. 943. I intended to vote yes.

Deshotel

I was shown voting no on Record No. 943. I intended to vote yes.

Howard

When Record No. 943 was taken, I was temporarily out of the house chamber. I would have voted no.

Hughes

**HR 1859 - ADOPTED
(by Pitts)**

The following privileged resolution was laid before the house:

HR 1859

BE IT RESOLVED by the House of Representatives of the State of Texas, 78th Legislature, Regular Session, 2003, That House Rule 13, Section 9(a), be suspended in part as provided by House Rule 13, Section 9(f), to enable the conference committee appointed to resolve the differences on **HB 3459**, relating to fiscal matters involving certain governmental educational entities, including public school finance, program compliance monitoring by the Texas Education Agency, amounts withheld from from and the use of compensatory education allotments, the public school technology allotment, the accounting for the permanent school fund, employee benefits provided by certain educational entities, the uses of the telecommunications infrastructure fund, and participation in a multijurisdiction lottery game, to consider and take action on the following matter:

House Rule 13, Section 9(a)(4), is suspended to permit the committee to add SECTIONS 5, 28, 43, 44, 45, 59, 68, 69, 73, 74, 78, and 79 to read as follows:

SECTION 5. Section 11.151, Education Code, is amended by adding Subsection (e) to read as follows:

(e) A school district may request the assistance of the attorney general on any legal matter. The district must pay any costs associated with the assistance.

SECTION 28. (a) Sections 41.0021(a) and (b), Education Code, are amended to read as follows:

(a) Notwithstanding Section 41.002, for the [~~2001-2002, 2002-2003, and~~] 2003-2004 school year [~~years~~], a school district that in the 1999-2000 school year did not offer each grade level from kindergarten through 12 may elect to have its wealth per student determined under this section.

(e) This section expires September 1, 2004.

(b) This section prevails over any other Act of the 78th Legislature, Regular Session, 2003, amending Sections 41.0021(a) and (e), Education Code.

SECTION 43. Section 822.001, Government Code, is amended by adding Subsections (c) through (f) to read as follows:

(c) Membership in the retirement system begins on the 91st day after the first day a person is employed.

(d) A person who is reemployed after withdrawing contributions for previous service credit begins membership on the 91st day after the first day the person is reemployed.

(e) Notwithstanding any other provision of law, a member may establish credit only as provided by Section 823.406 for service performed during the 90-day waiting period provided by Subsection (c) or (d).

(f) Subsections (c), (d), and (e) and this subsection expire September 1, 2005.

SECTION 44. Section 823.002, Government Code, is amended to read as follows:

Sec. 823.002. SERVICE CREDITABLE IN A YEAR. (a) The board of trustees by rule shall determine how much service in any year is equivalent to one year of service credit, but in no case may all of a person's service in one school year be creditable as more than one year of service. Service that has been credited by the retirement system on annual statements for a period of five or more years may not be deleted or corrected because of an error in crediting unless the error concerns three or more years of service credit or was caused by fraud.

(b) The rules adopted by the board of trustees under Subsection (a) must provide that the 90-day waiting periods described by Sections 822.001(c) and (d) be applied with regard to contributions during a member's first year of service under either of those subsections in a manner that, to the greatest extent possible, minimizes the cost to the retirement system. This subsection expires September 1, 2005.

SECTION 45. Subchapter E, Chapter 823, Government Code, is amended by adding Section 823.406 to read as follows:

Sec. 823.406. CREDIT PURCHASE OPTION FOR CERTAIN SERVICE. (a) A member may establish membership service credit under this section only for service performed during a 90-day waiting period to become a member after beginning employment.

(b) A member may establish service credit under this section by depositing with the retirement system, for each month of service credit, the actuarial present value, at the time of deposit, of the additional standard retirement annuity benefits that would be attributable to the purchase of the service credit under this section, based on rates and tables recommended by the retirement system's actuary and adopted by the board of trustees.

(c) After a member makes the deposits required by this section, the retirement system shall grant the member one month of equivalent membership service credit for each month of credit approved.

(d) The retirement system shall deposit the amount of the actuarial present value of the service credit purchased in the member's individual account in the employees saving account.

(e) The board of trustees may adopt rules to administer this section.

SECTION 59. Section 57.046, Utilities Code, is amended by amending Subsection (a) and adding Subsections (c) and (d) to read as follows:

(a) The board shall use money in the public schools account to:

(1) to the extent directed in the General Appropriations Act, fund the technology allotment under Section 32.005, Education Code; and

(2) award grants and loans in accordance with this subchapter to fund:

(A) [~~(+)~~] equipment for public schools, including computers, printers, computer labs, and video equipment; and

(B) [~~(=)~~] intracampus and intercampus wiring to enable those public schools to use the equipment.

(c) Section 57.047(d) does not apply to the use of money in the public schools account for the purpose specified by Subsection (a)(1).

(d) In addition to the purposes for which the qualifying entities account may be used, the board may use money in the account to award grants to the Health and Human Services Commission for technology initiatives of the commission.

SECTION 68. Notwithstanding any conflicting provision of H.B. No. 1, Acts of the 78th Legislature, Regular Session, 2003, the guaranteed level of state and local funds per weighted student per cent of tax effort is \$25.81. This subsection does not affect a school district's entitlement to any additional revenue under H.B. No. 1, Acts of the 78th Legislature, Regular Session, 2003.

SECTION 69. Of the amounts appropriated by H.B. No. 1, Acts of the 78th Legislature, Regular Session, 2003, to the Texas Education Agency under Strategy A.1.2, FSP - Equalized Facilities, for purposes of the existing debt assistance program under Subchapter B, Chapter 46, Education Code, the commissioner of education may, in the fiscal year ending August 31, 2005, use an amount not to exceed \$20 million for purposes of the instructional facilities allotment under Subchapter A, Chapter 46, Education Code.

SECTION 73. Section 822.001, Government Code, as amended by this Act, and Section 823.406, Government Code, as added by this Act, apply only to a person who is first employed on or after the effective date of this Act and to a former employee who has withdrawn retirement contributions under Section 822.003, Government Code, and is reemployed on or after the effective date of this Act.

SECTION 74. The requirements of Section 823.002(b), Government Code, as added by this Act, apply to persons whose employment begins on or after the effective date of this Act. The board of trustees of the Teacher Retirement System of Texas shall adopt rules implementing the requirements of that subsection as soon as practicable after the effective date of this Act.

SECTION 78. Chapter 466, Government Code, is amended by adding Subchapter J to read as follows:

SUBCHAPTER J. PARTICIPATION IN MULTIJURISDICTION LOTTERY
GAME

Sec. 466.451. MULTIJURISDICTION AGREEMENT AUTHORIZED. The commission may enter into a written agreement with the appropriate officials of one or more other states or other jurisdictions, including foreign countries, to participate in the operation, marketing, and promotion of a multijurisdiction lottery game or games. The commission may adopt rules relating to a multijurisdiction lottery game or games.

Sec. 466.452. REVENUE FROM MULTIJURISDICTION LOTTERY. (a) Except as provided by this section, revenue received from the sale of tickets in this state for a multijurisdiction lottery game is subject to Subchapter H.

(b) The commission may deposit a portion of the revenue received from the sale of multijurisdiction lottery game tickets in this state into a fund shared with other parties to an agreement under this subchapter for the payment of prizes awarded in multijurisdiction lottery games in which the commission participates. The commission may retain that revenue in the fund for as long as necessary to pay prizes claimed during the period designated for claiming a prize in the multijurisdiction lottery game.

Sec. 466.453. PAYMENT OF COSTS AUTHORIZED. The commission may share in the payment of costs associated with participating in multijurisdiction lottery games.

SECTION 79. (a) As soon as practicable after the effective date of this Act, the Texas Lottery Commission shall adopt the rules necessary to implement multijurisdiction lottery games in accordance with Subchapter J, Chapter 466, Government Code, as added by this Act.

(b) The Texas Lottery Commission may adopt an emergency rule under Subsection (a) of this section without prior notice or hearing, or with any abbreviated notice and hearing as the commission finds practicable, for the implementation of the change in law made by Subchapter J, for multijurisdiction lottery games, Chapter 466, Government Code. Section 2001.034, Government Code, does not apply to an emergency rule adopted under this section.

(c) Notwithstanding any law to the contrary, including any law enacted during the 78th Legislature, Regular Session, 2003, to promptly implement Subchapter J, Chapter 466, Government Code, as added by this Act, a contract for the acquisition or provision of facilities, supplies, equipment, materials, or services related to the initial operation of multijurisdiction lottery games under these subchapters is not subject to:

- (1) Subtitle D, Title 10, Government Code;
- (2) Section 466.101, Government Code;
- (3) Chapter 2161, Government Code; or
- (4) any competitive bidding requirements or contract requirements provided by any other law or by rules of the Texas Lottery Commission.

Explanation: These additions are necessary to permit a school district to request the assistance of the attorney general, to provide for determining the wealth per student of certain school districts, to administer the state retirement system, including delaying participation in the state retirement system until the 91st day after employment with the state, to permit the awarding of certain grants to the Health and Human Services Commission for technology initiatives, to provide that the guaranteed level of state and local funds per weighted student per cent of tax effort is \$25.81, to permit the commissioner of education to use certain funds for purposes of the instructional facilities allotment under Subchapter A, Chapter 46, Education Code, and to permit the Texas Lottery Commission to participate in a multijurisdiction lottery game or games.

Amendment No. 1

Representative Talton offered the following amendment to **HR 1859**:

Amend **HR 1859** by Pitts, suspending limitations on conference committee jurisdiction for **HB 3459**, as follows:

(1) On page 1 of the resolution, lines 12 and 13, strike "and participation in a multijurisdiction lottery game".

(2) On page 1 of the resolution, line 17, strike "78, and 79".

(3) Strike page 5, lines 17-31, page 6, lines 1-31, and page 7, lines 1-5.

(4) Strike page 7, 17-19, and substitute "Subchapter A, Chapter 46, Education Code.

HR 1859 - STATEMENT OF LEGISLATIVE INTENT

REPRESENTATIVE KING: Mr. Pitts, this bill also has an extension of the TIF fund by \$250 million, does it not?

REPRESENTATIVE PITTS: That's correct.

KING: And, am I correct that the original deal we made in 1995—or that was purported to have been made—with the telecom, was to—that the telecom—or that the TIF would sunset on its own at the expiration of 10 years, or when the fund reached \$1.5 billion? Is that correct?

PITTS: That is correct.

KING: And, am I correct that it hasn't reached \$1.5 billion yet, but that it's getting pretty close?

PITTS: That is correct.

KING: And, if I understand the way it works, each August the comptroller does an accounting to determine where we're at on the TIF, and then reports to the legislature how close we're getting to that \$1.5 billion. Is that how you understand it?

PITTS: That's right.

KING: And, if I understand it also, it's not anticipated that by this August we would have reached \$1.5 billion.

PITTS: That's my understanding.

KING: Now—but it is expected that by the following August, we would reach \$1.5 billion.

PITTS: That is correct.

KING: Now, if we vote this expansion, this TIF will probably not sunset before we come back for the next session. Is that right?

PITTS: It should last another year.

KING: So, in practicality, what we're doing is adding \$250 million to what was already the TIF tax. Is that right?

PITTS: That's right.

KING: Now, as I understand it, the governor's told us we're going to come back for special session on school finance. Would you agree with me that we're probably going to put the entire tax code on the table at that time?

PITTS: I believe we will be looking at many options on how to fund education.

KING: And that special session should be before TIF reaches \$1.5 billion and would naturally sunset?

PITTS: That is correct.

KING: So, in legislative theory, if there is such a thing—we could, if this passes and TIF is expanded—we could still come back in special session, when we look at all school finance, since you've told us this money goes to schools, and we could undo what I would see as the damage we're doing today. Is that correct?

PITTS: Yes, I think we can look at this and all other methods next session.

KING: So, members who are opposed—as I am—to expanding the TIF tax, would have the opportunity, in a special session, to come back and—as we put the whole tax code on the table, and as we look at all of the funding opportunities—we'd have another opportunity then to put TIF back in place.

PITTS: That is right.

KING: Thank you.

REMARKS ORDERED PRINTED

Representative King moved to print remarks between Representative King and Representative Pitts.

The motion prevailed without objection.

Representative Pitts moved to table Amendment No. 1.

A record vote was requested.

The motion to table prevailed by (Record 944): 97 Yeas, 51 Nays, 0 Present, not voting.

Yeas — Mr. Speaker(C); Allen; Alonzo; Bailey; Baxter; Berman; Bonnen; Branch; Brown, B.; Brown, F.; Callegari; Campbell; Canales; Capelo; Casteel; Chavez; Chisum; Christian; Coleman; Cook, B.; Cook, R.; Crabb; Crownover; Davis, J.; Delisi; Denny; Driver; Dukes; Dutton; Eiland; Eissler; Ellis; Escobar; Farabee; Farrar; Flores; Flynn; Geren; Giddings; Goodman; Goolsby; Griggs; Grusendorf; Guillen; Gutierrez; Haggerty; Hamric; Hardcastle; Heflin; Hilderbran; Hill; Hochberg; Homer; Hope; Hupp; Jones, E.; Keel; Keffer, B.; Keffer, J.; Kolkhorst; Krusee; Kuempel; Lewis; Luna; Madden; Martinez Fischer; McReynolds; Menendez; Mercer; Miller; Moreno, P.; Morrison; Mowery; Nixon; Pickett; Pitts; Puente; Quintanilla; Raymond; Reyna; Ritter; Rose; Seaman; Smith, W.; Solis; Solomons; Stick; Swinford; Telford; Truitt; Uresti; Villarreal; Wilson; Wohlgenuth; Wolens; Wong; Woolley.

Nays — Bohac; Burnam; Castro; Corte; Davis, Y.; Dawson; Deshotel; Dunnam; Edwards; Elkins; Gallego; Gattis; Hamilton; Harper-Brown; Hartnett; Hegar; Hodge; Hopson; Howard; Hughes; Hunter; Isett; Jones, D.; Jones, J.; King; Laney; Laubenberg; Mabry; Marchant; McCall; Merritt; Moreno, J.; Naishtat; Noriega; Oliveira; Olivo; Paxton; Peña; Phillips; Riddle; Rodriguez; Smith, T.; Smithee; Talton; Taylor; Thompson; Turner; Van Arsdale; West; Wise; Zedler.

Absent, Excused — Garza.

Absent — McClendon.

STATEMENTS OF VOTE

I was shown voting yes on Record No. 944. I intended to vote no.

B. Brown

I was shown voting no on Record No. 944. I intended to vote yes.

Deshotel

I was shown voting yes on Record No. 944. I intended to vote no.

Flynn

I was shown voting yes on Record No. 944. I intended to vote no.

Giddings

I was shown voting yes on Record No. 944. I intended to vote no.

Hilderbran

I was shown voting yes on Record No. 944. I intended to vote no.

Seaman

I was shown voting yes on Record No. 944. I intended to vote no.

Solomons

HR 1859 was adopted. (Berman, Bohac, Burnam, Y. Davis, Dawson, Denny, Dukes, Flynn, Gattis, Hamilton, Harper-Brown, Hegar, Hilderbran, Hodge, Howard, Hughes, Hunter, Isett, J. Jones, King, Laubenberg, McCall, Mercer, Paxton, Phillips, Reyna, Riddle, Seaman, T. Smith, Solomons, Talton, Taylor, Truitt, Wolens, and Zedler recorded voting no; Wong recorded present, not voting)

HB 3459 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Pitts submitted the following conference committee report on **HB 3459** :

Austin, Texas, May 31, 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 3459** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Bivins

Pitts

Zaffirini

Grusendorf

Shapiro

Heflin

Duncan

Gutierrez

On the part of the senate

On the part of the house

HB 3459, A bill to be entitled An Act relating to fiscal matters involving certain governmental educational entities, including public school finance, program compliance monitoring by the Texas Education Agency, amounts withheld from and the use of compensatory education allotments, the public school technology allotment, the accounting for the permanent school fund, employee benefits provided by certain educational entities, the uses of the telecommunications infrastructure fund, and participation in a multijurisdictional lottery game.

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

SECTION 1. The following provisions of the Education Code are repealed:

- (1) Chapters 41, 42, and 46; and
- (2) Section 45.002.

SECTION 2. Chapter 4, Education Code, is amended by adding Section 4.003 to read as follows:

Sec. 4.003. STATE RESPONSIBILITY FOR PROVISION OF PUBLIC EDUCATION. (a) It is the policy of this state that the provision of public education is a state responsibility and that a thorough and efficient system be provided and substantially financed through state revenue sources so that each student enrolled in the public school system shall have access to programs and services that are appropriate to the student's educational needs and that are substantially equal to those available to any similar student, notwithstanding varying local economic factors.

(b) The public school finance system of this state shall adhere to a standard of neutrality that provides for substantially equal access to similar revenue per student at similar tax effort, considering all state and local tax revenues of districts after acknowledging all legitimate student and district cost differences.

SECTION 3. Sections 1 and 2 of this Act take effect September 1, 2004, but only if, before that date:

(1) the legislature has enacted a school finance system to replace the system established by Chapters 41, 42, 45, and 46, Education Code;

(2) the Act enacting a school finance system in compliance with Subdivision (1) of this section affirmatively states that the system is a comprehensive school finance system for the entire state; and

(3) the school finance system enacted in compliance with Subdivision (1) of this section has become law.

SECTION 4. Subchapter B, Chapter 7, Education Code, is amended by adding Section 7.027 to read as follows:

Sec. 7.027. LIMITATION ON COMPLIANCE MONITORING. (a) Except as provided by Section 29.001(5), 29.010(a), 39.074, or 39.075, the agency may monitor compliance with requirements applicable to a process or program provided by a school district, campus, program, or school granted charters under Chapter 12, including the process described by Subchapter F, Chapter 11, or a program described by Subchapter B, C, D, E, F, H, or I, Chapter 29, Subchapter A, Chapter 37, or Section 38.003, and the use of funds provided for such a program under Subchapter C, Chapter 42, only as necessary to ensure:

- (1) compliance with federal law and regulations;
- (2) financial accountability, including compliance with grant requirements; and
- (3) data integrity for purposes of:
 - (A) the Public Education Information Management System (PEIMS); and
 - (B) accountability under Chapter 39.

(b) The board of trustees of a school district or the governing body of an open-enrollment charter school has primary responsibility for ensuring that the district or school complies with all applicable requirements of state educational programs.

SECTION 5. Section 11.151, Education Code, is amended by adding Subsection (e) to read as follows:

(e) A school district may request the assistance of the attorney general on any legal matter. The district must pay any costs associated with the assistance.

SECTION 6. Section 11.164, Education Code, is amended to read as follows:

Sec. 11.164. RESTRICTING WRITTEN INFORMATION [REPORTS]. (a) The [On an annual basis, the] board of trustees of each school district shall limit redundant requests for information and[~~—after soliciting recommendations from each campus level committee and the district level committee, consider~~] the number and length of written reports that a classroom teacher is [employees of the district are] required to prepare. A classroom teacher may not be required to prepare any written information other than:

- (1) any report concerning the health, safety, or welfare of a student;
- (2) a report of a student's grade on an assignment or examination;
- (3) a report of a student's academic progress in a class or course;
- (4) a report of a student's grades at the end of each grade reporting period;
- (5) a textbook report;
- (6) a unit or weekly lesson plan that outlines, in a brief and general manner, the information to be presented during each period at the secondary level or in each subject or topic at the elementary level;
- (7) an attendance report;
- (8) any report required for accreditation review;
- (9) any information required by a school district that relates to a complaint, grievance, or actual or potential litigation and that requires the classroom teacher's involvement; or

(10) any information specifically required by law, rule, or regulation.

(b) The board of trustees shall review paperwork requirements imposed on classroom teachers and shall transfer to existing noninstructional staff a reporting task that can reasonably be accomplished by that staff.

(c) This section does not preclude a school district from collecting essential information, in addition to information specified under Subsection (a), from a classroom teacher on agreement between the classroom teacher and the district.

SECTION 7. Section 13.005(a), Education Code, is amended to read as follows:

(a) Except as provided by this section or by a local consolidation agreement under Section 13.158, the annexation of all or part of the territory of one district to another is effective on the first July 1 that is more than 30 days after the date of the order or ordinance accomplishing the annexation or of the declaration of the results of an election at which the transfer is approved.

SECTION 8. Section 13.152, Education Code, is amended to read as follows:

Sec. 13.152. RESOLUTION OR PETITION. Consolidation is initiated in each district proposed to be consolidated by either a resolution adopted by the board of trustees of the [each] district or a petition requesting an election on the question that is signed by the required number of registered voters of the district [each of the districts proposed to be consolidated]. Each district is not required to use the same method to initiate consolidation.

SECTION 9. Section 13.153, Education Code, is amended by amending Subsection (b) and adding Subsection (c) to read as follows:

(b) If no local consolidation agreement is submitted under Section 13.158, the [The] ballot in the election shall be printed to permit voting for or against the proposition: "Consolidation of (name of school districts) into a single school district."

(c) If a local consolidation agreement is submitted under Section 13.158, the ballot in the election shall be printed to permit voting for or against the proposition: "Consolidation of (name of school districts) into a single school district under a local consolidation agreement."

SECTION 10. Sections 13.155(b) and (c), Education Code, are amended to read as follows:

(b) Except as provided by Subsection (c) or by a local consolidation agreement under Section 13.158, the board of trustees of the school district having the greatest membership on the last day of the school year preceding the consolidation serves as the board of trustees of the consolidated district until the next regular election of trustees, at which time the consolidated district shall elect a board of trustees.

(c) Except as provided by a local consolidation agreement under Section 13.158, if [H] the membership on the last day of the school year preceding the consolidation in the district with the largest membership is more than five times that of the other district or districts consolidating with it, the trustees of the

district with the largest membership continue to serve for the terms for which they have been elected and only the vacancies, as they occur, are filled from the consolidated district.

SECTION 11. Subchapter D, Chapter 13, Education Code, is amended by adding Sections 13.158 and 13.159 to read as follows:

Sec. 13.158. LOCAL CONSOLIDATION AGREEMENT. (a) Before issuing an order for an election under Section 13.153, the boards of trustees of the districts to be consolidated may draft a local consolidation agreement to be submitted to the registered voters in each district. An agreement must set out the composition and method of election of the consolidated board of trustees. The identical agreement must be submitted to the registered voters of each district.

(b) A local consolidation agreement may provide the following:

(1) an effective date that is not more than one year after the date of the consolidation election;

(2) a schedule to elect the board of trustees of the consolidated district before or after the effective date of consolidation;

(3) that the consolidated district educate particular grades within the boundaries of a district being consolidated;

(4) that the consolidated district maintain a specific campus in operation;

(5) that if the votes cast in some districts, but not all districts, show a majority voting in favor of the consolidation, the districts receiving a favorable vote may consolidate;

(6) that a majority of the votes cast in each district must be in favor of consolidation for there to be a consolidation; or

(7) any other provision consistent with state and federal law.

(c) Not later than 30 days before a consolidation election is held, the boards of trustees of the districts to be consolidated may amend the local consolidation agreement. After a successful election to consolidate, the local consolidation agreement may not be amended for five years following the effective date of consolidation, unless a shorter period is set out in the agreement. After that time, the agreement may be amended only by unanimous vote of the board of trustees of the district.

(d) The commissioner may waive a requirement under this section or Section 13.159 on application of the boards of trustees of all districts proposed for consolidation.

Sec. 13.159. PUBLIC INSPECTION AND HEARING. (a) A local consolidation agreement under Section 13.158 must be made available for public inspection during regular business hours at the central administration building of each district for at least 25 days before the consolidation election.

(b) Each district shall hold a public hearing to allow interested persons to present comments related to the local consolidation agreement. If the agreement is amended following a public hearing, before the consolidation election each district shall hold another public hearing to consider the amendment.

(c) Each district shall provide notice of each public hearing to the public.

SECTION 12. Section 21.253, Education Code, is amended to read as follows:

Sec. 21.253. REQUEST FOR HEARING. (a) A teacher must file a written request for a hearing under this subchapter with the commissioner not later than the 15th day after the date the teacher receives written notice of the proposed action. The teacher must provide the district with a copy of the request and must provide the commissioner with a copy of the notice.

(b) The parties may agree in writing to extend by not more than 10 days the deadline for requesting a hearing.

SECTION 13. Sections 21.254(c), (d), and (e), Education Code, are amended to read as follows:

(c) If a hearing examiner is not selected by the parties to a pending case under Subsection (e), the [The] commissioner shall assign a hearing examiner to the [a pending] case not earlier than the sixth business day and not later than the 10th business day after the date on which the commissioner receives the request for a hearing. When a hearing examiner has been assigned to a case, the commissioner shall immediately notify the parties.

(d) The parties may agree to reject a hearing examiner for any reason and either [Either] party is entitled to reject the assigned hearing examiner for cause. A rejection must be in writing and filed with the commissioner not later than the third day after the date of notification of the hearing examiner's assignment. If the parties agree to reject the hearing examiner or if the commissioner determines that one [the] party has good cause to reject the hearing examiner, the commissioner shall assign another hearing examiner as provided by Subsection (b). If neither party makes a timely rejection, the assignment is final.

(e) After the teacher receives the notice of the proposed action, the parties by agreement may select a hearing examiner from the list maintained by the commissioner under Subsection (a) or a person who is not certified to serve as a hearing examiner. A person who is not a certified hearing examiner may be selected only if the person is [under this subsection must be] licensed to practice law in this state. If the parties agree on a hearing examiner, the parties shall, before the date the commissioner is permitted to assign a hearing examiner, notify the commissioner in writing of the agreement, including [before the teacher files a request for hearing under Section 21.253, the request shall include] the name of the hearing examiner selected. [If the parties agree on a hearing examiner after the teacher files the request for hearing, the teacher shall promptly notify the commissioner in writing of the name of the hearing examiner.]

SECTION 14. Sections 21.257(a) and (c), Education Code, are amended to read as follows:

(a) Not later than the 60th [45th] day after the date on which the commissioner receives a teacher's written request for a hearing, the hearing examiner shall complete the hearing and make a written recommendation that:

- (1) includes proposed findings of fact and conclusions of law; and
- (2) may include a proposal for granting relief.

(c) The parties may agree in writing to extend by not more than 45 days [waive] the right to a recommendation by the date prescribed by Subsection (a). A hearing under this section may not be held on a Saturday, Sunday, or a state or federal holiday, unless all parties agree.

SECTION 15. Subchapter G, Chapter 21, Education Code, is amended by adding Section 21.3041 to read as follows:

Sec. 21.3041. REHEARING BY COMMISSIONER. (a) Not later than the 20th day after the date the party or the party's representative receives notice of the commissioner's decision under Section 21.304, the party may file a request for rehearing.

(b) A request for rehearing is not required for a party to appeal the commissioner's decision under Section 21.307.

(c) A request for rehearing is denied by operation of law if the commissioner does not issue an order before the 45th day after the date the party or the party's representative receives notice of the commissioner's decision.

SECTION 16. Section 21.307(b), Education Code, is amended to read as follows:

(b) An appeal under this section must be perfected not later than the 30th day after:

(1) the date the party or the party's representative receives [received] notice of the commissioner's decision or the date on which the decision of the board of trustees is [was] affirmed by operation of law if the commissioner fails [failed] to issue a decision within the required period; or

(2) if a request for rehearing is filed under Section 21.3041, the date on which the request is denied by order of the commissioner or by operation of law under Section 21.3041(c). [A motion for rehearing is not required for the party to appeal.]

SECTION 17. Subchapter I, Chapter 21, Education Code, is amended by adding Section 21.413 to read as follows:

Sec. 21.413. CLASSROOM SUPPLY REIMBURSEMENT PROGRAM. (a) The commissioner shall establish a reimbursement program under which the commissioner provides funds to a school district for the purpose of reimbursing classroom teachers in the district who expend personal funds on classroom supplies. A school district must match any funds provided to the district under the reimbursement program with local funds to be used for the same purpose.

(b) The commissioner shall adopt rules for the local allocation of funds provided to a school district under the reimbursement program. A school district shall allow each classroom teacher in the district who is reimbursed under the reimbursement program to use the funds in the teacher's discretion, except that the funds must be used for the benefit of the district's students. A school district may not use funds received under the reimbursement program to replace local funds used by the district for the same purpose.

(c) The commissioner shall identify state and federal funds available for use under the reimbursement program, including funds subject to the Education Flexibility Partnership Act of 1999 (20 U.S.C. Section 5891a et seq.), and its subsequent amendments, as well as consolidated administrative funds.

(d) The commissioner shall establish the reimbursement program for implementation beginning not later than the 2005-2006 school year. The commissioner may implement the reimbursement program only if funds are specifically appropriated by the legislature for the program or if the commissioner identifies available funds, other than general revenue funds, that may be used for the program.

SECTION 18. Subchapter A, Chapter 29, Education Code, is amended by adding Section 29.0161 to read as follows:

Sec. 29.0161. CONTRACT WITH STATE OFFICE OF ADMINISTRATIVE HEARINGS FOR SPECIAL EDUCATION DUE PROCESS HEARINGS. Not later than December 1, 2003, the agency and the State Office of Administrative Hearings shall jointly determine whether it would be cost-effective for the agency to enter an interagency contract with the office under which the office would conduct all or part of the agency's special education due process hearings under 20 U.S.C. Section 1415 and its subsequent amendments.

SECTION 19. Sections 29.062(a) and (e), Education Code, are amended to read as follows:

(a) The legislature recognizes that compliance with this subchapter is an imperative public necessity. Therefore, in accordance with the policy of the state, the agency shall evaluate the effectiveness of programs under this subchapter based on the academic excellence indicators adopted under Section 39.051(a), including the results of assessment instruments. The agency may combine evaluations under this section with federal accountability measures concerning students of limited English proficiency ~~monitor compliance with state rules by inspecting each school district and open enrollment charter school on site at least every three years].~~

(e) If a school district or open-enrollment charter school fails to satisfy appropriate standards adopted by the commissioner for purposes of Subsection (a) ~~[or refuses to comply after proper notification]~~, the agency shall apply sanctions, which may include the removal of accreditation, loss of foundation school funds, or both.

SECTION 20. Section 31.021(b), Education Code, is amended to read as follows:

(b) The State Board of Education shall annually set aside out of the available school fund of the state an amount sufficient for the board, school districts, and open-enrollment charter schools to purchase and distribute the necessary textbooks for the use of the students of this state for the following school year. The board shall determine the amount of the available school fund to set aside for the state textbook fund based on:

(1) a report by the commissioner issued on July 1 or, if that date is a Saturday or Sunday, on the following Monday, stating the amount of unobligated money in the fund;

(2) ~~a requirement to provide an allotment to be distributed to each district equal to \$30 per student in average daily attendance, or a greater amount for any year provided by appropriation, to be used only to:~~

~~[(A) provide for the purchase by school districts of electronic textbooks or technological equipment that contributes to student learning; and~~

~~[(B) pay for training educational personnel directly involved in student learning in the appropriate use of electronic textbooks and for providing for access to technological equipment for instructional use;~~

~~[(3)]~~ the commissioner's estimate, based on textbooks selected under Section 31.101 and on attendance reports submitted under Section 31.103 by school districts and open-enrollment charter schools, of the amount of funds, in addition to funds reported under Subdivision (1), that will be necessary for purchase and distribution of textbooks for the following school year; and

(3) ~~[(4)]~~ any amount the board determines should be set aside for emergency purposes caused by unexpected increases in attendance.

SECTION 21. Section 31.103(b), Education Code, is amended to read as follows:

(b) A requisition for textbooks for the following school year shall be based on the maximum attendance reports under Subsection (a), plus an additional 10 percent, except as otherwise provided. A school district or open-enrollment charter school shall make a requisition for a textbook on the conforming or nonconforming list through the commissioner to the state depository designated by the publisher or as provided by State Board of Education rule, as applicable, not later than June 1 of each year. The designated state depository or, if the publisher or manufacturer does not have a designated textbook depository in this state under Section 31.151(a)(6)(B), the publisher or manufacturer shall fill a requisition approved by the agency at any other time in the case of an emergency. As made necessary by available funds, the commissioner shall reduce the additional percentage of attendance for which a district or school may requisition textbooks. The commissioner may, on application of a district or school that is experiencing high enrollment growth, increase the additional percentage of attendance for which the district or school may requisition textbooks.

SECTION 22. Subchapter A, Chapter 32, Education Code, is amended by adding Section 32.005 to read as follows:

Sec. 32.005. TECHNOLOGY ALLOTMENT. (a) Each school district is entitled to an allotment of \$30 for each student in average daily attendance or a different amount for any year provided by appropriation.

(b) An allotment under this section may be used only to:

(1) provide for the purchase by school districts of electronic textbooks or technological equipment that contributes to student learning; and

(2) pay for training educational personnel directly involved in student learning in the appropriate use of electronic textbooks and for providing for access to technological equipment for instructional use.

(c) The allotment under this section may be paid from:

(1) the telecommunications infrastructure fund under Subchapter C, Chapter 57, Utilities Code;

(2) the available school fund; or

(3) any other fund that may be used for that purpose and that is identified in the General Appropriations Act as the source of payment of the allotment.

SECTION 23. Section 32.033(a), Education Code, is amended to read as follows:

(a) The agency, in coordination with institutions of higher education and other public or private entities, may ~~shall~~ maintain and expand, as needed, the telecommunications capabilities of school districts and regional education service centers. The agency shall design and implement a telecommunications system for distance learning throughout the state.

SECTION 24. Section 34.007(b), Education Code, is amended to read as follows:

(b) In establishing and operating the transportation system, the county or school district board:

(1) shall employ school bus drivers certified in accordance with standards and qualifications adopted by the Department of Public Safety; and

(2) may allow a parent to designate one of the following locations ~~[a child care facility, as defined by Section 42.002, Human Resources Code,]~~ instead of the child's residence as the regular location for purposes of obtaining transportation under the system to and from the child's school, if the location is on an approved route:

(A) a child-care facility, as defined by Section 42.002, Human Resources Code; or

(B) the residence of a grandparent of the child.

SECTION 25. Section 39.023(e), Education Code, is amended to read as follows:

(e) Under rules adopted by the State Board of Education, every other year, the agency shall release the questions and answer keys to each assessment instrument administered under Subsection (a), (b), (c), (d), or (l) after the last time the instrument is administered for that ~~[a]~~ school year. To ensure a valid bank of questions for use each year, the agency is not required to release a question that is being field-tested and was not used to compute the student's score on the instrument. The agency shall also release, under board rule, each question that is no longer being field-tested and that was not used to compute a student's score.

SECTION 26. Section 39.051(f), Education Code, is amended to read as follows:

(f) The ~~[Beginning with the 2002-2003 school year, the]~~ indicator under Subsection (b)(1) must include the results of assessment instruments required under Section 39.023(b). ~~[Those results may not be aggregated by grade level or subject area.]~~

SECTION 27. Sections 39.055(a) and (e), Education Code, are amended to read as follows:

(a) The commissioner shall develop a process for auditing school district dropout records electronically. The commissioner shall also develop a system and standards for review of the audit or use systems already available at the agency. The system must be designed to identify districts that are at high risk of having

inaccurate dropout records and that, as a result, require on-site monitoring of dropout records. If the electronic audit of a district's dropout records indicates that a district is not at high risk of having inaccurate dropout records, the district may not be subject to on-site monitoring under this subsection. If the risk-based system indicates that a district is at high risk of having inaccurate dropout records, the district is entitled to an opportunity to respond to the commissioner's determination before on-site monitoring may be conducted. The district must respond not later than the 30th day after the date the commissioner notifies the district of the commissioner's determination. If the district's response does not change the commissioner's determination that the district is at high risk of having inaccurate dropout records or if the district does not respond in a timely manner, the commissioner shall order agency staff to conduct on-site monitoring of the [board of trustees of each school district shall have the] district's dropout records [audited annually at district expense by a public accountant or certified public accountant who:

~~(1) is certified or registered, as appropriate, and licensed under Chapter 901, Occupations Code;~~

~~(2) has successfully completed training provided by the agency in auditing school dropout records; and~~

~~(3) is not an employee of the district].~~

~~(e) [The agency shall review each report of an audit of dropout records.]~~ The commissioner shall notify the board of trustees of a school district of any objection the commissioner has to the district's dropout data [report], any violation of sound accounting practices or of a law or rule revealed by the data [report], or any recommendation by the commissioner concerning the data [report]. If the data reflect [report reflects] that a penal law has been violated, the commissioner shall notify the county attorney, district attorney, or criminal district attorney, as appropriate, and the attorney general. The commissioner is entitled to access to all district records the commissioner considers necessary or appropriate for the review, analysis, or approval of district dropout data [a report].

SECTION 28. (a) Sections 41.0021(a) and (e), Education Code, are amended to read as follows:

(a) Notwithstanding Section 41.002, for the ~~[2001-2002, 2002-2003, and]~~ 2003-2004 school year [years], a school district that in the 1999-2000 school year did not offer each grade level from kindergarten through 12 may elect to have its wealth per student determined under this section.

(e) This section expires September 1, 2004.

(b) This section prevails over any other Act of the 78th Legislature, Regular Session, 2003, amending Section 41.0021(a) or (e), Education Code.

SECTION 29. Section 41.033, Education Code, is amended to read as follows:

Sec. 41.033. GOVERNANCE PLAN. (a) The agreement among the consolidating districts may include a governance plan designed to preserve community-based and site-based decision making within the consolidated district,

including the delegation of specific powers of the governing board of the district other than the power to levy taxes, including a provision authorized by Section 13.158(b).

(b) The governance plan may provide for a transitional board of trustees during the first year after consolidation, but beginning with the next year the board of trustees must be elected from within the boundaries of the consolidated district ~~[from single member districts drawn in accordance with the procedures provided by Section 11.052].~~ If the consolidating districts elect trustees from single-member districts, the consolidated district must adopt a plan to elect its board of trustees from single-member districts.

SECTION 30. Section 42.152, Education Code, is amended by amending Subsections (c), (q), and (r) and adding Subsections (q-1)-(q-4), (u), and (v) to read as follows:

(c) Funds allocated under this section shall be used ~~[only]~~ to fund supplemental programs and services designed to eliminate any disparity in performance on assessment instruments administered under Subchapter B, Chapter 39, or disparity in the rates of high school completion between students at risk of dropping out of school, as defined by Section 29.081, and all other students. Specifically, the funds, other than an indirect cost allotment established under State Board of Education rule, which may not exceed 15 percent, may be used ~~[only]~~ to meet the costs of providing a compensatory, intensive, or accelerated instruction program under Section 29.081 or an alternative education program established under Section 37.008 or to support a program eligible under Title I of the Elementary and Secondary Education Act of 1965, as provided by Pub. L. No. 103-382 and its subsequent amendments, and by federal regulations implementing that Act, at a campus at which at least 40 ~~[50]~~ percent of the students are educationally disadvantaged. In meeting the costs of providing a compensatory, intensive, or accelerated instruction program under Section 29.081, a district's compensatory education allotment shall ~~[may]~~ be used ~~[only]~~ for costs supplementary to the regular education program, such as costs for program and student evaluation, instructional materials and equipment and other supplies required for quality instruction, supplemental staff expenses, salary for teachers of at-risk students, smaller class size, and individualized instruction. A home-rule school district or an open-enrollment charter school must use funds allocated under Subsection (a) for a purpose authorized in this subsection but is not otherwise subject to Subchapter C, Chapter 29. Notwithstanding any other provisions of this section:

(1) to ensure that a sufficient amount of the funds allotted under this section are available to supplement instructional programs and services, no more than 18 percent of the funds allotted under this section may be used to fund disciplinary alternative education programs established under Section 37.008; ~~[and]~~

(2) the commissioner may waive the limitations of Subdivision (1) upon an annual petition, by a district's board and a district's site-based decision making committee, presenting the reason for the need to spend supplemental compensatory education funds on disciplinary alternative education programs under Section 37.008, provided that:

(A) the~~[-The]~~ district ~~[shall]~~ in its petition reports ~~[report]~~ the number of students in each grade level, by demographic subgroup, not making satisfactory progress under the state's assessment system; and

(B) the~~[-The]~~ commissioner ~~makes the~~ ~~[will make this]~~ waiver request information available annually to the public on the agency's website; and

(3) for purposes of this subsection, a program specifically designed to serve students at risk of dropping out of school, as defined by Section 29.081, is considered to be a program supplemental to the regular education program, and a district may use its compensatory education allotment for such a program.

(q) The State Board of Education, with the assistance of the state auditor and the comptroller, shall develop and implement by rule ~~[a]~~ reporting and auditing ~~systems~~ ~~[system]~~ for district and campus expenditures of compensatory education funds to ensure that compensatory education funds, other than the indirect cost allotment, are spent only to supplement the regular education program as required by Subsection (c). The reporting requirements shall be managed electronically to minimize local administrative costs. A district shall submit the report required by this subsection not later than the 150th day after the last day permissible for resubmission of information required under Section 42.006.

(q-1) The commissioner shall develop a system to identify school districts that are at high risk of having used compensatory education funds other than in compliance with Subsection (c) or of having inadequately reported compensatory education expenditures. If a review of the report submitted under Subsection (q), using the risk-based system, indicates that a district is not at high risk of having misused compensatory education funds or of having inadequately reported compensatory education expenditures, the district may not be required to perform a local audit of compensatory education expenditures and is not subject to on-site monitoring under this section.

(q-2) If a review of the report submitted under Subsection (q), using the risk-based system, indicates that a district is at high risk of having misused compensatory education funds, the commissioner shall notify the district of that determination. The district must respond to the commissioner not later than the 30th day after the date the commissioner notifies the district of the commissioner's determination. If the district's response does not change the commissioner's determination that the district is at high risk of having misused compensatory education funds or if the district does not respond in a timely manner, the commissioner shall:

(1) require the district to conduct a local audit of compensatory education expenditures for the current or preceding school year;

(2) order agency staff to conduct on-site monitoring of the district's compensatory education expenditures; or

(3) both require a local audit and order on-site monitoring.

(q-3) If a review of the report submitted under Subsection (q), using the risk-based system, indicates that a district is at high risk of having inadequately reported compensatory education expenditures, the commissioner may require agency staff to assist the district in following the proper reporting methods or amending a district or campus improvement plan under Subchapter F, Chapter 11. If the district does not take appropriate corrective action before the 45th day after the date the agency staff notifies the district of the action the district is expected to take, the commissioner may:

(1) require the district to conduct a local audit of the district's compensatory education expenditures; or

(2) order agency staff to conduct on-site monitoring of the district's compensatory education expenditures.

(q-4) The commissioner, in the year following a local ~~[an]~~ audit of compensatory education expenditures, shall withhold from a district's foundation school fund payment an amount equal to the amount of compensatory education funds the agency determines were not used in compliance with Subsection (c). The commissioner shall release to a district funds withheld under this subsection when the district provides to the commissioner a detailed plan to spend those funds in compliance with Subsection (c).

(r) The commissioner shall grant a one-year exemption from the requirements of Subsections (q)-(q-4) [~~Subsection (g)~~] to a school district in which the group of students who have failed to perform satisfactorily in the preceding school year on an assessment instrument required under Section 39.023(a), (c), or (l) subsequently performs on those assessment instruments at a level that meets or exceeds a level prescribed by commissioner rule. Each year the commissioner, based on the most recent information available, shall determine if a school district is entitled to an exemption for the following school year and notify the district of that determination.

(u) For the 2003-2004 and 2004-2005 school years, notwithstanding the allotments and reductions otherwise required or permitted by this section or Section 39.031, the legislature may in the General Appropriations Act reduce the total amount of funding for the compensatory education allotment by not more than the sum of all of the changes, made to programs funded through deductions to the compensatory education allotment to which a district is otherwise entitled under Subsection (a), under H.B. No. 1, Acts of the 78th Legislature, Regular Session, 2003. After deducting the amount of a reduction made as provided by this subsection from the total amount computed for the allotment under Subsection (a), the commissioner shall:

(1) reduce each district's tier one allotments in the same manner described for a reduction in allotments under Section 42.253; and

(2) allocate funds to each district accordingly.

(v) This subsection and Subsection (u) expire on September 1, 2005.

SECTION 31. Section 42.154(a), Education Code, is amended to read as follows:

(a) For each full-time equivalent student in average daily attendance in an approved career and technology education program in grades nine through 12 or in career and technology education programs for students with disabilities in grades seven through 12, a district is entitled to an annual allotment equal to the adjusted basic allotment multiplied by a weight of 1.35 [~~1.37~~].

SECTION 32. Section 42.155(k), Education Code, is amended to read as follows:

(k) Notwithstanding any other provision of this section, the commissioner may not reduce the allotment to which a district or county is entitled under this section because the district or county provides transportation for an eligible student to and from a child-care facility, as defined by Section 42.002, Human Resources Code, or a grandparent's residence instead of the student's residence, as authorized by Section 34.007, if the transportation is provided within the approved routes of the district or county for the school the student attends.

SECTION 33. Subchapter E, Chapter 42, Education Code, is amended by adding Section 42.2517 to read as follows:

Sec. 42.2517. EXCESS FUNDS FOR COST OF EDUCATION ADJUSTMENT. (a) If the commissioner determines that the amount appropriated for purposes of the Foundation School Program exceeds the amount to which school districts are entitled under this chapter, the commissioner may:

(1) adjust each district's cost of education adjustment under Section 42.102 to reflect current uncontrollable variations in the cost of education, particularly the cost of providing salaries and benefits to classroom teachers; and

(2) provide funding under this chapter based on the cost of education index adjusted under Subdivision (1).

(b) If the amount available under Subsection (a) is not sufficient to provide funding based on the cost of education index adjusted under Subsection (a)(1), the commissioner shall rank districts by the increase in the cost of education adjustment applicable to each district under this section and shall provide funding under this section to districts in descending order of the amount of increase in the cost of education adjustment applicable to districts under this section, beginning with the district that has the greatest increase in the cost of education adjustment, until no funds are available for purposes of this section.

SECTION 34. Section 42.253(b), Education Code, is amended to read as follows:

(b) Except as provided by this subsection, the commissioner shall base the determinations under Subsection (a) on the estimates provided to the legislature under Section 42.254, or, if the General Appropriations Act provides estimates for that purpose, on the estimates provided under that Act, for each school district for each school year. The commissioner shall reduce the entitlement of each district that has a final taxable value of property for the second year of a state fiscal biennium that is higher than the estimate under Section 42.254 or the General Appropriations Act, as applicable. A reduction under this subsection may not reduce the district's entitlement below the amount to which it is entitled at its

actual taxable value of property. ~~[The sum of the reductions under this subsection may not be greater than the amount necessary to fully fund the entitlement of each district.]~~

SECTION 35. Sections 42.259(c), (d), and (f), Education Code, are amended to read as follows:

(c) Payments from the foundation school fund to each category 2 school district shall be made as follows:

(1) 22 percent of the yearly entitlement of the district shall be paid in an installment to be made on or before the 25th day of September of a fiscal year;

(2) 18 percent of the yearly entitlement of the district shall be paid in an installment to be made on or before the 25th day of October;

(3) 9.5 percent of the yearly entitlement of the district shall be paid in an installment to be made on or before the 25th day of November;

(4) 7.5 percent of the yearly entitlement of the district shall be paid in an installment to be made on or before the 25th day of April;

(5) five percent of the yearly entitlement of the district shall be paid in an installment to be made on or before the 25th day of May;

(6) 10 percent of the yearly entitlement of the district shall be paid in an installment to be made on or before the 25th day of June;

(7) 13 percent of the yearly entitlement of the district shall be paid in an installment to be made on or before the 25th day of July; and

(8) 15 percent of the yearly entitlement of the district shall be paid in an installment to be made after the fifth day of September and not later than the 10th day of September of the calendar year following the calendar year of the payment made under Subdivision (1) ~~[on or before the 25th day of August].~~

(d) Payments from the foundation school fund to each category 3 school district shall be made as follows:

(1) 45 percent of the yearly entitlement of the district shall be paid in an installment to be made on or before the 25th day of September of a fiscal year;

(2) 35 percent of the yearly entitlement of the district shall be paid in an installment to be made on or before the 25th day of October; and

(3) 20 percent of the yearly entitlement of the district shall be paid in an installment to be made after the fifth day of September and not later than the 10th day of September of the calendar year following the calendar year of the payment made under Subdivision (1) ~~[on or before the 25th day of August].~~

(f) Except as provided by Subsection (c)(8) or (d)(3), any ~~[Any]~~ previously unpaid additional funds from prior years owed to a district shall be paid to the district together with the September payment of the current year entitlement.

SECTION 36. Section 43.001(b), Education Code, is amended to read as follows:

(b) The available school fund, which shall be apportioned annually to each county according to its scholastic population, consists of:

(1) the interest and dividends arising from any securities or funds belonging to the permanent school fund, as determined in accordance with the accrual basis of accounting;

(2) all interest derivable from the proceeds of the sale of land set apart for the permanent school fund;

(3) all money derived from the lease of land belonging to the permanent school fund;

(4) one-fourth of all revenue derived from all state occupation taxes, exclusive of delinquencies and cost of collection;

(5) one-fourth of revenue derived from state gasoline and special fuels excise taxes as provided by law; and

(6) all other appropriations to the available school fund made by the legislature for public school purposes.

SECTION 37. Chapter 43, Education Code, is amended by adding Section 43.020 to read as follows:

Sec. 43.020. TREATMENT OF ACCRUED INCOME. All interest and dividends accruing from the investments of the permanent school fund shall be deposited to the credit of the available school fund in accordance with the accrual basis of accounting. Funds recognized under this section are considered part of the available school fund and may be appropriated as provided by Section 5, Article VII, Texas Constitution.

SECTION 38. Section 44.031(a), Education Code, is amended to read as follows:

(a) Except as provided by this subchapter, all school district contracts, except contracts for the purchase of produce or vehicle fuel, valued at \$25,000 or more in the aggregate for each 12-month period shall be made by the method, of the following methods, that provides the best value for the district:

(1) competitive bidding;

(2) competitive sealed proposals;

(3) a request for proposals, for services other than construction services;

(4) a catalogue purchase as provided by Subchapter B, Chapter 2157, Government Code;

(5) an interlocal contract;

(6) a design/build contract;

(7) a contract to construct, rehabilitate, alter, or repair facilities that involves using a construction manager;

(8) a job order contract for the minor construction, repair, rehabilitation, or alteration of a facility; ~~or~~

(9) the reverse auction procedure as defined by Section 2155.062(d), Government Code; or

(10) the formation of a political subdivision corporation under Section 304.001, Local Government Code.

SECTION 39. Section 45.201(4), Education Code, is amended to read as follows:

(4) "Approved securities" means:

(A) bonds of this state or any agency or political subdivision of this state;

(B) all evidences of indebtedness legally issued by the board of trustees of the depositing school district;

(C) all debt securities that are a direct obligation of the treasury of the United States;

(D) other obligations, including [all debt securities, except] reducing principal balance securities, the principal and interest of which are unconditionally guaranteed or insured by, or backed [in the event of default] by the full faith and credit of, this state or the United States or their respective agencies and instrumentalities; and

(E) those securities provided for by Article 842, Revised Statutes, and Section 1, Chapter 160, General Laws, Acts of the 43rd Legislature, 1933 (Article 842a, Vernon's Texas Civil Statutes).

SECTION 40. Section 46.033, Education Code, is amended to read as follows:

Sec. 46.033. ELIGIBLE BONDS. Bonds, including bonds issued under Section 45.006, are eligible to be paid with state and local funds under this subchapter if:

(1) the district made payments on the bonds during the 2002-2003 [~~2000-2001~~] school year or taxes levied to pay the principal of and interest on the bonds were included in the district's audited debt service collections for that school year; and

(2) the district does not receive state assistance under Subchapter A for payment of the principal and interest on the bonds.

SECTION 41. Section 46.034, Education Code, is amended by amending Subsection (c) and adding Subsections (d) and (e) to read as follows:

(c) If the amount required to pay the principal of and interest on eligible bonds in a school year is less than the amount of payments made by the district on the bonds during the 2002-2003 [~~2000-2001~~] school year or the district's audited debt service collections for that school year, the district may not receive aid in excess of the amount that, when added to the district's local revenue for the school year, equals the amount required to pay the principal of and interest on the bonds.

(d) Notwithstanding any other provision of this chapter, if the appropriation to support newly eligible bonds for the 2003-2004 school year and the 2004-2005 school year is not sufficient to provide the state aid that school districts are entitled to under Section 46.032, the commissioner is directed to reduce the \$35 guaranteed level of state and local support per student per cent of tax effort for newly eligible debt only to the level necessary to fund the sum of the allotments within the appropriated amount. The guaranteed level for eligible debt through the 2000-2001 school year is not affected by this adjustment. The commissioner shall make this determination as soon as practicable, prior to the beginning of the school year. The decision of the commissioner is final and may not be appealed.

(e) Subsection (d) and this subsection expire September 1, 2005.

SECTION 42. Subchapter I, Chapter 88, Education Code, is amended by adding Sections 88.703 and 88.704 to read as follows:

Sec. 88.703. SUNSET PROVISION. The Texas Veterinary Medical Diagnostic Laboratory is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the laboratory is abolished and this subchapter expires September 1, 2007.

Sec. 88.704. FEES. The Texas Veterinary Medical Diagnostic Laboratory may charge and collect fees for goods and services the laboratory provides to any person, including a governmental entity.

SECTION 43. Section 822.001, Government Code, is amended by adding Subsections (c), (d), (e), and (f) to read as follows:

(c) Membership in the retirement system begins on the 91st day after the first day a person is employed.

(d) A person who is reemployed after withdrawing contributions for previous service credit begins membership on the 91st day after the first day the person is reemployed.

(e) Notwithstanding any other provision of law, a member may establish credit only as provided by Section 823.406 for service performed during the 90-day waiting period provided by Subsection (c) or (d).

(f) Subsections (c), (d), and (e) and this subsection expire September 1, 2005.

SECTION 44. Section 823.002, Government Code, is amended to read as follows:

Sec. 823.002. SERVICE CREDITABLE IN A YEAR. (a) The board of trustees by rule shall determine how much service in any year is equivalent to one year of service credit, but in no case may all of a person's service in one school year be creditable as more than one year of service. Service that has been credited by the retirement system on annual statements for a period of five or more years may not be deleted or corrected because of an error in crediting unless the error concerns three or more years of service credit or was caused by fraud.

(b) The rules adopted by the board of trustees under Subsection (a) must provide that the 90-day waiting periods described by Sections 822.001(c) and (d) be applied with regard to contributions during a member's first year of service under either of those subsections in a manner that, to the greatest extent possible, minimizes the cost to the retirement system. This subsection expires September 1, 2005.

SECTION 45. Subchapter E, Chapter 823, Government Code, is amended by adding Section 823.406 to read as follows:

Sec. 823.406. CREDIT PURCHASE OPTION FOR CERTAIN SERVICE. (a) A member may establish membership service credit under this section only for service performed during a 90-day waiting period to become a member after beginning employment.

(b) A member may establish service credit under this section by depositing with the retirement system, for each month of service credit, the actuarial present value, at the time of deposit, of the additional standard retirement annuity benefits that would be attributable to the purchase of the service credit under this section, based on rates and tables recommended by the retirement system's actuary and adopted by the board of trustees.

(c) After a member makes the deposits required by this section, the retirement system shall grant the member one month of equivalent membership service credit for each month of credit approved.

(d) The retirement system shall deposit the amount of the actuarial present value of the service credit purchased in the member's individual account in the employees saving account.

(e) The board of trustees may adopt rules to administer this section.

SECTION 46. Section 2257.022, Government Code, is amended to read as follows:

Sec. 2257.022. AMOUNT OF COLLATERAL. (a) Except as provided by Subsection (b), the ~~The~~ total value of eligible security to secure a deposit of public funds must be in an amount not less than the amount of the deposit of public funds:

(1) increased by the amount of any accrued interest; and

(2) reduced to the extent that the United States or an instrumentality of the United States insures the deposit.

(b) The total value of eligible security described by Section 45.201(4)(D), Education Code, to secure a deposit of public funds of a school district must be in an amount not less than 110 percent of the amount of the deposit as determined under Subsection (a). The total market value of the eligible security must be reported at least once each month to the school district.

(c) The value of a surety bond is its face value.

(d) ~~(e)~~ The value of an investment security is its market value.

SECTION 47. Section 1575.002, Insurance Code, as effective June 1, 2003, is amended to conform to Section 3.03, Chapter 1187, Acts of the 77th Legislature, Regular Session, 2001, and to conform more closely to the source law from which the section was derived, and further amended to read as follows:

Sec. 1575.002. GENERAL DEFINITIONS. In this chapter:

(1) "Active employee" means a contributing member of the Teacher Retirement System of Texas ~~[an employee as defined by Section 821.001, Government Code,]~~ who:

(A) is employed by a public school ~~[a member of the system]~~; and

(B) is not entitled to coverage under a plan provided under Chapter 1551 or 1601.

~~(2) ["Board of trustees" means the board of trustees of the Teacher Retirement System of Texas.~~

~~(3) ["Carrier" means an insurance company or hospital service corporation authorized by the department under this code or another insurance law of this state to provide any of the insurance coverages, benefits, or services provided by this chapter.~~

~~(4) ["Fund" means the retired~~ retired ~~[Texas public]~~ school employees group insurance fund.

~~(5) ["Group program" means the Texas Public School Employees Group Insurance Program authorized by this chapter.~~

(5) ~~(6)~~ "Health benefit plan" means a group insurance policy, contract, or certificate, medical or hospital service agreement, membership or subscription contract, salary continuation plan, or similar group arrangement to provide health care services or to pay or reimburse expenses of health care services.

(6) "Public school" means:

(A) a school district;

(B) another educational district whose employees are members of the Teacher Retirement System of Texas;

(C) a regional education service center established under Chapter 8, Education Code; or

(D) an open-enrollment charter school established under Subchapter D, Chapter 12, Education Code.

(7) "Trustee" ~~["System-"]~~ means the Teacher Retirement System of Texas.

SECTION 48. Section 1575.004, Insurance Code, as effective June 1, 2003, is amended to read as follows:

Sec. 1575.004. DEFINITION OF RETIREE. In this chapter, "retiree" means:

(1) an individual not eligible for coverage under a plan provided under Chapter 1551 or 1601 who:

(A) is at least 65 years of age and has taken a service retirement under the Teacher Retirement System of Texas [system] with at least 10 years of service credit in the system for actual service in public schools in this state; or

(B) has taken a service retirement under the Teacher Retirement System of Texas and who has at least 10 years of service credit for actual public service in the public schools in this state or has at least five years of service credit for actual public service in the public schools in this state and has five years of military service credited in the Teacher Retirement System of Texas, and the sum of the individual's age and amount of service credit earned for service in the public schools of this state equals or exceeds the number 80 [and

(B) is not eligible for coverage under a plan provided under Chapter 1551 or 1601]; or

(2) an individual who:

(A) has taken a disability retirement under the Teacher Retirement System of Texas [system]; and

(B) is entitled to receive monthly benefits from the Teacher Retirement System of Texas [system].

SECTION 49. (a) Section 1575.153, Insurance Code, as effective June 1, 2003, is amended to conform to Section 3.10, Chapter 1187, Acts of the 77th Legislature, Regular Session, 2001, and further amended to read as follows:

Sec. 1575.153. ~~[AUTOMATIC] BASIC COVERAGE.~~ A retiree ~~[or active employee of a participating school district]~~ who applies for coverage during an enrollment period may not be denied coverage in a basic plan provided under this chapter unless the trustee ~~[board of trustees]~~ finds under Subchapter K that the retiree ~~[individual]~~ defrauded or attempted to defraud the group program.

(b) Section 3.10, Chapter 1187, Acts of the 77th Legislature, Regular Session, 2001, is repealed.

SECTION 50. Subchapter D, Chapter 1575, Insurance Code, as effective June 1, 2003, is amended by adding Sections 1575.161, 1575.162, and 1575.163 to read as follows:

Sec. 1575.161. OPEN ENROLLMENT; ADDITIONAL ENROLLMENT PERIODS. (a) A retiree eligible for coverage under the group program may select any coverage provided under this chapter for which the person is otherwise eligible:

(1) on the date that the person retires; and
(2) during any open enrollment periods for retirees set by the trustee by rule.

(b) In addition to the enrollment periods authorized under Subsection (a), a retiree who:

(1) is enrolled in the group program as of August 31, 2004, and who is 65 years of age or older on that date may select coverage as described by Subsections (c) and (d) on September 1, 2004; or

(2) enrolls in the group program on or after September 1, 2004, and who is 65 years of age or older on or after that date may select coverage as described in Subsections (c) and (d) on the date that the retiree is 65 years of age.

(c) If a retiree described by Subsection (b) is not covered by the Medicare program, the retiree may enroll in the next-higher coverage tier under the group program and may add dependent coverage in that same coverage tier.

(d) If a retiree described by Subsection (b) is covered by the Medicare program, the retiree may enroll in any coverage tier under the group program and may add dependent coverage in that same coverage tier.

(e) This section does not affect the right of a retiree enrolled in a coverage tier under the group program to select a lower level of coverage at any time.

Sec. 1575.162. SPECIAL ENROLLMENTS. This chapter does not limit the ability of an individual to enroll in the group program if the individual:

(1) experiences a special enrollment event as provided by the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191, 110 Stat. 1936 (1996)), as amended; and

(2) is otherwise eligible to enroll in the group program.

Sec. 1575.163. LIMITATIONS. The Teacher Retirement System of Texas, as trustee, may not contract for or provide a health benefit plan that excludes from participation in the network a general hospital that:

(1) is located in within the geographical service area or areas of the health coverage plan that includes a county that:

(A) has a population of at least 100,000 and not more than 175,000; and

(B) is located in the Texas-Louisiana border region, as that term is defined in Section 2056.002(e), Government Code; and

(2) agrees to provide medical and health care services under the plan subject to the same terms and conditions as other hospital providers under the plan.

SECTION 51. Section 1575.201, Insurance Code, as effective June 1, 2003, is amended to read as follows:

Sec. 1575.201. ADDITIONAL STATE CONTRIBUTIONS; CERTAIN CONTRIBUTIONS. (a) The state through the trustee [~~system~~] shall contribute from money in the fund:

(1) the total cost of the basic plan covering each participating retiree;
and

(2) for each participating dependent, surviving spouse, and surviving dependent child, the amount prescribed by the General Appropriations Act to cover part of the cost of the basic plan covering the dependent, surviving spouse, and surviving dependent child.

(b) The trustee shall collect the amount of premium required for basic coverage under the group program that exceeds the amount contributed by the state for those individuals described by Subsection (a)(2).

SECTION 52. Section 1575.202(a), Insurance Code, is amended to read as follows:

(a) Each state fiscal year, the state shall contribute to the fund an amount equal to one [~~0.5~~] percent of the salary of each active employee.

SECTION 53. Section 1575.203(a), Insurance Code, as effective June 1, 2003, is amended to read as follows:

(a) Each state fiscal year, each active employee shall, as a condition of employment, contribute to the fund an amount equal to 0.5 [~~0.25~~] percent of the employee's salary.

SECTION 54. Section 1575.204, Insurance Code, as effective June 1, 2003, is amended to read as follows:

Sec. 1575.204. PUBLIC SCHOOL CONTRIBUTION [~~RATIO OF STATE AND ACTIVE EMPLOYEE CONTRIBUTIONS~~]. Each state fiscal year, each public school shall contribute to the fund the amount prescribed by the General Appropriations Act, which may not be less than 0.25 percent or greater than 0.75 percent of the salary of each active employee of the public school. The public school shall make the contributions on a monthly basis and as otherwise prescribed by the trustee [~~If the amount of state and active employee contributions to the fund is raised by the legislature above the percentages provided by Sections 1575.202 and 1575.203 to provide adequate funding for the group program, the ratio between the state's contribution and the active employees' contributions must be maintained at two to one~~].

SECTION 55. Subchapter E, Chapter 1575, Insurance Code, as effective June 1, 2003, is amended by adding Sections 1575.211 and 1575.212 to read as follows:

Sec. 1575.211. COST SHARING. (a) The total costs for the operation of the group program shall be shared among the state, the public schools, the active employees, and the retirees in the manner prescribed by the General Appropriations Act.

(b) In determining the allocation of total costs under this section, the state shall pay not more than 55 percent of the total costs, retirees shall pay at least 30 percent of the total costs, and the balance shall be paid by active employees and public schools.

Sec. 1575.212. PAYMENT BY RETIREES; RANGES. (a) The trustee by rule shall establish ranges for payment of the share of total costs allocated under Section 1575.211 to retirees, with different levels for:

(1) retirees who are not eligible to participate in Part A of the Medicare program;

(2) retirees who are eligible for participation but are not participating in Part A of the Medicare program; and

(3) retirees who are eligible for participation in the Medicare program and are participating in Part A of the Medicare program.

(b) In establishing ranges for payment of the share of total costs allocated under Section 1575.211 to retirees, the trustee may consider the years of service credit accrued by a retiree and may reward those retirees with more years of service credit.

SECTION 56. Subchapter E, Chapter 3, Insurance Code, is amended by adding Article 3.50-7A to read as follows:

Art. 3.50-7A. LIMITATIONS APPLICABLE TO TEXAS SCHOOL EMPLOYEES UNIFORM GROUP COVERAGE PROGRAM. (a) This article applies only to the uniform group coverage program established under Article 3.50-7 of this code. A term used in this article has the meaning assigned by Section 2, Article 3.50-7, of this code.

(b) The Teacher Retirement System of Texas, as trustee, may not contract for or provide a health coverage plan that excludes from participation in the network a general hospital that:

(1) is located in within the geographical service area or areas of the health coverage plan that includes a county that:

(A) has a population of at least 100,000 and not more than 175,000; and

(B) is located in the Texas-Louisiana border region, as that term is defined in Section 2056.002(e), Government Code; and

(2) agrees to provide medical and health care services under the plan subject to the same terms and conditions as other hospital providers under the plan.

SECTION 57. Section 2, Article 3.50-8, Insurance Code, is amended by amending Subsection (a) and adding Subsections (a-1), (e), (f), and (g) to read as follows:

(a) Each year, the trustee shall deliver to each school district, including a school district that is ineligible for state aid under Chapter 42, Education Code, each other educational district that is a member of the Teacher Retirement System of Texas, each participating charter school, and each regional education service center state funds in an amount, as determined by the trustee, equal to:

(1) the product of the number of full-time active employees employed by the district, school, or service center, other than in the capacity of professional staff, multiplied by \$500 [~~\$1,000~~] or a greater amount as provided by the General Appropriations Act for purposes of this article; and

(2) the product of the number of part-time active employees employed by the district, school, or service center, other than in the capacity of professional staff, multiplied by \$250 or a greater amount as provided by the General Appropriations Act for purposes of this article.

(a-1) Notwithstanding any other provision of this article or other law, on or after September 1, 2005, each year, the trustee shall deliver to each school district, including a school district that is ineligible for state aid under Chapter 42, Education Code, each other educational district that is a member of the Teacher Retirement System of Texas, each participating charter school, and each regional education service center state funds in an amount, as determined by the trustee, equal to the product of the number of active employees employed by the district, school, or service center multiplied by \$1,000 or a greater amount as provided by the General Appropriations Act for purposes of this article.

(e) A member of the professional staff of a district, charter school, or service center described by Subsection (a) of this section is not eligible to receive state funds under Subsection (a) of this section.

(f) For purposes of this section, a member of the professional staff of a district, charter school, or service center described by Subsection (a) of this section has the meaning defined by rule by the trustee.

(g) An employee is not eligible to receive a state contribution under this article until the 90th day after the date the employee is employed by an entity described by Section 1(2)(A) of this article.

SECTION 58. Section 304.001(a), Local Government Code, is amended to read as follows:

(a) In this chapter, "political subdivision" means a county, municipality, school district, hospital district, or any other political subdivision receiving electric service from an entity that has implemented customer choice as defined in Section 31.002, Utilities Code.

SECTION 59. Section 57.046, Utilities Code, is amended by amending Subsection (a) and adding Subsections (c) and (d) to read as follows:

(a) The board shall use money in the public schools account to:

(1) to the extent directed in the General Appropriations Act, fund the technology allotment under Section 32.005, Education Code; and

(2) award grants and loans in accordance with this subchapter to fund:

(A) [~~(A)~~] equipment for public schools, including computers, printers, computer labs, and video equipment; and

(B) [~~(B)~~] intracampus and intercampus wiring to enable those public schools to use the equipment.

(c) Section 57.047(d) does not apply to the use of money in the public schools account for the purpose specified by Subsection (a)(1).

(d) In addition to the purposes for which the qualifying entities account may be used, the board may use money in the account to award grants to the Health and Human Services Commission for technology initiatives of the commission.

SECTION 60. Sections 57.048(c) and (d), Utilities Code, are amended to read as follows:

(c) The total amount deposited to the credit of the fund, excluding interest and loan repayments, may not exceed \$1.75 [~~\$1.5~~] billion. Not later than August 31 of each year, the comptroller shall determine the total amount, excluding interest and loan repayments, that has been deposited to the credit of the fund during that fiscal year and the preceding fiscal years. If the comptroller determines that a total of \$1.5 [~~\$1.2~~] billion or more, excluding interest and loan repayments, has been deposited to the credit of the fund, the comptroller shall impose the assessment during the next fiscal year at a rate that the comptroller estimates is sufficient to produce the amount necessary to result in the deposit in the fund of a total of not more than \$1.75 [~~\$1.5~~] billion, excluding interest and loan repayments.

(d) The comptroller may not collect the assessment during a fiscal year if the comptroller determines after the yearly review that the total amount deposited to the credit of the fund during that fiscal year and the preceding fiscal years is \$1.74 [~~\$1.49~~] billion or more, excluding interest and loan repayments, and it is not possible to impose the assessment during the next fiscal year at a practical rate without collecting more than a total of \$1.75 [~~\$1.5~~] billion, excluding interest and loan repayments.

SECTION 61. The following laws are repealed:

- (1) Sections 39.055(b), (c), and (d) and 53.47(k), Education Code;
- (2) Section 823.401(h), Government Code; and
- (3) Section 1575.154, Insurance Code, as effective June 1, 2003.

SECTION 62. Effective September 1, 2003, the comptroller of public accounts shall transfer \$42 million from the Texas school employees uniform group coverage trust fund established under Section 8, Article 3.50-7, Insurance Code, to the retired school employees group insurance fund described by Subchapter G, Chapter 1575, Insurance Code, as effective June 1, 2003, to compensate the retired school employees group insurance fund for money transferred from that fund under Section 4.01, Chapter 1187, Acts of the 77th Legislature, Regular Session, 2001.

SECTION 63. (a) The comptroller shall contract with a consultant for a comprehensive audit of regional education service centers in this state. The audit must include:

- (1) a detailed analysis of all services provided by regional education service centers that identifies, for each service provided:
 - (A) the percentage of school districts receiving the service;
 - (B) the costs to the regional education service centers of providing the service;
 - (C) the charges imposed on school districts by the regional education service centers for providing the service; and

(D) the difference between the amount determined under Paragraph (B) of this subdivision and the amount determined under Paragraph (C) of this subdivision;

(2) an evaluation of whether any services provided by a regional education service center could be provided at a lower cost by an alternative service provider, as determined based on a survey of potential alternative service providers;

(3) an analysis of the governance structures of regional education service centers;

(4) a review of the financial condition of regional education service centers and their current funding sources to determine the adequacy of state appropriations to regional education service centers and whether those appropriations should continue to be made;

(5) a review of the number and geographic distribution of regional education service centers;

(6) a review of the institutional structure of regional education service centers, with consideration of whether a separate system of Texas Education Agency field offices would be appropriate or whether any regional education service center functions should be transferred to Texas Education Agency facilities; and

(7) an analysis of the support functions of regional education service centers to determine whether support requirements could be decreased through business processes or application redesigns.

(b) Costs of the audit required by Subsection (a) of this section shall be paid using amounts appropriated for the fiscal biennium ending August 31, 2005, to regional education service centers or to the Texas Education Agency for the costs of services provided by regional education service centers, not to exceed a total amount of \$750,000.

(c) Not later than June 1, 2004, the comptroller shall submit a report to the legislature concerning the results of the audit required by Subsection (a) of this section.

SECTION 64. Section 11.164, Education Code, as amended by this Act, applies beginning with the 2003-2004 school year.

SECTION 65. The changes in law made by this Act to Subsection (a), Section 13.005, Education Code, Subsections (b) and (c), Section 13.155, Education Code, and Section 41.033, Education Code, apply only to a school district consolidation with an effective date on or after the effective date of this Act. A school district consolidation with an effective date before the effective date of this Act is covered by the law in effect on the effective date of the district's consolidation, and the former law is continued in effect for that purpose.

SECTION 66. Subchapter F, Chapter 21, Education Code, as amended by this Act, applies only to a hearing before a hearing examiner under that subchapter for which a teacher makes a written request on or after September 1, 2003. A hearing under Subchapter F, Chapter 21, Education Code, for which a

teacher made a written request before September 1, 2003, is governed by the law in effect on the date the teacher requests the hearing, and the former law is continued in effect for that purpose.

SECTION 67. (a) The repeal by Section 1 of this Act of Section 45.002, Education Code, does not impair any obligation created by the issuance or execution of any lawful agreement or evidence of indebtedness before September 1, 2004, that matures after that date and that is payable from the levy and collection of a maintenance tax under that section or another law, and an independent school district may, on and after September 1, 2004, levy, assess, and collect a maintenance tax, at a rate not greater than the rate required to pay such obligations but only for so long as those obligations remain outstanding and unpaid.

(b) Notwithstanding the repeal by Section 1 of this Act of Chapters 41, 42, and 46, Education Code, and Section 45.002, Education Code, a school district that, before September 1, 2004, issues bonds, notes, or other evidences of indebtedness under Chapter 45, Education Code, or other applicable law or enters into a lease-purchase agreement under Subchapter A, Chapter 271, Local Government Code, may continue, before, on, and after September 1, 2004, to receive state assistance with respect to such payments to the same extent the district would have been entitled to receive the assistance under Chapter 42 or 46, Education Code, as those chapters existed before repeal by this Act, and the former law is continued in effect for that purpose. The commissioner of education may adopt rules to implement this subsection.

(c) The repeal by Section 1 of this Act of Chapters 41, 42, and 46, Education Code, and Section 45.002, Education Code, does not limit, modify, or eliminate the authority of a school district to:

(1) issue or execute bonds, public securities, (1) other obligations under Chapter 45, Education Code, or other law, either before, on, or after September 1, 2004; or

(2) levy, assess, and collect, before, on, or after September 1, 2004, ad valorem taxes at the full rate and in the full amount authorized by Section 45.002, Education Code, and necessary to pay the bonds, public securities, or other obligations when due and payable.

(d) Before September 1, 2004, the commissioner of education may not refuse to grant assistance to a school district under Chapter 42 or 46, Education Code, in connection with public securities, lease-purchase agreements, credit agreements, or other obligations, including those described by Subchapter A, Chapter 271, Local Government Code, on the basis that the district's authority to levy a maintenance tax is repealed effective September 1, 2004.

SECTION 68. Notwithstanding any conflicting provision of H.B. No. 1, Acts of the 78th Legislature, Regular Session, 2003, the guaranteed level of state and local funds per weighted student per cent of tax effort is \$27.14. This section does not affect a school district's entitlement to any additional revenue under H.B. No. 1, Acts of the 78th Legislature, Regular Session, 2003.

SECTION 69. Of the amounts appropriated by H.B. No. 1, Acts of the 78th Legislature, Regular Session, 2003, to the Texas Education Agency under Strategy A.1.2, FSP - Equalized Facilities, for purposes of the existing debt assistance program under Subchapter B, Chapter 46, Education Code, the commissioner of education may, in the fiscal year ending August 31, 2005, use an amount not to exceed \$20 million for purposes of the instructional facilities allotment under Subchapter A, Chapter 46, Education Code.

SECTION 70. The commissioner of education shall adopt rules and establish the classroom supply reimbursement program as required by Section 21.413, Education Code, as added by this Act, not later than August 1, 2005.

SECTION 71. Notwithstanding Section 39.182, Education Code:

(1) the Texas Education Agency is not required to prepare and deliver a report under that section before December 1, 2003, that covers the 2002-2003 school year; and

(2) as determined by the commissioner of education, the report required to be delivered not later than December 1, 2004, by the Texas Education Agency under that section may include information from the 2002-2003 school year.

SECTION 72. Section 42.152(c), Education Code, as amended by this Act, applies to the use of compensatory education funds allotted under Chapter 42, Education Code, for any school year, including a school year before September 1, 2003.

SECTION 73. Section 822.001, Government Code, as amended by this Act, and Section 823.406, Government Code, as added by this Act, apply only to a person who is first employed on or after the effective date of this Act and to a former employee who has withdrawn retirement contributions under Section 822.003, Government Code, and is reemployed on or after the effective date of this Act.

SECTION 74. The requirements of Subsection (b), Section 823.002, Government Code, as added by this Act, apply to persons whose employment begins on or after the effective date of this Act. The board of trustees of the Teacher Retirement System of Texas shall adopt rules implementing the requirements of that subsection as soon as practicable after the effective date of this Act.

SECTION 75. The change in law made by this Act to Section 2, Article 3.50-8, Insurance Code, applies to a monthly installment to be paid on or after September 1, 2003.

SECTION 76. Notwithstanding Article 3.50-8, Insurance Code, the state shall pay the state contribution for active employee health coverage or supplemental compensation authorized under Section 2, Article 3.50-8, Insurance Code, for the last month of state fiscal year 2005 not earlier than the first day of the first month of state fiscal year 2006.

SECTION 77. (a) Except as otherwise provided by this Act, this Act takes effect September 1, 2003.

(b) Sections 20, 22, 36, 37, 59, and 60 of this Act take effect immediately if this Act receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, Sections 20, 22, 36, 37, 59, and 60 of this Act take effect September 1, 2003.

SECTION 78. Chapter 466, Government Code, is amended by adding Subchapter J to read as follows:

SUBCHAPTER J. PARTICIPATION IN MULTI JURISDICTION
LOTTERY GAME

Sec. 466.451. MULTI JURISDICTION AGREEMENT AUTHORIZED. The commission may enter into a written agreement with the appropriate officials of one or more other states or other jurisdictions, including foreign countries, to participate in the operation, marketing, and promotion of a multijurisdiction lottery game or games. The commission may adopt rules relating to a multijurisdiction lottery game or games.

Sec. 466.452. REVENUE FROM MULTI JURISDICTION LOTTERY. (a) Except as provided by this section, revenue received from the sale of tickets in this state for a multijurisdiction lottery game is subject to Subchapter H.

(b) The commission may deposit a portion of the revenue received from the sale of multijurisdiction lottery game tickets in this state into a fund shared with other parties to an agreement under this subchapter for the payment of prizes awarded in multijurisdiction lottery games in which the commission participates. The commission may retain that revenue in the fund for as long as necessary to pay prizes claimed during the period designated for claiming a prize in the multijurisdiction lottery game.

Sec. 466.453. PAYMENT OF COSTS AUTHORIZED. The commission may share in the payment of costs associated with participating in multijurisdiction lottery games.

SECTION 79. (a) As soon as practicable after the effective date of this Act, the Texas Lottery Commission shall adopt the rules necessary to implement multijurisdiction lottery games in accordance with Subchapter J, Chapter 466, Government Code, as added by this Act.

(b) The Texas Lottery Commission may adopt an emergency rule under Subsection (a) of this section without prior notice or hearing, or with any abbreviated notice and hearing as the commission finds practicable, for the implementation of the change in law made by Subchapter J, for multijurisdiction lottery games, Chapter 466, Government Code. Section 2001.034, Government Code, does not apply to an emergency rule adopted under this section.

(c) Notwithstanding any law to the contrary, including any law enacted during the 78th Legislature, Regular Session, 2003, to promptly implement Subchapter J, Chapter 466, Government Code, as added by this Act, a contract for the acquisition or provision of facilities, supplies, equipment, materials, or services related to the initial operation of multijurisdiction lottery games under these subchapters is not subject to:

- (1) Subtitle D, Title 10, Government Code;
- (2) Section 466.101, Government Code;

(3) Chapter 2161, Government Code; or

(4) any competitive bidding requirements or contract requirements provided by any other law or by rules of the Texas Lottery Commission.

HB 3459 - STATEMENT OF LEGISLATIVE INTENT

REPRESENTATIVE MCREYNOLDS: Jim, I noticed on page 55 and page 56 of this bill, there's some new language when it talks about the teachers' health insurance program. It says "other than in the capacity of professional staff." That is a little confusing to all of us because when the bill left the house, "professional employee" was the word that was used, and it was defined in the house version to mean a teacher, a nurse, a counselor, or a librarian. Would you please tell us, since we regard our teachers and other school professionals as professionals, what is meant by professional staff being exempted here? And is it your intent that we only exclude professional administration, not the nonadministrative professionals such as teachers, counselors, nurses, librarians, speech pathologists, educational diagnosticians, etc?

REPRESENTATIVE PITTS: All of those people that you said—teachers, librarians, nurses, all certified people, all full-time school employees, all full-time school employees—will receive the \$500 pass through. The only ones that would not be included in the full-time individuals would be the administrators.

MCREYNOLDS: Well, it just changed on us between the house and the senate and I wanted to have clarification.

PITTS: Mr. McReynolds, I want you to know it is the conferees' opinion on **HB 3459** that we would get back to the \$1,000 pass through and that is also included in this bill that there is a sunset provision.

REMARKS ORDERED PRINTED

Representative Rose moved to print remarks between Representative McReynolds and Representative Pitts.

The motion prevailed without objection.

Representative Pitts moved to adopt the conference committee report on **HB 3459**.

A record vote was requested.

The motion prevailed by (Record 945): 105 Yeas, 38 Nays, 2 Present, not voting.

Yeas — Mr. Speaker(C); Allen; Alonzo; Bailey; Berman; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Callegari; Campbell; Capelo; Casteel; Castro; Chavez; Chisum; Christian; Cook, B.; Cook, R.; Corte; Crabb; Crownover; Davis, J.; Dawson; Delisi; Denny; Deshotel; Driver; Dukes; Dunnam; Edwards; Eiland; Eissler; Ellis; Farabee; Flores; Flynn; Gallego; Gattis; Geren; Goolsby; Griggs; Grusendorf; Guillen; Gutierrez; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Heflin; Hegar; Hill; Hochberg; Hope; Hopson; Hunter; Hupp; Isett; Jones, D.; Jones, E.; Keel; Keffer, B.; Keffer, J.; King; Kolkhorst; Krusee; Kuempel; Lewis; Luna; Mabry; Madden; Marchant; Martinez Fischer;

McClendon; McReynolds; Menendez; Mercer; Miller; Morrison; Mowery; Nixon; Phillips; Pickett; Pitts; Quintanilla; Reyna; Ritter; Seaman; Smith, W.; Smithee; Stick; Swinford; Telford; Truitt; Van Arsdale; Villarreal; Wilson; Wise; Wohlgemuth; Wong; Woolley; Zedler.

Nays — Canales; Coleman; Davis, Y.; Dutton; Elkins; Escobar; Farrar; Giddings; Goodman; Hodge; Homer; Howard; Jones, J.; Laney; Laubenberg; McCall; Moreno, J.; Moreno, P.; Naishtat; Noriega; Oliveira; Olivo; Peña; Puente; Raymond; Riddle; Rodriguez; Rose; Smith, T.; Solis; Solomons; Talton; Taylor; Thompson; Turner; Uresti; West; Wolens.

Present, not voting — Baxter; Hilderbran.

Absent, Excused — Garza.

Absent — Burnam; Hughes; Merritt; Paxton.

STATEMENTS OF VOTE

I was shown voting yes on Record No. 945. I intended to vote no.

Capelo

When Record No. 945 was taken, I was temporarily out of the house chamber. I would have voted no.

Hughes

When Record No. 945 was taken, my vote failed to register. I would have voted no.

Merritt

When Record No. 945 was taken, I was in the house but away from my desk. I would have voted no.

Paxton

I was shown voting no on Record No. 945. I intended to vote yes.

Rose

I was shown voting no on Record No. 945. I intended to vote yes.

Taylor

REASONS FOR VOTE

I voted for **HB 3459** to preserve the Teacher Retirement System Health Care Program (TRS-CARE). I disagree with expanding gambling of any type, including a multi-state Powerball lottery system. This is evidenced by my previous vote against the multi-state lottery.

Berman

Flynn

Griggs

Hopson

Nixon

I voted for **HB 3459** to preserve the Teacher Retirement System Health Care (TRS-CARE) and for the overall need to balance the budget. However, I oppose Powerball in this bill. I also oppose an extension of the TIF tax, believing this is unfair to SBC and will cost jobs. This is not right, and I oppose the TIF extension.

Bohac

I do not support Powerball, however, I choose to support the appropriations bill that had counted on the \$3 billion in **HB 3459**.

I believe that the house will revisit the TIF during the special session and seek to honor the original agreement.

Casteel

I voted for **HB 3459** because of the revenue the bill provides the citizens of Texas. Additionally, **HB 3459** preserves Teacher Retirement System Health Care (TRS-CARE).

However, I oppose Powerball and would prefer other revenue sources.

B. Cook

I voted to complete the budget in order that we may preserve the Teacher Retirement. I disagree with gambling as well as decreasing the weight of career and technology courses and do not agree with passing any tax on to my constituents through TIF grants.

Dawson

I voted for **HB 3459** to preserve the Teacher Retirement System and Health Care Program. I disagree with dependence on Powerball gambling, as I had voted against it originally.

Eissler

I voted for this bill, **HB 3459**, for the overall need to balance the budget. However, I am strongly opposed to expansion of gambling—Powerball—in this bill. I also oppose changing the state's agreement on the TIF.

Harper-Brown

As joint-author of this bill, I wish the record to reflect some reasons for my "no" vote.

The bill began strictly as a plan to do away with the "Robin Hood" method of school finance that has been so punitive to my constituents and the Plano Independent School District (among others).

In a most unusual play—as the bill returned to the house for final consideration today, it had two measures added to it in conference. (I refused to sign the Conference Committee Report.)

First, it added an expansion of gambling in the State of Texas. In fact, the very measure that the house previously voted down.

Second, it created a new tax on the telecommunications industry. Such a tax should have had hearings in the Ways and Means Committee, been voted out—gone through the calendars process and had debate on the house floor. Inexplicably, the normal process did not take place.

I shall steadfastly support measures to overturn and replace the current method of financing our schools without violating the processes of the house of representatives which I am sworn to uphold.

McCall

I voted for **HB 3459** because of the overall need to balance the budget; however, I strongly oppose the expansion of gambling—Powerball—in this bill. I also oppose changing the state's agreement on the TIF.

Mercer

I voted yes on **HB 3459** because there were sections in **HB 3459** that had to pass to make the budget work and to preserve the Teacher Retirement System Health Care Program (TRS-CARE). I disagree with the expansion of gambling, including a multi-state Powerball as evidenced by my prior vote against the multi-state lottery Powerball. I also disagree with the TIF extension as found in this bill.

Phillips

I objected to the expansion of the lottery with the new game "Powerball" and I also objected to the extension of the TIF; however, I felt compelled to vote "for" **HB 3459** so the state would not lose \$100 million for this budget cycle.

Reyna

I voted for **HB 3459** to preserve the Teacher Retirement Health Care Program and to better fund public education.

Rose

**HB 1695 - HOUSE DISCHARGES CONFEREES
HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS**

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

HB 1695, A bill to be entitled An Act relating to certain election processes and procedures.

Representative Denny moved to discharge the conferees and concur in the senate amendments to **HB 1695**.

The motion prevailed.

Senate Committee Substitute

HB 1695, A bill to be entitled An Act relating to certain election processes and procedures.

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

SECTION 1. Section 1.006, Election Code, is amended to read as follows:

Sec. 1.006. EFFECT OF WEEKEND OR HOLIDAY. (a) If the last day for performance of an act is a Saturday, Sunday, or legal state or national holiday, the act is timely if performed on the next regular business day, except as otherwise provided by this code.

(b) If the last day for performance of an act is extended under Subsection (a), the extended date is used to determine any other dates and deadlines, and the dates or times of any related procedures, that are expressly required to be made on a date or at a time determined in relation to the last day for performance of the act.

(c) A declaration of ineligibility of a candidate is considered to be the performance of an act under this section for purposes of causing the candidate's name to be omitted from the ballot.

(d) The filing of a document, including a withdrawal request or resignation, is considered to be the performance of an act under this section for purposes of creating a vacancy to be filled at a subsequent election.

(e) The death of a person is not considered to be the performance of an act under this section.

SECTION 2. Section 2.025, Election Code, is amended to read as follows:

Sec. 2.025. RUNOFF ELECTION DAY. (a) Except as otherwise provided by this code [~~Subsection (b)~~], a runoff election shall be held not earlier than the 20th or later than the 45th [~~30th~~] day after the date the final canvass of the main election is completed.

(b) A runoff election date later than [~~may be held after~~] the period prescribed by Subsection (a) may be prescribed by a home-rule city charter [~~law but not later than the 45th day after the date the final canvass of the main election is completed only to:~~

[~~(1) permit a joint runoff election to be held with another political subdivision in accordance with Chapter 271; or~~

[~~(2) avoid holding the runoff on:~~

[~~(A) a legal state or national holiday; or~~

[~~(B) a weekend day within three days of a legal state or national holiday~~].

(c) This section [~~Subsection (b)~~] supersedes a law outside this subchapter to the extent of a conflict notwithstanding Section 2.022.

SECTION 3. Section 2.051(b), Election Code, is amended to read as follows:

(b) In the case of an election in which any members of the political subdivision's governing body are elected from territorial units such as single-member districts, this subchapter applies to the election in a particular territorial unit [~~single member district~~] if:

[~~(1)~~] each candidate whose name is to appear on the ballot in that territorial unit [~~district~~] is unopposed and no at-large proposition or opposed at-large race is to appear on the ballot. This subchapter applies to an unopposed at-large race in such an election regardless of whether an opposed race is to appear on the ballot in a particular territorial unit [~~; and~~

~~[(2) the requirements prescribed by Subsection (a) are otherwise met].~~

SECTION 4. Section 2.053(c), Election Code, is amended to read as follows:

(c) A certificate of election shall be issued to each candidate in the same manner and at the same time as provided for a candidate elected at the election. The candidate must qualify for the office in the same manner as provided for a candidate elected at the election.

SECTION 5. Section 13.072(c), Election Code, is amended to read as follows:

(c) Except as provided by Subsection (d) ~~[or (e)]~~, if the registrar determines that an application does not comply with Section 13.002 or does not indicate that the applicant is eligible for registration, the registrar shall reject the application.

SECTION 6. Section 13.073, Election Code, is amended by adding Subsection (c) to read as follows:

(c) If the registrar rejects an application for incompleteness but receives a completed application not later than the 10th day after the date the notice is delivered under Subsection (a) or the date the incomplete application is returned under Subsection (b), as applicable, the original date of submission of the incomplete application is considered to be the date of submission to the registrar for the purpose of determining the effective date of registration.

SECTION 7. Section 15.025, Election Code, is amended to read as follows:

Sec. 15.025. EFFECTIVE DATE OF CERTAIN CHANGES IN REGISTRATION INFORMATION ~~[IN PRECINCT OF NEW RESIDENCE]~~.

(a) Except as provided by Subsections (b) and (d), the ~~[The]~~ registration of a voter described by this subsection whose information ~~[residence]~~ is changed on the registration records ~~[to another county election precinct in the same county]~~ becomes effective as to the change ~~[in the precinct of new residence]~~ on the 30th day after:

(1) the date the voter submits to the registrar ~~[receives]~~ a notice of a change in registration information under Section 15.021 or a ~~[voter's]~~ response under Section 15.053, indicating the change ~~[of residence]~~; or

(2) the date the voter submits a statement of residence to an election officer under Section 63.0011 or a registration application or change of address to an agency employee under Chapter 20, indicating the change ~~[of residence]~~.

(b) A change in registration information covered by this section is effective for purposes of early voting if it will be effective on election day.

(c) For purposes of determining the effective date of a change in registration information covered by this section, a document submitted by mail is considered to be submitted to the registrar on the date it is placed with postage prepaid and properly addressed in the United States mail. The date indicated by the post office cancellation mark is considered to be the date the document was placed in the mail unless proven otherwise.

(d) If the 30th day before the date of an election is a Saturday, Sunday, or legal state or national holiday, the document is considered to be timely if it is submitted to the registrar on or before the next regular business day.

SECTION 8. Sections 16.033(c) and (d), Election Code, are amended to read as follows:

(c) The notice must include:

(1) a request for information relevant to determining the voter's eligibility for registration; and

(2) a warning that the voter's registration is subject to cancellation if the registrar does not receive an appropriate reply on or before the 30th ~~[60th]~~ day after the date the notice is mailed.

(d) Except as provided by Subsection (e), the registrar shall cancel a voter's registration if:

(1) after considering the voter's reply, the registrar determines that the voter is not eligible for registration;

(2) no reply is received from the voter on or before the 30th ~~[60th]~~ day after the date the notice is mailed to the voter under Subsection (b); or

(3) each notice mailed under Subsection (b) is returned undelivered to the registrar with no forwarding information available.

SECTION 9. Sections 16.0332(a) and (b), Election Code, are amended to read as follows:

(a) After the registrar receives a list under Section 62.113, Government Code, of persons excused or disqualified from jury service because of citizenship status, the registrar shall deliver to each registered voter whose name [who] appears on the list a written notice requiring the voter to submit to the registrar [provide] proof of United States citizenship in the form of a certified copy of the voter's birth certificate, United States passport, or certificate of naturalization or any other [a] form prescribed by the secretary of state. The notice shall be delivered by forwardable mail to the mailing address on the voter's registration application and to any new address of the voter known to the registrar.

(b) If a voter fails to submit to [provide] the registrar [with] proof of citizenship on or before the 30th ~~[31st]~~ day after the date the notice is mailed ~~[to the voter]~~, the registrar shall cancel the voter's registration.

SECTION 10. Section 16.036(a), Election Code, is amended to read as follows:

(a) Immediately after cancellation of a voter's registration under Section 16.031(a)(3), 16.033, ~~[or]~~ 16.0331, or 16.0332, the registrar shall deliver written notice of the cancellation to the voter.

SECTION 11. Section 19.001(a), Election Code, is amended to read as follows:

(a) Before May 15 of each year, the registrar shall prepare and submit to the comptroller of public accounts a statement containing:

(1) the total number of initial registrations for the previous voting year;

(2) the total number of registrations canceled under Sections 16.031(a)(1), ~~[and]~~ 16.033, and 16.0332 for the previous voting year; and

(3) the total number of registrations for which information was updated for the previous voting year.

SECTION 12. Section 32.091, Election Code, is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

(a) Except as provided by Subsection (c), an ~~Am~~ election judge or clerk is entitled to compensation for services rendered at a precinct polling place at an hourly rate not to exceed the amount fixed by the appropriate authority, which amount must be at least the federal minimum hourly wage. A judge or clerk may be compensated at that rate for services rendered under Section 62.014(c).

(c) For a primary or runoff primary election, the minimum hourly rate is the greater of the maximum rate provided by Subsection (a) or, if the election officer attended a training program as provided by Subchapter F, §7.

SECTION 13. Section 32.111, Election Code, is amended to read as follows:

Sec. 32.111. TRAINING STANDARDS FOR ELECTION JUDGES. (a) The secretary of state shall ~~[governing body of a political subdivision that holds elections or the county executive committee of a political party that holds primary elections may]:~~

(1) adopt ~~[minimum]~~ standards of training in election law and procedure for presiding or alternate election judges ~~[serving in its elections];~~ ~~[and]~~

(2) develop materials for a standardized curriculum for that training;
and

(3) distribute the materials as necessary to the governing bodies of political subdivisions that hold elections and to each county executive committee of a political party that holds a primary election ~~[require that a person meet those standards before appointment or service as a judge].~~

(b) The ~~[Minimum]~~ training standards may include required attendance at appropriate training programs or the passage of an examination at the end of a training program.

SECTION 14. Section 32.112, Election Code, is amended to read as follows:

Sec. 32.112. EXPENSE OF TRAINING JUDGES. The governing body of a political subdivision may appropriate funds to:

(1) compensate its election judges, early voting clerk, and deputy early voting clerks in charge of early voting polling places for attending a training program required under Section 32.111 ~~[programs]~~, at an hourly rate not to exceed the maximum rate of compensation of an election judge for services rendered at a precinct polling place or, if applicable, for attending a training program under Section 32.114; and

(2) pay the expenses of conducting the programs.

SECTION 15. Sections 32.113(a) and (b), Election Code, are amended to read as follows:

(a) The governing body of a political subdivision other than a county may, and the county executive committee of a political party shall, provide training ~~[programs]~~ for its election officers using the standardized training program and materials developed and provided by the secretary of state under Section 32.111.

(b) A political subdivision or county executive committee may conduct its training ~~[programs]~~ independently or jointly with other entities.

SECTION 16. Section 32.114, Election Code, is amended by amending Subsection (a) and adding Subsection (e) to read as follows:

(a) The county clerk shall provide one or more sessions of [a] training using the standardized training program and materials developed and provided by the secretary of state under Section 32.111 [program] for the election judges and clerks appointed to serve in elections ordered by the governor or a county authority. Each election judge shall complete the training program.

(e) An election judge, early voting clerk, or deputy early voting clerk in charge of an early voting polling place is entitled to compensation for attending the training program at an hourly rate not to exceed \$7.

SECTION 17. Section 67.003, Election Code, is amended to read as follows:

Sec. 67.003. TIME FOR LOCAL CANVASS. Each local canvassing authority shall convene to conduct the local canvass at the time set by the canvassing authority's presiding officer:

(1) on the seventh day after election day for:

(A) the general election for state and county officers; or

(B) an election of a political subdivision that is held jointly with an

election of:

(i) a county; or

(ii) one or more other political subdivisions under an election services contract with the county election officer; or

(2) not earlier than the third day or later than the sixth day after election day for an election other than an [the general] election described by Subdivision (1) [for state and county officers].

SECTION 18. Section 83.006(b), Election Code, is amended to read as follows:

(b) To be eligible for appointment as early voting clerk under this section, a person must meet the requirements for eligibility for service as a presiding election judge, except that:

(1) an appointee must be a qualified voter of the political subdivision and is not required to be a qualified voter of any other particular territory; ~~[and]~~

(2) in an election in which an officer of the political subdivision is a candidate, an appointee's status as an employee of the political subdivision does not make the appointee ineligible for appointment as the clerk; and

(3) an appointee who is a permanent employee of the political subdivision and a qualified voter of any territory is not required to be a qualified voter of the political subdivision.

SECTION 19. Section 83.007(b), Election Code, is amended to read as follows:

(b) To be eligible for appointment as early voting clerk under this section, a person must meet the requirements for eligibility for service as a presiding election judge, except that:

(1) an [the] appointee must be a qualified voter of the territory covered by the election and is not required to be a qualified voter of any other particular territory; and

(2) an appointee who is a permanent employee of the authority ordering the election and a qualified voter of any territory is not required to be a qualified voter of the territory covered by the election.

SECTION 20. Section 83.032(b), Election Code, is amended to read as follows:

(b) For a temporary deputy to be eligible for appointment as a deputy early voting clerk under this section, the temporary deputy must meet the requirements for eligibility for service as a presiding election judge, except that:

(1) an appointee is not required to be a qualified voter of any particular territory other than the county, in the case of an appointment by a county clerk, or the city, in the case of an appointment by a city secretary; ~~and~~

(2) in an election in which the early voting clerk is a candidate, an appointee's status as an employee of the clerk does not make the appointee ineligible for appointment as a deputy early voting clerk; and

(3) an appointee who is a permanent employee of the county or city, as applicable, and a qualified voter of any territory is not required to be a qualified voter of the county or city, as applicable.

SECTION 21. Section 84.032, Election Code, is amended by amending Subsection (b) and adding Subsection (e) to read as follows:

(b) A request must:

(1) be in writing and signed by the applicant;

(2) specify the election for which the application was made; and

(3) except as provided by Subsection (c), ~~(d)~~, or (e), be received by the early voting clerk:

(A) not later than the third day before election day; and

(B) if an early voting ballot sent to the applicant is returned to the clerk as a marked ballot, before the marked ballot's arrival at the address on the carrier envelope.

(e) An applicant may also submit a request at any time after the early voting ballot is returned to the early voting clerk as a marked ballot and before the ballot is delivered to the early voting ballot board by appearing in person and executing an affidavit that the applicant did not mark the ballot.

SECTION 22. Section 85.001(c), Election Code, is amended to read as follows:

(c) If the date prescribed by Subsection (a) or (b) for beginning the period is a Saturday, Sunday, or legal state holiday, the early voting period begins [-

~~(1)] on the next regular business day[-~~or~~~~

~~(2) on that Saturday or Sunday if early voting is ordered to be conducted on that day under Section 85.006].~~

SECTION 23. Section 86.003(c), Election Code, is amended to read as follows:

(c) The address to which the balloting materials must be addressed is the address at which the voter is registered to vote, or the registered mailing address if different, unless the ground for voting by mail is:

(1) absence from the county of residence, in which case the address must be an address outside the voter's county of residence;

(2) confinement in jail, in which case the address must be the address of the jail or of a relative described by Section 84.002(a)(4); or

(3) age or disability and the voter is living at a hospital, nursing home or other long-term care facility, or retirement center, or with a relative described by Section 84.002(a)(3), in which case the address must be the address of that facility or relative.

SECTION 24. Section 86.007(d), Election Code, is amended to read as follows:

(d) A marked ballot voted by mail that arrives after the time prescribed by Subsection (a) shall be counted if:

(1) the ballot was cast from an address outside the United States;

(2) the carrier envelope was placed for delivery before the time the ballot is required to arrive under Subsection (a); and

(3) the ballot arrives at the address on the carrier envelope not later than:

(A) the fifth day after the date of:

(i) the general election for state and county officers; or

(ii) an election of a political subdivision that is held jointly with an election of:

(a) a county; or

(b) one or more political subdivisions under an election services contract with the county election officer; or

(B) the second day after the date of an election other than an [the general] election described by Paragraph (A) [for state and county officers].

SECTION 25. Section 87.0241, Election Code, is amended by amending Subsection (b) and adding Subsection (c) to read as follows:

(b) The board may not count early voting ballots until:

(1) the polls open on election day; or

(2) in an election conducted by an authority of a county with a population of 100,000 or more or conducted jointly with such a county, the end of the period for early voting by personal appearance.

(c) The secretary of state shall prescribe any procedures necessary for implementing this section in regard to elections described by Subsection (b)(2).

SECTION 26. Section 87.027, Election Code, is amended by amending Subsections (a), (c), (d), (i), and (j) and adding Subsection (a-1) to read as follows:

(a) Except as provided by Subsection (a-1), a [A] signature verification committee may be appointed in any election. The early voting clerk is the authority responsible for determining whether a signature verification committee is to be appointed. If the clerk determines that a committee is to be appointed, the clerk shall issue a written order calling for the appointment. ~~[Section 87.0271 supersedes this section to the extent of a conflict.]~~

(a-1) A signature verification committee shall be appointed in the general election for state and county officers on submission to the early voting clerk of a written request for the committee by at least 15 registered voters of the county.

The request must be submitted not later than the preceding October 1, and a request submitted by mail is considered to be submitted at the time of its receipt by the clerk.

(c) Not later than the fifth day after the date the early voting clerk issues the order calling for the appointment of a signature verification committee, or not later than October 15 for a committee required under Subsection (a-1), the appropriate authority shall appoint the members of the committee and designate one of the appointees as chair, subject to Subsection (d). The authority shall fill a vacancy on the committee by appointment as soon as possible after the vacancy occurs, subject to Subsection (d). The early voting clerk shall post notice of the name and residence address of each appointee. The notice must remain posted continuously for the period beginning the day after the date of the appointment and ending on the last day of the committee's operation in the election.

(d) The early voting clerk shall determine the number of members who are to compose the signature verification committee and shall state that number in the order calling for the committee's appointment. A committee must consist of not fewer than five members. In an election [and, in elections] in which party alignment is indicated on the ballot, each county chair of a political party with a nominee or aligned candidate on the ballot shall submit to the appointing authority a list of names of persons eligible to serve on the signature verification committee. The authority shall appoint at least two persons from each list to serve as members of the committee. The same number of members must be appointed from each list. The authority shall appoint the chair of the committee from the list provided by the political party whose nominee for governor received the most votes in the county in the most recent gubernatorial general election. A vacancy on the committee shall be filled by appointment from the original list or from a new list submitted by the appropriate county chair [must be balanced as equally as possible by members of each political party required to nominate candidates by primary election].

(i) The signature verification committee shall compare the signature on each carrier envelope certificate, except those signed for a voter by a witness, with the signature on the voter's ballot application to determine whether the signatures are those of the same person. The committee may also compare the signatures with the signature on the voter's registration application to confirm that the signatures are those of the same person [match] but may not use the registration application signature to determine that the signatures are not those of the same person [do not match]. A determination under this subsection that the signatures are not those of the same person [do not match] must be made by a majority vote of the committee's membership. The committee shall place the jacket envelopes, carrier envelopes, and applications of voters whose signatures are not those of the same person [do not match] in separate containers from those of voters whose signatures are those of the same person [match]. The committee chair shall deliver the sorted materials to the early voting ballot board at the time specified by the board's presiding judge but within the period permitted for the early voting clerk's delivery of early voting ballots to the board.

(j) If a signature verification committee is appointed, the early voting ballot board shall follow the same procedure for accepting the early voting ballots voted by mail as in an election without a signature verification committee, except that the board may not determine whether a voter's signatures on the carrier envelope certificate and ballot application are those of the same person ~~[match]~~ if the committee has determined that the signatures are those of the same person ~~[match]~~. If the committee has determined that the signatures are not those of the same person ~~[do not match]~~, the board may make a determination that the signatures are those of the same person ~~[match]~~ by a majority vote of the board's membership.

SECTION 27. Section 87.041(b), Election Code, is amended to read as follows:

(b) A ballot may be accepted only if:

- (1) the carrier envelope certificate is properly executed;
- (2) neither the voter's signature on the ballot application nor the signature on the carrier envelope certificate is determined to have been executed by a person other than the voter, unless signed by a witness;
- (3) the voter's ballot application states a legal ground for early voting by mail;
- (4) the voter is registered to vote, if registration is required by law;
- (5) the address to which the ballot was mailed to the voter, as indicated by the application, was outside the voter's county of residence, if the ground for early voting is absence from the county of residence; ~~[and]~~
- (6) for a voter to whom a statement of residence form was required to be sent under Section 86.002(a), the statement of residence is returned in the carrier envelope and indicates that the voter satisfies the residence requirements prescribed by Section 63.0011; and
- (7) the address to which the ballot was mailed to the voter is an address that is otherwise required by Sections 84.002 and 86.003.

SECTION 28. Section 87.101, Election Code, is amended to read as follows:

Sec. 87.101. ~~[PREPARATION OF BALLOTS;]~~ DELIVERY OF BALLOTS TO COUNTING STATION. ~~[(a)]~~ On the direction of the presiding judge, the early voting ballot board~~[, in accordance with Section 85.032(b);]~~ shall deliver to the central counting station ~~[open]~~ the container for the early voting electronic system ballots that are to be counted by automatic tabulating equipment at a central counting station. The board shall make the delivery without opening the container and~~[, remove the ballots from the container, and remove any ballots enclosed in ballot envelopes from their envelopes.~~

~~[(b) On the direction of the presiding judge, the early voting ballot board may prepare the ballots for delivery to the central counting station at any time after they are received and shall deliver them.]~~ in accordance with the procedure applicable to electronic system ballots cast at a precinct polling place.

SECTION 29. Section 87.1231(a), Election Code, is amended to read as follows:

~~[(a)]~~ Not later than the time of the local canvass, the early voting clerk shall deliver to the local canvassing authority a report of the total number of early voting votes for each candidate or measure by election precinct. The report may reflect the total for votes by mail and the total for votes by personal appearance.

SECTION 30. Section 87.125(a), Election Code, is amended to read as follows:

(a) The early voting ballot board shall convene to count ballots voted by mail described by Section 86.007(d) at the time set by the presiding judge of the board ~~[on]~~:

(1) on the sixth day after the date of:

(A) the [a] general election for state and county officers; or

(B) an election of a political subdivision that is held jointly with an

election of:

(i) a county; or

(ii) one or more political subdivisions under an election services contract with the county election officer;

(2) on the second [fifth] day after the date of a primary [or special] election, at a time following the last mail delivery, or on an earlier day or at an earlier time if the early voting clerk certifies that all ballots mailed from outside the United States have been received; or

(3) not earlier than the third day or later than the fifth day after the date of an election other than an election described by Subdivision (1) or (2).

SECTION 31. Section 102.003(b), Election Code, is amended to read as follows:

(b) An application may be submitted after the last day of the period for early voting by personal appearance and before 5 ~~[2]~~ p.m. on election day.

SECTION 32. Section 104.003, Election Code, is amended to read as follows:

Sec. 104.003. TIME AND PLACE FOR VOTING. Voting under this chapter shall be conducted on election day, beginning at 7 ~~[8]~~ a.m. and concluding at 7 ~~[2]~~ p.m., at the main early voting polling place~~[, except that the voting shall begin at 7 a.m. and conclude at 7 p.m. in an election in which mechanical voting machines are used].~~ However, if the early voting ballots voted by mail are processed at a location other than the main early voting polling place, the early voting clerk may require the voting to be conducted at that location.

SECTION 33. Section 112.002, Election Code, is amended by amending Subsection (a) and adding Subsections (c) and (d) to read as follows:

(a) After changing residence to another county, a person is eligible to vote a limited ballot by personal appearance during the early voting period or by mail if:

(1) the person would have been eligible to vote in the county of former residence on election day if still residing in that county; and

(2) ~~[the date of the election is not more than 90 days after the new residence is established; and~~

~~[(3)]~~ a voter registration for the person in the county of new residence is not effective on or before election day.

(c) Before being accepted for voting under this chapter, the voter must execute a statement including:

(1) a statement that the voter satisfies the applicable requirements prescribed by Subsection (a);

(2) the voter's residence address or, if the residence has no address, the address at which the voter receives mail and a concise description of the voter's residence;

(3) the month, day, and year of the voter's birth; and

(4) the date the statement is executed.

(d) A statement executed under Subsection (c) shall be submitted:

(1) to an election officer at the main early voting polling place, if the person is voting by personal appearance; or

(2) with the person's application for a ballot to be voted by mail, if the person is voting by mail.

SECTION 34. Section 127.066(c), Election Code, is amended to read as follows:

(c) After the box is sealed, it shall be delivered to the central counting station by two election officers [in accordance with the procedure for delivering ballot box no. 3 to the central counting station]. The officers shall deliver the box to the presiding judge of the central counting station or to the judge's designee.

SECTION 35. Chapter 144, Election Code, is amended by adding Section 144.006 to read as follows:

Sec. 144.006. FILING DEADLINE FOR DECLARED WRITE-IN CANDIDATE. Except as otherwise provided by law, a declaration of write-in candidacy must be filed not later than 5 p.m. of the fifth day after the date an application for a place on the ballot is required to be filed in an election in which:

(1) the filing deadline for an application for a place on the ballot is the 45th day before election day; and

(2) write-in votes may be counted only for names appearing on a list of declared write-in candidates.

SECTION 36. Section 172.024(a), Election Code, is amended to read as follows:

(a) The filing fee for a candidate for nomination in the general primary election is as follows:

(1) United States senator \$5,000 [~~\$4,000~~]

(2) office elected statewide, except United States senator. 3,750 [~~3,000~~]

(3) United States representative. 3,125 [~~2,500~~]

(4) state senator 1,250 [~~1,000~~]

(5) state representative 750 [~~600~~]

(6) member, State Board of Education 300 [~~250~~]

(7) chief justice or justice, court of appeals, other than a justice specified by Subdivision (8) 1,875 [~~1,500~~]

(8) chief justice or justice of a court of appeals that serves a court of appeals district in which a county with a population of more than 850,000 is wholly or partly situated 2,500 [~~2,000~~]

- (9) district judge or judge specified by Section 52.092(d) for which this schedule does not otherwise prescribe a fee 1,500 [~~1,200~~]
- (10) district or criminal district judge of a court in a judicial district wholly contained in a county with a population of more than 850,000 2,500 [~~2,000~~]
- (11) judge, statutory county court, other than a judge specified by Subdivision (12) 1,500 [~~1,200~~]
- (12) judge of a statutory county court in a county with a population of more than 850,000 2,500 [~~2,000~~]
- (13) district attorney, criminal district attorney, or county attorney performing the duties of a district attorney. 1,250 [~~1,000~~]
- (14) county commissioner, county clerk, sheriff, county tax assessor-collector, county treasurer, or judge, constitutional county court:
 - (A) county with a population of 200,000 or more. 1,250 [~~1,000~~]
 - (B) county with a population of under 200,000 750 [~~600~~]
- (15) justice of the peace or constable:
 - (A) county with a population of 200,000 or more. 1,000 [~~800~~]
 - (B) county with a population of under 200,000 375 [~~300~~]
- (16) county surveyor, inspector of hides and animals, or public weigher 75 [~~50~~]
- (17) office of the county government for which this schedule does not otherwise prescribe a fee. 750 [~~600~~]

SECTION 37. Sections 172.126(a) and (c), Election Code, are amended to read as follows:

(a) The primary elections in a county may be conducted jointly at the regular polling places designated for the general election for state and county officers. The county clerk shall supervise the overall conduct of the joint primary elections. This section applies to the conduct of joint primary elections notwithstanding and in addition to other applicable provisions of this code. The decision to conduct a joint general primary election or runoff primary election, as applicable, must be made by majority vote of the full membership of the commissioners court and with the unanimous approval of the county clerk and the county chair of each political party required to nominate candidates by primary election.

(c) One set of election officers shall conduct the primary elections at each polling place. Not later than the second Monday in December preceding the primary elections, each county chair shall deliver to the county clerk a list of the names of the election judges and clerks for that party. The presiding judge of each party, or alternate judge if applicable, serves as a co-judge for the precinct. If an eligible presiding co-judge and alternate co-judge cannot be found to serve for a particular party in a precinct, a joint primary may not be conducted in that precinct, and that precinct must be consolidated with another precinct that has an eligible presiding co-judge and alternate co-judge to serve for each party. The county clerk shall appoint the election clerks in accordance with rules prescribed by the secretary of state. The secretary of state shall prescribe the maximum number of clerks that may be appointed for each precinct. The early voting ballot

board and any central counting station shall also be composed of and administered by one set of election officers that provides representation for each party, and the secretary of state by rule shall prescribe procedures consistent with this subsection for the appointment of those officers.

SECTION 38. Section 173.005(a), Election Code, is amended to read as follows:

~~(a)~~ The maximum hourly rate payable with state funds in a particular primary election year to election judges serving in a primary election for attending training programs is the same as the maximum rate prescribed by this code for ~~a political subdivision's~~ compensation for attending a training program for election judges appointed to serve in elections ordered by the governor or a county authority [of its election judges for the same activity].

SECTION 39. Section 173.011(b), Election Code, is amended to read as follows:

(b) Any surplus remaining in a county primary fund shall be remitted to the secretary of state [county clerk] immediately after the final payment from the fund of the necessary expenses for holding the primary elections for that year, but not later than July 1 following the applicable primary election. The surplus in the primary fund shall be remitted regardless of whether state funds were requested by the chair. ~~[Any surplus primary funds received by the county clerk under this subsection may be used only for paying the remaining expenses of the joint primary election.]~~

SECTION 40. Section 212.001, Election Code, is amended to read as follows:

Sec. 212.001. GENERAL REQUIREMENTS FOR RECOUNT DOCUMENT. A recount document submitted under this title must:

- (1) be in writing;
- (2) identify the office or measure for which a recount is desired;
- (3) state the grounds for the recount;
- (4) state the side of the measure that the person requesting the recount represents, if applicable;
- (5) identify the election precincts, grouped by county or other appropriate territorial unit if the election involves more than one local canvassing authority, for which a recount is desired and must indicate the method of voting used in each precinct;
- (6) be signed by:
 - (A) the person requesting the recount or, if there is more than one, any one or more of them; or
 - (B) an agent of the person requesting the recount;
- (7) state each requesting person's name, residence address, and, if authorization to obtain the recount is based on eligibility to vote in the election, voter registration number, and county of registration if the election covers territory in more than one county;
- (8) designate an agent who is a resident of this state to receive notice under this title on behalf of the person requesting the recount if:

(A) the person requesting the recount is not a resident of this state;
or

(B) there is more than one person requesting the recount;

(9) state the mailing address and at least one telephone number, if any, at which the person requesting the recount or an agent, identified by name, may receive notice given under this title; ~~and~~

(10) state the mailing address and at least one telephone number, if any, at which the opposing candidates for the office or their agents, identified by name, may receive notice given under this title; and

(11) be accompanied by a deposit as provided by Subchapter E.

SECTION 41. Section 212.088(a), Election Code, is amended to read as follows:

(a) If the deadline for submitting an expedited recount petition falls on a Saturday, Sunday, or legal state holiday, the deadline is extended to 10 ~~[9]~~ a.m. of the next regular business day.

SECTION 42. Section 212.111(b), Election Code, is amended to read as follows:

(b) ~~The [Except as provided by Subsection (c), the]~~ deposit must be in the form of cash or a cashier's check or money order made payable to the recount coordinator.

SECTION 43. Section 277.002(a), Election Code, is amended to read as follows:

(a) For a petition signature to be valid, a petition must:

(1) contain in addition to the signature:

(A) the signer's printed name;

(B) the signer's:

(i) date of birth and residence address; or

(ii) ~~[the signer's]~~ voter registration number and, if the territory from which signatures must be obtained is situated in more than one county, the county of registration; and

(C) ~~[the signer's residence address; and~~

~~[(D)]~~ the date of signing; and

(2) comply with any other applicable requirements prescribed by law.

SECTION 44. Sections 13.072(e), 15.026, 87.0271, 87.1231(b), 145.006, 173.005(b), and 212.111(c), Election Code, are repealed.

SECTION 45. (a) This Act takes effect September 1, 2003.

(b) As they relate to the holding of an election, the changes in law made by this Act apply only to an election ordered on or after September 1, 2003.

SB 1370 - 24 HOUR LAYOUT RULE SUSPENDED

Representative Delisi moved to suspend Rule 13, Section 10 of the house rules to consider the conference committee report on **SB 1370** which was ineligible for consideration at this time.

A record vote was requested.

The motion prevailed by (Record 946): 101 Yeas, 40 Nays, 0 Present, not voting.

Yeas — Mr. Speaker(C); Allen; Bailey; Baxter; Berman; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Callegari; Campbell; Casteel; Chisum; Christian; Cook, B.; Cook, R.; Corte; Crabb; Crownover; Davis, J.; Dawson; Delisi; Denny; Driver; Edwards; Eiland; Eissler; Elkins; Ellis; Flynn; Gattis; Geren; Giddings; Goodman; Goolsby; Griggs; Grusendorf; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Heflin; Hegar; Hilderbran; Hill; Hope; Howard; Hughes; Hunter; Hupp; Isett; Jones, D.; Jones, E.; Keel; Keffer, B.; Keffer, J.; King; Kolkhorst; Krusee; Kuempel; Laubenberg; Lewis; Luna; Madden; Marchant; McCall; Mercer; Merritt; Miller; Morrison; Mowery; Nixon; Oliveira; Paxton; Phillips; Pitts; Puente; Reyna; Riddle; Ritter; Rose; Seaman; Smith, T.; Smith, W.; Smithee; Solomons; Stick; Swinford; Talton; Taylor; Turner; Van Arsdale; Villarreal; West; Wohlgemuth; Wolens; Wong; Woolley; Zedler.

Nays — Alonzo; Burnam; Canales; Capelo; Castro; Chavez; Coleman; Davis, Y.; Dukes; Dunnam; Dutton; Escobar; Farrar; Guillen; Haggerty; Hochberg; Hodge; Homer; Hopson; Jones, J.; Laney; Mabry; Martinez Fischer; McClendon; McReynolds; Moreno, J.; Moreno, P.; Naishtat; Noriega; Olivo; Peña; Quintanilla; Raymond; Rodriguez; Solis; Telford; Thompson; Uresti; Wilson; Wise.

Absent, Excused — Garza.

Absent — Deshotel; Farabee; Flores; Gallego; Gutierrez; Menendez; Pickett; Truitt.

STATEMENT OF VOTE

When Record No. 946 was taken, I was in the house but away from my desk. I would have voted no.

Deshotel

SB 1370 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Delisi submitted the conference committee report on **SB 1370**.

SB 1370 - STATEMENT OF LEGISLATIVE INTENT

REPRESENTATIVE HAGGERTY: Chairwoman Delisi, could you tell me again what you did to my bill?

REPRESENTATIVE DELISI: Yes. It's a part of—the conference committee agreed, that the probation officers could elect to come into ERS system. Now, there was a privileged resolution that we passed a couple of hours ago. And that privileged resolution says that—I was persuaded and I think it's fair, Pat, that when we have new people coming into the system, that's a new administrative cost—

HAGGERTY: They agreed to pay that administrative cost in my bill.

DELISI: Yes, sir, a one-time administrative cost—

HAGGERTY: Actually, it came to \$179,000 the first year, and \$102,000 each year thereafter, which they agreed to pay.

DELISI: It is indeed, sir, a one-time assessment on administrative costs.

HAGGERTY: And that's all there is?

DELISI: Yes, sir.

HAGGERTY: There's none of this special premium and all the rest of it, that's included in that?

DELISI: No, if you will come down and have a look at the privileged resolution, I think it will satisfy your concerns.

HAGGERTY: Would you please read to me that sentence about a premium to be established by the board?

DELISI: Yes, sir.

HAGGERTY: What does that mean? A one-time administrative cost, I can understand. Is that all the probation officers will have to pay?

DELISI: It says in the privileged resolution, "which may include the actuarial cost of including the group in the program, and a participation premium determined by the board"—

HAGGERTY: And a participation premium, what does that mean?

DELISI: Sir, it says "may include"—

HAGGERTY: I know. What is a participation premium?

DELISI: A participation premium—

HAGGERTY: Means that they could jack the cost to triple?

DELISI: That is—that's an item that is determined by the board of trustees of ERS, based on the actuarial soundness of the system, as new people are brought into ERS.

HAGGERTY: OK. In your first sentence there, it says, those—that will only affect people who are not paid out of the general fund, is that correct?

DELISI: That's correct.

HAGGERTY: Since the probation officers get two-thirds of their paycheck out of the general fund, they wouldn't be covered by this at all, would they?

DELISI: If they elect—

HAGGERTY: Pardon?

DELISI: If they're not in the system now—

HAGGERTY: If they're not in the system now, but it says only those who are not paid out of the general fund, isn't that correct?

DELISI: That's what the privileged resolution says.

HAGGERTY: Since two-thirds of their pay is out of the general fund, then they are not covered by that privileged resolution, is that correct?

DELISI: Yes, that's correct.

HAGGERTY: OK. So, the probation officers would not be covered with this premium that you're talking about, because they're being paid out of the general fund. Is that correct?

DELISI: This is the—Mr. Haggerty, I know I'm at the front mic, but I'm going to ask you a question at the back mic. Who are the current employers of your probation officers?

HAGGERTY: At the current time, they work for district judges. But they are paid out of the general fund by the State of Texas.

DELISI: I—the employer—

HAGGERTY: The district judges do not pay them. So, the State of Texas, through the general fund, is paying two-thirds of their salary. I just want to make sure that they are not covered, because in that privileged resolution it says, "those who are not paid out of the general fund." And the ones they are talking about, are the community colleges and other people who are paid out of local taxes, that they do not want to come in without having to pay this premium. I just want to be very clear, that what you're talking about is that the probation officers are going to be allowed in, without paying that premium—only the administrative costs.

DELISI: Right. I cannot guarantee you what the decision of the trustees will be.

HAGGERTY: I'm asking you to read what you just passed, and tell me if that's not what it says.

DELISI: I will read to you again, it says, "which may include"—

HAGGERTY: No, start at the top. Right up there where it says "paid by the state."

DELISI: Mr. Haggerty, the way that this resolution reads, it says that, "as a condition for participation in the program, a one-time assessment of administrative costs for participation of the employees and annuitants in the program, which may include"—

HAGGERTY: Go back to the sentence above that. Who does this refer to, Representative Delisi?

DELISI: I'll read you the entire—

HAGGERTY: Would you like me to come down and read it for you, there?

DELISI: Not withstanding any other provision of the law, the board of trustees may impose—the board of trustees of ERS—

HAGGERTY: Ms. Delisi, would you like me to come down and read it for you? Who are they referring to? Anybody who is not paid out of the budget of the State of Texas—isn't that what it says?

DELISI: Whose employees are not paid salaries from amounts appropriated by the general appropriations act.

HAGGERTY: That's right. Now, are the probation officers paid by an appropriation by the general fund?

DELISI: I understand that two-thirds of their cost—

HAGGERTY: Does that mean, then, that they are not responsible for the second part of your question? Since they are paid out of the general fund, then they would not be part of this bill, would it?

DELISI: Let me say this to you, Mr. Haggerty—

HAGGERTY: This is real simple, it's yes or no. It says, if they're paid out of the general fund. You just said they're paid out of the general fund. That means they are not subject to this premium. Is that correct?

DELISI: That is correct.

HAGGERTY: Thank you very much.

REMARKS ORDERED PRINTED

Representative Haggerty moved to print remarks between Representative Haggerty and Representative Delisi.

The motion prevailed without objection.

Representative Delisi moved to adopt the conference committee report on **SB 1370**.

A record vote was requested.

The motion prevailed by (Record 947): 93 Yeas, 51 Nays, 1 Present, not voting.

Yeas — Allen; Bailey; Baxter; Berman; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Callegari; Campbell; Casteel; Chisum; Christian; Cook, B.; Cook, R.; Corte; Crabb; Crownover; Davis, J.; Dawson; Delisi; Denny; Driver; Edwards; Eissler; Elkins; Ellis; Farabee; Flynn; Gattis; Geren; Goolsby; Griggs; Grusendorf; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Heflin; Hegar; Hill; Homer; Hope; Howard; Hughes; Hunter; Hupp; Isett; Jones, D.; Jones, E.; Keel; Keffer, B.; Keffer, J.; King; Kolkhorst; Krusee; Kuempel; Laubenberg; Lewis; Luna; Mabry; Madden; Marchant; McCall; Mercer; Merritt; Morrison; Mowery; Nixon; Paxton; Pitts; Reyna; Riddle; Ritter; Seaman; Smith, T.; Smith, W.; Smithee; Solomons; Stick; Swinford; Talton; Taylor; Truitt; Van Arsdale; West; Wohlgemuth; Wolens; Wong; Woolley; Zedler.

Nays — Alonzo; Burnam; Canales; Capelo; Castro; Chavez; Coleman; Davis, Y.; Deshotel; Dukes; Dunnam; Dutton; Eiland; Escobar; Flores; Gallego; Giddings; Goodman; Guillen; Haggerty; Hochberg; Hodge; Hopson; Jones, J.; Laney; Martinez Fischer; McClendon; McReynolds; Menendez; Moreno, J.; Moreno, P.; Naishtat; Noriega; Oliveira; Olivo; Peña; Phillips; Pickett; Puente; Quintanilla; Raymond; Rodriguez; Rose; Solis; Telford; Thompson; Turner; Uresti; Villarreal; Wilson; Wise.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Garza.

Absent — Farrar; Gutierrez; Hilderbran; Miller.

STATEMENTS OF VOTE

When Record No. 947 was taken, I was in the house but away from my desk. I would have voted no.

Hilderbran

I was shown voting no on Record No. 947. I intended to vote yes.

Pickett

HR 1937 - NOTICE OF INTRODUCTION

Pursuant to the provisions of Rule 13, Section 9(f) of the House Rules, the chair announced the introduction of **HR 1937**, suspending the limitations on the conferees for **HB 2359**.

HB 2292 - 24 HOUR LAYOUT RULE SUSPENDED

Representative Wohlgeomuth moved to suspend Rule 13, Section 10 of the house rules to consider the conference committee report on **HB 2292** which was ineligible for consideration at this time.

The motion prevailed.

HB 2292 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Wohlgeomuth submitted the following conference committee report on **HB 2292** :

Austin, Texas, May 30, 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 2292** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Nelson
Janek
Bivins

Wohlgeomuth
Ellis
Truitt
Gutierrez
J. Davis

On the part of the senate

On the part of the house

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

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

ARTICLE 1. ORGANIZATION OF THE HEALTH AND HUMAN SERVICES
COMMISSION AND HEALTH AND HUMAN SERVICES AGENCIES

SECTION 1.01. (a) Section 531.001(3), Government Code, is amended to read as follows:

(3) "Executive commissioner" [~~"Commissioner"~~] means the executive commissioner of the Health and Human Services Commission [~~health and human services~~].

(b) Section 531.001(4), Government Code, as amended by Chapters 53, 957, and 1420, Acts of the 77th Legislature, Regular Session, 2001, is reenacted and amended to read as follows:

(4) "Health and human services agencies" includes the:

- (A) Interagency Council on Early Childhood Intervention;
- (B) Texas Department on Aging;
- (C) Texas Commission on Alcohol and Drug Abuse;
- (D) Texas Commission for the Blind;
- (E) Texas Commission for the Deaf and Hard of Hearing;
- (F) Texas Department of Health;
- (G) Texas Department of Human Services;
- (H) Texas Department of Mental Health and Mental Retardation;
- (I) Texas Rehabilitation Commission;
- (J) Department of Family and Protective [~~and Regulatory~~]

Services; [~~and~~]

- (K) Texas Health Care Information Council;
- (L) Department of Aging and Disability Services;
- (M) Department of State Health Services; and
- (N) Department of Assistive and Rehabilitative Services.

(c) Effective on the date the agencies listed in Section 1.26 of this article are abolished as provided by that section, Section 531.001(4), Government Code, as amended by Chapters 53, 957, and 1420, Acts of the 77th Legislature, Regular Session, 2001, is reenacted and amended to read as follows:

(4) "Health and human services agencies" includes the:

(A) Department of Aging and Disability Services [~~Interagency Council on Early Childhood Intervention~~];

(B) Department of State Health Services [~~Texas Department on Aging~~];

(C) Department of Assistive and Rehabilitative Services [~~Texas Commission on Alcohol and Drug Abuse~~]; and

(D) [~~Texas Commission for the Blind~~];

[~~E~~] Texas Commission for the Deaf and Hard of Hearing;

[~~F~~] Texas Department of Health;

[~~G~~] Texas Department of Human Services;

[~~H~~] Texas Department of Mental Health and Mental Retardation;

[~~I~~] Texas Rehabilitation Commission;

[~~J~~] Department of Family and Protective [~~and Regulatory~~]
Services; [~~and~~]

[~~K~~] Texas Health Care Information Council].

(d) A reference in law to the commissioner of health and human services means the executive commissioner of the Health and Human Services Commission.

SECTION 1.02. Section 531.004, Government Code, is amended to read as follows:

Sec. 531.004. SUNSET PROVISION. The Health and Human Services Commission is subject to Chapter 325 (Texas Sunset Act). Unless continued in existence as provided by that chapter, the commission is abolished and this chapter expires September 1, 2009 [~~2007~~].

SECTION 1.02A. Section 531.005, Government Code, is amended to read as follows:

Sec. 531.005. EXECUTIVE COMMISSIONER. (a) The commission is governed by an executive commissioner [~~a commissioner of health and human services~~] appointed by the governor with the advice and consent of the senate.

(b) The executive commissioner shall be appointed without regard to race, color, disability, sex, religion, age, or national origin.

SECTION 1.03. Section 531.0055, Government Code, is amended to read as follows:

Sec. 531.0055. EXECUTIVE COMMISSIONER: GENERAL RESPONSIBILITY FOR [~~RELATING TO CERTAIN FUNCTIONS OF~~] HEALTH AND HUMAN SERVICES AGENCIES. (a) In this section and in Section 531.0056, "agency director"[~~:-~~

(1) "~~Agency director~~" means the [~~director, executive director, or~~] commissioner of a health and human services agency.

(2) " ~~Policymaking body~~" means the board or commission with [~~policymaking authority over a health and human services agency.~~]

(b) The commission shall:

(1) supervise the administration and operation of the Medicaid program, including the administration and operation of the Medicaid managed care system in accordance with Section 531.021;

(2) perform [~~supervise~~] information systems planning and management for health and human services agencies under Section 531.0273, with:

(A) the provision of information technology services at health and human services agencies considered to be a centralized administrative support service either performed by commission personnel or performed under a contract with the commission; and

(B) an emphasis on research and implementation on a demonstration or pilot basis of appropriate and efficient uses of new and existing technology to improve the operation of health and human services agencies and delivery of health and human services;

(3) monitor and ensure the effective use of all federal funds received by a health and human services agency in accordance with Section 531.028 and the General Appropriations Act; [~~and~~]

(4) implement Texas Integrated Enrollment Services as required by Subchapter F, except that notwithstanding Subchapter F, determining eligibility for benefits under the following programs is the responsibility of and must be centralized by the commission:

(A) the child health plan program;

(B) the financial assistance program under Chapter 31, Human Resources Code;

(C) the medical assistance program under Chapter 32, Human Resources Code;

(D) the nutritional assistance programs under Chapter 33, Human Resources Code;

(E) long-term care services, as defined by Section 22.0011, Human Resources Code;

(F) community-based support services identified or provided in accordance with Section 531.02481; and

(G) other health and human services programs, as appropriate; and

(5) implement programs intended to prevent family violence and provide services to victims of family violence.

(c) ~~The [After implementation of the commission's duties under Subsection (b), the] commission shall implement the powers and duties given to the commission under Sections 531.0246, 531.0247, 2155.144, [as added by Chapter 1045, Acts of the 75th Legislature, Regular Session, 1997,] and 2167.004.~~

(d) After implementation of the commission's duties under Subsections (b) and (c), the commission shall implement the powers and duties given to the commission under Section 531.0248. Nothing in the priorities established by this section is intended to limit the authority of the commission to work simultaneously to achieve the multiple tasks assigned to the commission in this section, when such an approach is beneficial in the judgment of the commission. The commission shall plan and implement an efficient and effective centralized system of administrative support services for health and human services agencies. The performance of administrative support services for health and human services agencies is the responsibility of the commission. The term "administrative support services" includes, but is not limited to, strategic planning and evaluation, audit, legal, human resources, information resources, purchasing, contract management, financial management, and accounting services.

(e) Notwithstanding any other law, the executive commissioner shall adopt rules and policies for the operation of and provision of health and human services by the health and human services agencies. In addition, the executive commissioner, as necessary to perform the functions described by Subsections (b), (c), and (d) in implementation of applicable [the] policies established for an agency by the executive commissioner [each agency's policymaking body], shall:

(1) manage and direct the operations of each health and human services agency; [and]

(2) supervise and direct the activities of each agency director; and

(3) be responsible for the administrative supervision of the internal audit program for all health and human services agencies, including:

(A) selecting the director of internal audit;

(B) ensuring that the director of internal audit reports directly to the executive commissioner; and

(C) ensuring the independence of the internal audit function.

(f) The operational authority and responsibility of the executive commissioner for purposes of Subsection (e) at each health and human services agency includes authority over and responsibility for the:

(1) management of the daily operations of the agency, including the organization and management of the agency and agency operating procedures;

(2) allocation of resources within the agency, including use of federal funds received by the agency;

(3) personnel and employment policies;

(4) contracting, purchasing, and related policies, subject to this chapter and other laws relating to contracting and purchasing by a state agency;

(5) information resources systems used by the agency;

(6) location of agency facilities; and

(7) coordination of agency activities with activities of other state agencies, including other health and human services agencies.

(g) Notwithstanding any other law, the operational authority and responsibility of the executive commissioner for purposes of Subsection (e) at each health and human services agency includes the authority and responsibility to adopt or approve, subject to applicable limitations, any rate of payment or similar provision required by law to be adopted or approved by the agency.

(h) For each health and human services agency, the executive commissioner shall implement a program to evaluate and supervise the daily operations of the agency. The program must include measurable performance objectives for each agency director and adequate reporting requirements to permit the executive commissioner to perform the duties assigned to the executive commissioner under this section.

(i) To facilitate the operations of a health and human services agency in accordance with this section, the executive commissioner may delegate a specific power or duty given under Subsection (f) or (g) to an agency director. The agency director shall, at the request of the executive commissioner, assist in the development of rules and policies for the operation and provision of health and human services by the agency. The agency director acts on behalf of the executive commissioner in performing the delegated function and reports to the executive commissioner regarding the delegated function and any matter affecting agency programs and operations.

(j) The executive commissioner shall ~~may~~ adopt rules to implement the executive commissioner's authority under this section.

(k) The executive commissioner and each agency director shall enter into a memorandum of understanding in the manner prescribed by Section 531.0163 that:

(1) clearly defines the responsibilities of the agency director and the executive commissioner, including:

(A) the responsibility of the agency director to report to the governor and to report to and implement policies of the executive commissioner; and

(B) the extent to which the agency director acts as a liaison between the agency and the commission;

(2) establishes the program of evaluation and supervision of daily operations required by Subsection (h); and

(3) describes each delegation of a power or duty made under Subsection (i) or other law.

(l) ~~Notwithstanding any other law, the executive commissioner [provision of this section, a policymaking body] has the authority [provided by law] to adopt policies and rules governing the delivery of services to persons who are served by each health and human services [the] agency and the rights and duties of persons who are served or regulated by each [the] agency. [The commissioner and each policymaking body shall enter into a memorandum of understanding that clearly defines:~~

~~[(1) the policymaking authority of the policymaking body; and~~

~~[(2) the operational authority of the commissioner.]~~

SECTION 1.04. Section 531.0056, Government Code, is amended to read as follows:

Sec. 531.0056. APPOINTMENT [EMPLOYMENT] OF AGENCY DIRECTOR BY EXECUTIVE COMMISSIONER. (a) The executive commissioner shall appoint an agency director for each health and human services agency with the approval of the governor. ~~[This section applies only to an agency director employed by the commissioner.]~~

(b) An agency director appointed by the executive commissioner serves at the pleasure of the executive commissioner. ~~[An agency director employed by the commissioner may be employed only with the concurrence of the agency's policymaking body and the approval of the governor.]~~

(c) In addition to the requirements of [As established in] Section 531.0055(k)(1), the memorandum of understanding required by that section must [the commissioner and agency director shall enter into a memorandum of understanding that] clearly define [defines] the responsibilities of the agency director [and may establish terms and conditions of employment in the memorandum of understanding].

(d) The terms of the memorandum of understanding shall outline specific performance objectives, as defined ~~[jointly]~~ by the executive commissioner ~~[and the policymaking body]~~, to be fulfilled by the agency director, including the performance objectives outlined in Section 531.0055(h).

(e) Based upon the performance objectives outlined in the memorandum of understanding, the executive commissioner shall perform an employment evaluation of the agency director.

(f) The executive commissioner shall submit the evaluation ~~[, along with any recommendation regarding the employment of the agency director,]~~ to the ~~[agency's policymaking body and the]~~ governor not later than January 1 of each even-numbered year.

~~[(g) The policymaking body shall consider the evaluation in a meeting of the policymaking body and take necessary action, if any, not later than 90 days after the date of the receipt of the evaluation.~~

~~[(h) An agency director employed by the commissioner serves at the pleasure of the commissioner but may be discharged only with the concurrence of the agency's policymaking body.]~~

SECTION 1.05. Section 531.008, Government Code, is amended to read as follows:

Sec. 531.008. DIVISIONS OF COMMISSION. (a) Subject to Subsection (c), the executive [The] commissioner may establish divisions within the commission as necessary for effective administration and for the discharge of the commission's functions.

(b) Subject to Subsection (c), the executive [The] commissioner may allocate and reallocate functions among the commission's divisions.

(c) The executive commissioner shall establish the following divisions and offices within the commission:

(1) the eligibility services division to make eligibility determinations for services provided through the commission or a health and human services agency related to:

(A) the child health plan program;

(B) the financial assistance program under Chapter 31, Human Resources Code;

(C) the medical assistance program under Chapter 32, Human Resources Code;

(D) the nutritional assistance programs under Chapter 33, Human Resources Code;

(E) long-term care services, as defined by Section 22.0011, Human Resources Code;

(F) community-based support services identified or provided in accordance with Section 531.02481; and

(G) other health and human services programs, as appropriate;

(2) the office of inspector general to perform fraud and abuse investigation and enforcement functions as provided by Subchapter C and other law;

(3) the office of the ombudsman to:

(A) provide dispute resolution services for the commission and the health and human services agencies; and

(B) perform consumer protection functions related to health and human services;

(4) a purchasing division as provided by Section 531.017; and

(5) an internal audit division to conduct a program of internal auditing in accordance with Government Code, Chapter 2102.

SECTION 1.06. Subchapter A, Chapter 531, Government Code, is amended by adding Sections 531.0161, 531.0162, and 531.0163 to read as follows:

Sec. 531.0161. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE PROCEDURES. (a) The commission shall develop and implement a policy, for the commission and each health and human services agency, to encourage the use of:

(1) negotiated rulemaking procedures under Chapter 2008 for the adoption of rules for the commission and each agency; and

(2) appropriate alternative dispute resolution procedures under Chapter 2009 to assist in the resolution of internal and external disputes under the commission's or agency's jurisdiction.

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

Sec. 531.0162. USE OF TECHNOLOGY. (a) The commission shall develop and implement a policy requiring the agency commissioner and employees of each health and human services agency to research and propose appropriate technological solutions to improve the agency's ability to perform its functions. The technological solutions must:

(1) ensure that the public is able to easily find information about a health and human services agency on the Internet;

(2) ensure that persons who want to use a health and human services agency's services are able to:

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

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

(3) be cost-effective and developed through the commission's planning process; and

(4) meet federal accessibility standards for persons with disabilities.

(b) The commission shall develop and implement a policy described by Subsection (a) in relation to the commission's functions.

Sec. 531.0163. MEMORANDUM OF UNDERSTANDING. (a) The memorandum of understanding under Section 531.0055(k) must be adopted by the executive commissioner by rule in accordance with the procedures prescribed by Subchapter B, Chapter 2001, for adopting rules, except that the requirements of Section 2001.033(a)(1)(A) or (C) do not apply with respect to any part of the memorandum of understanding that:

(1) concerns only internal management or organization within or among health and human services agencies and does not affect private rights or procedures; or

(2) relates solely to the internal personnel practices of health and human services agencies.

(b) The memorandum of understanding may be amended only by following the procedures prescribed under Subsection (a).

SECTION 1.07. Subchapter B, Chapter 531, Government Code, is amended by adding Section 531.0224 to read as follows:

Sec. 531.0224. PLANNING AND POLICY DIRECTION OF TEMPORARY ASSISTANCE FOR NEEDY FAMILIES PROGRAM. The commission shall:

(1) plan and direct the financial assistance program under Chapter 31, Human Resources Code, including the procurement, management, and monitoring of contracts necessary to implement the program;

(2) adopt rules and standards governing the financial assistance program under Chapter 31, Human Resources Code; and

(3) establish requirements for and define the scope of the ongoing evaluation of the financial assistance program under Chapter 31, Human Resources Code.

SECTION 1.08. Chapter 531, Government Code, is amended by adding Subchapter K to read as follows:

SUBCHAPTER K. HEALTH AND HUMAN SERVICES COUNCIL

Sec. 531.401. DEFINITION. In this subchapter, "council" means the Health and Human Services Council.

Sec. 531.402. HEALTH AND HUMAN SERVICES COUNCIL. (a) The Health and Human Services Council is created to assist the executive commissioner in developing rules and policies for the commission.

(b) The council is composed of nine members of the public appointed by the governor with the advice and consent of the senate. To be eligible for appointment to the council, a person must have demonstrated an interest in and knowledge of problems and available services related to the child health plan program, the financial assistance program under Chapter 31, Human Resources Code, the medical assistance program under Chapter 32, Human Resources Code, or the nutritional assistance programs under Chapter 33, Human Resources Code.

(c) The council shall study and make recommendations to the executive commissioner regarding the management and operation of the commission, including policies and rules governing the delivery of services to persons who are served by the commission and the rights and duties of persons who are served or regulated by the commission.

(d) Chapter 551 applies to the council.

(e) Chapter 2110 does not apply to the council.

(f) A majority of the members of the council constitute a quorum for the transaction of business.

Sec. 531.403. APPOINTMENTS. (a) Appointments to the council shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointees.

(b) Appointments to the council shall be made so that each geographic area of the state is represented on the council. Notwithstanding Subsection (a), appointments to the council must reflect the ethnic diversity of this state.

Sec. 531.404. TRAINING PROGRAM FOR COUNCIL MEMBERS. (a) A person who is appointed as a member of the council may not vote, deliberate, or be counted as a member in attendance at a meeting of the council until the person completes a training program that complies with this section.

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

- (1) the legislation that created the commission and the council;
- (2) the programs operated by the commission;
- (3) the role and functions of the commission and the council, including detailed information regarding the advisory responsibilities of the council;
- (4) the rules of the executive commissioner applicable to the commission, with an emphasis on the rules that relate to disciplinary and investigatory authority;
- (5) the current budget for the commission;
- (6) the results of the most recent formal audit of the commission;
- (7) the requirements of:
 - (A) the open meetings law, Chapter 551;
 - (B) the public information law, Chapter 552;
 - (C) the administrative procedure law, Chapter 2001; and
 - (D) other laws relating to public officials, including conflict-of-interest laws; and
- (8) any applicable ethics policies adopted by the executive commissioner or the Texas Ethics Commission.

Sec. 531.405. TERMS. (a) Council members serve for staggered six-year terms with the terms of three members expiring February 1 of each odd-numbered year.

(b) A member of the council may not serve more than two consecutive full terms as a council member.

Sec. 531.406. VACANCY. The governor by appointment shall fill the unexpired term of a vacancy on the council.

Sec. 531.407. PRESIDING OFFICER; OTHER OFFICERS; MEETINGS. (a) The governor shall designate a member of the council as the presiding officer to serve in that capacity at the pleasure of the governor.

(b) The members of the council shall elect any other necessary officers.

(c) The council shall meet quarterly and at other times at the call of the presiding officer. The council may hold meetings in different areas of the state.

Sec. 531.408. REIMBURSEMENT FOR EXPENSES. A council member may not receive compensation for service as a member of the council but is entitled to reimbursement for travel expenses incurred by the member while conducting the business of the council as provided by the General Appropriations Act.

Sec. 531.409. PUBLIC INTEREST INFORMATION AND COMPLAINTS. (a) The executive commissioner, with the advice of the council, shall prepare information of public interest describing the functions of the commission and the procedures by which complaints are filed with and resolved by the commission. The commission shall make the information available to the public and appropriate state governmental entities.

(b) The executive commissioner by rule shall establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the commission for directing complaints to the commission.

Sec. 531.410. PUBLIC ACCESS AND TESTIMONY. The executive commissioner shall develop and implement policies that provide the public with a reasonable opportunity to appear before the council or executive commissioner and to speak on any issue under the jurisdiction of the commission.

Sec. 531.411. POLICYMAKING AND MANAGEMENT RESPONSIBILITIES. The executive commissioner, with the advice of the council, shall develop and the commission shall implement policies that clearly delineate the policymaking responsibilities of the executive commissioner from the management responsibilities of the commission and the staff of the commission.

SECTION 1.09. The Health and Safety Code is amended by adding Title 12 to read as follows:

TITLE 12. HEALTH AND MENTAL HEALTH

CHAPTER 1001. DEPARTMENT OF STATE HEALTH SERVICES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1001.001. DEFINITIONS. In this chapter:

(1) "Commission" means the Health and Human Services Commission.

(2) "Commissioner" means the commissioner of state health services.

(3) "Council" means the State Health Services Council.

(4) "Department" means the Department of State Health Services.

(5) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

Sec. 1001.002. AGENCY. The department is an agency of the state.

Sec. 1001.003. SUNSET PROVISION. The department is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the department is abolished and this chapter expires September 1, 2009.

[Sections 1001.004-1001.020 reserved for expansion]

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

Sec. 1001.021. STATE HEALTH SERVICES COUNCIL. (a) The State Health Services Council is created to assist the commissioner in developing rules and policies for the department.

(b) The council is composed of nine members of the public appointed by the governor with the advice and consent of the senate. To be eligible for appointment to the council, a person must have demonstrated an interest in and knowledge of problems and available services related to public health, mental health, or substance abuse.

(c) The council shall study and make recommendations to the executive commissioner and the commissioner regarding the management and operation of the department, including policies and rules governing the delivery of services to persons who are served by the department and the rights and duties of persons who are served or regulated by the department.

(d) Chapter 551, Government Code, applies to the council.

(e) Chapter 2110, Government Code, does not apply to the council.

(f) A majority of the members of the council constitute a quorum for the transaction of business.

Sec. 1001.022. APPOINTMENTS. (a) Appointments to the council shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointees.

(b) Appointments to the council shall be made so that each geographic area of the state is represented on the council. Notwithstanding Subsection (a), appointments to the council must reflect the ethnic diversity of this state.

Sec. 1001.023. TRAINING PROGRAM FOR COUNCIL MEMBERS. (a) A person who is appointed as a member of the council may not vote, deliberate, or be counted as a member in attendance at a meeting of the council 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 department and the council;

(2) the programs operated by the department;

(3) the role and functions of the department and the council, including detailed information regarding:

(A) the division of authority and of responsibility between the commissioner and the executive commissioner; and

(B) the advisory responsibilities of the council;

(4) the rules of the executive commissioner applicable to the department, with an emphasis on the rules that relate to disciplinary and investigatory authority;

(5) the current budget for the department;

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

(7) the requirements of:

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

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

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

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

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

Sec. 1001.024. TERMS. (a) Council members serve for staggered six-year terms with the terms of three members expiring February 1 of each odd-numbered year.

(b) A member of the council may not serve more than two consecutive full terms as a council member.

Sec. 1001.025. VACANCY. The governor by appointment shall fill the unexpired term of a vacancy on the council.

Sec. 1001.026. PRESIDING OFFICER; OTHER OFFICERS; MEETINGS. (a) The governor shall designate a member of the council as the presiding officer to serve in that capacity at the pleasure of the governor.

(b) The members of the council shall elect any other necessary officers.

(c) The council shall meet quarterly and at other times at the call of the presiding officer. The council may hold meetings in different areas of the state.

Sec. 1001.027. REIMBURSEMENT FOR EXPENSES. A council member may not receive compensation for service as a member of the council but is entitled to reimbursement for travel expenses incurred by the member while conducting the business of the council as provided by the General Appropriations Act.

Sec. 1001.028. PUBLIC INTEREST INFORMATION AND COMPLAINTS. (a) The commissioner, with the advice of the council, shall prepare information of public interest describing the functions of the department and the procedures by which complaints are filed with and resolved by the department. The commission shall make the information available to the public and appropriate state governmental entities.

(b) The executive commissioner by rule shall establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the department for directing complaints to the department.

Sec. 1001.029. PUBLIC ACCESS AND TESTIMONY. (a) The commissioner shall develop and implement policies that provide the public with a reasonable opportunity to appear before the commissioner and to speak on any issue under the jurisdiction of the department.

(b) The commissioner shall grant an opportunity for a public hearing before the council makes recommendations to the commissioner regarding a substantive rule if a public hearing is requested by:

(1) at least 25 persons;

(2) a governmental entity; or

(3) an association with at least 25 members.

(c) The executive commissioner shall consider fully all written and oral submissions about a proposed rule.

Sec. 1001.030. POLICYMAKING AND MANAGEMENT RESPONSIBILITIES. The commissioner, with the advice of the council and subject to the approval of the executive commissioner, shall develop and the department shall implement policies that clearly delineate the policymaking responsibilities of the executive commissioner from the management responsibilities of the commission, the commissioner, and the staff of the department.

Sec. 1001.031. ANNUAL REPORT. (a) The commissioner shall file annually with the governor, the presiding officer of each house of the legislature, and the executive commissioner a complete and detailed written report accounting for all funds received and disbursed by the department during the preceding fiscal year.

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

Sec. 1001.032. OFFICES. The department shall maintain its central office in Austin. The department may maintain offices in other areas of the state as necessary.

[Sections 1001.033-1001.050 reserved for expansion]SUBCHAPTER C. PERSONNEL

Sec. 1001.051. COMMISSIONER. (a) The executive commissioner shall appoint a commissioner of the department with the approval of the governor. The commissioner is to be selected according to education, training, experience, and demonstrated ability.

(b) The commissioner serves at the pleasure of the executive commissioner.

(c) Subject to the control of the executive commissioner, the commissioner shall act as the department's chief administrative officer and as a liaison between the department and commission.

(d) The commissioner shall administer this chapter under operational policies established by the executive commissioner and in accordance with the memorandum of understanding under Section 531.0055(k), Government Code, between the commissioner and the executive commissioner, as adopted by rule.

Sec. 1001.052. PERSONNEL. (a) The department may employ, compensate, and prescribe the duties of personnel necessary and suitable to administer this chapter.

(b) The executive commissioner shall prepare and by rule adopt personnel standards.

(c) A personnel position may be filled only by an individual selected and appointed on a nonpartisan merit basis.

(d) The commissioner, with the advice of the council, shall develop and the department shall implement policies that clearly define the responsibilities of the staff of the department.

Sec. 1001.053. INFORMATION ABOUT QUALIFICATIONS AND STANDARDS OF CONDUCT. The commissioner or the commissioner's designee shall provide to department employees, as often as necessary, information regarding the requirements for employment under this chapter or rules adopted by the executive commissioner, including information regarding a person's responsibilities under applicable laws relating to standards of conduct for state employees.

Sec. 1001.054. MERIT PAY. Subject to rules adopted by the executive commissioner, the commissioner or the commissioner's designee shall develop a system of annual performance evaluations. All merit pay for department employees must be given under the system established under this section or under rules adopted by the executive commissioner.

Sec. 1001.055. CAREER LADDER. The commissioner or the commissioner's designee shall develop an intra-agency career ladder program. The program must require intra-agency postings of all nonentry-level positions concurrently with any public posting.

Sec. 1001.056. EQUAL EMPLOYMENT OPPORTUNITY POLICY. (a) Subject to rules adopted by the executive commissioner, the commissioner or the commissioner's designee shall prepare and maintain a written policy statement that implements a program of equal employment opportunity to ensure that all personnel decisions are made without regard to race, color, disability, sex, religion, age, or national origin.

(b) Unless the following are included in a policy statement adopted by the executive commissioner that is applicable to the department, the policy statement must include:

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

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

(c) The policy statement must be:

(1) updated annually;

(2) reviewed by the state Commission on Human Rights for compliance with Subsection (b)(1); and

(3) filed with the governor's office.

Sec. 1001.057. STATE EMPLOYEE INCENTIVE PROGRAM. The commissioner or the commissioner's designee shall provide to department employees information and training on the benefits and methods of participation in the state employee incentive program.

[Sections 1001.058-1001.070 reserved for expansion]

SUBCHAPTER D. POWERS AND DUTIES OF DEPARTMENT

Sec. 1001.071. GENERAL POWERS AND DUTIES OF DEPARTMENT RELATED TO HEALTH CARE. The department is responsible for administering human services programs regarding the public health, including:

(1) implementing the state's public health care delivery programs under the authority of the department;

(2) administering state health facilities, hospitals, and health care systems;

(3) developing and providing health care services, as directed by law;

(4) providing for the prevention and control of communicable diseases;

(5) providing public education on health-related matters, as directed by law;

(6) compiling and reporting health-related information, as directed by law;

(7) acting as the lead agency for implementation of state policies regarding the human immunodeficiency virus and acquired immunodeficiency syndrome and administering programs related to the human immunodeficiency virus and acquired immunodeficiency syndrome;

(8) investigating the causes of injuries and methods of prevention;

(9) administering a grant program to provide appropriated money to counties, municipalities, public health districts, and other political subdivisions for their use to provide or pay for essential public health services;

(10) administering the registration of vital statistics;

(11) licensing, inspecting, and enforcing regulations regarding health facilities, other than long-term care facilities regulated by the Department of Aging and Disability Services;

(12) implementing established standards and procedures for the management and control of sanitation and for health protection measures;

(13) enforcing regulations regarding radioactive materials;

(14) enforcing regulations regarding food, bottled and vended drinking water, drugs, cosmetics, and health devices;

(15) enforcing regulations regarding food service establishments, retail food stores, mobile food units, and roadside food vendors; and

(16) enforcing regulations controlling hazardous substances in households and workplaces.

Sec. 1001.072. GENERAL POWERS AND DUTIES OF DEPARTMENT RELATED TO MENTAL HEALTH. The department is responsible for administering human services programs regarding mental health, including:

(1) administering and coordinating mental health services at the local and state level;

(2) operating the state's mental health facilities; and

(3) inspecting, licensing, and enforcing regulations regarding mental health facilities, other than long-term care facilities regulated by the Department of Aging and Disability Services.

Sec. 1001.073. GENERAL POWERS AND DUTIES OF DEPARTMENT RELATED TO SUBSTANCE ABUSE. The department is responsible for administering human services programs regarding substance abuse, including:

(1) administering, coordinating, and contracting for the delivery of substance abuse prevention and treatment programs at the state and local level;

(2) inspecting, licensing, and enforcing regulations regarding substance abuse treatment facilities; and

(3) providing public education on substance abuse issues, as directed by law.

Sec. 1001.074. INFORMATION REGARDING COMPLAINTS. (a) The department shall maintain a file on each written complaint filed with the department. The file must include:

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

(2) the date the complaint is received by the department;

(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 department closed the file without taking action other than to investigate the complaint.

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

(c) The department, 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. 1001.075. RULES. The executive commissioner may adopt rules reasonably necessary for the department to administer this chapter, consistent with the memorandum of understanding under Section 531.0055(k), Government Code, between the commissioner and the executive commissioner, as adopted by rule.

SECTION 1.10. Section 40.001, Human Resources Code, is amended by adding Subdivisions (2-a) and (4-a) and amending Subdivision (4) to read as follows:

(2-a) "Council" means the Family and Protective Services Council.

(4) "Commissioner" ["Executive director"] means the commissioner [executive director] of the Department of Family and Protective [and Regulatory] Services.

(4-a) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

SECTION 1.11. Section 40.002, Human Resources Code, is amended to read as follows:

Sec. 40.002. DEPARTMENT OF FAMILY AND PROTECTIVE [AND REGULATORY] SERVICES; GENERAL DUTIES OF DEPARTMENT [RESPONSIBILITY]. (a) The Department of Family and Protective [and Regulatory] Services is composed of the council [board], the commissioner [executive director], an administrative staff, and other officers and employees necessary to efficiently carry out the purposes of this chapter.

(b) Notwithstanding any other law, the [The] department shall [is the state agency with primary responsibility for]:

(1) provide [providing] protective services for children and elderly and disabled persons, including investigations of alleged abuse, neglect, or exploitation in facilities of the Texas Department of Mental Health and Mental Retardation or its successor agency;

(2) provide [providing] family support and family preservation services that [which] respect the fundamental right of parents to control the education and upbringing of their children;

(3) license, register, and enforce regulations applicable to [regulating] child-care facilities and child-care administrators; and

(4) implement [implementing] and manage [managing] programs intended to provide early intervention or prevent at-risk behaviors that lead to child abuse, delinquency, running away, truancy, and dropping out of school.

(c) The department is the state agency designated to cooperate with the federal government in the administration of programs under:

(1) Parts B and E, Title IV, federal Social Security Act (42 U.S.C. Sections 620 et seq. and 670 et seq.); and

(2) other federal law for which the department has administrative responsibility.

(d) The department shall cooperate with the United States Department of Health and Human Services and other federal and state agencies in a reasonable manner and in conformity with the provisions of federal law and this subtitle to the extent necessary to qualify for federal assistance in the delivery of services.

(e) If the department determines that a provision of state law governing the department conflicts with a provision of federal law, the executive commissioner [~~department~~] may adopt policies and rules necessary to allow the state to receive and spend federal matching funds to the fullest extent possible in accordance with the federal statutes, this subtitle, and the state constitution and within the limits of appropriated funds.

SECTION 1.12. Sections 40.004, 40.021, 40.022, 40.0226, 40.024, 40.025, 40.026, and 40.027, Human Resources Code, are amended to read as follows:

Sec. 40.004. PUBLIC INTEREST INFORMATION AND PUBLIC ACCESS. (a) The commissioner [~~board~~] shall develop and implement policies that provide the public with a reasonable opportunity to appear before the commissioner [~~board~~] and to speak on any issue under the jurisdiction of the department.

(b) The commissioner, with the advice of the council, [~~department~~] shall prepare information of public interest describing the functions of the department. The commission [~~department~~] shall make the information available to the public and appropriate state agencies.

(c) The commissioner shall grant an opportunity for a public hearing before the council makes recommendations to the commissioner regarding a substantive rule if a public hearing is requested by:

- (1) at least 25 persons;
- (2) a governmental entity; or
- (3) an association with at least 25 members.

(d) The executive commissioner shall consider fully all written and oral submissions about a proposed rule.

Sec. 40.021. FAMILY AND [~~BOARD OF~~] PROTECTIVE [~~AND REGULATORY~~] SERVICES COUNCIL. (a) The Family and Protective Services Council is created to assist the commissioner in developing rules and policies for the department [~~board is composed of six members appointed by the governor with the advice and consent of the senate. The governor shall designate one member to be the presiding officer of the board to serve in that capacity at the pleasure of the governor.~~].

(b) The council is composed of nine members of the public appointed by the governor with the advice and consent of the senate. To be eligible for appointment to the council, a person must have demonstrated an interest in and knowledge of problems and available services related to the functions of the department. [~~Four members of the board must have a demonstrated interest in the services provided by the department, and two members must represent the public.~~]

(c) The council shall study and make recommendations to the executive commissioner and the commissioner regarding the management and operation of the department, including policies and rules governing the delivery of services to persons who are served by the department and the rights and duties of persons who are served or regulated by the department.

(d) Chapter 551, Government Code, applies to the council.

(e) Chapter 2110, Government Code, does not apply to the council [board shall be appointed without regard to race, color, disability, sex, religion, age, or national origin].

(f) A majority of the members of the council constitute a quorum for the transaction of business.

Sec. 40.022. APPOINTMENTS [RESTRICTIONS ON BOARD APPOINTMENT OR MEMBERSHIP]. (a) Appointments to the council shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointees. [A person is not eligible for appointment as a member of the board if the person or the person's spouse:

(1) is a person who is employed by or participates in the management of a business entity or other organization regulated by the department or receiving funds from the department;

(2) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization that is regulated by the department or that receives funds from the department;

(3) uses or receives a substantial amount of tangible goods, services, or money from the department, other than compensation or reimbursement authorized by law for board membership, attendance, or expenses, or as a client or a parent or guardian of a client receiving services from the department; or

(4) is an employee, officer, or paid consultant of a trade association in a field under the jurisdiction of the department.]

(b) Appointments to the council shall be made so that each geographic area of the state is represented on the council. Notwithstanding Subsection (a), appointments to the council must reflect the ethnic diversity of this state. [~~In~~ addition to the requirements of Subsection (a), a person is not eligible for appointment as a public member of the board if the person or the person's spouse is registered, certified, or licensed by an occupational regulatory agency in a field under the jurisdiction of the department.]

Sec. 40.0226. [BOARD MEMBER] TRAINING PROGRAM FOR COUNCIL MEMBERS. (a) A person who is appointed as a member of the council may not vote, deliberate, or be counted as a member in attendance at a meeting of the council until the person completes a training program that complies with [Before a member of the board may assume the member's duties and before the member may be confirmed by the senate, the member must complete at least one course of the training program established under] this section.

(b) The [A] training program must [established under this section shall] provide information to the member regarding:

(1) the ~~[enabling]~~ legislation that created the department and the council ~~[board]~~;

(2) the programs operated by the department;

(3) the role and functions of the department and the council, including detailed information regarding:

(A) the division of authority and of responsibility between the commissioner and the executive commissioner; and

(B) the advisory responsibilities of the council;

(4) the rules of the executive commissioner applicable to the department, with an emphasis on the rules that relate to disciplinary and investigatory authority;

(5) the current budget for the department;

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

(7) the requirements of the:

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

(B) public information ~~[open records]~~ law, Chapter 552, Government Code; and

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

(8) the requirements of the conflict-of-interest laws and other laws relating to public officials; and

(9) any applicable ethics policies adopted by the executive commissioner ~~[board]~~ or the Texas Ethics Commission.

Sec. 40.024. ~~[BOARD] TERMS; VACANCY.~~ (a) Members of the council ~~[board]~~ serve for staggered six-year terms, with the terms of three ~~[two]~~ members expiring February 1 of each odd-numbered year.

(b) A member of the council may not serve more than two consecutive full terms as a council member.

(c) The governor by appointment shall fill the unexpired term of a vacancy on the council.

Sec. 40.025. REIMBURSEMENT FOR EXPENSES ~~[BOARD PER DIEM]~~. A council member may not receive compensation for service as a member of the council but is entitled to reimbursement for travel expenses incurred by the member while conducting the business of the council as provided ~~[While performing their duties, board members are entitled to a per diem as prescribed]~~ by the General Appropriations Act.

Sec. 40.026. PRESIDING OFFICER; OTHER OFFICERS; [BOARD] MEETINGS ~~[; QUORUM]~~. (a) The governor shall designate a member of the council as the presiding officer to serve in that capacity at the pleasure of the governor ~~[board shall meet at least quarterly and at the call of the presiding officer]~~.

(b) The members of the council shall elect any other necessary officers ~~[Four members of the board constitute a quorum]~~.

(c) The council shall meet quarterly and at other times at the call of the presiding officer. The council may hold meetings in different areas of the state.

Sec. 40.027. COMMISSIONER [~~EXECUTIVE DIRECTOR~~]. (a) The executive commissioner [of health and human services] shall appoint a commissioner [employ the executive director] in accordance with Section 531.0056, Government Code. The commissioner is to be selected according to education, training, experience, and demonstrated ability.

(b) The commissioner serves at the pleasure of the executive commissioner.

(c) Subject to the control of the executive commissioner, the commissioner shall act as the department's chief administrative officer and as a liaison between the department and commission.

(d) The commissioner shall administer this chapter and other laws relating to the department under operational policies established [executive director is the executive head of the department. The executive director shall perform the duties assigned] by the executive commissioner and in accordance with the memorandum of understanding under Section 531.0055(k), Government Code, between the commissioner and the executive commissioner, as adopted by rule [of health and human services and state law].

SECTION 1.13. Title 7, Human Resources Code, is amended by adding Chapter 117 to read as follows:

CHAPTER 117. DEPARTMENT OF ASSISTIVE AND REHABILITATIVE SERVICES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 117.001. DEFINITIONS. In this chapter:

(1) "Commission" means the Health and Human Services Commission.

(2) "Commissioner" means the commissioner of assistive and rehabilitative services.

(3) "Council" means the Assistive and Rehabilitative Services Council.

(4) "Department" means the Department of Assistive and Rehabilitative Services.

(5) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

Sec. 117.002. AGENCY. The department is an agency of the state.

Sec. 117.003. SUNSET PROVISION. The department is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the department is abolished and this chapter expires September 1, 2009.

[Sections 117.004-117.020 reserved for expansion]

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

Sec. 117.021. ASSISTIVE AND REHABILITATIVE SERVICES COUNCIL. (a) The Assistive and Rehabilitative Services Council is created to assist the commissioner in developing rules and policies for the department.

(b) The council is composed of nine members of the public appointed by the governor with the advice and consent of the senate. To be eligible for appointment to the council, a person must have demonstrated an interest in and knowledge of problems and available services related to early childhood intervention services or to persons with disabilities other than developmental delay and mental retardation and persons who are blind, deaf, or hard of hearing.

(c) The council shall study and make recommendations to the executive commissioner and the commissioner regarding the management and operation of the department, including policies and rules governing the delivery of services to persons who are served by the department and the rights and duties of persons who are served or regulated by the department.

(d) Chapter 551, Government Code, applies to the council.

(e) Chapter 2110, Government Code, does not apply to the council.

(f) A majority of the members of the council constitute a quorum for the transaction of business.

Sec. 117.022. APPOINTMENTS. (a) Appointments to the council shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointees.

(b) Appointments to the council shall be made so that each geographic area of the state is represented on the council. Notwithstanding Subsection (a), appointments to the council must reflect the ethnic diversity of this state.

Sec. 117.023. TRAINING PROGRAM FOR COUNCIL MEMBERS. (a) A person who is appointed as a member of the council may not vote, deliberate, or be counted as a member in attendance at a meeting of the council 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 department and the council;

(2) the programs operated by the department;

(3) the role and functions of the department and the council, including detailed information regarding:

(A) the division of authority and of responsibility between the commissioner and the executive commissioner; and

(B) the advisory responsibilities of the council;

(4) the rules of the executive commissioner applicable to the department, with an emphasis on the rules that relate to disciplinary and investigatory authority;

(5) the current budget for the department;

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

(7) the requirements of:

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

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

(C) the administrative procedure law, Chapter 2001, Government

Code; and

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

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

Sec. 117.024. TERMS. (a) Council members serve for staggered six-year terms with the terms of three members expiring February 1 of each odd-numbered year.

(b) A member of the council may not serve more than two consecutive full terms as a council member.

Sec. 117.025. VACANCY. The governor by appointment shall fill the unexpired term of a vacancy on the council.

Sec. 117.026. PRESIDING OFFICER; OTHER OFFICERS; MEETINGS. (a) The governor shall designate a member of the council as the presiding officer to serve in that capacity at the pleasure of the governor.

(b) The members of the council shall elect any other necessary officers.

(c) The council shall meet quarterly and at other times at the call of the presiding officer. The council may hold meetings in different areas of the state.

Sec. 117.027. REIMBURSEMENT FOR EXPENSES. A council member may not receive compensation for service as a member of the council but is entitled to reimbursement for travel expenses incurred by the member while conducting the business of the council as provided by the General Appropriations Act.

Sec. 117.028. PUBLIC INTEREST INFORMATION AND COMPLAINTS. (a) The commissioner, with the advice of the council, shall prepare information of public interest describing the functions of the department and the procedures by which complaints are filed with and resolved by the department. The commission shall make the information available to the public and appropriate state governmental entities.

(b) The executive commissioner by rule shall establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the department for directing complaints to the department.

Sec. 117.029. PUBLIC ACCESS AND TESTIMONY. (a) The commissioner shall develop and implement policies that provide the public with a reasonable opportunity to appear before the commissioner and to speak on any issue under the jurisdiction of the department.

(b) The commissioner shall grant an opportunity for a public hearing before the council makes recommendations to the commissioner regarding a substantive rule if a public hearing is requested by:

(1) at least 25 persons;

(2) a governmental entity; or

(3) an association with at least 25 members.

(c) The executive commissioner shall consider fully all written and oral submissions about a proposed rule.

Sec. 117.030. POLICYMAKING AND MANAGEMENT RESPONSIBILITIES. The commissioner, with the advice of the council and subject to the approval of the executive commissioner, shall develop and the department shall implement policies that clearly delineate the policymaking responsibilities of the executive commissioner from the management responsibilities of the commission, the commissioner, and the staff of the department.

Sec. 117.031. ANNUAL REPORT. (a) The commissioner shall file annually with the governor, the presiding officer of each house of the legislature, and the executive commissioner a complete and detailed written report accounting for all funds received and disbursed by the department during the preceding fiscal year.

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

Sec. 117.032. OFFICES. The department shall maintain its central office in Austin. The department may maintain offices in other areas of the state as necessary.

[Sections 117.033-117.050 reserved for expansion]

SUBCHAPTER C. PERSONNEL

Sec. 117.051. COMMISSIONER. (a) The executive commissioner shall appoint a commissioner of the department with the approval of the governor. The commissioner is to be selected according to education, training, experience, and demonstrated ability.

(b) The commissioner serves at the pleasure of the executive commissioner.

(c) Subject to the control of the executive commissioner, the commissioner shall act as the department's chief administrative officer and as a liaison between the department and commission.

(d) The commissioner shall administer this chapter under operational policies established by the executive commissioner and in accordance with the memorandum of understanding under Section 531.0055(k), Government Code, between the commissioner and the executive commissioner, as adopted by rule.

Sec. 117.052. PERSONNEL. (a) The department may employ, compensate, and prescribe the duties of personnel necessary and suitable to administer this chapter.

(b) The executive commissioner shall prepare and by rule adopt personnel standards.

(c) A personnel position may be filled only by an individual selected and appointed on a nonpartisan, merit basis.

(d) The commissioner, with the advice of the council, shall develop and the department shall implement policies that clearly define the responsibilities of the staff of the department.

Sec. 117.053. INFORMATION ABOUT QUALIFICATIONS AND STANDARDS OF CONDUCT. The commissioner or the commissioner's designee shall provide to department employees, as often as necessary, information regarding the requirements for employment under this chapter or rules adopted by the executive commissioner, including information regarding a person's responsibilities under applicable laws relating to standards of conduct for state employees.

Sec. 117.054. MERIT PAY. Subject to rules adopted by the executive commissioner, the commissioner or the commissioner's designee shall develop a system of annual performance evaluations. All merit pay for department employees must be given under the system established under this section or under rules adopted by the executive commissioner.

Sec. 117.055. CAREER LADDER. The commissioner or the commissioner's designee shall develop an intra-agency career ladder program. The program must require intra-agency postings of all nonentry-level positions concurrently with any public posting.

Sec. 117.056. EQUAL EMPLOYMENT OPPORTUNITY POLICY. (a) Subject to rules adopted by the executive commissioner, the commissioner or the commissioner's designee shall prepare and maintain a written policy statement that implements a program of equal employment opportunity to ensure that all personnel decisions are made without regard to race, color, disability, sex, religion, age, or national origin.

(b) Unless the following are included in a policy statement adopted by the executive commissioner that is applicable to the department, the policy statement must include:

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

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

(c) The policy statement must be:

(1) updated annually;

(2) reviewed by the state Commission on Human Rights for compliance with Subsection (b)(1); and

(3) filed with the governor's office.

Sec. 117.057. STATE EMPLOYEE INCENTIVE PROGRAM. The commissioner or the commissioner's designee shall provide to department employees information and training on the benefits and methods of participation in the state employee incentive program.

[Sections 117.058-117.070 reserved for expansion]

SUBCHAPTER D. POWERS AND DUTIES OF DEPARTMENT

Sec. 117.071. GENERAL POWERS AND DUTIES OF DEPARTMENT. The department is responsible for administering human services programs to provide early childhood intervention services and rehabilitation and related services to persons who are blind, deaf, or hard of hearing. The department is also responsible for providing and coordinating programs for the rehabilitation of persons with disabilities so that those persons may prepare for and engage in a gainful occupation or achieve maximum personal independence.

Sec. 117.072. INFORMATION REGARDING COMPLAINTS. (a) The department shall maintain a file on each written complaint filed with the department. The file must include:

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

(2) the date the complaint is received by the department;

(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 department closed the file without taking action other than to investigate the complaint.

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

(c) The department, 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. 117.073. RULES. The executive commissioner may adopt rules reasonably necessary for the department to administer this chapter, consistent with the memorandum of understanding under Section 531.0055(k), Government Code, between the commissioner and the executive commissioner, as adopted by rule.

SECTION 1.13A. The Human Resources Code is amended by adding Title 11 to read as follows:

TITLE 11. AGING, COMMUNITY-BASED, AND LONG-TERM CARE
SERVICES

CHAPTER 161. DEPARTMENT OF AGING AND DISABILITY SERVICES
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 161.001. DEFINITIONS. In this chapter:

(1) "Commission" means the Health and Human Services Commission.

(2) "Commissioner" means the commissioner of aging and disability services.

(3) "Council" means the Aging and Disability Services Council.

(4) "Department" means the Department of Aging and Disability Services.

(5) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

Sec. 161.002. AGENCY. The department is an agency of the state.

Sec. 161.003. SUNSET PROVISION. The department is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the department is abolished and this chapter expires September 1, 2009.

[Sections 161.004-161.020 reserved for expansion]

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

Sec. 161.021. AGING AND DISABILITY SERVICES COUNCIL. (a) The Aging and Disability Services Council is created to assist the commissioner in developing rules and policies for the department.

(b) The council is composed of nine members of the public appointed by the governor with the advice and consent of the senate. To be eligible for appointment to the council, a person must have demonstrated an interest in and knowledge of issues and available services related to the aging and persons with developmental disabilities or mental retardation.

(c) The council shall study and make recommendations to the executive commissioner and the commissioner regarding the management and operation of the department, including policies and rules governing the delivery of services to persons who are served by the department and the rights and duties of persons who are served or regulated by the department.

(d) Chapter 551, Government Code, applies to the council.

(e) Chapter 2110, Government Code, does not apply to the council.

(f) A majority of the members of the council constitute a quorum for the transaction of business.

Sec. 161.022. APPOINTMENTS. (a) Appointments to the council shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointees.

(b) Appointments to the council shall be made so that each geographic area of the state is represented on the council. Notwithstanding Subsection (a), appointments to the council must reflect the ethnic diversity of this state.

Sec. 161.023. TRAINING PROGRAM FOR COUNCIL MEMBERS. (a) A person who is appointed as a member of the council may not vote, deliberate, or be counted as a member in attendance at a meeting of the council 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 department and the council;

(2) the programs operated by the department;

(3) the role and functions of the department and the council, including detailed information regarding:

(A) the division of authority and of responsibility between the commissioner and the executive commissioner; and

(B) the advisory responsibilities of the council;

(4) the rules of the executive commissioner applicable to the department, with an emphasis on the rules that relate to disciplinary and investigatory authority;

(5) the current budget for the department;

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

(7) the requirements of:

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

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

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

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

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

Sec. 161.024. TERMS. (a) Council members serve for staggered six-year terms with the terms of three members expiring February 1 of each odd-numbered year.

(b) A member of the council may not serve more than two consecutive full terms as a council member.

Sec. 161.025. VACANCY. The governor by appointment shall fill the unexpired term of a vacancy on the council.

Sec. 161.026. PRESIDING OFFICER; OTHER OFFICERS; MEETINGS. (a) The governor shall designate a member of the council as the presiding officer to serve in that capacity at the pleasure of the governor.

(b) The members of the council shall elect any other necessary officers.

(c) The council shall meet quarterly and at other times at the call of the presiding officer. The council may hold meetings in different areas of the state.

Sec. 161.027. REIMBURSEMENT FOR EXPENSES. A council member may not receive compensation for service as a member of the council but is entitled to reimbursement for travel expenses incurred by the member while conducting the business of the council as provided by the General Appropriations Act.

Sec. 161.028. PUBLIC INTEREST INFORMATION AND COMPLAINTS. (a) The commissioner, with the advice of the council, shall prepare information of public interest describing the functions of the department and the procedures by which complaints are filed with and resolved by the department. The commission shall make the information available to the public and appropriate state governmental entities.

(b) The executive commissioner by rule shall establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the department for directing complaints to the department.

Sec. 161.029. PUBLIC ACCESS AND TESTIMONY. (a) The commissioner shall develop and implement policies that provide the public with a reasonable opportunity to appear before the commissioner and to speak on any issue under the jurisdiction of the department.

(b) The commissioner shall grant an opportunity for a public hearing before the council makes recommendations to the commissioner regarding a substantive rule if a public hearing is requested by:

(1) at least 25 persons;

(2) a governmental entity; or

(3) an association with at least 25 members.

(c) The executive commissioner shall consider fully all written and oral submissions about a proposed rule.

Sec. 161.030. POLICYMAKING AND MANAGEMENT RESPONSIBILITIES. The executive commissioner, with the advice of the council and subject to the approval of the executive commissioner, shall develop and the department shall implement policies that clearly delineate the

policymaking responsibilities of the executive commissioner from the management responsibilities of the commission, the commissioner, and the staff of the department.

Sec. 161.031. ANNUAL REPORT. (a) The commissioner shall file annually with the governor, the presiding officer of each house of the legislature, and the executive commissioner a complete and detailed written report accounting for all funds received and disbursed by the department during the preceding fiscal year.

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

Sec. 161.032. OFFICES. The department shall maintain its central office in Austin. The department may maintain offices in other areas of the state as necessary.

[Sections 161.033-161.050 reserved for expansion]

SUBCHAPTER C. PERSONNEL

Sec. 161.051. COMMISSIONER. (a) The executive commissioner shall appoint a commissioner of the department with the approval of the governor. The commissioner is to be selected according to education, training, experience, and demonstrated ability.

(b) The commissioner serves at the pleasure of the executive commissioner.

(c) Subject to the control of the executive commissioner, the commissioner shall act as the department's chief administrative officer and as a liaison between the department and commission.

(d) The commissioner shall administer this chapter under operational policies established by the executive commissioner and in accordance with the memorandum of understanding under Section 531.0055(k), Government Code, between the commissioner and the executive commissioner, as adopted by rule.

Sec. 161.052. PERSONNEL. (a) The department may employ, compensate, and prescribe the duties of personnel necessary and suitable to administer this chapter.

(b) The executive commissioner shall prepare and by rule adopt personnel standards.

(c) A personnel position may be filled only by an individual selected and appointed on a nonpartisan merit basis.

(d) The commissioner, with the advice of the council, shall develop and the department shall implement policies that clearly define the responsibilities of the staff of the department.

Sec. 161.053. INFORMATION ABOUT QUALIFICATIONS AND STANDARDS OF CONDUCT. The commissioner or the commissioner's designee shall provide to department employees, as often as necessary, information regarding the requirements for employment under this chapter or rules adopted by the executive commissioner, including information regarding a person's responsibilities under applicable laws relating to standards of conduct for state employees.

Sec. 161.054. MERIT PAY. Subject to rules adopted by the executive commissioner, the commissioner or the commissioner's designee shall develop a system of annual performance evaluations. All merit pay for department employees must be given under the system established under this section or under rules adopted by the executive commissioner.

Sec. 161.055. CAREER LADDER. The commissioner or the commissioner's designee shall develop an intra-agency career ladder program. The program must require intra-agency postings of all nonentry-level positions concurrently with any public posting.

Sec. 161.056. EQUAL EMPLOYMENT OPPORTUNITY POLICY. (a) Subject to rules adopted by the executive commissioner, the commissioner or the commissioner's designee shall prepare and maintain a written policy statement that implements a program of equal employment opportunity to ensure that all personnel decisions are made without regard to race, color, disability, sex, religion, age, or national origin.

(b) Unless the following are included in a policy statement adopted by the executive commissioner that is applicable to the department, the policy statement must include:

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

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

(c) The policy statement must be:

(1) updated annually;

(2) reviewed by the state Commission on Human Rights for compliance with Subsection (b)(1); and

(3) filed with the governor's office.

Sec. 161.057. STATE EMPLOYEE INCENTIVE PROGRAM. The commissioner or the commissioner's designee shall provide to department employees information and training on the benefits and methods of participation in the state employee incentive program.

[Sections 161.058-161.070 reserved for expansion]

SUBCHAPTER D. POWERS AND DUTIES OF DEPARTMENT

Sec. 161.071. GENERAL POWERS AND DUTIES OF DEPARTMENT. The department is responsible for administering human services programs for the aging and disabled, including:

(1) administering and coordinating programs to provide community-based care and support services to promote independent living for populations that would otherwise be institutionalized;

(2) providing institutional care services, including services through convalescent and nursing homes and related institutions under Chapter 242, Health and Safety Code;

(3) providing and coordinating programs and services for persons with disabilities, including programs for the treatment, rehabilitation, or benefit of persons with developmental disabilities or mental retardation;

(4) operating state facilities for the housing, treatment, rehabilitation, or benefit of persons with disabilities, including state schools for persons with mental retardation;

(5) serving as the state unit on aging required by the federal Older Americans Act of 1965 (42 U.S.C. Section 3001 et seq.) and its subsequent amendments, including performing the general functions under Section 101.022 to ensure:

(A) implementation of the federal Older Americans Act of 1965 (42 U.S.C. Section 3001 et seq.) and its subsequent amendments, including implementation of services and volunteer opportunities under that Act for older residents of this state through area agencies on aging;

(B) advocacy for residents of nursing facilities through the office of the state long-term care ombudsman;

(C) fostering of the state and community infrastructure and capacity to serve older residents of this state; and

(D) availability of a comprehensive resource for state government and the public on trends related to and services and programs for an aging population;

(6) performing all licensing and enforcement activities and functions related to long-term care facilities, including licensing and enforcement activities related to convalescent and nursing homes and related institutions under Chapter 242, Health and Safety Code;

(7) performing all licensing and enforcement activities related to assisted living facilities under Chapter 247, Health and Safety Code;

(8) performing all licensing and enforcement activities related to intermediate care facilities for persons with mental retardation under Chapter 252, Health and Safety Code; and

(9) performing all licensing and enforcement activities and functions related to home and community support services agencies under Chapter 142, Health and Safety Code.

Sec. 161.072. INFORMATION REGARDING COMPLAINTS. (a) The department shall maintain a file on each written complaint filed with the department. The file must include:

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

(2) the date the complaint is received by the department;

(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 department closed the file without taking action other than to investigate the complaint.

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

(c) The department, 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. 161.073. RULES. The executive commissioner may adopt rules reasonably necessary for the department to administer this chapter, consistent with the memorandum of understanding under Section 531.0055(k), Government Code, between the commissioner and the executive commissioner, as adopted by rule.

SECTION 1.14. APPOINTMENT OF COMMISSIONERS. (a) As soon as possible, the executive commissioner of the Health and Human Services Commission shall appoint the commissioners of:

(1) the Department of State Health Services in accordance with Chapter 1001, Health and Safety Code, as added by this article;

(2) the Department of Family and Protective Services in accordance with Chapter 40, Human Resources Code, as amended by this article;

(3) the Department of Assistive and Rehabilitative Services in accordance with Chapter 117, Human Resources Code, as added by this article; and

(4) the Department of Aging and Disability Services in accordance with Chapter 161, Human Resources Code, as added by this article.

(b) The executive commissioner of the Health and Human Services Commission shall make the appointments of the commissioners required by this section so that the ethnic diversity of this state is reflected in those appointments.

SECTION 1.15. APPOINTMENTS OF COUNCIL MEMBERS. (a) As soon as possible, the governor shall appoint the members of the State Health Services Council in accordance with Chapter 1001, Health and Safety Code, as added by this article. In making the initial appointments, the governor shall designate three members for terms expiring February 1, 2005, three members for terms expiring February 1, 2007, and three members for terms expiring February 1, 2009.

(b) As soon as possible, the governor shall appoint the members of the Family and Protective Services Council in accordance with Chapter 40, Human Resources Code, as amended by this article. In making the initial appointments, the governor shall designate three members for terms expiring February 1, 2005, three members for terms expiring February 1, 2007, and three members for terms expiring February 1, 2009.

(c) As soon as possible, the governor shall appoint the members of the Assistive and Rehabilitative Services Council in accordance with Chapter 117, Human Resources Code, as added by this article. In making the initial

appointments, the governor shall designate three members for terms expiring February 1, 2005, three members for terms expiring February 1, 2007, and three members for terms expiring February 1, 2009.

(d) As soon as possible, the governor shall appoint the members of the Aging and Disability Services Council in accordance with Chapter 161, Human Resources Code, as added by this article. In making the initial appointments, the governor shall designate three members for terms expiring February 1, 2005, three members for terms expiring February 1, 2007, and three members for terms expiring February 1, 2009.

(e) As soon as possible, the governor shall appoint the members of the Health and Human Services Council in accordance with Chapter 531, Government Code, as amended by this article. In making the initial appointments, the governor shall designate three members for terms expiring February 1, 2005, three members for terms expiring February 1, 2007, and three members for terms expiring February 1, 2009.

SECTION 1.16. LIMITATION ON ACTIVITIES. A state agency created under this article may, before the date specified in the transition plan required under Section 1.23 of this article, perform only those powers, duties, functions, programs, and activities that relate to preparing for the transfer of powers, duties, functions, programs, and activities to that agency in accordance with this article. A state agency created under this article may not operate all or any part of a health and human services program before the date specified in the transition plan required under Section 1.23 of this article.

SECTION 1.17. INITIAL COUNCIL AND COMMITTEE MEETINGS. The presiding officers of the councils for each state agency created under this article, the Family and Protective Services Council and the Health and Human Services Council, and the presiding officer of the Health and Human Services Transition Legislative Oversight Committee shall call the initial meeting of the applicable council or committee as soon as possible after the council or committee members are appointed.

SECTION 1.18. TRANSFERS TO THE HEALTH AND HUMAN SERVICES COMMISSION. (a) On the date specified in the transition plan required under Section 1.23 of this article, the following powers, duties, functions, programs, and activities are transferred to the Health and Human Services Commission:

(1) all powers, duties, functions, programs, and activities related to administrative support services, such as strategic planning and evaluation, audit, legal, human resources, information resources, accounting, purchasing, financial management, and contract management services, of a state agency or entity abolished by Section 1.26 of this article;

(2) all powers, duties, functions, programs, and activities of the Texas Department of Human Services related to:

(A) determining eligibility for long-term care services and community-based support services;

(B) the financial assistance program under Chapter 31, Human Resources Code;

(C) the nutritional assistance programs under Chapter 33, Human Resources Code;

(D) preventing family violence and providing services to victims of family violence; and

(E) the Texas Department of Human Services office of inspector general;

(3) all powers, duties, functions, programs, and activities related to the following programs administered by a state agency or entity abolished by Section 1.26 of this article:

(A) the state child health plan program under Chapters 62 and 63, Health and Safety Code; and

(B) the medical assistance program under Chapter 32, Human Resources Code; and

(4) all rulemaking and policymaking authority for the provision of health and human services in this state.

(b) On the date specified by Subsection (a) of this section:

(1) all obligations and contracts of a state agency or entity abolished by Section 1.26 of this article that are related to a power, duty, function, program, or activity transferred under Subsection (a) of this section are transferred to the Health and Human Services Commission;

(2) all property and records in the custody of a state agency or entity abolished by Section 1.26 of this article that are related to a power, duty, function, program, or activity transferred under Subsection (a) of this section and all funds appropriated by the legislature for the power, duty, function, program, or activity shall be transferred to the Health and Human Services Commission; and

(3) all complaints, investigations, or contested cases that are pending before a state agency or entity abolished by Section 1.26 of this article or the governing body of the agency or entity and that are related to a power, duty, function, program, or activity transferred under Subsection (a) of this section are transferred without change in status to the Health and Human Services Commission.

(c) A rule or form adopted by a state agency or entity abolished by Section 1.26 of this article that relates to a power, duty, function, program, or activity transferred under Subsection (a) of this section is a rule or form of the Health and Human Services Commission and remains in effect until altered by the commission.

(d) A reference in law to a state agency or entity abolished by Section 1.26 of this article, or to the governing body of the agency or entity, that relates to a power, duty, function, program, or activity transferred under Subsection (a) of this section means the Health and Human Services Commission.

(e) A license, permit, or certification in effect that was issued by a state agency or entity abolished by Section 1.26 of this article and that relates to a power, duty, function, program, or activity transferred under Subsection (a) of this section is continued in effect as a license, permit, or certification of the Health and Human Services Commission.

(f) All powers, duties, functions, programs, and activities relating to the Texas Department of Human Services office of inspector general transferred to the Health and Human Services Commission under Subsection (a)(2)(E) of this section, shall be assumed by the commission's office of inspector general. Notwithstanding any other provision of law, a reference in law to the Texas Department of Human Services office of inspector general means the commission's office of inspector general.

SECTION 1.19. TRANSFERS TO THE DEPARTMENT OF STATE HEALTH SERVICES. (a) On the date specified in the transition plan required under Section 1.23 of this article, the following powers, duties, functions, programs, and activities, other than those related to rulemaking or policymaking or administrative support services such as strategic planning and evaluation, audit, legal, human resources, information resources, accounting, purchasing, financial management, and contract management services, are transferred to the Department of State Health Services:

(1) except as provided by Section 1.18 of this article, all powers, duties, functions, programs, and activities of the Texas Department of Health;

(2) all powers, duties, functions, programs, and activities of the Texas Department of Mental Health and Mental Retardation relating to providing mental health services;

(3) all powers, duties, functions, programs, and activities of the Texas Commission on Alcohol and Drug Abuse; and

(4) all powers, duties, functions, programs, and activities of the Texas Health Care Information Council.

(b) On the date specified by Subsection (a) of this section:

(1) all obligations and contracts of an entity listed in Subsection (a) of this section that are related to a power, duty, function, program, or activity transferred under that subsection are transferred to the Department of State Health Services;

(2) all property and records in the custody of an entity listed in Subsection (a) of this section that are related to a power, duty, function, program, or activity transferred under that subsection and all funds appropriated by the legislature for the power, duty, function, program, or activity shall be transferred to the Department of State Health Services; and

(3) all complaints, investigations, or contested cases that are pending before an entity or the governing body of an entity listed in Subsection (a) of this section and that are related to a power, duty, function, program, or activity transferred under that subsection are transferred without change in status to the Department of State Health Services.

(c) A rule or form adopted by an entity listed in Subsection (a) of this section that relates to a power, duty, function, program, or activity transferred under that subsection is a rule or form of the Department of State Health Services and remains in effect until altered by the executive commissioner of the Health and Human Services Commission.

(d) A reference in law to an entity listed in Subsection (a) of this section that relates to a power, duty, function, program, or activity transferred under that subsection means the Department of State Health Services. A reference in law to the governing body of an entity listed in Subsection (a) of this section means the Health and Human Services Commission or the executive commissioner of the Health and Human Services Commission.

(e) A license, permit, or certification in effect that was issued by an entity listed in Subsection (a) of this section and that relates to a power, duty, function, program, or activity transferred under that subsection is continued in effect as a license, permit, or certification of the Department of State Health Services.

SECTION 1.20. TRANSFERS TO THE DEPARTMENT OF AGING AND DISABILITY SERVICES. (a) On the date specified in the transition plan required under Section 1.23 of this article, the following powers, duties, functions, programs, and activities, other than those related to rulemaking or policymaking or administrative support services such as strategic planning and evaluation, audit, legal, human resources, information resources, accounting, purchasing, financial management, and contract management services, are transferred to the Department of Aging and Disability Services:

(1) all powers, duties, functions, programs, and activities of the Texas Department on Aging;

(2) except as provided by Section 1.18 of this article, from the Texas Department of Human Services, all powers, duties, functions, programs, and activities related to providing long-term care services and community-based support and services, licensing and enforcing regulations applicable to long-term care facilities, and licensing and enforcing regulations applicable to home and community support services agencies; and

(3) all powers, duties, functions, programs, and activities of the Texas Department of Mental Health and Mental Retardation related to providing mental retardation services, including state school administration and services and community residential services.

(b) On the date specified by Subsection (a) of this section:

(1) all obligations and contracts of an entity listed in Subsection (a) of this section that are related to a power, duty, function, program, or activity transferred under that subsection are transferred to the Department of Aging and Disability Services;

(2) all property and records in the custody of an entity listed in Subsection (a) of this section that are related to a power, duty, function, program, or activity transferred under that subsection and all funds appropriated by the legislature for the power, duty, function, program, or activity shall be transferred to the Department of Aging and Disability Services; and

(3) all complaints, investigations, or contested cases that are pending before an entity or the governing body of an entity listed in Subsection (a) of this section and that are related to a power, duty, function, program, or activity transferred under that subsection are transferred without change in status to the Department of Aging and Disability Services.

(c) A rule or form adopted by an entity listed in Subsection (a) of this section that relates to a power, duty, function, program, or activity transferred under that subsection is a rule or form of the Department of Aging and Disability Services and remains in effect until altered by the executive commissioner of the Health and Human Services Commission.

(d) A reference in law to an entity listed in Subsection (a) of this section that relates to a power, duty, function, program, or activity transferred under that subsection means the Department of Aging and Disability Services. A reference in law to the governing body of an entity listed in Subsection (a) of this section means the Health and Human Services Commission or the executive commissioner of the Health and Human Services Commission.

(e) A license, permit, or certification in effect that was issued by an entity listed in Subsection (a) of this section and that relates to a power, duty, function, program, or activity transferred under that subsection is continued in effect as a license, permit, or certification of the Department of Aging and Disability Services.

SECTION 1.21. TRANSFERS TO THE DEPARTMENT OF ASSISTIVE AND REHABILITATIVE SERVICES. (a) On the date specified in the transition plan required under Section 1.23 of this article, the following powers, duties, functions, programs, and activities, other than those related to rulemaking or policymaking or administrative support services such as strategic planning and evaluation, audit, legal, human resources, information resources, accounting, purchasing, financial management, and contract management services, are transferred to the Department of Assistive and Rehabilitative Services:

(1) all powers, duties, functions, programs, and activities of the Texas Rehabilitation Commission;

(2) all powers, duties, functions, programs, and activities of the Interagency Council on Early Childhood Intervention;

(3) all powers, duties, functions, programs, and activities of the Texas Commission for the Blind; and

(4) all powers, duties, functions, programs, and activities of the Texas Commission for the Deaf and Hard of Hearing.

(b) On the date specified by Subsection (a) of this section:

(1) all obligations and contracts of an entity listed in Subsection (a) of this section that are related to a power, duty, function, program, or activity transferred under that subsection are transferred to the Department of Assistive and Rehabilitative Services;

(2) all property and records in the custody of an entity listed in Subsection (a) of this section that are related to a power, duty, function, program, or activity transferred under that subsection and all funds appropriated by the legislature for the power, duty, function, program, or activity shall be transferred to the Department of Assistive and Rehabilitative Services; and

(3) all complaints, investigations, or contested cases that are pending before an entity or the governing body of an entity listed in Subsection (a) of this section and that are related to a power, duty, function, program, or activity transferred under that subsection are transferred without change in status to the Department of Assistive and Rehabilitative Services.

(c) A rule or form adopted by an entity listed in Subsection (a) of this section that relates to a power, duty, function, program, or activity transferred under that subsection is a rule or form of the Department of Assistive and Rehabilitative Services and remains in effect until altered by the executive commissioner of the Health and Human Services Commission.

(d) A reference in law to an entity listed in Subsection (a) of this section that relates to a power, duty, function, program, or activity transferred under that subsection means the Department of Assistive and Rehabilitative Services. A reference in law to the governing body of an entity listed in Subsection (a) of this section means the Health and Human Services Commission or the executive commissioner of the Health and Human Services Commission.

(e) A license, permit, or certification in effect that was issued by an entity listed in Subsection (a) of this section and that relates to a power, duty, function, program, or activity transferred under that subsection is continued in effect as a license, permit, or certification of the Department of Assistive and Rehabilitative Services.

SECTION 1.22. HEALTH AND HUMAN SERVICES TRANSITION LEGISLATIVE OVERSIGHT COMMITTEE. The Health and Human Services Transition Legislative Oversight Committee is created to facilitate the transfer of powers, duties, functions, programs, and activities between the state's health and human services agencies and the Health and Human Services Commission as provided by this article with a minimal negative effect on the delivery of those services in this state.

(b) The committee is composed of 7 members, as follows:

(1) two members of the senate, appointed by the lieutenant governor not later than October 1, 2003;

(2) two members of the house of representatives, appointed by the speaker of the house of representatives not later than October 1, 2003;

(3) three members of the public, appointed by the governor not later than October 1, 2003.

(c) The executive commissioner of the Health and Human Services Commission serves as an ex officio member of the committee.

(d) A member of the committee serves at the pleasure of the appointing official.

(e) The lieutenant governor and the speaker of the house of representatives shall alternate designating a presiding officer from among their respective appointments. The speaker of the house of representatives shall make the first appointment after the effective date of this section.

(f) A member of the committee may not receive compensation for serving on the committee but is entitled to reimbursement for travel expenses incurred by the member while conducting the business of the committee as provided by the General Appropriations Act.

(g) The committee shall:

(1) facilitate the transfer of powers, duties, functions, programs, and activities between the state's health and human services agencies and the Health and Human Services Commission as provided by this article with a minimal negative effect on the delivery of those services in this state;

(2) with assistance from the Health and Human Services Commission and the health and human services agencies, advise the executive commissioner of the Health and Human Services Commission concerning:

(A) the powers, duties, functions, programs, and activities transferred under this article and the funds and obligations that are related to the powers, duties, functions, programs, or activities; and

(B) the transfer of the powers, duties, functions, programs, activities, records, property, funds, obligations, and employees by the entities as required by Sections 1.18, 1.19, 1.20, and 1.21 of this article;

(3) meet at the call of the presiding officer;

(4) research, take public testimony, and issue reports on other appropriate issues or specific issues requested by the lieutenant governor, speaker, or governor; and

(5) review specific recommendations for legislation proposed by the Health and Human Services Commission or the health and human services agencies.

(h) The committee shall monitor the effectiveness and efficiency of the health and human services system of this state.

(i) The committee may request reports and other information from the Health and Human Services Commission, health and human services agencies, and the attorney general relating to health and human services in this state and other appropriate issues.

(j) The committee shall use existing staff of the senate, the house of representatives, and the Texas Legislative Council to assist the committee in performing its duties under this section.

(k) Chapter 551, Government Code, applies to the committee.

(l) The committee shall report to the governor, lieutenant governor, and speaker of the house of representatives not later than November 15 of each even-numbered year. The report must include:

(1) identification of significant issues within the health and human services delivery system, with recommendations for action;

(2) an analysis of the effectiveness and efficiency of the health and human services delivery system, with recommendations for any necessary research; and

(3) recommendations for legislative action.

SECTION 1.23. TRANSITION PLAN. (a) The transfer of powers, duties, functions, programs, and activities under Sections 1.18, 1.19, 1.20, and 1.21 of this article to the Health and Human Services Commission, the Department of State Health Services, the Department of Aging and Disability Services, and the Department of Assistive and Rehabilitative Services, respectively, must be accomplished in accordance with a schedule included in a transition plan developed by the executive commissioner of the Health and Human Services Commission and submitted to the governor and the Legislative Budget Board not later than December 1, 2003. The executive commissioner shall provide to the governor and the Legislative Budget Board transition plan status reports and updates on at least a quarterly basis following submission of the initial transition plan. The transition plan must be made available to the public.

(b) Not later than November 1, 2003, the Health and Human Services Commission shall hold a public hearing and accept public comment regarding the transition plan required to be developed by the executive commissioner of the Health and Human Services Commission under Subsection (a) of this section.

(c) In developing the transition plan, the executive commissioner of the Health and Human Services Commission shall hold public hearings in various geographic areas in this state before submitting the plan to the governor and the Legislative Budget Board as required by this section.

SECTION 1.24. APPLICABILITY OF FORMER LAW. An action brought or proceeding commenced before the date of a transfer prescribed by this article in accordance with the transition plan required under Section 1.23 of this article, including a contested case or a remand of an action or proceeding by a reviewing court, is governed by the laws and rules applicable to the action or proceeding before the transfer.

SECTION 1.25. WORK PLAN FOR HEALTH AND HUMAN SERVICES AGENCIES. (a) The Health and Human Services Commission, the Department of Family and Protective Services, and each health and human services agency created under this article shall implement the powers, duties, functions, programs, and activities assigned to the agency under this article in accordance with a work plan designed by the commission to ensure that the transfer and provision of health and human services in this state are accomplished in a careful and deliberative manner.

(b) A work plan designed by the commission under this section must include the following phases:

(1) a planning phase, during which the agency will focus on and stabilize the organization of the agency's powers, duties, functions, programs, and activities, and which must include:

(A) initiation of recommendations made by the Health and Human Services Transition Legislative Oversight Committee;

(B) creation of interagency and intra-agency steering committees;

(C) development of global visions, goals, and organizational strategies; and

(D) development of communications and risk management plans;

(2) an integration phase, during which the agency will identify opportunities and problems and design customized solutions for those problems, and which must include:

(A) identification of key issues for the agency relating to the Texas Integrated Eligibility Redesign System, waivers needed from federal agencies, costs, or legal requirements for other agency activities;

(B) planning for daily operations;

(C) validation of fiscal and program synergies;

(D) definition and building of a program management office; and

(E) development of performance measures, related tracking measures and tools, and risk mitigation initiatives;

(3) an optimization phase, during which the agency will complete and expand on the initial health and human services transitions, and which must include:

(A) optimization of initial implementation initiatives;

(B) use of enterprise teaming operations;

(C) building infrastructures to support and facilitate changes in the delivery of health and human services; and

(D) identification and use of beneficial assets management and facilities approaches; and

(4) a transformation phase, during which the agency will continue implementing initial and additional changes to the delivery of health and human services, and which must include:

(A) implementation of changes in agency management activities;

(B) continuation of risk assessments; and

(C) conducting a transformation review of the changes to the delivery of health and human services.

SECTION 1.26. ABOLITION OF STATE AGENCIES AND ENTITIES.

(a) The following state agencies and entities are abolished on the date on which their respective powers, duties, functions, programs, and activities are transferred under this article:

(1) the Interagency Council on Early Childhood Intervention;

(2) the Texas Commission for the Blind;

(3) the Texas Commission for the Deaf and Hard of Hearing;

(4) the Texas Commission on Alcohol and Drug Abuse;

(5) the Texas Department of Health;

(6) the Texas Department of Human Services;

(7) the Texas Department of Mental Health and Mental Retardation;

(8) the Texas Department on Aging;

(9) the Texas Health Care Information Council; and

(10) the Texas Rehabilitation Commission.

(b) The abolition of a state agency or entity listed in Subsection (a) of this section and the transfer of its powers, duties, functions, programs, activities, obligations, rights, contracts, records, property, funds, and employees as provided by this article do not affect or impair an act done, any obligation, right, order,

permit, certificate, rule, criterion, standard, or requirement existing, or any penalty accrued under former law, and that law remains in effect for any action concerning those matters.

SECTION 1.27. A reference in law to the Department of Protective and Regulatory Services means the Department of Family and Protective Services.

SECTION 1.28. REPEAL. The following are repealed:

- (1) Sections 531.0057, 531.034, and 531.0345, Government Code;
- (2) Sections 40.0225 and 40.023, Human Resources Code; and
- (3) Article 2, Chapter 1505, Acts of the 76th Legislature, Regular Session, 1999.

SECTION 1.29. EFFECTIVE DATE. (a) Except as provided by Subsection (b) of this section, this article takes effect September 1, 2003.

(b) The Department of State Health Services, the Department of Assistive and Rehabilitative Services, and the Department of Aging and Disability Services are created on the date the executive commissioner of the Health and Human Services Commission appoints the commissioner of the respective agency.

ARTICLE 2. ADMINISTRATION, OPERATION, AND FINANCING OF HEALTH AND HUMAN SERVICES PROGRAMS AND PROVISION OF HEALTH AND HUMAN SERVICES

SECTION 2.01. Section 531.001, Government Code, is amended by adding Subdivision (1-a) to read as follows:

(1-a) "Child health plan program" means the child health plan program established under Chapters 62 and 63, Health and Safety Code.

SECTION 2.02. (a) Subchapter A, Chapter 531, Government Code, is amended by adding Section 531.017 to read as follows:

Sec. 531.017. PURCHASING DIVISION. (a) The commission shall establish a purchasing division for the management of administrative activities related to the purchasing functions of the commission and the health and human services agencies.

(b) The purchasing division shall:

(1) seek to achieve targeted cost reductions, increase process efficiencies, improve technological support and customer services, and enhance purchasing support for each health and human services agency; and

(2) if cost-effective, contract with private entities to perform purchasing functions for the commission and the health and human services agencies.

(b) Not later than January 1, 2004, the Health and Human Services Commission shall develop and implement a plan to consolidate the purchasing functions of the commission and health and human services agencies in a purchasing division under Section 531.017, Government Code, as added by this section.

SECTION 2.03. Section 531.021, Government Code, is amended by adding Subsections (c)-(e) to read as follows:

(c) The commission in its adoption of reasonable rules and standards under Subsection (b)(2) shall include financial performance standards that, in the event of a proposed rate reduction, provide private ICF-MR facilities and home and community-based services providers with flexibility in determining how to use

medical assistance payments to provide services in the most cost-effective manner while continuing to meet the state and federal requirements of the Medicaid program.

(d) In adopting rules and standards required by Subsection (b)(2), the commission may provide for payment of fees, charges, and rates in accordance with:

(1) formulas, procedures, or methodologies prescribed by the commission's rules;

(2) applicable state or federal law, policies, rules, regulations, or guidelines;

(3) economic conditions that substantially and materially affect provider participation in the Medicaid program, as determined by the commissioner; or

(4) available levels of appropriated state and federal funds.

(e) Notwithstanding any other provision of Chapter 32, Human Resources Code, Chapter 533, or this chapter, the commission may adjust the fees, charges, and rates paid to Medicaid providers as necessary to achieve the objectives of the Medicaid program in a manner consistent with the considerations described by Subsection (d).

SECTION 2.04. Subchapter B, Chapter 531, Government Code, is amended by adding Section 531.0335 to read as follows:

Sec. 531.0335. PROHIBITION ON PUNITIVE ACTION FOR FAILURE TO IMMUNIZE. (a) In this section:

(1) "Person responsible for a child's care, custody, or welfare" has the meaning assigned by Section 261.001, Family Code.

(2) "Punitive action" includes the initiation of an investigation of a person responsible for a child's care, custody, or welfare for alleged or suspected abuse or neglect of a child.

(b) The commissioner by rule shall prohibit a health and human services agency from taking a punitive action against a person responsible for a child's care, custody, or welfare for failure of the person to ensure that the child receives the immunization series prescribed by Section 161.004, Health and Safety Code.

(c) This section does not affect a law, including Chapter 31, Human Resources Code, that specifically provides a punitive action for failure to ensure that a child receives the immunization series prescribed by Section 161.004, Health and Safety Code.

SECTION 2.05. Subchapter B, Chapter 531, Government Code, is amended by adding Section 531.0392 to read as follows:

Sec. 531.0392. RECOVERY OF CERTAIN THIRD-PARTY REIMBURSEMENTS UNDER MEDICAID. (a) In this section, "dually eligible individual" means an individual who is eligible to receive health care benefits under both the Medicaid and Medicare programs.

(b) The commission shall obtain Medicaid reimbursement from each fiscal intermediary who makes a payment to a service provider on behalf of the Medicare program, including a reimbursement for a payment made to a home health services provider or nursing facility for services rendered to a dually eligible individual.

SECTION 2.06. Subchapter B, Chapter 531, Government Code, is amended by adding Section 531.063 to read as follows:

Sec. 531.063. CALL CENTERS. (a) The commission, by rule, shall establish at least one but not more than four call centers for purposes of determining and certifying or recertifying a person's eligibility and need for services related to the programs listed under Section 531.008(c), if cost-effective. The commission must conduct a public hearing before establishing the initial call center.

(b) The commission shall contract with at least one but not more than four private entities for the operation of call centers required by this section unless the commission determines that contracting would not be cost-effective.

(c) Each call center required by this section must be located in this state. This subsection does not prohibit a call center located in this state from processing overflow calls through a center located in another state.

(d) Each call center required by this section shall provide translation services as required by federal law for clients unable to speak, hear, or comprehend the English language.

(e) The commission shall develop consumer service and performance standards for the operation of each call center required by this section. The standards shall address a call center's:

(1) ability to serve its consumers in a timely manner, including consideration of the consumers' ability to access the call center, whether the call center has toll-free telephone access, the average amount of time a consumer spends on hold, the frequency of call transfers, whether a consumer is able to communicate with a live person at the call center, and whether the call center makes mail correspondence available;

(2) staff, including employee courtesy, friendliness, training, and knowledge about the programs listed under Section 531.008(c); and

(3) complaint handling procedures, including the level of difficulty involved in filing a complaint and whether the call center's complaint responses are timely.

(f) The commission shall make available to the public the standards developed under Subsection (e).

(g) The commission shall develop:

(1) mechanisms for measuring consumer service satisfaction; and

(2) performance measures to evaluate whether each call center meets the standards developed under Subsection (e).

(h) The commission may inspect each call center and analyze its consumer service performance through use of a consumer service evaluator who poses as a consumer of the call center.

(i) Notwithstanding Subsection (a), the commissioner shall develop and implement policies that provide an applicant for services related to the programs listed under Section 531.008(c) with an opportunity to appear in person to establish initial eligibility or to comply with periodic eligibility recertification requirements if the applicant requests a personal interview. In implementing the policies, the commission shall maintain offices to serve applicants who request a personal interview. This subsection does not affect a law or rule that requires an applicant to appear in person to establish initial eligibility or to comply with periodic eligibility recertification requirements.

SECTION 2.07. (a) Subchapter B, Chapter 531, Government Code, is amended by adding Section 531.065 to read as follows:

Sec. 531.065. CONSOLIDATION AND COORDINATION OF HEALTH INSURANCE PREMIUM PAYMENT REIMBURSEMENT PROGRAMS. (a) The commission shall develop and implement a plan to consolidate and coordinate the administration of the health insurance premium payment reimbursement programs prescribed by Section 62.059, Health and Safety Code, and Section 32.0422, Human Resources Code.

(b) If cost-effective, the commission may contract with a private entity to assist the commission in developing and implementing a plan required by this section.

(b) Section 62.059(i), Health and Safety Code, and Section 32.0422(m), Human Resources Code, are repealed.

(c) Not later than January 1, 2004, the Health and Human Services Commission shall develop and implement a plan to consolidate and coordinate the administration of health insurance premium payment reimbursement programs as required by Section 531.065, Government Code, as added by this section.

SECTION 2.08. Subchapter B, Chapter 531, Government Code, is amended by adding Section 531.067 to read as follows:

Sec. 531.067. PUBLIC ASSISTANCE HEALTH BENEFIT REVIEW AND DESIGN COMMITTEE. (a) The commission shall appoint a Public Assistance Health Benefit Review and Design Committee. The committee consists of nine representatives of health care providers participating in the Medicaid program or the child health plan program, or both. The committee membership must include at least three representatives from each program.

(b) The commissioner shall designate one member to serve as presiding officer for a term of two years.

(c) The committee shall meet at the call of the presiding officer.

(d) The committee shall review and provide recommendations to the commission regarding health benefits and coverages provided under the state Medicaid program, the child health plan program, and any other income-based health care program administered by the commission or a health and human services agency. In performing its duties under this subsection, the committee must:

(1) review benefits provided under each of the programs; and

(2) review procedures for addressing high utilization of benefits by recipients.

(e) The commission shall provide administrative support and resources as necessary for the committee to perform its duties under this section.

(f) Section 2110.008 does not apply to the committee.

(g) In performing the duties under this section, the commission may design and implement a program to improve and monitor clinical and functional outcomes of a recipient of services under the state child health plan or medical assistance program. The program may use financial, clinical, and other criteria based on pharmacy, medical services, and other claims data related to the child health plan or the state medical assistance program. The commission must report to the committee on the fiscal impact, including any savings associated with the strategies utilized under this section.

SECTION 2.09. Subchapter B, Chapter 531, Government Code, is amended by adding Section 531.068 to read as follows:

Sec. 531.068. MEDICAID OR OTHER HEALTH BENEFIT COVERAGE. In adopting rules or standards governing the state Medicaid program or rules or standards for the development or implementation of health benefit coverage for a program administered by the commission or a health and human services agency, the commission and each health and human services agency, as appropriate, may take into consideration any recommendation made with respect to health benefits provided under their respective programs or the state Medicaid program by the Public Assistance Health Benefit Review and Design Committee established under Section 531.067.

SECTION 2.10. Subchapter B, Chapter 531, Government Code, is amended by adding Section 531.069 to read as follows:

Sec. 531.069. PERIODIC REVIEW OF VENDOR DRUG PROGRAM. (a) The commission shall periodically review all purchases made under the vendor drug program to determine the cost-effectiveness of including a component for prescription drug benefits in any capitation rate paid by the state under a Medicaid managed care program or the child health plan program.

(b) In making the determination required by Subsection (a), the commission shall consider the value of any prescription drug rebates received by the state.

SECTION 2.11. (a) Subchapter B, Chapter 531, Government Code, is amended by adding Section 531.070 to read as follows:

Sec. 531.070. SUPPLEMENTAL REBATES. (a) In this section:

(1) "Labeler" means a person that:

(A) has a labeler code from the United States Food and Drug Administration under 21 C.F.R. Section 207.20; and

(B) receives prescription drugs from a manufacturer or wholesaler and repackages those drugs for later retail sale.

(2) "Manufacturer" means a manufacturer of prescription drugs as defined by 42 U.S.C. Section 1396r-8(k)(5) and its subsequent amendments, including a subsidiary or affiliate of a manufacturer.

(3) "Wholesaler" means a person licensed under Subchapter I, Chapter 431, Health and Safety Code.

(b) For purposes of this section, the term "supplemental rebates" means cash rebates paid by a manufacturer to the state on the basis of appropriate quarterly health and human services program utilization data relating to the manufacturer's products, pursuant to a state supplemental rebate agreement negotiated with the manufacturer and, if necessary, approved by the federal government under Section 1927 of the federal Social Security Act.

(c) The commission may enter into a written agreement with a manufacturer to accept certain program benefits in lieu of supplemental rebates, as defined by this section, only if:

(1) the program benefit yields savings that are at least equal to the amount the manufacturer would have provided under a state supplemental rebate agreement during the current biennium as determined by the written agreement;

(2) the manufacturer posts a performance bond guaranteeing savings to the state, and agrees that if the savings are not achieved in accordance with the written agreement, the manufacturer will forfeit the bond to the state less any savings that were achieved; and

(3) the program benefit is in addition to other program benefits currently offered by the manufacturer to recipients of medical assistance or related programs.

(d) For purposes of this section, a program benefit may mean disease management programs authorized under this title, drug product donation programs, drug utilization control programs, prescriber and beneficiary counseling and education, fraud and abuse initiatives, and other services or administrative investments with guaranteed savings to a program operated by a health and human services agency.

(e) Other than as required to satisfy the provisions of this section, the program benefits shall be deemed an alternative to, and not the equivalent of, supplemental rebates and shall be treated in the state's submissions to the federal government (including, as appropriate, waiver requests and quarterly Medicaid claims) so as to maximize the availability of federal matching payments.

(f) Agreements by the commission to accept program benefits as defined by this section:

(1) may not prohibit the commission from entering into similar agreements related to different drug classes with other entities;

(2) shall be limited to a time period expressly determined by the commission; and

(3) may only cover products that have received approval by the Federal Drug Administration at the time of the agreement, and new products approved after the agreement may be incorporated only under an amendment to the agreement.

(g) For purposes of this section, the commission may consider a monetary contribution or donation to the arrangements described in Subsection (c) for the purpose of offsetting expenditures to other state health care programs, but which funding may not be used to offset expenditures for covered outpatient drugs as defined by 42 U.S.C. Section 1396r-8(k)(2) under the vendor drug program. An arrangement under this subsection may not yield less than the amount the state

would have benefited under a supplemental rebate. The commission may consider an arrangement under this section as satisfying the requirements related to Section 531.072(b).

(h) Subject to Subsection (i), the commission shall negotiate with manufacturers and labelers, including generic manufacturers and labelers, to obtain supplemental rebates for prescription drugs provided under:

(1) the Medicaid vendor drug program in excess of the Medicaid rebates required by 42 U.S.C. Section 1396r-8 and its subsequent amendments;

(2) the child health plan program; and

(3) any other state program administered by the commission or a health and human services agency, including community mental health centers and state mental health hospitals.

(i) The commission may by contract authorize a private entity to negotiate with manufacturers and labelers on behalf of the commission.

(j) A manufacturer or labeler that sells prescription drugs in this state may voluntarily negotiate with the commission and enter into an agreement to provide supplemental rebates for prescription drugs provided under:

(1) the Medicaid vendor drug program in excess of the Medicaid rebates required by 42 U.S.C. Section 1396r-8 and its subsequent amendments;

(2) the child health plan program; and

(3) any other state program administered by the commission or a health and human services agency, including community mental health centers and state mental health hospitals.

(k) In negotiating terms for a supplemental rebate amount, the commission shall consider:

(1) rebates calculated under the Medicaid rebate program in accordance with 42 U.S.C. Section 1396r-8 and its subsequent amendments;

(2) any other available information on prescription drug prices or rebates; and

(3) other program benefits as specified in Subsection (c).

(l) Each year the commission shall provide a written report to the legislature and the governor. The report shall cover:

(1) the cost of administering the preferred drug lists adopted under Section 531.072;

(2) an analysis of the utilization trends for medical services provided by the state and any correlation to the preferred drug lists;

(3) an analysis of the effect on health outcomes and results for recipients; and

(4) statistical information related to the number of approvals granted or denied.

(m) In negotiating terms for a supplemental rebate, the commission shall use the average manufacturer price (AMP), as defined in Section 1396r-8(k)(1) of the Omnibus Budget Reconciliation Act of 1990, as the cost basis for the product.

(b) Not later than January 1, 2004, the Health and Human Services Commission shall implement Section 531.070, Government Code, as added by this section.

SECTION 2.12. Subchapter B, Chapter 531, Government Code, is amended by adding Section 531.071 to read as follows:

Sec. 531.071. CONFIDENTIALITY OF INFORMATION REGARDING DRUG REBATES, PRICING, AND NEGOTIATIONS. (a) Notwithstanding any other state law, information obtained or maintained by the commission regarding prescription drug rebate negotiations or a supplemental medical assistance or other rebate agreement, including trade secrets, rebate amount, rebate percentage, and manufacturer or labeler pricing, is confidential and not subject to disclosure under Chapter 552.

(b) Information that is confidential under Subsection (a) includes information described by Subsection (a) that is obtained or maintained by the commission in connection with the Medicaid vendor drug program, the child health plan program, the kidney health care program, the children with special health care needs program, or another state program administered by the commission or a health and human services agency.

(c) General information about the aggregate costs of different classes of drugs is not confidential under Subsection (a).

SECTION 2.13. (a) Subchapter B, Chapter 531, Government Code, is amended by adding Section 531.072 to read as follows:

Sec. 531.072. PREFERRED DRUG LISTS. (a) In a manner that complies with applicable state and federal law, the commission shall adopt preferred drug lists for the Medicaid vendor drug program and for prescription drugs purchased through the child health plan program. The commission may adopt preferred drug lists for community mental health centers, state mental health hospitals, and any other state program administered by the commission or a state health and human services agency.

(b) The preferred drug lists may contain only drugs provided by a manufacturer or labeler that reaches an agreement with the commission on supplemental rebates under Section 531.070.

(c) In making a decision regarding the placement of a drug on each of the preferred drug lists, the commission shall consider:

(1) the recommendations of the Pharmaceutical and Therapeutics Committee established under Section 531.074;

(2) the clinical efficacy of the drug;

(3) the price of competing drugs after deducting any federal and state rebate amounts; and

(4) program benefit offerings solely or in conjunction with rebates and other pricing information.

(d) The commission shall provide for the distribution of current copies of the preferred drug lists by posting the list on the Internet. In addition, the commission shall mail copies of the lists to any health care provider on request of that provider.

(e) In this subsection, "labeler" and "manufacturer" have the meanings assigned by Section 531.070. The commission shall ensure that:

(1) a manufacturer or labeler may submit written evidence supporting the inclusion of a drug on the preferred drug lists before a supplemental agreement is reached with the commission; and

(2) any drug that has been approved or has had any of its particular uses approved by the United States Food and Drug Administration under a priority review classification will be reviewed by the Pharmaceutical and Therapeutics Committee at the next regularly scheduled meeting of the committee. On receiving notice from a manufacturer or labeler of the availability of a new product, the commission, to the extent possible, shall schedule a review for the product at the next regularly scheduled meeting of the committee.

(f) A recipient of drug benefits under the Medicaid vendor drug program may appeal a denial of prior authorization under Section 531.073 of a covered drug or covered dosage through the Medicaid fair hearing process.

(b) Not later than March 1, 2004, the Health and Human Services Commission shall adopt the preferred drug lists as required by Section 531.072, Government Code, as added by this section.

SECTION 2.14. Subchapter B, Chapter 531, Government Code, is amended by adding Section 531.073 to read as follows:

Sec. 531.073. PRIOR AUTHORIZATION FOR CERTAIN PRESCRIPTION DRUGS. (a) The commission, in its rules and standards governing the Medicaid vendor drug program and the child health plan program, shall require prior authorization for the reimbursement of a drug that is not included in the appropriate preferred drug list adopted under Section 531.072, except for any drug exempted from prior authorization requirements by federal law. The commission may require prior authorization for the reimbursement of a drug provided through any other state program administered by the commission or a state health and human services agency, including a community mental health center and a state mental health hospital if the commission adopts preferred drug lists under Section 531.072 that apply to those facilities and the drug is not included in the appropriate list. The commission shall require that the prior authorization be obtained by the prescribing physician or prescribing practitioner.

(a-1) Until the commission has completed a study evaluating the impact of a requirement of prior authorization on recipients of certain drugs, the commission shall delay requiring prior authorization for drugs that are used to treat patients with illnesses that:

(1) are life-threatening;

(2) are chronic; and

(3) require complex medical management strategies.

(a-2) Not later than the 30th day before the date on which prior authorization requirements are implemented, the commission shall post on the Internet for consumers and providers:

(1) a notification of the implementation date; and

(2) a detailed description of the procedures to be used in obtaining prior authorization.

(b) The commission shall establish procedures for the prior authorization requirement under the Medicaid vendor drug program to ensure that the requirements of 42 U.S.C. Section 1396r-8(d)(5) and its subsequent amendments are met. Specifically, the procedures must ensure that:

(1) a prior authorization requirement is not imposed for a drug before the drug has been considered at a meeting of the Pharmaceutical and Therapeutics Committee established under Section 531.074;

(2) there will be a response to a request for prior authorization by telephone or other telecommunications device within 24 hours after receipt of a request for prior authorization; and

(3) a 72-hour supply of the drug prescribed will be provided in an emergency or if the commission does not provide a response within the time required by Subdivision (2).

(c) The commission shall ensure that a prescription drug prescribed before implementation of a prior authorization requirement for that drug for a recipient under the child health plan program, the Medicaid program, or another state program administered by the commission or a health and human services agency or for a person who becomes eligible under the child health plan program, the Medicaid program, or another state program administered by the commission or a health and human services agency is not subject to any requirement for prior authorization under this section unless the recipient has exhausted all the prescription, including any authorized refills, or a period prescribed by the commission has expired, whichever occurs first.

(d) The commission shall implement procedures to ensure that a recipient under the child health plan program, the Medicaid program, or another state program administered by the commission or a person who becomes eligible under the child health plan program, the Medicaid program, or another state program administered by the commission or a health and human services agency receives continuity of care in relation to certain prescriptions identified by the commission.

(e) The commission may by contract authorize a private entity to administer the prior authorization requirements imposed by this section on behalf of the commission.

(f) The commission shall ensure that the prior authorization requirements are implemented in a manner that minimizes the cost to the state and any administrative burden placed on providers.

SECTION 2.15. (a) Subchapter B, Chapter 531, Government Code, is amended by adding Section 531.074 to read as follows:

Sec. 531.074. PHARMACEUTICAL AND THERAPEUTICS COMMITTEE. (a) The Pharmaceutical and Therapeutics Committee is established for the purposes of developing recommendations for preferred drug lists adopted by the commission under Section 531.072.

(b) The committee consists of the following members appointed by the governor:

(1) six physicians licensed under Subtitle B, Title 3, Occupations Code, and participating in the Medicaid program, at least one of whom is a licensed physician who is actively engaged in mental health providing care and treatment to persons with severe mental illness and who has practice experience in the state Medicaid plan; and

(2) five pharmacists licensed under Subtitle J, Title 3, Occupations Code, and participating in the Medicaid vendor drug program.

(c) In making appointments to the committee under Subsection (b), the governor shall ensure that the committee includes physicians and pharmacists who:

(1) represent different specialties and provide services to all segments of the Medicaid program's diverse population;

(2) have experience in either developing or practicing under a preferred drug list; and

(3) do not have contractual relationships, ownership interests, or other conflicts of interest with a pharmaceutical manufacturer or labeler or with an entity engaged by the commission to assist in the development of the preferred drug lists or the administration of the prior authorization system.

(d) A member of the committee is appointed for a two-year term and may serve more than one term.

(e) The governor shall appoint a physician to be the presiding officer of the committee. The presiding officer serves at the pleasure of the governor.

(f) The committee shall meet at least monthly during the six-month period following establishment of the committee to enable the committee to develop recommendations for the initial preferred drug lists. After that period, the committee shall meet at least quarterly and at other times at the call of the presiding officer or a majority of the committee members.

(g) A member of the committee may not receive compensation for serving on the committee but is entitled to reimbursement for reasonable and necessary travel expenses incurred by the member while conducting the business of the committee, as provided by the General Appropriations Act.

(h) In developing its recommendations for the preferred drug lists, the committee shall consider the clinical efficacy, safety, and cost-effectiveness and any program benefit associated with a product.

(i) The commission shall adopt rules governing the operation of the committee, including rules governing the procedures used by the committee for providing notice of a meeting and rules prohibiting the committee from discussing confidential information described by Section 531.071 in a public meeting. The committee shall comply with the rules adopted under this subsection.

(j) To the extent feasible, the committee shall review all drug classes included in the preferred drug lists adopted under Section 531.072 at least once every 12 months and may recommend inclusions to and exclusions from the lists to ensure that the lists provide for cost-effective medically appropriate drug therapies for Medicaid recipients, children receiving health benefits coverage under the child health plan program, and any other affected individuals.

(k) The commission shall provide administrative support and resources as necessary for the committee to perform its duties.

(l) Chapter 2110 does not apply to the committee.

(b) Not later than November 1, 2003, the governor shall appoint members to the Pharmaceutical and Therapeutics Committee established under Section 531.074, Government Code, as added by this section.

(c) Not later than January 1, 2004, the Pharmaceutical and Therapeutics Committee established under Section 531.074, Government Code, as added by this section, shall submit recommendations for the preferred drug lists the committee is required to develop under that section to the Health and Human Services Commission.

SECTION 2.16. Subchapter B, Chapter 531, Government Code, is amended by adding Section 531.075 to read as follows:

Sec. 531.075. PRIOR AUTHORIZATION FOR HIGH-COST MEDICAL SERVICES. The commission may evaluate and implement, as appropriate, procedures, policies, and methodologies to require prior authorization for high-cost medical services and procedures and may contract with qualified service providers or organizations to perform those functions. Any such program shall recognize any prohibitions in state or federal law on limits in the amount, duration, or scope of medically necessary services for children on Medicaid.

SECTION 2.17. Subchapter B, Chapter 531, Government Code, is amended by adding Section 531.077 to read as follows:

Sec. 531.077. RECOVERY OF MEDICAL ASSISTANCE. (a) The commissioner shall ensure that the state Medicaid program implements 42 U.S.C. Section 1396p(b)(1).

(b) The Medicaid account is an account in the general revenue fund. Any funds recovered by implementing 42 U.S.C. Section 1396p(b)(1) shall be deposited in the Medicaid account. Money in the account may be appropriated only to fund long-term care, including community-based care and facility-based care.

SECTION 2.18. (a) Section 531.101, Government Code, is amended to read as follows:

Sec. 531.101. AWARD FOR REPORTING MEDICAID FRAUD, ABUSE, OR OVERCHARGES. (a) The commission may grant an award to an individual who reports activity that constitutes fraud or abuse of funds in the state Medicaid program or reports overcharges in the program if the commission determines that the disclosure results in the recovery of an administrative penalty imposed under Section 32.039, Human Resources Code. The commission may not grant an award to an individual in connection with a report if the commission or attorney general had independent knowledge of the activity reported by the individual [overcharge or in the termination of the fraudulent activity or abuse of funds].

(b) The commission shall determine the amount of an award. The award may not exceed five [must be equal to not less than 10] percent of the amount of the administrative penalty imposed under Section 32.039, Human Resources Code, [savings to this state] that resulted [result] from the individual's disclosure. In determining the amount of the award, the commission shall consider how

important the disclosure is in ensuring the fiscal integrity of the program. The commission may also consider whether the individual participated in the fraud, abuse, or overcharge.

(c) ~~[An award under this section is subject to appropriation. The award must be paid from money appropriated to or otherwise available to the commission, and additional money may not be appropriated to the commission for the purpose of paying the award.~~

~~[(d) Payment of an award under this section from federal funds is subject to the permissible use under federal law of funds for this purpose.~~

~~[(e)]~~ A person who brings an action under Subchapter C, Chapter 36, Human Resources Code, is not eligible for an award under this section.

(b) Section 531.101, Government Code, as amended by this section, applies only to a report that occurs on or after the effective date of this section. A report that occurs before the effective date of this section is governed by the law in effect at the time of the report, and the former law is continued in effect for that purpose.

SECTION 2.19. (a) Section 531.102, Government Code, is amended to read as follows:

Sec. 531.102. ~~[INVESTIGATIONS AND ENFORCEMENT]~~ OFFICE OF INSPECTOR GENERAL. (a) The commission, through the commission's office of inspector general ~~[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. The commission may obtain any information or technology necessary to enable the office to meet its responsibilities under this subchapter or other law.

(a-1) The governor shall appoint an inspector general to serve as director of the office. The inspector general serves a one-year term that expires on February 1.

(b) The commission, in consultation with the inspector general, shall set clear objectives, priorities, and performance standards for the office that emphasize:

- (1) coordinating investigative efforts to aggressively recover money;
- (2) allocating resources to cases that have the strongest supportive evidence and the greatest potential for recovery of money; and
- (3) maximizing opportunities for referral of cases to the office of the attorney general in accordance with Section 531.103.

(c) The commission shall train office staff to enable the staff to pursue priority Medicaid and other health and human services ~~[welfare]~~ fraud and abuse cases as necessary.

(d) The commission may require employees of health and human services agencies to provide assistance to the office ~~[commission]~~ in connection with the office's ~~[commission's]~~ duties relating to the investigation of fraud and abuse in the provision of health and human services. The office is entitled to access to any information maintained by a health and human services agency, including internal records, relevant to the functions of the office.

(e) The commission, in consultation with the inspector general, by rule shall set specific claims criteria that, when met, require the office to begin an investigation.

(f)(1) If the commission receives a complaint of Medicaid fraud or abuse from any source, the office must conduct an integrity review to determine whether there is sufficient basis to warrant a full investigation. An integrity review must begin not later than the 30th day after the date 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 the 90th day after it began.

(2) If the findings of an integrity review give the office reason to believe that an incident of fraud or abuse involving possible criminal conduct has occurred in the Medicaid program, the office must take the following action, as appropriate, not later than the 30th day after the completion of the integrity review:

(A) if a provider is suspected of fraud or abuse involving criminal conduct, the office must refer the case to the state's Medicaid fraud control unit, provided that the criminal referral does not preclude the office 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 office may conduct a full investigation of the suspected fraud.

(g)(1) Whenever the office learns or has reason to suspect that a provider's records are being withheld, concealed, destroyed, fabricated, or in any way falsified, the office shall immediately refer the case to the state's Medicaid fraud control unit. However, such criminal referral does not preclude the office 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 office 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 office 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 office 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 office 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 office 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, a hearing initiated under Subdivision (3) shall be stayed at the office's request until the informal resolution process is completed.

(5) The office 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.

(h) In addition to performing functions and duties otherwise provided by law, the office may:

(1) assess administrative penalties otherwise authorized by law on behalf of the commission or a health and human services agency;

(2) request that the attorney general obtain an injunction to prevent a person from disposing of an asset identified by the office as potentially subject to recovery by the office due to the person's fraud or abuse;

(3) provide for coordination between the office and special investigative units formed by managed care organizations under Section 531.113 or entities with which managed care organizations contract under that section;

(4) audit the use and effectiveness of state or federal funds, including contract and grant funds, administered by a person or state agency receiving the funds from a health and human services agency;

(5) conduct investigations relating to the funds described by Subdivision (4); and

(6) recommend policies promoting economical and efficient administration of the funds described by Subdivision (4) and the prevention and detection of fraud and abuse in administration of those funds.

(i) Notwithstanding any other provision of law, a reference in law or rule to the commission's office of investigations and enforcement means the office of inspector general established under this section.

(b) As soon as possible after the effective date of this section, the governor shall appoint a person to serve as inspector general in accordance with Section 531.102, Government Code, as amended by this section. The initial term of the person appointed in accordance with this subsection expires February 1, 2005.

SECTION 2.20. Subchapter C, Chapter 531, Government Code, is amended by adding Section 531.1021 to read as follows:

Sec. 531.1021. SUBPOENAS. (a) The office of inspector general may request that the commissioner or the commissioner's designee approve the issuance by the office of a subpoena in connection with an investigation conducted by the office. If the request is approved, the office may issue a subpoena to compel the attendance of a relevant witness or the production, for inspection or copying, of relevant evidence that is in this state.

(b) A subpoena may be served personally or by certified mail.

(c) If a person fails to comply with a subpoena, the office, acting through the attorney general, may file suit to enforce the subpoena in a district court in this state.

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

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

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

(g) All information and materials subpoenaed or compiled by the office in connection with an investigation are confidential and not subject to disclosure under Chapter 552, and not subject to disclosure, discovery, subpoena, or other means of legal compulsion for their release to anyone other than the office or its employees or agents involved in the investigation conducted by the office, except that this information may be disclosed to the office of the attorney general and law enforcement agencies.

SECTION 2.21. (a) Section 531.103, Government Code, is amended to read as follows:

Sec. 531.103. INTERAGENCY COORDINATION. (a) The commission, acting through the commission's office of inspector general, and the office of the attorney general shall enter into a memorandum of understanding to develop and implement joint written procedures for processing cases of suspected fraud, waste, or abuse, as those terms are defined by state or federal law, or other violations of state or federal law under the state Medicaid program or other program administered by the commission or a health and human services agency, including the financial assistance program under Chapter 31, Human Resources Code, a nutritional assistance program under Chapter 33, Human Resources Code, and the child health plan program. The memorandum of understanding shall require:

(1) the office of inspector general [~~commission~~] and the office of the attorney general to set priorities and guidelines for referring cases to appropriate state agencies for investigation, prosecution, or other disposition to enhance deterrence of fraud, waste, [~~or~~] abuse, or other violations of state or federal law, including a violation of Chapter 102, Occupations Code, in the programs [~~program~~] and maximize the imposition of penalties, the recovery of money, and the successful prosecution of cases;

(1-a) the office of inspector general to refer each case of suspected provider fraud, waste, or abuse to the office of the attorney general not later than the 20th business day after the date the office of inspector general determines that the existence of fraud, waste, or abuse is reasonably indicated;

(1-b) the office of the attorney general to take appropriate action in response to each case referred to the attorney general, which action may include direct initiation of prosecution, with the consent of the appropriate local district or

county attorney, direct initiation of civil litigation, referral to an appropriate United States attorney, a district attorney, or a county attorney, or referral to a collections agency for initiation of civil litigation or other appropriate action;

(2) the office of inspector general [~~commission~~] to keep detailed records for cases processed by that office [~~the commission~~] or the office of the attorney general, including information on the total number of cases processed and, for each case:

(A) the agency and division to which the case is referred for investigation;

(B) the date on which the case is referred; and

(C) the nature of the suspected fraud, waste, or abuse;

(3) the office of inspector general [~~commission~~] to notify each appropriate division of the office of the attorney general of each case referred by the office of inspector general [~~commission~~];

(4) the office of the attorney general to ensure that information relating to each case investigated by that office is available to each division of the office with responsibility for investigating suspected fraud, waste, or abuse;

(5) the office of the attorney general to notify the office of inspector general [~~commission~~] of each case the attorney general declines to prosecute or prosecutes unsuccessfully;

(6) representatives of the office of inspector general [~~commission~~] and of the office of the attorney general to meet not less than quarterly to share case information and determine the appropriate agency and division to investigate each case; and

(7) the office of inspector general [~~commission~~] and the office of the attorney general to submit information requested by the comptroller about each resolved case for the comptroller's use in improving fraud detection.

(b) An exchange of information under this section between the office of the attorney general and the commission, the office of inspector general, or a health and human services agency does not affect whether the information is subject to disclosure under Chapter 552.

(c) The commission and the office of the attorney general shall jointly prepare and submit a semiannual report to the governor, lieutenant governor, [~~and~~] speaker of the house of representatives, and comptroller concerning the activities of those agencies in detecting and preventing fraud, waste, and abuse under the state Medicaid program or other program administered by the commission or a health and human services agency. The report may be consolidated with any other report relating to the same subject matter the commission or office of the attorney general is required to submit under other law.

(d) The commission and the office of the attorney general may not assess or collect investigation and attorney's fees on behalf of any state agency unless the office of the attorney general or other state agency collects a penalty, restitution, or other reimbursement payment to the state.

(e) In addition to the provisions required by Subsection (a), the memorandum of understanding required by this section must also ensure that no barriers to direct fraud referrals to the office of the attorney general's Medicaid fraud control unit or unreasonable impediments to communication between Medicaid agency employees and the Medicaid fraud control unit are imposed, and must include procedures to facilitate the referral of cases directly to the office of the attorney general. [The commission shall refer a case of suspected fraud, waste, or abuse under the state Medicaid program to the appropriate district attorney, county attorney, city attorney, or private collection agency if the attorney general fails to act within 30 days of referral of the case to the office of the attorney general. A failure by the attorney general to act within 30 days constitutes approval by the attorney general under Section 2107.003.]

(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 in accordance with procedures adopted under this section and 20 percent of the amount of the penalty, restitution, or other reimbursement payment collected.

(b) 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 531.103, Government Code, as necessary to comply with that section, as amended by this section.

SECTION 2.22. Section 531.104(b), Government Code, is amended to read as follows:

(b) The memorandum of understanding must specify the type, scope, and format of the investigative support provided to the attorney general under this section [provide that the commission is not required to provide investigative support in more than 100 open investigations in a fiscal year].

SECTION 2.23. (a) Subchapter C, Chapter 531, Government Code, is amended by adding Section 531.1063 to read as follows:

Sec. 531.1063. MEDICAID FRAUD PILOT PROGRAM. (a) The commission, with cooperation from the Texas Department of Human Services, shall develop and implement a front-end Medicaid fraud reduction pilot program in one or more counties in this state to address provider fraud and appropriate cases of third-party and recipient fraud.

(b) The program must be designed to reduce:

(1) the number of fraud cases arising from authentication fraud and abuse;

(2) the total amount of Medicaid expenditures; and

(3) the number of fraudulent participants.

(c) The program must include:

(1) participant smart cards and biometric readers that reside at the point of contact with Medicaid providers, recipients, participating pharmacies, hospitals, and appropriate third-party participants;

(2) a secure finger-imaging system that is compliant with the Health Insurance Portability and Accountability Act (HIPAA) and the use of any existing state database of fingerprint images developed in connection with the financial

assistance program under Chapter 31, Human Resources Code; fingerprint images collected as part of the program shall only be placed on the smart card; and

(3) a monitoring system.

(d) In implementing the program, the commission may:

(1) exempt recipients who are children or who are elderly or disabled;

and

(2) obtain a fingerprint image from a parent or caretaker of a recipient who is a child, regardless of whether the parent or caretaker is a recipient.

(e) The commission must ensure that the procedures for obtaining fingerprint images of participating recipients and parents and caretakers who are not recipients are designed in a flexible manner that gives consideration to transportation barriers and work schedules of those individuals.

(f) To ensure reliability, the program and all associated hardware and software must easily integrate into participant settings and must be initially tested in a physician environment in this state and determined to be successful in authenticating recipients, providers, and provider staff members before the program is implemented throughout the program area.

(g) The commission may extend the program to additional counties if the commission determines that expansion would be cost-effective.

(b) Not later than January 1, 2004, the Health and Human Services Commission shall begin implementation of the program required by Section 531.1063, Government Code, as added by this section.

(c) Not later than February 1, 2005, the Health and Human Services Commission shall report to the governor, the lieutenant governor, and the speaker of the house of representatives regarding the program required by Section 531.1063, Government Code, as added by this section. The report must include:

- (1) an identification and evaluation of the benefits of the program; and
- (2) recommendations regarding expanding the program statewide.

SECTION 2.24. 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 2.25. (a) Subchapter C, Chapter 531, Government Code, is amended by adding Section 531.113 to read as follows:

Sec. 531.113. MANAGED CARE ORGANIZATIONS: SPECIAL INVESTIGATIVE UNITS OR CONTRACTS. (a) Each managed care organization that provides or arranges for the provision of health care services to an individual under a government-funded program, including the Medicaid program and the child health plan program, shall:

(1) establish and maintain a special investigative unit within the managed care organization to investigate fraudulent claims and other types of program abuse by recipients and service providers; or

(2) contract with another entity for the investigation of fraudulent claims and other types of program abuse by recipients and service providers.

(b) Each managed care organization subject to this section shall adopt a plan to prevent and reduce fraud and abuse and annually file that plan with the commission's office of inspector general for approval. The plan must include:

(1) a description of the managed care organization's procedures for detecting and investigating possible acts of fraud or abuse;

(2) a description of the managed care organization's procedures for the mandatory reporting of possible acts of fraud or abuse to the commission's office of inspector general;

(3) a description of the managed care organization's procedures for educating and training personnel to prevent fraud and abuse;

(4) the name, address, telephone number, and fax number of the individual responsible for carrying out the plan;

(5) a description or chart outlining the organizational arrangement of the managed care organization's personnel responsible for investigating and reporting possible acts of fraud or abuse;

(6) a detailed description of the results of investigations of fraud and abuse conducted by the managed care organization's special investigative unit or the entity with which the managed care organization contracts under Subsection (a)(2); and

(7) provisions for maintaining the confidentiality of any patient information relevant to an investigation of fraud or abuse.

(c) If a managed care organization contracts for the investigation of fraudulent claims and other types of program abuse by recipients and service providers under Subsection (a)(2), the managed care organization shall file with the commission's office of inspector general:

(1) a copy of the written contract;

(2) the names, addresses, telephone numbers, and fax numbers of the principals of the entity with which the managed care organization has contracted; and

(3) a description of the qualifications of the principals of the entity with which the managed care organization has contracted.

(d) The commission's office of inspector general may review the records of a managed care organization to determine compliance with this section.

(e) The commissioner shall adopt rules as necessary to accomplish the purposes of this section.

(b) A managed care organization subject to Section 531.113, Government Code, as added by this section, shall comply with the requirements of that section not later than September 1, 2004.

SECTION 2.26. (a) Subchapter C, Chapter 531, Government Code, is amended by adding Section 531.114 to read as follows:

Sec. 531.114. FINANCIAL ASSISTANCE FRAUD. (a) For purposes of establishing or maintaining the eligibility of a person and the person's family for financial assistance under Chapter 31, Human Resources Code, or for purposes of increasing or preventing a reduction in the amount of that assistance, a person may not intentionally:

- (1) make a statement that the person knows is false or misleading;
- (2) misrepresent, conceal, or withhold a fact; or
- (3) knowingly misrepresent a statement as being true.

(b) If after an investigation the commission determines that a person violated Subsection (a), the commission shall:

(1) notify the person of the alleged violation not later than the 30th day after the date the commission completes the investigation and provide the person with an opportunity for a hearing on the matter; or

(2) refer the matter to the appropriate prosecuting attorney for prosecution.

(c) If a person waives the right to a hearing or if a hearing officer at an administrative hearing held under this section determines that a person violated Subsection (a), the person is ineligible to receive financial assistance as provided by Subsection (d). A person who a hearing officer determines violated Subsection (a) may appeal that determination by filing a petition in the district court in the county in which the violation occurred not later than the 30th day after the date the hearing officer made the determination.

(d) A person determined under Subsection (c) to have violated Subsection (a) is not eligible for financial assistance:

(1) before the first anniversary of the date of that determination, if the person has no previous violations; and

(2) permanently, if the person was previously determined to have committed a violation.

(e) If a person is convicted of a state or federal offense for conduct described by Subsection (a), or if the person is granted deferred adjudication or placed on community supervision for that conduct, the person is permanently disqualified from receiving financial assistance.

(f) This section does not affect the eligibility for financial assistance of any other member of the household of a person ineligible as a result of Subsection (d) or (e).

(g) The commission shall adopt rules as necessary to implement this section.

(b) Section 531.114, Government Code, as added by this section, applies only to conduct occurring on or after the effective date of this section. Conduct occurring before the effective date of this section is governed by the law in effect on the date the conduct occurred, and the former law is continued in effect for that purpose.

SECTION 2.27. Subchapter C, Chapter 531, Government Code, is amended by adding Section 531.115 to read as follows:

Sec. 531.115. FEDERAL FELONY MATCH. The commission shall develop and implement a system to cross-reference data collected for the programs listed under Section 531.008(c) with the list of fugitive felons maintained by the federal government.

SECTION 2.28. Subchapter C, Chapter 531, Government Code, is amended by adding Section 531.116 to read as follows:

Sec. 531.116. COMPLIANCE WITH LAW PROHIBITING SOLICITATION. A provider who furnishes services under the Medicaid program or child health plan program is subject to Chapter 102, Occupations Code, and the provider's compliance with that chapter is a condition of the provider's eligibility to participate as a provider under those programs.

SECTION 2.29. Subchapter A, Chapter 533, Government Code, is amended by adding Section 533.0025 to read as follows:

Sec. 533.0025. DELIVERY OF SERVICES. (a) In this section, "medical assistance" has the meaning assigned by Section 32.003, Human Resources Code.

(b) Except as otherwise provided by this section and notwithstanding any other law, the commission shall provide medical assistance for acute care through the most cost-effective model of Medicaid managed care as determined by the commission. If the commission determines that it is more cost-effective, the commission may provide medical assistance for acute care in a certain part of this state or to a certain population of recipients using:

(1) a health maintenance organization model, including the acute care portion of Medicaid Star + Plus pilot programs;

(2) a primary care case management model;

(3) a prepaid health plan model;

(4) an exclusive provider organization model; or

(5) another Medicaid managed care model or arrangement.

(c) In determining whether a model or arrangement described by Subsection (b) is more cost-effective, the commissioner must consider:

(1) the scope, duration, and types of health benefits or services to be provided in a certain part of this state or to a certain population of recipients;

(2) administrative costs necessary to meet federal and state statutory and regulatory requirements;

(3) the anticipated effect of market competition associated with the configuration of Medicaid service delivery models determined by the commission; and

(4) the gain or loss to this state of a tax collected under Article 4.11, Insurance Code.

(d) If the commission determines that it is not more cost-effective to use a Medicaid managed care model to provide certain types of medical assistance for acute care in a certain area or to certain medical assistance recipients as prescribed by this section, the commission shall provide medical assistance for acute care through a traditional fee-for-service arrangement.

(e) Notwithstanding Subsection (b)(1), the commission may not provide medical assistance using a health maintenance organization in Cameron County, Hidalgo County, or Maverick County.

SECTION 2.30. Subchapter A, Chapter 533, Government Code, is amended by adding Section 533.0132 to read as follows:

Sec. 533.0132. STATE TAXES. The commission shall ensure that any experience rebate or profit sharing for managed care organizations is calculated by treating premium, maintenance, and other taxes under the Insurance Code and any other taxes payable to this state as allowable expenses for purposes of determining the amount of the experience rebate or profit sharing.

SECTION 2.31. Sections 403.105(a) and (c), Government Code, are amended to read as follows:

(a) The permanent fund for health and tobacco education and enforcement is a dedicated account in the general revenue fund. The fund is composed of:

(1) money transferred to the fund at the direction of the legislature;

(2) gifts and grants contributed to the fund; and

(3) the available earnings of the fund determined in accordance with Section 403.1068.

(c) The available earnings of the fund may be appropriated to the Texas Department of Health for:

(1) programs to reduce the use of cigarettes and tobacco products in this state, including:

(A) [~~+~~] smoking cessation programs;

(B) [~~2~~] enforcement of Subchapters H, K, and N, Chapter 161, Health and Safety Code, or other laws relating to distribution of cigarettes or tobacco products to minors or use of cigarettes or tobacco products by minors;

(C) [~~3~~] public awareness programs relating to use of cigarettes and tobacco products, including general educational programs and programs directed toward youth; and

(D) [~~4~~] specific programs for communities traditionally targeted, by advertising and other means, by companies that sell cigarettes or tobacco products; and

(2) the provision of preventive medical and dental services to children in the medical assistance program under Chapter 32, Human Resources Code.

SECTION 2.32. The heading to Section 403.105, Government Code, is amended to read as follows:

Sec. 403.105. PERMANENT FUND FOR HEALTH AND TOBACCO EDUCATION AND ENFORCEMENT.

SECTION 2.33. Section 403.1055(c), Government Code, is amended to read as follows:

(c) The available earnings of the fund may be appropriated to:

(1) the Texas Department of Health for the purpose of:

(A) developing and demonstrating cost-effective prevention and intervention strategies for improving health outcomes for children and the public;

(B) ~~and for~~ providing grants to local communities to address specific public health priorities, including sickle cell anemia, diabetes, high blood pressure, cancer, heart attack, stroke, keloid tissue and scarring, and respiratory disease;

(C) ~~, and for~~ providing grants to local communities for essential public health services as defined in the Health and Safety Code; and

(D) providing grants to schools of public health located in Texas;

and

(2) the Interagency Council on Early Childhood Intervention to provide intervention services for children with developmental delay or who have a high probability of developing developmental delay and the families of those children.

SECTION 2.34. Section 466.408(b), Government Code, is amended to read as follows:

(b) If a claim is not made for prize money on or before the 180th day after the date on which the winner was selected, the prize money shall be used in the following order of priority:

(1) subject to legislative appropriation, not more than \$20 million in prize money each year may be deposited to or appropriated from the Texas Department of Health state-owned multicategorical teaching hospital account, which is an account in the general revenue fund;

(2) not more than \$5 million in prize money each year may be appropriated to the Health and Human Services Commission and shall be used to support the provision of inpatient hospital services in hospitals located in the 15 counties that comprise the Texas-Mexico border area, with payment for those services to be not less than the amount established under the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) cost reimbursement methodology for the hospital providing the services; and

(3) all prize money subject to this section and not appropriated from the Texas Department of Health state-owned multicategorical teaching hospital account or not appropriated to the Health and Human Services Commission for the purpose specified in Subdivision (2) shall be deposited in the general revenue fund and may be appropriated for any purpose as determined by the legislature, including the provision of indigent health care services as specified in Chapter 61, Health and Safety Code ~~[shall be deposited to the credit of the Texas Department of Health state owned multicategorical teaching hospital account or the tertiary care facility account as follows:~~

[(1) not more than \$40 million in prize money each biennium may be deposited to or appropriated from the Texas Department of Health state-owned multicategorical teaching hospital account, which is an account in the general revenue fund; and

~~[(2) all prize money subject to this section in excess of \$40 million each biennium shall be deposited in the tertiary care facility account. Money deposited in the tertiary care facility account may only be appropriated to the department for purposes specified in Chapter 46 or 61, Health and Safety Code].~~

SECTION 2.35. Section 533.005, Government Code, is amended to read as follows:

Sec. 533.005. REQUIRED CONTRACT PROVISIONS. (a) A contract between a managed care organization and the commission for the organization to provide health care services to recipients must contain:

(1) procedures to ensure accountability to the state for the provision of health care services, including procedures for financial reporting, quality assurance, utilization review, and assurance of contract and subcontract compliance;

(2) capitation and provider payment rates that ensure the cost-effective provision of quality health care;

(3) a requirement that the managed care organization provide ready access to a person who assists recipients in resolving issues relating to enrollment, plan administration, education and training, access to services, and grievance procedures;

(4) a requirement that the managed care organization provide ready access to a person who assists providers in resolving issues relating to payment, plan administration, education and training, and grievance procedures;

(5) a requirement that the managed care organization provide information and referral about the availability of educational, social, and other community services that could benefit a recipient;

(6) procedures for recipient outreach and education;

(7) a requirement that the managed care organization make payment to a physician or provider for health care services rendered to a recipient under a managed care plan not later than the 45th day after the date a claim for payment is received with documentation reasonably necessary for the managed care organization to process the claim, or within a period, not to exceed 60 days, specified by a written agreement between the physician or provider and the managed care organization;

(8) a requirement that the commission, on the date of a recipient's enrollment in a managed care plan issued by the managed care organization, inform the organization of the recipient's Medicaid certification date;

(9) a requirement that the managed care organization comply with Section 533.006 as a condition of contract retention and renewal; ~~and~~

(10) a requirement that the managed care organization provide the information required by Section 533.012 and otherwise comply and cooperate with the commission's office of investigations and enforcement;

(11) a requirement that the managed care organization's usages of out-of-network providers or groups of out-of-network providers may not exceed limits for those usages relating to total inpatient admissions, total outpatient services, and emergency room admissions determined by the commission; and

(12) if the commission finds that a managed care organization has violated Subdivision (11), a requirement that the managed care organization reimburse an out-of-network provider for health care services at a rate that is equal to the allowable rate for those services, as determined under Sections 32.028 and 32.0281, Human Resources Code.

(b) In accordance with Subsection (a)(12), all post-stabilization services provided by an out-of-network provider must be reimbursed by the managed care organization at the allowable rate for those services until the managed care organization arranges for the timely transfer of the recipient, as determined by the recipient's attending physician, to a provider in the network. A managed care organization may not refuse to reimburse an out-of-network provider for emergency or post-stabilization services provided as a result of the managed care organization's failure to arrange for and authorize a timely transfer of a recipient.

SECTION 2.36. Section 533.012(a), Government Code, is amended to read as follows:

(a) Each managed care organization contracting with the commission under this chapter shall submit to the commission:

(1) a description of any financial or other business relationship between the organization and any subcontractor providing health care services under the contract;

(2) a copy of each type of contract between the organization and a subcontractor relating to the delivery of or payment for health care services; ~~and~~

(3) a description of the fraud control program used by any subcontractor that delivers health care services; and

(4) a description and breakdown of all funds paid to the managed care organization, including a health maintenance organization, primary care case management, and an exclusive provider organization, necessary for the commission to determine the actual cost of administering the managed care plan.

SECTION 2.37. The heading to Subchapter C, Chapter 531, Government Code, is amended to read as follows:

SUBCHAPTER C. MEDICAID AND OTHER HEALTH AND HUMAN SERVICES

~~[WELFARE]~~ FRAUD, ABUSE, OR OVERCHARGES

SECTION 2.37A. 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) "Hold on payment" means the temporary denial of reimbursement under the Medicaid program for items or services furnished by a specified provider.

(3) "Practitioner" means a physician or other individual licensed under state law to practice the individual's profession.

(4) "Program exclusion" means the suspension of a provider from being authorized under the Medicaid program to request reimbursement for items or services furnished by that specific provider.

(5) "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 2.38. Section 2177.0001(3), Government Code, is amended to read as follows:

(3) "State agency" has the meaning assigned by Section 2054.003, except that the term does not include a university system or institution of higher education or an agency identified in Section 531.001(4).

SECTION 2.39. Section 2177.101(a), Government Code, is amended to read as follows:

(a) This subchapter does not apply to procurements conducted by an agency identified in Section 531.001(4) or to procurements for major construction projects, as defined by the commission in consultation with the department, such as procurements made under Chapter 223, Transportation Code. In defining a major construction project, the commission shall base its decision on whether the nature of the project, any related contract or specifications, or other considerations are of a type that would make electronic procurement inappropriate.

SECTION 2.40. Section 2055.001(4), Government Code, is amended to read as follows:

(4) "State agency" has the meaning assigned by Section 2054.003, except that the term does not include a university system or institution of higher education or an agency identified in Section 531.001(4).

SECTION 2.41. Section 2055.002, Government Code, is amended to read as follows:

Sec. 2055.002. APPLICABILITY TO INSTITUTIONS OF HIGHER EDUCATION OR HEALTH AND HUMAN SERVICES AGENCIES. (a) Except as provided by Subsection (b), the requirements of this chapter regarding electronic government projects do not apply to institutions of higher education or a health and human services agency identified in Section 531.001(4), Government Code.

(b) Subject to approval by the office, an institution of higher education or a health and human services agency may elect to participate regarding an electronic government project of that institution or agency in the same manner as a state agency under this chapter. If the institution or health and human services agency makes this election and the office approves the election, the institution or health and human services agency:

(1) shall comply with this chapter regarding that electronic government project in the same manner as a state agency; and

(2) may not withdraw the project from management by the office unless the office approves the withdrawal.

SECTION 2.42. (a) Subchapter B, Chapter 12, Health and Safety Code, is amended by adding Sections 12.0111 and 12.0112 to read as follows:

Sec. 12.0111. LICENSING FEES. (a) This section applies in relation to each licensing program administered by the department or administered by a regulatory board or other agency that is under the jurisdiction of the department or administratively attached to the department. In this section and Section 12.0112, "license" includes a permit, certificate, or registration.

(b) Notwithstanding other law, the department shall charge a fee for issuing or renewing a license that is in an amount designed to allow the department to recover from its license holders all of the department's direct and indirect costs in administering and enforcing the applicable licensing program.

(c) Notwithstanding other law, each regulatory board or other agency that is under the jurisdiction of the department or administratively attached to the department and that issues licenses shall charge a fee for issuing or renewing a license that is in an amount designed to allow the department and the regulatory board or agency to recover from the license holders all of the direct and indirect costs to the department and to the regulatory board or agency in administering and enforcing the applicable licensing program.

(d) This section does not apply to a person regulated under Chapter 773.

Sec. 12.0112. TERM OF LICENSE. (a) Notwithstanding other law and except as provided by Subsection (b), the term of each license issued by the department, or by a regulatory board or other agency that is under the jurisdiction of the department or administratively attached to the department, is two years. The department, regulatory board, or agency may provide for staggering the issuance and renewal of licenses.

(b) This section does not apply to a license issued for a youth camp under Chapter 141.

(b) Section 12.0111, Health and Safety Code, as added by this section, applies only to a license, permit, certificate, or registration issued or renewed by the Texas Department of Health, or by a regulatory board or other agency that is under the jurisdiction of the department or administratively attached to the department, on or after January 1, 2004.

(c) Section 12.0112, Health and Safety Code, as added by this section, applies only to a license, permit, certificate, or registration that is issued or renewed on or after January 1, 2005.

SECTION 2.43. Sections 62.055(a), (d), and (e), Health and Safety Code, are amended to read as follows:

(a) It is the intent of the legislature that the commission maximize the use of private resources in administering the child health plan created under this chapter. In administering the child health plan, the commission may contract with[-

~~(4)]~~ a third party administrator to provide enrollment and related services under the state child health plan[-~~or~~

~~[(2) another entity, including the Texas Healthy Kids Corporation under Subchapter F, Chapter 109, to obtain health benefit plan coverage for children who are eligible for coverage under the state child health plan].~~

(d) A third party administrator ~~[or other entity]~~ may perform tasks under the contract that would otherwise be performed by the Texas Department of Health or Texas Department of Human Services under this chapter.

(e) The commission shall:

(1) retain all policymaking authority over the state child health plan;

(2) procure all contracts with a third party administrator ~~[or other entity]~~ through a competitive procurement process in compliance with all applicable federal and state laws or regulations; and

(3) ensure that all contracts with child health plan providers under Section 62.155 are procured through a competitive procurement process in compliance with all applicable federal and state laws or regulations.

SECTION 2.44. (a) Subchapter B, Chapter 62, Health and Safety Code, is amended by adding Section 62.0582 to read as follows:

Sec. 62.0582. THIRD-PARTY BILLING VENDORS. (a) A third-party billing vendor may not submit a claim with the commission for payment on behalf of a health plan provider under the program unless the vendor has entered into a contract with the commission authorizing that activity.

(b) To the extent practical, the contract shall contain provisions comparable to the provisions contained in contracts between the commission and health plan providers, with an emphasis on provisions designed to prevent fraud or abuse under the 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 commission 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 commission, 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 commission 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 commission, the office of the attorney general, or authorized representatives.

(c) On receipt of a claim submitted by a third-party billing vendor, the commission shall send a remittance notice directly to the provider referenced in the claim. The notice must include detailed information regarding the claim submitted on behalf of the provider.

(d) The commission shall take all action necessary, including any modifications of the commission's claims processing system, to enable the commission to identify and verify a third-party billing vendor submitting a claim for payment under the 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.

(e) The commission shall audit each third-party billing vendor subject to this section at least annually to prevent fraud and abuse under the program.

(b) Section 62.0582, Health and Safety Code, as added by this section, takes effect January 1, 2006.

SECTION 2.45. Section 62.002(4), Health and Safety Code, is amended to read as follows:

(4) "Gross [Net] family income" means the total amount of income established without consideration of any reduction for offsets that may be available to the family under any other [~~for a family after reduction for offsets for expenses such as child care and work related expenses, in accordance with standards applicable under the Medicaid~~] program.

SECTION 2.46. Section 62.101(b), Health and Safety Code, is amended to read as follows:

(b) The commission shall establish income eligibility levels consistent with Title XXI, Social Security Act (42 U.S.C. Section 1397aa et seq.), as amended, and any other applicable law or regulations, and subject to the availability of appropriated money, so that a child who is younger than 19 years of age and whose gross [net] family income is at or below 200 percent of the federal poverty level is eligible for health benefits coverage under the program. In addition, the commission may establish eligibility standards regarding the amount and types of allowable assets for a family whose gross family income is above 150 percent of the federal poverty level.

SECTION 2.47. Section 62.1015(b), Health and Safety Code, is amended to read as follows:

(b) A child of an employee of a charter school, school district, other educational district whose employees are members of the Teacher Retirement System of Texas, or regional education service center may be enrolled in health benefits coverage under the child health plan. A child enrolled in the child health plan under this section:

(1) participates in the same manner as any other child enrolled in the child health plan; and

(2) is subject to the same requirements and restrictions relating to income eligibility, continuous coverage, and enrollment, including applicable waiting periods, as any other child enrolled in the child health plan.

SECTION 2.48. Section 62.102, Health and Safety Code, is amended to read as follows:

Sec. 62.102. CONTINUOUS COVERAGE. (a) The commission shall provide that an individual who is determined to be eligible for coverage under the child health plan remains eligible for those benefits until the earlier of:

- (1) the end of a period, not to exceed 12 months, following the date of the eligibility determination; or
- (2) the individual's 19th birthday.

(b) The period of continuous eligibility may be established at an interval of 6 months beginning immediately upon passage of this Act and ending September 1, 2005, at which time an interval of 12 months of continuous eligibility will be re-established.

SECTION 2.49. Section 62.151, Health and Safety Code, is amended by amending Subsection (b) and adding Subsections (e) and (f) to read as follows:

(b) In developing the covered benefits, the commission shall consider the health care needs of healthy children and children with special health care needs. ~~[At the time the child health plan program is first implemented, the child health plan must provide a benefits package that is actuarially equivalent, as determined in accordance with 42 U.S.C. Section 1397cc, to the basic plan for active state employees offered through health maintenance organizations under the Texas Employees Uniform Group Insurance Benefits Act (Article 3.50 2, Vernon's Texas Insurance Code), as determined by the commission. The child health plan must provide at least the covered benefits described by the recommended benefits package described for a state designed child health plan by the Texas House of Representatives Committee on Public Health "CHIP" Interim Report to the Seventy Sixth Texas Legislature dated December, 1998, and the Senate Interim Committee on Children's Health Insurance Report to the Seventy Sixth Texas Legislature dated December 1, 1998.]~~

(e) In developing the covered benefits, the commission shall seek input from the Public Assistance Health Benefit Review and Design Committee established under Section 531.067, Government Code.

(f) The commission, if it determines the policy to be cost-effective, may ensure that an enrolled child does not, unless authorized by the commission in consultation with the child's attending physician or advanced practice nurse, receive under the child health plan:

(1) more than four different outpatient brand-name prescription drugs during a month; or

(2) more than a 34-day supply of a brand-name prescription drug at any one time.

SECTION 2.50. Section 62.153, Health and Safety Code, is amended by amending Subsection (b) and adding Subsection (d) to read as follows:

(b) Subject to Subsection (d), cost-sharing ~~[Cost-sharing]~~ provisions adopted under this section shall ensure that families with higher levels of income are required to pay progressively higher percentages of the cost of the plan.

(d) Cost-sharing provisions adopted under this section may be determined based on the maximum level authorized under federal law and applied to income levels in a manner that minimizes administrative costs.

SECTION 2.51. (a) The heading to Section 62.154, Health and Safety Code, is amended to read as follows:

Sec. 62.154. WAITING PERIOD; CROWD OUT.

(b) Sections 62.154(a), (b), and (d), Health and Safety Code, are amended to read as follows:

(a) To the extent permitted under Title XXI of the Social Security Act (42 U.S.C. Section 1397aa et seq.), as amended, and any other applicable law or regulations, the child health plan must include a waiting period. The child health plan ~~and~~ may include copayments and other provisions intended to discourage:

(1) employers and other persons from electing to discontinue offering coverage for children under employee or other group health benefit plans; and

(2) individuals with access to adequate health benefit plan coverage, other than coverage under the child health plan, from electing not to obtain or to discontinue that coverage for a child.

(b) A child is not subject to a waiting period adopted under Subsection (a) if:

(1) the family lost coverage for the child as a result of:

(A) termination of employment because of a layoff or business closing;

(B) termination of continuation coverage under the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. No. 99-272);

(C) change in marital status of a parent of the child;

(D) termination of the child's Medicaid eligibility because:

(i) the child's family's earnings or resources increased; or

(ii) the child reached an age at which Medicaid coverage is not available; or

(E) a similar circumstance resulting in the involuntary loss of coverage;

(2) the family terminated health benefits plan coverage for the child because the cost to the child's family for the coverage exceeded 10 percent of the family's net income; ~~or~~

(3) the child has access to group-based health benefits plan coverage and is required to participate in the health insurance premium payment reimbursement program administered by the commission; or

(4) the commission has determined that other grounds exist for a good cause exception.

(d) The waiting period required by Subsection (a) must~~[-~~

~~[(4)]~~ extend for a period of 90 days after:

(1) the first day of the month in ~~[last date on]~~ which the applicant is enrolled under the child health plan, if the date of enrollment is on or before the 15th day of the month; or

(2) the first day of the month after which the applicant is enrolled under the child health plan, if the date of enrollment is after the 15th day of the month ~~[was covered under a health benefits plan; and~~

~~[(2) apply to a child who was covered by a health benefits plan at any time during the 90 days before the date of application for coverage under the child health plan, other than a child who was covered under a health benefits plan provided under Chapter 109].~~

SECTION 2.52. Sections 62.155(c) and (d), Health and Safety Code, are amended to read as follows:

(c) In selecting a health plan provider, the commission:

(1) may give preference to a person who provides similar coverage under the Medicaid program [~~or through the Texas Healthy Kids Corporation~~]; and

(2) shall provide for a choice of at least two health plan providers in each service [~~metropolitan~~] area.

(d) The commissioner may authorize an exception to Subsection (c)(2) if there is only one acceptable applicant to become a health plan provider in the service [~~metropolitan~~] area.

SECTION 2.53. Subchapter D, Chapter 62, Health and Safety Code, is amended by adding Section 62.158 to read as follows:

Sec. 62.158. STATE TAXES. The commission shall ensure that any experience rebate or profit-sharing for health plan providers under the child health plan is calculated by treating premium, maintenance, and other taxes under the Insurance Code and any other taxes payable to this state as allowable expenses for purposes of determining the amount of the experience rebate or profit-sharing.

SECTION 2.54. (a) Subtitle E, Title 2, Health and Safety Code, is amended by adding Chapter 112 to read as follows:

CHAPTER 112. BORDER HEALTH FOUNDATION

Sec. 112.001. DEFINITIONS. In this chapter:

(1) "Board of directors" means the board of directors of the Border Health Foundation.

(2) "Foundation" means the Border Health Foundation.

Sec. 112.002. CREATION OF FOUNDATION. (a) The department shall establish the Border Health Foundation as a nonprofit corporation that complies with the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes), except as otherwise provided by this chapter, and qualifies as an organization exempt from federal income tax under Section 501(c)(3), Internal Revenue Code of 1986, as amended.

(b) The department shall ensure that the foundation operates independently of any state agency or political subdivision of this state.

Sec. 112.003. POWERS AND DUTIES. (a) The foundation shall raise money from other foundations, governmental entities, and other sources to finance health programs in this state in areas adjacent to the border with the United Mexican States.

(b) The foundation shall:

(1) identify and seek potential partners in the private sector that will afford this state the opportunity to maintain or increase the existing levels of financing of health programs and activities;

(2) engage in outreach efforts to make the existence of the office known to potential partners throughout this state; and

(3) perform any other function necessary to carry out the purposes of this section.

(c) The department shall review programs from all agencies under its control to determine which projects should be available to receive money under Subsection (a).

(d) The foundation has the powers necessary and convenient to carry out its duties.

Sec. 112.004. ADMINISTRATION. (a) The foundation is governed by a board of five directors appointed by the Texas Board of Health from individuals recommended by the commissioner.

(b) Members of the board of directors serve for staggered terms of six years, with as near as possible to one-third of the members' terms expiring every two years.

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

(d) The board of directors shall ensure that the foundation remains eligible for an exemption from federal income tax under Section 501(a), Internal Revenue Code of 1986, as amended, by being listed as an exempt organization under Section 501(c)(3) of that code, as amended.

Sec. 112.005. RESTRICTIONS ON BOARD APPOINTMENT, MEMBERSHIP, AND EMPLOYMENT. (a) In this section, "Texas trade association" means a cooperative and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) A person may not be a member of the board of directors and may not be a foundation 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.), as amended, if:

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

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

(c) A person may not be a member of the board of directors or act as the general counsel to the board of directors or the foundation 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 foundation.

Sec. 112.006. REMOVAL OF BOARD MEMBER. (a) It is a ground for removal from the board of directors that a member:

(1) is ineligible for membership under Section 112.005;

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

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

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

(c) The foundation in its articles or bylaws shall establish the manner in which a board member may be removed under this section and may establish other grounds for removal of a member.

Sec. 112.007. VACANCY. A vacancy on the board of directors shall be filled for the remainder of the unexpired term in the same manner as provided in Section 112.004(a).

Sec. 112.008. OFFICERS. The board of directors shall elect from among its members a presiding officer, an assistant presiding officer, and other necessary officers. The presiding officer and assistant presiding officer serve for a period of one year and may be reelected.

Sec. 112.009. MEETINGS. The board of directors may meet as often as necessary, but shall meet at least twice a year.

Sec. 112.010. TAX EXEMPTION. All income, property, and other assets of the foundation are exempt from taxation by this state and political subdivisions of this state.

Sec. 112.011. MEMORANDUM OF UNDERSTANDING. The foundation and the department shall enter into a memorandum of understanding that:

(1) requires the board of directors and staff of the foundation to report to the commissioner and department;

(2) allows the department to provide staff functions to the foundation;
and

(3) outlines the financial contributions to be made to the foundation from funds obtained from grants and other sources.

Sec. 112.012. FUNDING. (a) The department, another agency of this state, including an institution of higher education as defined by Section 61.003, Education Code, or a political subdivision of this state may contract with the foundation to finance, on behalf of the department, agency, or political subdivision, health programs described by Section 112.003.

(b) The foundation may apply for and accept funds from the federal government or any other public or private entity. The foundation or any member of the foundation may also solicit and accept pledges, gifts, and endowments from private sources on the foundation's behalf. The foundation may only accept a pledge, gift, or endowment solicited under this section that is consistent with the purposes of the foundation.

(c) The board of directors of the foundation shall manage and approve disbursements of funds, pledges, gifts, and endowments that are the property of the foundation.

(d) The board of directors of the foundation shall manage any capital improvements constructed, owned, or leased by the foundation and any real property acquired by the foundation.

Sec. 112.013. RECORDS. (a) The foundation shall maintain financial records and reports independently from those of the department.

(b) The foundation shall comply with all filing requirements of the secretary of state and the Internal Revenue Service.

Sec. 112.014. REPORT TO DEPARTMENT. Not later than the 60th day after the last day of the fiscal year, the foundation shall submit to the department a report itemizing all income and expenditures and describing all activities of the foundation during the preceding fiscal year.

(b) The Border Health Foundation shall be created as required by this section not later than June 1, 2004.

SECTION 2.55. Section 142.003(a), Health and Safety Code, is amended to read as follows:

(a) The following persons need not be licensed under this chapter:

(1) a physician, dentist, registered nurse, occupational therapist, or physical therapist licensed under the laws of this state who provides home health services to a client only as a part of and incidental to that person's private office practice;

(2) a registered nurse, licensed vocational nurse, physical therapist, occupational therapist, speech therapist, medical social worker, or any other health care professional as determined by the department who provides home health services as a sole practitioner;

(3) a registry that operates solely as a clearinghouse to put consumers in contact with persons who provide home health, hospice, or personal assistance services and that does not maintain official client records, direct client services, or compensate the person who is providing the service;

(4) an individual whose permanent residence is in the client's residence;

(5) an employee of a person licensed under this chapter who provides home health, hospice, or personal assistance services only as an employee of the license holder and who receives no benefit for providing the services, other than wages from the license holder;

(6) a home, nursing home, convalescent home, assisted living facility, special care facility, or other institution for individuals who are elderly or who have disabilities that provides home health or personal assistance services only to residents of the home or institution;

(7) a person who provides one health service through a contract with a person licensed under this chapter;

(8) a durable medical equipment supply company;

(9) a pharmacy or wholesale medical supply company that does not furnish services, other than supplies, to a person at the person's house;

(10) a hospital or other licensed health care facility that provides home health or personal assistance services only to inpatient residents of the hospital or facility;

(11) a person providing home health or personal assistance services to an injured employee under Title 5, Labor Code;

(12) a visiting nurse service that:

(A) is conducted by and for the adherents of a well-recognized church or religious denomination; and

(B) provides nursing services by a person exempt from licensing by Section 301.004, Occupations Code, because the person furnishes nursing care in which treatment is only by prayer or spiritual means;

(13) an individual hired and paid directly by the client or the client's family or legal guardian to provide home health or personal assistance services;

(14) a business, school, camp, or other organization that provides home health or personal assistance services, incidental to the organization's primary purpose, to individuals employed by or participating in programs offered by the business, school, or camp that enable the individual to participate fully in the business's, school's, or camp's programs;

(15) a person or organization providing sitter-companion services or chore or household services that do not involve personal care, health, or health-related services;

(16) a licensed health care facility that provides hospice services under a contract with a hospice;

(17) a person delivering residential acquired immune deficiency syndrome hospice care who is licensed and designated as a residential AIDS hospice under Chapter 248; ~~or~~

(18) the Texas Department of Criminal Justice;

(19) a person that provides home health, hospice, or personal assistance services only to persons enrolled in a program funded wholly or partly by the Texas Department of Mental Health and Mental Retardation and monitored by the Texas Department of Mental Health and Mental Retardation or its designated local authority in accordance with standards set by the Texas Department of Mental Health and Mental Retardation; or

(20) an individual who provides home health or personal assistance services as the employee of a consumer or an entity or employee of an entity acting as a consumer's fiscal agent under Section 531.051, Government Code.

SECTION 2.56. Section 142.009(j), Health and Safety Code, is amended to read as follows:

(j) Except as provided by Subsections (h)~~[-(i)-]~~ and (l), an on-site survey must be conducted within 18 months after a survey for an initial license. After that time, an on-site survey must be conducted at least every 36 months.

SECTION 2.57. (a) Section 242.047, Health and Safety Code, is amended to read as follows:

Sec. 242.047. ACCREDITATION REVIEW TO SATISFY [INSTEAD OF] INSPECTION OR CERTIFICATION REQUIREMENTS. (a) The department shall accept an annual accreditation review from the Joint Commission on Accreditation of Health Organizations for a nursing home instead of an inspection for renewal of a license under Section 242.033 and in satisfaction of the requirements for certification by the department for participation in the medical assistance program under Chapter 32, Human Resources Code, and the federal Medicare program, but only if:

(1) the nursing home is accredited by the commission under the commission's long-term care standards;

(2) the commission maintains an annual inspection or review program that, for each nursing home, meets the department's applicable minimum standards as confirmed by the board;

(3) the commission conducts an annual on-site inspection or review of the home; ~~and~~

(4) the nursing home submits to the department a copy of its annual accreditation review from the commission in addition to the application, fee, and any report required for renewal of a license or for certification, as applicable; and

(5) the department has:

(A) determined whether a waiver or authorization from a federal agency is necessary under federal law, including for federal funding purposes, before the department accepts an annual accreditation review from the joint commission:

(i) instead of an inspection for license renewal purposes;

(ii) as satisfying the requirements for certification by the department for participation in the medical assistance program; or

(iii) as satisfying the requirements for certification by the department for participation in the federal Medicare program; and

(B) obtained any necessary federal waivers or authorizations.

(b) The department shall coordinate its licensing and certification activities with the commission.

(c) The department and the commission shall sign a memorandum of agreement to implement this section. The memorandum must provide that if all parties to the memorandum do not agree in the development, interpretation, and implementation of the memorandum, any area of dispute is to be resolved by the board.

(d) Except as specifically provided by this section, this [This] section does not limit the department in performing any duties and inspections authorized by this chapter or under any contract relating to the medical assistance program under Chapter 32, Human Resources Code, and Titles XVIII and XIX of the Social Security Act (42 U.S.C. Sections 1395 et seq. and 1396 et seq.), including authority to take appropriate action relating to an institution, such as closing the institution.

(e) This section does not require a nursing home to obtain accreditation from the commission.

(b) Not later than October 1, 2003, the Texas Department of Human Services shall:

(1) determine whether a waiver or authorization from a federal agency is necessary under federal law, including for federal funding purposes, before the department may accept an annual accreditation review from the Joint Commission on Accreditation of Health Organizations for a nursing home:

(A) instead of an inspection for purposes of renewing a nursing home license under Chapter 242, Health and Safety Code;

(B) as satisfying the requirements for certification by the department for participation in the medical assistance program under Chapter 32, Human Resources Code; and

(C) as satisfying the requirements for certification by the department for participation in the federal Medicare program; and

(2) if the department determines that a waiver or authorization is necessary, request any required waivers or authorizations that the department may possibly obtain under federal law.

(c) Not later than December 1, 2003, the Texas Department of Human Services shall report its progress under Subsection (b) of this section to the governor and to the presiding officer of each house of the legislature.

SECTION 2.58. (a) Section 242.063(d), Health and Safety Code, is amended to read as follows:

(d) ~~A [Notwithstanding Chapter 15, Civil Practice and Remedies Code, or Section 65.023, Civil Practice and Remedies Code, a] suit for a temporary restraining order or other injunctive relief must [may] be brought in [Travis County or in] the county in which the alleged violation occurs.~~

(b) Section 242.063(e), Health and Safety Code, is repealed.

(c) The changes in law made by this section to Section 242.063(d), Health and Safety Code, apply only to a suit filed on or after the effective date of this section. A suit filed before the effective date of this section is covered by the law in effect when the suit was filed, and that law is continued in effect for that purpose.

SECTION 2.59. Section 242.065(b), Health and Safety Code, is amended to read as follows:

(b) In determining the amount of a penalty to be awarded under this section, the trier of fact shall consider:

(1) the seriousness of the violation~~[-including the nature, circumstances, extent, and gravity of the violation and the hazard or potential hazard created by the violation to the health or safety of a resident];~~

(2) the history of violations committed by the person or the person's affiliate, employee, or controlling person;

(3) the amount necessary to deter future violations;

(4) the efforts made to correct the violation;

(5) any misrepresentation made to the department or to another person regarding:

(A) the quality of services rendered or to be rendered to residents;

(B) the compliance history of the institution or any institutions owned or controlled by an owner or controlling person of the institution; or

(C) the identity of an owner or controlling person of the institution;

(6) the culpability of the individual who committed the violation; and

(7) any other matter that should, as a matter of justice or equity, be considered.

SECTION 2.60. (a) Section 242.070, Health and Safety Code, is amended to read as follows:

Sec. 242.070. APPLICATION OF OTHER LAW. The department may not assess more than one monetary penalty under this chapter and Chapter 32, Human Resources Code, for a violation arising out of the same act or failure to act, except as provided by Section 242.0665(c). The ~~[This section does not~~

~~prohibit the~~ department may assess the greater of ~~[from assessing]~~ a monetary penalty under this chapter or ~~[and]~~ a monetary penalty under Chapter 32, Human Resources Code, for the same act or failure to act.

(b) The change in law made by this section to Section 242.070, Health and Safety Code, applies only to a penalty assessed on or after the effective date of this section.

SECTION 2.61. Section 242.601(a), Health and Safety Code, is amended to read as follows:

(a) An institution must establish medication administration procedures ~~[to ensure that:~~

~~[(1) medications to be administered are checked against the order of a physician, advanced practice nurse, or physician assistant pursuant to protocols jointly developed with a physician;~~

~~[(2) the resident is identified before the administration of a medication;~~

~~[(3) each resident's clinical record includes an individual medication record in which the dose of medication administered is properly recorded by the person who administered the medication;~~

~~[(4) medications and biologicals are prepared and administered to a resident by the same individual, except under unit of use package distribution systems; and~~

~~[(5) a medication prescribed for one resident is not administered to any other person].~~

SECTION 2.62. Section 242.603(a), Health and Safety Code, is amended to read as follows:

(a) An institution shall store medications under appropriate conditions of sanitation, temperature, light, moisture, ventilation, segregation, and security. ~~[Poisons, medications used externally, and medications taken internally shall be stored on separate shelves or in separate cabinets. Medication stored in a refrigerator containing other items shall be kept in a separate compartment with appropriate security. The institution shall store a medication in a locked area that must remain locked unless an individual authorized to distribute the medication is present.]~~

SECTION 2.63. (a) Section 245.004(a), Health and Safety Code, is amended to read as follows:

(a) The following facilities need not be licensed under this chapter:

(1) a hospital licensed under Chapter 241 (Texas Hospital Licensing Law); or

(2) the office of a physician licensed under Subtitle B, Title 3, Occupations Code, unless the office is used for the purpose of performing more than 50 ~~[300]~~ abortions in any 12-month period.

(b) An office of a physician required by Section 245.004(a), Health and Safety Code, as amended by this section, to be licensed under Chapter 245, Health and Safety Code, must obtain that license not later than January 1, 2004.

SECTION 2.64. Section 252.202(a), Health and Safety Code, is amended to read as follows:

(a) A quality assurance fee is imposed on each facility for which a license fee must be paid under Section 252.034, ~~and~~ on each facility owned by a community mental health and mental retardation center, as described by Subchapter A, Chapter 534, and on each facility owned by the Texas Department of Mental Health and Mental Retardation. The fee:

- (1) is an amount established under Subsection (b) multiplied by the number of patient days as determined in accordance with Section 252.203;
- (2) is payable monthly; and
- (3) is in addition to other fees imposed under this chapter.

SECTION 2.65. Section 252.203, Health and Safety Code, is amended to read as follows:

Sec. 252.203. PATIENT DAYS. For each calendar day, a facility shall determine the number of patient days by adding the following:

- (1) the number of patients occupying a facility bed immediately before midnight of that day; and
- (2) ~~[the number of beds that are on hold on that day and that have been placed on hold for a period not to exceed three consecutive calendar days during which a patient is in a hospital; and~~
- ~~(3)~~ (3) the number of beds that are on hold on that day and that have been placed on hold for a period not to exceed three consecutive calendar days during which a patient is on therapeutic ~~[home]~~ leave.

SECTION 2.66. Section 252.204(b), Health and Safety Code, is amended to read as follows:

(b) Each facility shall:

- (1) not later than the 20th ~~[10th]~~ day after the last day of a month file a report with the Health and Human Services Commission or the department, as appropriate, stating the total patient days for the month; and
- (2) not later than the 30th day after the last day of the month pay the quality assurance fee.

SECTION 2.67. Sections 252.207(a) and (c), Health and Safety Code, are amended to read as follows:

(a) Subject to legislative appropriation and state and federal law, the ~~[The]~~ Health and Human Services Commission may ~~[shall]~~ use money in the quality assurance fund, together with any federal money available to match that money~~[-to]~~:

- (1) to offset ~~[allowable]~~ allowable expenses incurred to administer the quality assurance fee under this chapter ~~[under the Medicaid program]; [or]~~
- (2) to increase reimbursement rates paid under the Medicaid program to facilities or waiver programs for persons with mental retardation operated in accordance with 42 U.S.C. Section 1396n(c) and its subsequent amendments; or
- (3) for any other health and human services purpose approved by the governor and Legislative Budget Board[-, subject to Section 252.206(d)].

(c) If money in the quality assurance fund is used to increase a reimbursement rate in the Medicaid program, the ~~[The]~~ Health and Human Services Commission shall ensure that the reimbursement methodology used to

set that rate describes how the money in the fund will be used to increase the rate and [formula devised under Subsection (b)] provides incentives to increase direct care staffing and direct care wages and benefits.

SECTION 2.68. Section 253.008, Health and Safety Code, is amended to read as follows:

Sec. 253.008. VERIFICATION OF EMPLOYABILITY. (a) Before a facility, ~~or~~ an agency licensed under Chapter 142, or a person exempt from licensing under Section 142.003(a)(19) may hire an employee, the facility, ~~or~~ agency, or person shall search the employee misconduct registry under this chapter and the nurse aide registry maintained under the Omnibus Budget Reconciliation Act of 1987 (Pub. L. No. 100-203) to determine whether the applicant for employment ~~person~~ is designated in either registry as having abused, neglected, or exploited a resident or consumer of a facility or an individual receiving services from an agency licensed under Chapter 142 or from a person exempt from licensing under Section 142.003(a)(19).

(b) A facility, ~~or~~ agency licensed under Chapter 142, or a person exempt from licensing under Section 142.003(a)(19) may not employ a person who is listed in either registry as having abused, neglected, or exploited a resident or consumer of a facility or an individual receiving services from an agency licensed under Chapter 142 or from a person exempt from licensing under Section 142.003(a)(19).

SECTION 2.69. Section 253.009(a), Health and Safety Code, is amended to read as follows:

(a) Each facility, ~~or~~ each agency licensed under Chapter 142, and each person exempt from licensing under Section 142.003(a)(19) shall notify its employees in a manner prescribed by the department:

- (1) about the employee misconduct registry; and
- (2) that an employee may not be employed if the employee is listed in the registry.

SECTION 2.70. (a) Chapter 285, Health and Safety Code, is amended by adding Subchapter M to read as follows:

SUBCHAPTER M. PROVISION OF SERVICES

Sec. 285.201. PROVISION OF MEDICAL AND HOSPITAL CARE. As authorized by 8 U.S.C. Section 1621(d), this chapter affirmatively establishes eligibility for a person who would otherwise be ineligible under 8 U.S.C. Section 1621(a), provided that only local funds are utilized for the provision of nonemergency public health benefits. A person is not considered a resident of a governmental entity or hospital district if the person attempted to establish residence solely to obtain health care assistance.

(b) This section takes effect immediately if this Act receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this section takes effect September 1, 2003.

SECTION 2.71. 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 2.72. (a) Section 461.018(b), Health and Safety Code, is amended to read as follows:

(b) The commission's program under Subsection (a) must include:

(1) establishing and maintaining a list of webpages and toll-free "800" telephone numbers of nonprofit entities that ~~number to~~ provide crisis counseling and referral services to families experiencing difficulty as a result of problem or compulsive gambling;

(2) promoting public awareness regarding the recognition and prevention of problem or compulsive gambling;

(3) facilitating, through in-service training and other means, the availability of effective assistance programs for problem or compulsive gamblers; and

(4) conducting studies to identify adults and juveniles in this state who are, or who are at risk of becoming, problem or compulsive gamblers.

(b) Section 466.251(b), Government Code, and Section 2001.417(b), Occupations Code, are repealed.

SECTION 2.73. Section 533.034, Health and Safety Code, is amended to read as follows:

Sec. 533.034. AUTHORITY TO CONTRACT FOR COMMUNITY-BASED SERVICES. (a) The department may cooperate, negotiate, and contract with local agencies, hospitals, private organizations and foundations, community centers, physicians, and other persons to plan, develop, and provide community-based mental health and mental retardation services.

(b) The department may adopt a schedule of initial and annual renewal compliance fees for persons that provide services under a home and community-based services waiver program for persons with mental retardation adopted in accordance with Section 1915(c) of the federal Social Security Act (42 U.S.C. Section 1396n), as amended, and that is funded wholly or partly by the department and monitored by the department or by a designated local authority in accordance with standards adopted by the department. This subsection expires September 1, 2005.

SECTION 2.74. Section 533.035, Health and Safety Code, is amended by amending Subsection (c) and by adding Subsections (e), (f), and (g) to read as follows:

(c) A local mental health and mental retardation authority, with the department's approval, shall use the funds received under Subsection (b) to ensure mental health, mental retardation, and chemical dependency services are provided in the local service area. The local authority shall consider public input, ultimate cost-benefit, and client care issues to ensure consumer choice and the best use of public money in:

(1) assembling a network of service providers; and

(2) ~~determining whether to become a provider of a service or to contract that service to another organization; and~~

~~(3)~~ making recommendations relating to the most appropriate and available treatment alternatives for individuals in need of mental health or mental retardation services.

(e) In assembling a network of service providers, a local mental health and mental retardation authority may serve as a provider of services only as a provider of last resort and only if the authority demonstrates to the department that:

(1) the authority has made every reasonable attempt to solicit the development of an available and appropriate provider base that is sufficient to meet the needs of consumers in its service area; and

(2) there is not a willing provider of the relevant services in the authority's service area or in the county where the provision of the services is needed.

(f) The department shall review the appropriateness of a local mental health and mental retardation authority's status as a service provider at least biennially.

(g) The department, together with local mental health and mental retardation authorities and other interested persons, shall develop and implement a plan to privatize all services by intermediate facilities for persons with mental retardation and all related waiver services programs operated by an authority. The transfer of services to private providers may not occur on or before August 31, 2006. The plan must provide criteria that:

(1) promote the transition of services to private providers in a manner that causes the least disruption practicable to the consumers of those services;

(2) ensure the continuation of services at the same level of service provided before the transfer;

(3) provide for consumer choice as appropriate and as required by rule;
and

(4) require local mental health and mental retardation authorities to implement the privatization of services in a fiscally responsible manner.

SECTION 2.75. Subchapter B, Chapter 533, Health and Safety Code, is amended by adding Section 533.0354 to read as follows:

Sec. 533.0354. DISEASE MANAGEMENT PRACTICES AND JAIL DIVERSION MEASURES OF LOCAL MENTAL HEALTH AUTHORITIES.

(a) A local mental health authority shall ensure the provision of assessment services, crisis services, and intensive and comprehensive services using disease management practices for adults with bipolar disorder, schizophrenia, or clinically severe depression and for children with serious emotional illnesses. The local mental health authority shall ensure that individuals are engaged with treatment services that are:

(1) ongoing and matched to the needs of the individual in type, duration, and intensity;

(2) focused on a process of recovery designed to allow the individual to progress through levels of service;

(3) guided by evidence-based protocols and a strength-based paradigm of service; and

(4) monitored by a system that holds the local authority accountable for specific outcomes, while allowing flexibility to maximize local resources.

(b) The department shall require each local mental health authority to incorporate jail diversion strategies into the authority's disease management practices for managing adults with schizophrenia and bipolar disorder to reduce the involvement of those client populations with the criminal justice system.

(c) The department shall enter into performance contracts between the department and each local mental health authority for the fiscal years ending August 31, 2004, and August 31, 2005, that specify measurable outcomes related to their success in using disease management practices to meet the needs of the target populations.

(d) The department shall study the implementation of disease management practices, including the jail diversion measures, and shall submit to the governor, the lieutenant governor, and the speaker of the house of representatives a report on the progress in implementing disease management practices and jail diversion measures by local mental health authorities. The report must be delivered not later than December 31, 2004, and must include specific information on:

(1) the implementation of jail diversion measures undertaken; and
(2) the effect of disparities in per capita funding levels among local mental health authorities on the implementation and effectiveness of disease management practices and jail diversion measures.

(e) The department may use the fiscal year ending August 31, 2004, as a transition period for implementing the requirements of Subsections (a)-(c).

SECTION 2.76. Subchapter B, Chapter 533, Health and Safety Code, is amended by adding Section 533.0355 to read as follows:

Sec. 533.0355. ALLOCATION OF DUTIES UNDER CERTAIN MEDICAID WAIVER PROGRAMS. (a) In this section, "waiver program" means the local mental retardation authority waiver program established under the state Medicaid program.

(b) A provider of services under the waiver program shall:

(1) develop a person-directed plan and an individual program plan for each person who receives services from the provider under the waiver program;

(2) perform justification and implementation functions for the plans described by Subdivision (1);

(3) conduct case management under the waiver program, other than case management under Subsection (c)(3), in accordance with applicable state and federal laws; and

(4) plan, coordinate, and review the provision of services to all persons who receive services from the service provider under the waiver program.

(c) A local mental retardation authority shall:

(1) manage any waiting lists for services under the waiver program;

(2) perform functions relating to consumer choice and enrollment for persons who receive services under the waiver program; and

(3) conduct case management under the waiver program relating to funding disputes between a service provider and the local mental retardation authority.

(d) The department shall perform all administrative functions under the waiver program that are not assigned to a service provider under Subsection (b) or to a local mental retardation authority under Subsection (c). Administrative functions performed by the department include:

(1) any surveying, certification, and utilization review functions required under the waiver program; and

(2) managing an appeals process relating to decisions that affect a person receiving services under the waiver program.

(e) The department shall review:

(1) screening and assessment of levels of care;

(2) case management fees paid under the waiver program to a community center; and

(3) administrative fees paid under the waiver program to a service provider.

(f) The department shall perform any function relating to inventory for persons who receive services under the waiver program and agency planning assessments.

(g) The review required under Subsection (e) must include a comparison of fees paid before the implementation of this section with fees paid after the implementation of this section. The department may adjust fees paid based on that review.

(h) The department shall allocate the portion of the gross reimbursement funds paid to a local authority and a service provider for client services for the case management function in accordance with this section and to the extent allowed by law.

(i) The department may adopt rules governing the functions of a local mental retardation authority or service provider under this section.

SECTION 2.77. (a) Subchapter B, Chapter 533, Health and Safety Code, is amended by adding Section 533.049 to read as follows:

Sec. 533.049. PRIVATIZATION OF STATE SCHOOL. (a) After August 31, 2004, and before September 1, 2005, the department may contract with a private service provider to operate a state school only if:

(1) the Health and Human Services Commission determines that the private service provider will operate the state school at a cost that is at least 25 percent less than the cost to the department to operate the state school;

(2) the Health and Human Services Commission approves the contract;

(3) the private service provider is required under the contract to operate the school at a quality level at least equal to the quality level achieved by the department when the department operated the school, as measured by the school's most recent applicable ICF-MR survey; and

(4) the state school, when operated under the contract, treats a population with the same characteristics and need levels as the population treated by the state school when operated by the department.

(b) On or before April 1, 2004, the department shall report to the commissioner of health and human services whether the department has received a proposal by a private service provider to operate a state school. The report must include an evaluation of the private service provider's qualifications, experience, and financial strength, a determination of whether the provider can operate the state school under the same standard of care as the department, and an analysis of the projected savings under a proposed contract with the provider. The savings analysis must include all department costs to operate the state school, including costs, such as employee benefits, that are not appropriated to the department.

(c) If the department contracts with a private service provider to operate a state school, the department, the Governor's Office of Budget and Planning, and the Legislative Budget Board shall identify sources of funding that must be transferred to the department to fund the contract.

(d) The department may renew a contract under this section. The conditions listed in Subsections (a)(1)-(3) apply to the renewal of the contract.

(b) Section 533.049, Health and Safety Code, as added by this section, takes effect September 1, 2004.

SECTION 2.78. (a) Subchapter B, Chapter 533, Health and Safety Code, is amended by adding Section 533.050 to read as follows:

Sec. 533.050. PRIVATIZATION OF STATE MENTAL HOSPITAL. (a) After August 31, 2004, and before September 1, 2005, the department may contract with a private service provider to operate a state mental hospital owned by the department only if:

(1) the Health and Human Services Commission determines that the private service provider will operate the hospital at a cost that is at least 25 percent less than the cost to the department to operate the hospital;

(2) the Health and Human Services Commission approves the contract;

(3) the hospital, when operated under the contract, treats a population with the same characteristics and acuity levels as the population treated at the hospital when operated by the department; and

(4) the private service provider is required under the contract to operate the hospital at a quality level at least equal to the quality level achieved by the department when the department operated the hospital, as measured by the hospital's most recent applicable accreditation determination from the Joint Commission on Accreditation of Healthcare Organizations (JCAHO).

(b) On or before April 1, 2004, the department shall report to the commissioner of health and human services whether the department has received a proposal by a private service provider to operate a state mental hospital. The report must include an evaluation of the private service provider's qualifications, experience, and financial strength, a determination of whether the provider can operate the hospital under the same standard of care as the department, and an analysis of the projected savings under a proposed contract with the provider. The savings analysis must include all department costs to operate the hospital, including costs, such as employee benefits, that are not appropriated to the department.

(c) If the department contracts with a private service provider to operate a state mental hospital, the department, the Governor's Office of Budget and Planning, and the Legislative Budget Board shall identify sources of funding that must be transferred to the department to fund the contract.

(d) The department may renew a contract under this section. The conditions listed in Subsections (a)(1)-(3) apply to the renewal of the contract.

(b) Section 533.050, Health and Safety Code, as added by this section, takes effect September 1, 2004.

SECTION 2.79. Section 533.084, Health and Safety Code, is amended by adding Subsections (b-1) and (b-2) to read as follows:

(b-1) Notwithstanding Subsection (b) or any other law, the proceeds from the disposal of any surplus real property by the department that occurs before September 1, 2005:

(1) are not required to be deposited to the credit of the department in the Texas capital trust fund established under Chapter 2201, Government Code; and

(2) may be appropriated for any general governmental purpose.

(b-2) Subsection (b-1) and this subsection expire September 1, 2005.

SECTION 2.80. Subchapter D, Chapter 533, Health and Safety Code, is amended by adding Section 533.0844 to read as follows:

Sec. 533.0844. MENTAL HEALTH COMMUNITY SERVICES ACCOUNT. (a) The mental health community services account is an account in the general revenue fund that may be appropriated only for the provision of mental health services by or under contract with the department.

(b) The department shall deposit to the credit of the mental health community services account any money donated to the state for inclusion in the account, including life insurance proceeds designated for deposit to the account.

(c) Interest earned on the mental health community services account shall be credited to the account. The account is exempt from the application of Section 403.095, Government Code.

SECTION 2.81. Subchapter D, Chapter 533, Health and Safety Code, is amended by adding Section 533.0846 to read as follows:

Sec. 533.0846. MENTAL RETARDATION COMMUNITY SERVICES ACCOUNT. (a) The mental retardation community services account is an account in the general revenue fund that may be appropriated only for the provision of mental retardation services by or under contract with the department.

(b) The department shall deposit to the credit of the mental retardation community services account any money donated to the state for inclusion in the account, including life insurance proceeds designated for deposit to the account.

(c) Interest earned on the mental retardation community services account shall be credited to the account. The account is exempt from the application of Section 403.095, Government Code.

SECTION 2.82. Effective September 1, 2006, Section 534.001(b), Health and Safety Code, is amended to read as follows:

(b) In accordance with this subtitle, a [A] community center may be:

(1) a community mental health center that provides mental health services;

(2) a community mental retardation center that provides mental retardation services; or

(3) a community mental health and mental retardation center that provides mental health and mental retardation services.

SECTION 2.82A. Effective September 1, 2006, Section 535.002(b), Health and Safety Code, is amended to read as follows:

(b) If feasible and economical, the department may use local mental health and mental retardation authorities to implement this chapter. However, the department may not designate a [these] local mental health or [and] mental retardation authority [authorities] as a provider [the sole providers] of services if other providers are available.

SECTION 2.83. Section 572.0025(f), Health and Safety Code, is amended to read as follows:

(f) A prospective voluntary patient may not be formally accepted for treatment in a facility unless:

(1) the facility has a physician's order admitting the prospective patient, which order may be issued orally, electronically, or in writing, signed by the physician, provided that, in the case of an oral order or an electronically transmitted unsigned order, a signed original is presented to the mental health facility within 24 hours of the initial order; the order must be from:

(A) an admitting physician who has, either in person or through the use of audiovisual or other telecommunications technology, conducted a [an in-person] physical and psychiatric examination within 72 hours of the admission; or

(B) an admitting physician who has consulted with a physician who has, either in person or through the use of audiovisual or other telecommunications technology, conducted an [in-person] examination within 72 hours of the admission; and

(2) the facility administrator or a person designated by the administrator has agreed to accept the prospective patient and has signed a statement to that effect.

SECTION 2.84. (a) Section 773.050(c), Health and Safety Code, is amended to read as follows:

(c) The board shall consider the education, training, and experience of allied health professionals in adopting the minimum standards for emergency medical services personnel certification and may establish criteria for interstate reciprocity of emergency medical services personnel. Each out-of-state application for certification must be accompanied by a nonrefundable fee of not more than \$120 [~~\$100~~]. The board may also establish criteria for out-of-country emergency medical services personnel certification. Each out-of-country application for certification must be accompanied by a nonrefundable fee of not more than \$180 [~~\$150~~].

(b) Section 773.052(a), Health and Safety Code, is amended to read as follows:

(a) An emergency medical services provider with a specific hardship may apply to the bureau chief for a variance from a rule adopted under this chapter. The board may adopt a fee of not more than \$30 [~~\$25~~] for filing an application for a variance.

(c) Sections 773.054(c) and (d), Health and Safety Code, are amended to read as follows:

(c) Each application under Subsection (a)(3) must be accompanied by a nonrefundable fee of not more than \$30 [~~\$25~~] for a program instructor or examiner or \$60 [~~\$50~~] for a course coordinator. The department may not require a fee for a certification from an instructor, examiner, or coordinator who does not receive compensation for providing services.

(d) Each application under Subsection (a)(2) must be accompanied by a nonrefundable fee of not more than \$30 [~~\$25~~] for a basic course or training program or \$60 [~~\$50~~] for an advanced course or training program. The department may not require a fee for approval of a course or training program if the course coordinator or sponsoring agency does not receive compensation for providing the course or training program.

(d) Sections 773.055(a), (d), and (e), Health and Safety Code, are amended to read as follows:

(a) A nonrefundable fee must accompany each application for emergency medical services personnel certification. The fee may not exceed:

(1) \$90 [~~\$75~~] for an emergency medical technician-paramedic or emergency medical technician-intermediate;

(2) \$60 [~~\$50~~] for an emergency medical technician or emergency care attendant;

(3) \$90 [~~\$75~~] for recertification of an emergency medical technician-paramedic or emergency medical technician-intermediate;

(4) \$60 [~~\$50~~] for recertification of an emergency medical technician or emergency care attendant; or

(5) \$120 [~~\$100~~] for certification or recertification of a licensed paramedic.

(d) The department shall furnish a person who fails an examination for certification with an analysis of the person's performance on the examination if requested in writing by that person. The board may adopt rules to allow a person who fails the examination to retake all or part of the examination. A fee of not more than \$30 [~~\$25~~] must accompany each application for reexamination.

(e) The department shall issue certificates to emergency medical services personnel who meet the minimum standards for personnel certification adopted under Section 773.050. A certificate is valid for four years from the date of issuance. The department shall charge a fee of not more than \$10 [~~\$5~~] to replace a lost certificate.

(e) Section 773.056(b), Health and Safety Code, is amended to read as follows:

(b) The department shall issue a certificate to each program instructor, examiner, or course coordinator who meets the minimum standards adopted under Section 773.050. The certificate is valid for two years. The department shall charge a fee of not more than \$10 [~~\$5~~] to replace a lost or stolen certificate.

(f) Section 773.057(b), Health and Safety Code, is amended to read as follows:

(b) A nonrefundable application and vehicle fee determined by the board must accompany each application. The application fee may not exceed \$500 [~~\$150~~] for each application and the vehicle fee may not exceed \$180 for each emergency medical services vehicle operated by the provider.

(g) Section 773.0572, Health and Safety Code, is amended to read as follows:

Sec. 773.0572. PROVISIONAL LICENSES. The board by rule shall establish conditions under which an emergency medical services provider who fails to meet the minimum standards prescribed by this chapter may be issued a provisional license. The department may issue a provisional license to an emergency medical services provider under this chapter if the department finds that issuing the license would serve the public interest and that the provider meets the requirements of the rules adopted under this section. A nonrefundable fee of not more than \$30 [~~\$25~~] must accompany each application for a provisional license.

(h) Section 773.0611(c), Health and Safety Code, is amended to read as follows:

(c) The board shall adopt rules for unannounced inspections authorized under this section. The department or its representative shall perform unannounced inspections in accordance with those rules. An emergency medical services provider shall pay to the department a nonrefundable fee of not more than \$30 [~~\$25~~] if reinspection is necessary to determine compliance with this chapter and the rules adopted under this chapter.

(i) Section 773.065(c), Health and Safety Code, is amended to read as follows:

(c) The penalty may not exceed \$7,500 [~~\$1,000~~] for each violation. The board by rule shall establish gradations of penalties in accordance with the relative seriousness of the violation.

(j) Subchapter C, Chapter 773, Health and Safety Code, is amended by adding Section 773.071 to read as follows:

Sec. 773.071. FEES. (a) To the extent feasible, the board by rule shall set the fees under this subchapter in amounts necessary for the department to recover the cost of administering this subchapter.

(b) Subsection (a) does not apply to fees for which Section 773.059 prescribes the method for determining the amount of the fees.

(k) Sections 773.116(b) and (d), Health and Safety Code, are amended to read as follows:

(b) The board by rule shall set the amount of the fee schedule for initial or continuing designation as a trauma facility according to the number of beds in the health care facility. The amount of the fee may not exceed:

(1) \$5,000 for a Level I or II facility;

(2) \$2,500 for a Level III facility; or

(3) \$1,000 for a Level IV facility.

(d) To the extent feasible, the board by rule shall set the fee in an amount necessary for the department to recover [~~A fee under Subsection (e) may not exceed~~] the cost directly related to designating trauma facilities under this subchapter.

(l) Section 773.116(c), Health and Safety Code, is repealed.

(m) The changes in law made by this section relating to administrative penalties apply only to a violation that occurs on or after the effective date of this section. For the purposes of this subsection, an offense is committed before the effective date of this section if any element of the offense occurs before that date.

A violation that occurred before the effective date of this section is covered by the law in effect when the violation occurred, and the former law is continued in effect for that purpose.

(n) The changes in law made by this section relating to fees imposed under Chapter 773, Health and Safety Code, apply only to fees for an application filed or an inspection conducted on or after the effective date of this section. A fee for an application filed or an inspection conducted before the effective date of this section is covered by the law in effect when the application was filed or the inspection was conducted, and the former law is continued in effect for that purpose.

SECTION 2.85. Chapter 22, Human Resources Code, is amended by adding Section 22.040 to read as follows:

Sec. 22.040. THIRD-PARTY INFORMATION. Notwithstanding any other provision of this code, the department may use information obtained from a third party to verify the assets and resources of a person for purposes of determining the person's eligibility and need for medical assistance, financial assistance, or nutritional assistance. Third-party information includes information obtained from:

(1) a consumer reporting agency, as defined by Section 20.01, Business & Commerce Code;

(2) an appraisal district; or

(3) the Texas Department of Transportation's vehicle registration record database.

SECTION 2.86. (a) Section 31.0031, Human Resources Code, is amended by amending Subsection (g) and adding Subsection (h) to read as follows:

(g) In this section:

(1) "Caretaker [~~," caretaker]~~ relative" means a person who is listed as a relative eligible to receive assistance under 42 U.S.C. Section 602(a).

(2) "Payee" means a person who resides in a household with a dependent child and who is within the degree of relationship with the child that is required of a caretaker but whose needs are not included in determining the amount of financial assistance provided for the person's household.

(h) The department shall require each payee to sign a bill of responsibilities that defines the responsibilities of the state and of the payee. The responsibility agreement must require that a payee comply with the requirements of Subsections (d)(1), (2), (5), (6), and (7).

(b) Not later than January 1, 2004, the Texas Department of Human Services shall require each payee of financial assistance under Chapter 31, Human Resources Code, who received that assistance on behalf of a dependent child before September 1, 2003, and each recipient of financial assistance under Chapter 31, Human Resources Code, who received that assistance before September 1, 2003, to enter into a responsibility agreement that complies with the requirements of Section 31.0031, Human Resources Code, as amended by this section, to continue receiving that assistance. The department may not enforce the terms of the new agreement until the payee or recipient has an opportunity to enter into the agreement.

SECTION 2.87. Section 31.0031(c), Human Resources Code, is amended to read as follows:

(c) The department shall adopt rules governing sanctions and penalties under this section to or for:

(1) a person who fails to cooperate [comply] with each applicable requirement of the responsibility agreement prescribed by this section; and

(2) the family of a person who fails to cooperate with each applicable requirement of the responsibility agreement.

SECTION 2.88. (a) Sections 31.0032, 31.0033, and 31.0034, Human Resources Code, are amended to read as follows:

Sec. 31.0032. PAYMENT OF ASSISTANCE FOR PERFORMANCE [PENALTIES AND SANCTIONS]. (a) Except as provided by Section 231.115, Family Code, ~~[as added by Chapter 911, Acts of the 75th Legislature, Regular Session, 1997,]~~ if after an investigation the department or the Title IV-D agency determines that a person is not cooperating [complying] with a requirement of the responsibility agreement required under Section 31.0031, the department ~~[immediately]~~ shall immediately apply a sanction terminating the total amount of financial assistance provided under this chapter to or for the person and the person's family [apply appropriate sanctions or penalties regarding the assistance provided to or for that person under this chapter].

(a-1) The department shall apply a sanction or penalty imposed under Subsection (a) for a period ending when the person demonstrates cooperation with the requirement of the responsibility agreement for which the sanction was imposed or for a one-month period, whichever is longer.

(b) The department shall immediately notify the caretaker relative, second parent, or payee receiving the financial assistance if the department will not make the financial assistance payment for the period prescribed by Subsection (a-1) because of a person's failure to cooperate with the requirements of the responsibility agreement during a month [whether sanctions will be applied under this section].

(c) To the extent allowed by federal law, the Health and Human Services Commission or any health and human services agency, as defined by Section 531.001, Government Code, may deny medical assistance for a person who is eligible for financial assistance but to whom that assistance is not paid because of the person's failure to cooperate. Medical assistance to the person's family may not be denied for the person's failure to cooperate. Medical assistance may not be denied to a person receiving assistance under this chapter who is under the age of 19, a pregnant adult, or any other person who may not be denied medical assistance under federal law.

(d) This section does not prohibit the Texas Workforce Commission, the Health and Human Services Commission, or any health and human services agency, as defined by Section 531.001, Government Code, [department] from providing ~~[medical assistance,]~~ child care~~[s]~~ or any other related social or support services for an individual who is eligible for financial assistance but to whom that assistance is not paid because of the individual's failure to cooperate [subject to sanctions or penalties under this chapter].

(e) The department by rule shall establish procedures to determine whether a person has cooperated with the requirements of the responsibility agreement.

Sec. 31.0033. GOOD CAUSE [NONCOMPLIANCE] HEARING FOR FAILURE TO COOPERATE. (a) If the department or Title IV-D agency determines that a person has failed to cooperate with the requirements of the responsibility agreement under Section 31.0031 [penalties and sanctions should be applied under Section 31.0032], the person determined to have failed to cooperate [not complied] or, if different, the person receiving the financial assistance may request a hearing to show good cause for failure to cooperate [noncompliance] not later than the 13th day after the date the [on which] notice is sent [received] under Section 31.0032. If the person determined to have failed to cooperate or, if different, the person receiving the financial assistance requests a hearing to show good cause not later than the 13th day after the date on which the notice is sent under Section 31.0032, the department may not withhold or reduce the payment of financial assistance until the department determines whether the person had good cause for the person's failure to cooperate. On a showing of good cause for failure to cooperate [noncompliance], the person may receive a financial assistance payment for the period in which the person failed to cooperate, but had good cause for that failure to cooperate [sanctions may not be imposed].

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

(c) If the department finds that good cause for the person's failure to cooperate [noncompliance] was not shown at a hearing, the department may not make a financial assistance payment in any amount to the person for the person or the person's family for the period prescribed by Section 31.0032(a-1) [shall apply appropriate sanctions or penalties to or for that person until the department, or the Title IV-D agency in a Title IV-D case, determines that the person is in compliance with the terms of the responsibility agreement].

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

(e) Except as provided by a waiver or modification granted under Section 31.0322, a person has good cause for failing or refusing to cooperate with the requirement of the responsibility agreement under Section 31.0031(d)(1) only if:

(1) the person's cooperation would be harmful to the physical, mental, or emotional health of the person or the person's dependent child; or

(2) the person's noncooperation resulted from other circumstances the person could not control.

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

(1) the number of persons to whom ~~[sanctions and]~~ time limits apply;
(2) the number of persons under each time limit category;
(3) the number of persons who are exempt from participation under Section 31.012(c);

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

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

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

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

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

(7) the number of persons who were eligible to receive financial assistance under this chapter for each one-month period but to whom that financial assistance was not paid because the person failed to cooperate with the requirements of the responsibility agreement under Section 31.0031.

(b) Subchapter A, Chapter 31, Human Resources Code, is amended by adding Section 31.00331 to read as follows:

Sec. 31.00331. ADDITIONAL PENALTY FOR CONTINUOUS FAILURE TO COOPERATE. A person who fails to cooperate with the responsibility agreement for two consecutive months becomes ineligible for financial assistance for the person or the person's family. The person may reapply for financial assistance but must cooperate with the requirements of the responsibility agreement for a one-month period before receiving an assistance payment for that month.

(c) The changes in law made by this section apply to a person receiving financial assistance under Chapter 31, Human Resources Code, on or after the effective date of this section, regardless of the date on which eligibility for financial assistance was determined.

SECTION 2.89. Subchapter A, Chapter 31, Human Resources Code, is amended by adding Section 31.0038 to read as follows:

Sec. 31.0038. TEMPORARY EXCLUSION OF NEW SPOUSE'S INCOME. (a) Subject to the limitations prescribed by Subsection (b), income earned by an individual who marries an individual receiving financial assistance at the time of the marriage may not be considered by the department during the six-month period following the date of the marriage for purposes of determining:

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

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

(b) To be eligible for the income disregard provided by Subsection (a), the combined income of the individual receiving financial assistance and the new spouse cannot exceed 200 percent of the federal poverty level for their family size.

SECTION 2.90. Sections 31.012(b) and (c), Human Resources Code, are amended to read as follows:

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

(c) A person who is the caretaker of a physically or mentally disabled child who requires the caretaker's presence is not required to participate in a program under this section. A [~~Effective January 1, 2000, a single person who is the caretaker of a child is not required to participate in a program under this section until the caretaker's youngest child at the time the caretaker first became eligible for assistance reaches the age of three. Effective September 1, 2000, a single person who is the caretaker of a child is exempt until the caretaker's youngest child at the time the caretaker first became eligible for assistance reaches the age of two. Effective September 1, 2001, a~~] single person who is the caretaker of a child is exempt until the caretaker's youngest child at the time the caretaker first became eligible for assistance reaches the age of one. Notwithstanding Sections 31.0035(b) and 32.0255(b), the department shall provide to a person who is exempt under this subsection and who voluntarily participates in a program under Subsection (a)(2) six months of transitional benefits in addition to the applicable limit prescribed by Section 31.0065.

SECTION 2.91. Subchapter A, Chapter 31, Human Resources Code, is amended by adding Section 31.015 to read as follows:

Sec. 31.015. HEALTHY MARRIAGE DEVELOPMENT PROGRAM. (a) Subject to available federal funding, the department shall develop and implement a healthy marriage development program for recipients of financial assistance under this chapter.

(b) The healthy marriage development program shall promote and provide three instructional courses on the following topics:

(1) premarital counseling for engaged couples and marriage counseling for married couples that includes skill development for:

- (A) anger resolution;
- (B) family violence prevention;
- (C) communication;
- (D) honoring your spouse; and
- (E) managing a budget;

(2) physical fitness and active lifestyles and nutrition and cooking, including:

(A) abstinence for all unmarried persons, including abstinence for persons who have previously been married; and

(B) nutrition on a budget; and

(3) parenting skills, including parenting skills for character development, academic success, and stepchildren.

(c) The department shall provide to a recipient of financial assistance under this chapter additional financial assistance of not more than \$20 for the recipient's participation in a course offered through the healthy marriage development program up to a maximum payment of \$60 a month.

(d) The department may provide the courses or may contract with any person, including a community or faith-based organization, for the provision of the courses. The department must provide all participants with an option of attending courses in a non-faith-based organization.

(e) The department shall develop rules as necessary for the administration of the healthy marriage development program.

(f) The department must ensure that the courses provided by the department and courses provided through contracts with other organizations will be sensitive to the needs of individuals from different religions, races, and genders.

SECTION 2.92. (a) Section 32.021, Human Resources Code, is amended by adding Subsections (q), (r), and (s) to read as follows:

(q) The department shall include in its contracts for the delivery of medical assistance by nursing facilities clearly defined minimum standards that relate directly to the quality of care for residents of those facilities. The department shall consider the recommendations made by the nursing facility quality assurance team under Section 32.060 in establishing the standards. The department shall include in each contract:

(1) specific performance measures by which the department may evaluate the extent to which the nursing facility is meeting the standards; and

(2) provisions that allow the department to terminate the contract if the nursing facility is not meeting the standards.

(r) The department may not award a contract for the delivery of medical assistance to a nursing facility that does not meet the minimum standards that would be included in the contract as required by Subsection (q). The department shall terminate a contract for the delivery of medical assistance by a nursing facility that does not meet or maintain the minimum standards included in the contract in a manner consistent with the terms of the contract.

(s) Not later than November 15 of each even-numbered year, the department shall submit a report to the legislature regarding nursing facilities that contract with the department to provide medical assistance under this chapter and other nursing facilities with which the department was prohibited to contract as provided by Subsection (r). The department may include the report required under this section with the report made by the long-term care legislative oversight committee as required by Section 242.654, Health and Safety Code. The report must include:

(1) recommendations for improving the quality of information provided to consumers about the facilities;

(2) the minimum standards and performance measures included in the department's contracts with those facilities;

(3) the performance of the facilities with regard to the minimum standards;

(4) the number of facilities with which the department has terminated a contract or to which the department will not award a contract because the facilities do not meet the minimum standards; and

(5) the overall impact of the minimum standards on the quality of care provided by the facilities, consumers' access to facilities, and cost of care.

(b) Section 32.021(q), Human Resources Code, as added by this section, applies only to a contract for the delivery of medical assistance by a nursing facility that is entered into or renewed on or after May 1, 2004. A contract for the delivery of medical assistance by a nursing facility entered into before that date is governed by the law in effect on the date the contract was entered into, and the former law is continued in effect for that purpose.

SECTION 2.93. (a) Subchapter A, Chapter 302, Labor Code, is amended by adding Sections 302.0025, 302.0026, 302.0036, 302.0037, and 302.0038 to read as follows:

Sec. 302.0025. EMPLOYMENT PLAN AND POSTEMPLOYMENT STRATEGIES. (a) The commission shall ensure that an individual employment plan developed for a recipient of financial assistance participating in an employment program under Chapter 31, Human Resources Code, includes specific postemployment strategies to assist the recipient in making a transition to stable employment at a wage that enables the recipient and the recipient's family to maintain self-sufficiency.

(b) The individual employment plan must:

(1) consider a recipient's individual circumstances and needs in determining the recipient's initial job placement;

(2) identify a target wage that enables the recipient and the recipient's family to maintain self-sufficiency;

(3) provide specific postemployment goals and include methods and time frames by which the recipient is to achieve those goals; and

(4) refer the recipient to additional educational and training opportunities.

Sec. 302.0026. EMPLOYMENT SERVICES REFERRAL PROGRAM. (a) The commission and local workforce development boards shall develop an employment services referral program for recipients of financial assistance who participate in employment programs under Chapter 31, Human Resources Code, and have, in comparison to other recipients, higher levels of barriers to employment. The referral program must be designed to provide to a recipient referrals to preemployment and postemployment services offered by community-based organizations.

(b) In developing the referral program, the commission and local workforce development boards shall, subject to the availability of funds, coordinate partnerships and contract with community-based organizations that provide employment services specifically for persons with high levels of barriers to employment.

Sec. 302.0036. TRANSPORTATION ASSISTANCE. (a) To the extent funds are available, the commission and local workforce development boards shall provide transportation assistance to recipients of financial assistance

participating in employment programs under Chapter 31, Human Resources Code, that enables the recipients to maintain a stable work history and attain financial stability and self-sufficiency.

(b) The commission and local workforce development boards may provide the assistance described by Subsection (a) by implementing new initiatives or expanding existing initiatives that provide transportation assistance to recipients of financial assistance for whom transportation is a barrier to employment.

Sec. 302.0037. MAXIMIZING FEDERAL FUNDS FOR TRANSPORTATION ASSISTANCE. (a) The commission and local workforce development boards shall maximize the state's receipt of federal funds available to provide transportation assistance to recipients of financial assistance participating in employment programs under Chapter 31, Human Resources Code.

(b) The commission and local workforce development boards may, within any applicable appropriation limits, take any action required by federal law to receive federal funds to provide transportation assistance.

Sec. 302.0038. HOUSING RESOURCES FOR CERTAIN RECIPIENTS OF FINANCIAL ASSISTANCE. (a) The commission, in cooperation with local workforce development boards, shall, for a recipient of financial assistance participating in an employment program under Chapter 31, Human Resources Code:

(1) identify unmet housing needs and assess whether those needs are barriers to the recipient's full participation in the workforce and attainment of financial stability and self-sufficiency; and

(2) develop a service plan that takes into consideration the recipient's unmet housing needs.

(b) The commission by rule shall develop and implement a program through which a recipient identified under Subsection (a) as having unmet housing needs is referred by the commission or local workforce development board to agencies and organizations providing housing programs and services and connected to other housing resources. To provide those referrals and connections, the commission shall establish collaborative partnerships between:

(1) the commission;

(2) local workforce development boards;

(3) municipal, county, and regional housing authorities; and

(4) sponsors of local housing programs and services.

(c) The commission shall ensure that commission and local workforce development board staff members receive training regarding the programs and services offered by agencies and organizations with which the commission establishes partnerships under Subsection (b) and other available housing resources.

(b) Not later than December 1, 2003, the Texas Workforce Commission and local workforce development boards shall develop the employment services referral program required by Section 302.0026, Labor Code, as added by this section.

(c) Not later than December 1, 2003, the Texas Workforce Commission shall develop and implement the program required by Section 302.0038(b), Labor Code, as added by this section.

SECTION 2.94. Section 302.011, Labor Code, is amended to read as follows:

Sec. 302.011. POSTEMPLOYMENT CASE MANAGEMENT AND MENTORING. The commission shall encourage local workforce development boards to provide postemployment case management services for and use mentoring techniques to assist recipients of financial assistance who participate in employment programs under Chapter 31, Human Resources Code, and have, in comparison to other recipients, higher levels of barriers to employment. The case management services and mentoring techniques must be designed to increase the recipient's potential for wage growth and development of a stable employment history.

SECTION 2.95. Subchapter B, Chapter 32, Human Resources Code, is amended by adding Section 32.0212 to read as follows:

Sec. 32.0212. DELIVERY OF MEDICAL ASSISTANCE. Notwithstanding any other law and subject to Section 533.0025, Government Code, the department shall provide medical assistance for acute care through the Medicaid managed care system implemented under Chapter 533, Government Code.

SECTION 2.96. Section 32.024(i), Human Resources Code, is amended to read as follows:

(i) The department in its adoption of rules may ~~shall~~ establish a medically needy program that serves pregnant women, children, and caretakers who have high medical expenses, subject to availability of appropriated funds.

SECTION 2.97. (a) Section 32.024, Human Resources Code, is amended by adding Subsections (t-1), (z), and (z-1) to read as follows:

(t-1) The department, in its rules governing the medical transportation program, may not prohibit a recipient of medical assistance from receiving transportation services through the program to obtain renal dialysis treatment on the basis that the recipient resides in a nursing facility.

(z) In its rules and standards governing the vendor drug program, the department, to the extent allowed by federal law and if the department determines the policy to be cost-effective, may ensure that a recipient of prescription drug benefits under the medical assistance program does not, unless authorized by the department in consultation with the recipient's attending physician or advanced practice nurse, receive under the medical assistance program:

(1) more than four different outpatient brand-name prescription drugs during a month; or

(2) more than a 34-day supply of a brand-name prescription drug at any one time.

(z-1) Subsection (z) does not affect any other limit on prescription medications otherwise prescribed by department rule.

(b) Section 32.024(z), Human Resources Code, as added by this section, applies to a person receiving medical assistance on or after the effective date of this section regardless of the date on which the person began receiving that medical assistance.

SECTION 2.98. [RESERVED]

SECTION 2.99. (a) Section 32.026(e), Human Resources Code, is amended to read as follows:

(e) The department shall permit a recertification review of the eligibility and need for medical assistance of a child under 19 years of age to be conducted by telephone or mail instead of through a personal appearance at a department office, unless the department determines that the information needed to verify eligibility cannot be obtained in that manner. The department by rule may develop procedures to determine whether there is a need for a recertification review of a child described by this subsection to be conducted through a personal interview with a department representative. Procedures developed under this subsection shall be based on objective, risk-based factors and conditions and shall focus on a targeted group of recertification reviews for which there is a high probability that eligibility will not be recertified.

(b) Contingent upon enactment of **SB 1522**, **SB 1522** prevails regarding this section notwithstanding Section 2.157.

SECTION 2.100. (a) Section 32.0315(a), Human Resources Code, is amended to read as follows:

(a) Subject to appropriated state funds, the [The] department shall establish procedures and formulas for the allocation of federal medical assistance funds that are directed to be used to support graduate medical education in connection with the medical assistance program.

(b) Sections 32.0315(d)-(h), Human Resources Code, are repealed.

SECTION 2.101. Section 10(c), Chapter 584, Acts of the 77th Legislature, Regular Session, 2001, is amended to read as follows:

(c) The Health and Human Services Commission or the appropriate state agency operating part of the medical assistance program under Chapter 32, Human Resources Code, shall adopt rules required by Section 32.0261, Human Resources Code, as added by this Act, so that the rules take effect in accordance with that section not earlier than September 1, 2002, or later than September 1, 2005 [June 1, 2003]. The rules must provide for a 12-month period of continuous eligibility in accordance with that section for a child whose initial or continued eligibility is determined on or after the effective date of the rules.

SECTION 2.102. (a) Section 32.028, Human Resources Code, is amended by amending Subsection (g) and adding Subsections (i), (j), (k), (l), and (m) to read as follows:

(g) Subject to Subsection (i), the [The] Health and Human Services Commission shall ensure that the rules governing the determination of rates paid for nursing home services improve the quality of care by:

(1) providing a program offering incentives for increasing direct care staff and direct care wages and benefits, but only to the extent that appropriated funds are available after money is allocated to base rate reimbursements as determined by the Health and Human Services Commission's nursing facility rate setting methodologies; and

(2) if appropriated funds are available after money is allocated for payment of incentive-based rates under Subdivision (1), providing incentives that incorporate the use of a quality of care index, a customer satisfaction index, and a resolved complaints index developed by the commission.

(i) The Health and Human Services Commission shall ensure that rules governing the incentives program described by Subsection (g)(1):

(1) provide that participation in the program by a nursing home is voluntary;

(2) do not impose on a nursing home not participating in the program a minimum spending requirement for direct care staff wages and benefits;

(3) do not set a base rate for a nursing home participating in the program that is more than the base rate for a nursing home not participating in the program; and

(4) establish a funding process to provide incentives for increasing direct care staff and direct care wages and benefits in accordance with appropriations provided.

(j) 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.

(k) 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.

(l) The commission shall establish a task force to develop the rules necessary to implement Subsections (j) and (k). The task force must include representatives of nursing facilities and pharmacists.

(m) The commission may not fund an incentive program under Subsection (g)(1) using money appropriated for base rate reimbursements for nursing facilities.

(b) The Health and Human Services Commission shall adopt the rules required by Sections 32.028(j) and (k), Human Resources Code, as added by this section, not later than December 1, 2003.

SECTION 2.103. 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 willful 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 department shall discontinue 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, credible, and material to the issue of fraud or willful 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, a hearing initiated under Subsection (c) shall be stayed at the department's request until the informal resolution process is completed.

SECTION 2.104. 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 2.105. Section 32.0321, Human Resources Code, is amended to read as follows:

Sec. 32.0321. SURETY BOND. (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.

(b) The bond under Subsection (a) must be payable to the department to compensate the department for damages resulting from or penalties or fines imposed in connection with an act of fraud or abuse committed by the provider under the medical assistance program.

(c) Subject to Subsection (d) or (e), the department by rule may require each provider of medical assistance that establishes a resident's trust fund account to post a surety bond to secure the account. The bond must be payable to the department to compensate residents of the bonded provider for trust funds that are lost, stolen, or otherwise unaccounted for if the provider does not repay any deficiency in a resident's trust fund account to the person legally entitled to receive the funds.

(d) The department may not require the amount of a surety bond posted for a single facility provider under Subsection (c) to exceed the average of the total average monthly balance of all the provider's resident trust fund accounts for the 12-month period preceding the bond issuance or renewal date.

(e) If an employee of a provider of medical assistance is responsible for the loss of funds in a resident's trust fund account, the resident, the resident's family, and the resident's legal representative are not obligated to make any payments to the provider that would have been made out of the trust fund had the loss not occurred.

SECTION 2.106. (a) Subchapter B, Chapter 32, Human Resources Code, is amended by adding Section 32.0423 to read as follows:

Sec. 32.0423. RECOVERY OF REIMBURSEMENTS FROM HEALTH COVERAGE PROVIDERS. To the extent allowed by federal law, a health care service provider must seek reimbursement from available third-party health coverage or insurance that the provider knows about or should know about before billing the medical assistance program.

(b) Section 32.0423, Human Resources Code, as added by this section, applies to a person receiving medical assistance on or after the effective date of this section regardless of the date on which the person began receiving that medical assistance.

SECTION 2.107. (a) Subchapter B, Chapter 32, Human Resources Code, is amended by adding Section 32.0462 to read as follows:

Sec. 32.0462. MEDICATIONS AND MEDICAL SUPPLIES. The department may adopt rules establishing procedures for the purchase and distribution of medically necessary, over-the-counter medications and medical supplies under the medical assistance program that were previously being provided by prescription if the department determines it is more cost-effective than obtaining those medications and medical supplies through a prescription.

(b) Not later than January 1, 2004, the Health and Human Services Commission shall submit a report to the clerks of the standing committees of the senate and house of representatives with jurisdiction over the state Medicaid program describing the status of any cost savings generated by purchasing over-the-counter medications and medical supplies as provided by Section 32.0462, Human Resources Code, as added by this section. The report must be updated not later than January 1, 2005.

SECTION 2.108. Section 32.050, Human Resources Code, is amended by adding Subsections (d), (e), and (f) to read as follows:

(d) Except as provided by Subsection (e), a nursing facility, a home health services provider, or any other similar long-term care services provider that is Medicare-certified and provides care to individuals who are eligible for Medicare must:

(1) seek reimbursement from Medicare before billing the medical assistance program for services provided to an individual identified under Subsection (a); and

(2) as directed by the department, appeal Medicare claim denials for payment services provided to an individual identified under Subsection (a).

(e) A home health services provider is not required to seek reimbursement from Medicare before billing the medical assistance program for services provided to a person who is eligible for Medicare and who:

(1) has been determined as not being homebound; or

(2) meets other criteria determined by the department.

(f) If the Medicare reimbursement rate for a service provided to an individual identified under Subsection (a) exceeds the medical assistance reimbursement rate for a comparable service, the medical assistance program may not pay a Medicare coinsurance or deductible amount for that service.

SECTION 2.109. (a) Subchapter B, Chapter 32, Human Resources Code, is amended by adding Section 32.060 to read as follows:

Sec. 32.060. NURSING FACILITY QUALITY ASSURANCE TEAM. (a) The nursing facility quality assurance team is established to make recommendations to the department designed to promote high-quality care for residents of nursing facilities.

(b) The team is composed of nine members appointed by the governor as follows:

(1) two physicians with expertise in providing long-term care;

(2) one registered nurse with expertise in providing long-term care;

(3) three nursing facility advocates not affiliated with the nursing facility industry; and

(4) three representatives of the nursing facility industry.

(c) The governor shall designate a member of the team to serve as presiding officer. The members of the team shall elect any other necessary officers.

(d) The team shall meet at the call of the presiding officer.

(e) A member of the team serves at the will of the governor.

(f) A member of the team may not receive compensation for serving on the team but is entitled to reimbursement for travel expenses incurred by the member while conducting the business of the team as provided by the General Appropriations Act.

(g) The team shall:

(1) develop and recommend clearly defined minimum standards to be considered for inclusion in contracts between the department and nursing facilities for the delivery of medical assistance under this chapter that are designed to:

(A) ensure that the care provided by nursing facilities to residents who are recipients of medical assistance meets or exceeds the minimum acceptable standard of care; and

(B) encourage nursing facilities to provide the highest quality of care to those residents; and

(2) develop and recommend improvements to consumers' access to information regarding the quality of care provided by nursing facilities that contract with the department to provide medical assistance, including improvements in:

(A) the types and amounts of information to which consumers have access, such as expanding the types and amounts of information available through the department's Internet website; and

(B) the department's data systems that compile nursing facilities' inspection or survey data and other data relating to quality of care in nursing facilities.

(h) In developing minimum standards for contracts as required by Subsection (g)(1), the team shall:

(1) study the risk factors identified by the Texas Department of Insurance as contributing to lawsuits against nursing facilities;

(2) consider for inclusion in the minimum standards:

(A) the practices the Texas Department of Insurance recommends nursing facilities adopt to reduce the likelihood of those lawsuits; and

(B) other standards designed to improve the quality of care;

(3) focus on a minimum number of critical standards necessary to identify nursing facilities with poor quality services that should not be awarded contracts for the delivery of medical assistance; and

(4) with the assistance of the department, assess the potential cost impacts on providers necessary to meet the minimum standards and the commensurate fiscal impact on the department's appropriations requirement.

(i) The department shall ensure the accuracy of information provided to the team for use by the team in performing the team's duties under this section. The Health and Human Services Commission shall provide administrative support and resources to the team and request additional administrative support and resources from health and human services agencies as necessary.

(b) The governor shall appoint the members of the nursing facility quality assurance team established under Section 32.060, Human Resources Code, as added by this section, not later than January 1, 2004.

(c) The nursing facility quality assurance team shall develop and make the recommendations required by Section 32.060, Human Resources Code, as added by this section, not later than May 1, 2004.

(d) The nursing facility quality assurance team shall report on its work and recommendations to the governor and the Legislative Budget Board no later than October 1, 2004, for consideration by the 79th Legislature.

SECTION 2.110. Subchapter B, Chapter 32, Human Resources Code, is amended by adding Section 32.061 to read as follows:

Sec. 32.061. COMMUNITY ATTENDANT SERVICES PROGRAM. Any home and community-based services that the department provides under Section 1929, Social Security Act (42 U.S.C. Section 1396t) and its subsequent amendments to functionally disabled individuals who have income that exceeds the limit established by federal law for Supplemental Security Income (SSI) (42 U.S.C. Section 1381 et seq.) and its subsequent amendments shall be provided through the community attendant services program.

SECTION 2.111. (a) Subchapter B, Chapter 32, Human Resources Code, is amended by adding Section 32.063 to read as follows:

Sec. 32.063. 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 the 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.

(e) The department shall audit each third-party billing vendor subject to this section at least annually to prevent fraud and abuse under the medical assistance program.

(b) Section 32.063, Human Resources Code, as added by this section, takes effect January 1, 2004.

SECTION 2.112. (a) Subchapter B, Chapter 32, Human Resources Code, is amended by adding Section 32.064 to read as follows:

Sec. 32.064. COST SHARING. (a) To the extent permitted under Title XIX, Social Security Act (42 U.S.C. Section 1396 et seq.), as amended, and any other applicable law or regulations, the Health and Human Services Commission shall adopt provisions requiring recipients of medical assistance to share the cost of medical assistance, including provisions requiring recipients to pay:

(1) an enrollment fee;

(2) a deductible; or

(3) coinsurance or a portion of the plan premium, if the recipients receive medical assistance under the Medicaid managed care program under Chapter 533, Government Code, or a Medicaid managed care demonstration project under Section 32.041.

(b) Subject to Subsection (d), cost-sharing provisions adopted under this section shall ensure that families with higher levels of income are required to pay progressively higher percentages of the cost of the medical assistance.

(c) If cost-sharing provisions imposed under Subsection (a) include requirements that recipients pay a portion of the plan premium, the commission shall specify the manner in which the premium is paid. The commission may require that the premium be paid to the commission, an agency operating part of the medical assistance program, or the Medicaid managed care plan.

(d) Cost-sharing provisions adopted under this section may be determined based on the maximum level authorized under federal law and applied to income levels in a manner that minimizes administrative costs.

(b) The changes in law made by Section 32.064, Human Resources Code, as added by this section, apply to a person receiving medical assistance on or after the effective date of this section, regardless of the date on which eligibility for that assistance was determined.

SECTION 2.113. Section 48.401(1), Human Resources Code, is amended to read as follows:

(1) "Agency" means:

(A) an entity licensed under Chapter 142, Health and Safety Code;

or

(B) a person exempt from licensing under Section 142.003(a)(19), Health and Safety Code.

SECTION 2.114. Section 73.0051, Human Resources Code, is amended by adding Subsection (l) to read as follows:

(l) The council by rule may establish a system of payments by families of children receiving services under this chapter, including a schedule of sliding fees, in a manner consistent with 34 C.F.R. Sections 303.12(a)(3)(iv), 303.520, and 303.521.

SECTION 2.115. (a) Sections 91.027(a) and (b), Human Resources Code, are amended to read as follows:

(a) To the extent that funds are available under Sections 521.421(f), as added by Chapter 510, Acts of the 75th Legislature, Regular Session, 1997, and 521.422(b), Transportation Code, the [The] commission shall operate [develop] a Blindness Education, Screening, and Treatment Program to provide:

(1) blindness prevention education and [to provide] screening and treatment to prevent blindness for residents who are not covered under an adequate health benefit plan; and

(2) transition services to blind disabled individuals eligible for vocational rehabilitation services under Section 91.052.

(b) ~~[The commission shall implement the program only to the extent that funds are available under Section 521.421(f), Transportation Code.]~~ The program shall include:

(1) public education about blindness and other eye conditions;

(2) screenings and eye examinations to identify conditions that may cause blindness; ~~and~~

(3) treatment procedures necessary to prevent blindness; and

(4) transition services.

(b) The Texas Commission for the Blind shall establish the consolidated program under Section 91.027, Human Resources Code, as amended by this section, not later than the 90th day after the effective date of this section.

SECTION 2.116. (a) Section 111.052, Human Resources Code, is amended to read as follows:

Sec. 111.052. GENERAL FUNCTIONS. (a) The commission shall, to the extent of resources available and priorities established by the board, provide rehabilitation services directly or through public or private resources to individuals determined by the commission to be eligible for the services under a vocational rehabilitation program~~[-an extended rehabilitation services program.]~~ or other program established to provide rehabilitative services.

(b) In carrying out the purposes of this chapter, the commission may:

(1) cooperate with other departments, agencies, political subdivisions, and institutions, both public and private, in providing the services authorized by this chapter to eligible individuals, in studying the problems involved, and in

planning, establishing, developing, and providing necessary or desirable programs, facilities, and services, including those jointly administered with state agencies;

(2) enter into reciprocal agreements with other states;

(3) establish or construct rehabilitation facilities and workshops, contract with or provide grants to agencies, organizations, or individuals as necessary to implement this chapter, make contracts or other arrangements with public and other nonprofit agencies, organizations, or institutions for the establishment of workshops and rehabilitation facilities, and operate facilities for carrying out the purposes of this chapter;

(4) conduct research and compile statistics relating to the provision of services to or the need for services by disabled individuals;

(5) provide for the establishment, supervision, management, and control of small business enterprises to be operated by individuals with significant disabilities where their operation will be improved through the management and supervision of the commission;

(6) contract with schools, hospitals, private industrial firms, and other agencies and with doctors, nurses, technicians, and other persons for training, physical restoration, transportation, and other rehabilitation services; and

(7) assess the statewide need for services necessary to prepare students with disabilities for a successful transition to employment, establish collaborative relationships with each school district with education service centers to the maximum extent possible within available resources, and develop strategies to assist vocational rehabilitation counselors in identifying and reaching students in need of transition planning [contract with a public or private agency to provide and pay for rehabilitative services under the extended rehabilitation services program, including alternative sheltered employment or community integrated employment for a person participating in the program].

(b) Sections 111.002(7), 111.0525(a), and 111.073, Human Resources Code, are repealed.

SECTION 2.117. Section 111.060, Human Resources Code, is amended by adding Subsection (d) to read as follows:

(d) Notwithstanding any other provision of this section, any money in the comprehensive rehabilitation fund may be used for general governmental purposes if:

(1) the comptroller certifies that appropriations from general revenue made by the preceding legislature for the current biennium exceed available general revenues and cash balances for the remainder of that biennium;

(2) an estimate of anticipated revenues for a succeeding biennium prepared by the comptroller in accordance with Section 49a, Article III, Texas Constitution, is less than the revenues that are estimated at the same time by the comptroller to be available for the current biennium; or

(3) the Legislative Budget Board otherwise determines that a state fiscal emergency exists that requires use of any money in the fund for general governmental purposes.

SECTION 2.118. (a) Subchapter I, Chapter 264, Family Code, is transferred to Chapter 33, Education Code, is redesignated as Subchapter E, Chapter 33, Education Code, and is amended to read as follows:

SUBCHAPTER E [H]. COMMUNITIES IN SCHOOLS PROGRAM

Sec. 33.151 [264.751]. DEFINITIONS. In this subchapter:

(1) "Department" [~~"Agency"~~] means the Department of Protective and Regulatory Services [~~Texas Education Agency~~].

(2) "Communities In Schools program" means an exemplary youth dropout prevention program.

(3) "Delinquent conduct" has the meaning assigned by Section 51.03, Family Code.

(4) "Student at risk of dropping out of school" means:

(A) a student at risk of dropping out of school as defined [~~has the meaning assigned~~] by Section 29.081;

(B) [~~Education Code, or means~~] a student who is eligible for a free or reduced lunch; or

(C) a student who is in family conflict or crisis.

Sec. 33.152 [264.752]. STATEWIDE OPERATION OF PROGRAM. It is the intent of the legislature that the Communities In Schools program operate throughout this state. It is also the intent of the legislature that programs established under Chapter 305, Labor Code, as that chapter existed on August 31, 1999, and its predecessor statute, the Texas Unemployment Compensation Act (Article 5221b-9d, Vernon's Texas Civil Statutes), and programs established under this subchapter shall remain eligible to participate in the Communities In Schools program if funds are available and if their performance meets the criteria established by the agency [~~department~~] for renewal of their contracts.

Sec. 33.153 [264.753]. STATE DIRECTOR. The commissioner [~~executive director of the department~~] shall designate a state director for the Communities In Schools program.

Sec. 33.154 [264.754]. DUTIES OF STATE DIRECTOR. The state director shall:

(1) coordinate the efforts of the Communities In Schools program with other social service organizations and agencies and with public school personnel to provide services to students who are at risk of dropping out of school or engaging in delinquent conduct, including students who are in family conflict or emotional crisis;

(2) set standards for the Communities In Schools program and establish state performance goals, objectives, and measures for the program;

(3) obtain information to determine accomplishment of state performance goals, objectives, and measures;

(4) promote and market the program in communities in which the program is not established;

(5) help communities that want to participate in the program establish a local funding base; and

(6) provide training and technical assistance for participating communities and programs.

Sec. 33.155 [~~264.755~~]. DEPARTMENT [~~AGENCY~~] COOPERATION; MEMORANDUM OF UNDERSTANDING. (a) The agency, the department, and Communities In Schools, Inc. shall work together to maximize the effectiveness of the Communities In Schools program.

(b) The agency and the department shall develop and [~~mutually~~] agree to a memorandum of understanding to clearly define the responsibilities of the agency and of the department under this subchapter. The memorandum must address:

(1) the roles [~~role~~] of the agency and department in encouraging local business to participate in local Communities In Schools programs;

(2) the role of the agency in obtaining information from participating school districts;

(3) the use of federal or state funds available to the agency or the department for programs of this nature; and

(4) other areas identified by the agency and the department that require clarification.

(c) The agency and the department shall adopt rules to implement the memorandum and shall update the memorandum and rules annually.

Sec. 33.156 [~~264.756~~]. FUNDING; EXPANSION OF PARTICIPATION. (a) The agency [~~department~~] shall develop and implement an equitable formula for the funding of local Communities In Schools programs. The formula may provide for the reduction of funds annually contributed by the state to a local program by an amount not more than 50 percent of the amount contributed by the state for the first year of the program. The formula must consider the financial resources of individual communities and school districts. Savings accomplished through the implementation of the formula may be used to extend services to counties and municipalities currently not served by a local program or to extend services to counties and municipalities currently served by an existing local program.

(b) Each local Communities In Schools program shall develop a funding plan which ensures that the level of services is maintained if state funding is reduced.

(c) A local Communities In Schools program may accept federal funds, state funds, private contributions, grants, and public and school district funds to support a campus participating in the program.

Sec. 33.157 [~~264.757~~]. PARTICIPATION IN PROGRAM. An elementary or secondary school receiving funding [~~designated~~] under Section 33.156 [~~264.756~~] shall participate in a local Communities In Schools program if the number of students enrolled in the school who are at risk of dropping out of school is equal to at least 10 percent of the number of students in average daily attendance at the school, as determined by the agency.

Sec. 33.158 [~~264.758~~]. DONATIONS TO PROGRAM. (a) The agency [~~department~~] may accept a donation of services or money or other property that the agency [~~department~~] determines furthers the lawful objectives of the agency [~~department~~] in connection with the Communities In Schools program.

(b) Each donation, with the name of the donor and the purpose of the donation, must be reported in the public records of the agency [~~department~~].

(b) Section 302.062(g), Labor Code, is amended to read as follows:

- (g) Block grant funding under this section does not apply to:
- (1) the work and family policies program under Chapter 81;
 - (2) a program under the skills development fund created under Chapter 303;
 - (3) the job counseling program for displaced homemakers under Chapter 304;
 - (4) the Communities In Schools program under Subchapter E [F], Chapter 33 [264], Education [Family] Code, to the extent that funds are available to the commission for that program;
 - (5) the reintegration of offenders program under Chapter 306;
 - (6) apprenticeship programs under Chapter 133, Education Code;
 - (7) the continuity of care program under Section 501.095, Government Code;
 - (8) employment programs under Chapter 31, Human Resources Code;
 - (9) the senior citizens employment program under Chapter 101, Human Resources Code;
 - (10) the programs described by Section 302.021(b)(3);
 - (11) the community service program under the National and Community Service Act of 1990 (42 U.S.C. Section 12501 et seq.);
 - (12) the trade adjustment assistance program under Part 2, Subchapter II, Trade Act of 1974 (19 U.S.C. Section 2271 et seq.);
 - (13) the programs to enhance the employment opportunities of veterans; and
 - (14) the functions of the State Occupational Information Coordinating Committee.
- (c) On September 1, 2003:
- (1) all powers, duties, functions, and activities relating to the Communities In Schools program assigned to or performed by the Department of Protective and Regulatory Services immediately before September 1, 2003, are transferred to the Texas Education Agency;
 - (2) all funds, rights, obligations, and contracts of the Department of Protective and Regulatory Services related to the Communities In Schools program are transferred to the Texas Education Agency for the Communities In Schools program;
 - (3) all property and records in the custody of the Department of Protective and Regulatory Services related to the Communities In Schools program and all funds appropriated by the legislature for the Communities In Schools program are transferred to the Texas Education Agency for the Communities In Schools program; and
 - (4) all employees of the Department of Protective and Regulatory Services who primarily perform duties related to the Communities In Schools program become employees of the Texas Education Agency, to be assigned duties related to the Communities In Schools program.
- (d) For the 2003 and 2004 state fiscal years, all full-time equivalent positions (FTEs) authorized by the General Appropriations Act for the Communities In Schools program are transferred to the Texas Education Agency

and are not included in determining the agency's compliance with any limitation on the number of full-time equivalent positions (FTEs) imposed by the General Appropriations Act.

(e) A reference in law or administrative rule to the Department of Protective and Regulatory Services that relates to the Communities In Schools program means the Texas Education Agency. A reference in law or administrative rule to the executive director of the Department of Protective and Regulatory Services that relates to the Communities In Schools program means the commissioner of education.

(f) A rule of the Department of Protective and Regulatory Services relating to the Communities In Schools program continues in effect as a rule of the commissioner of education until superseded by rule of the commissioner of education. The secretary of state is authorized to adopt rules as necessary to expedite the implementation of this subsection.

(g) The transfer of the Communities In Schools program and associated powers, duties, functions, and activities under this section does not affect or impair any act done, any obligation, right, order, license, permit, rule, criterion, standard, or requirement existing, any investigation begun, or any penalty accrued under former law, and that law remains in effect for any action concerning those matters.

(h) An action brought or proceeding commenced before September 1, 2003, including a contested case or a remand of any action or proceeding by a reviewing court, is governed by the law and rules applicable to the action or proceeding immediately before September 1, 2003.

SECTION 2.119. (a) Sections 2(a) and (c), Article 4.11, Insurance Code, are amended to read as follows:

(a) "Carrier" means any insurer, managed care organization, or group hospital service plan transacting any such insurance business in this state including companies operating under the provisions of Chapters 841, 842, 843, 861, 881, 882, 883, 884, 941, 942, and 982, ~~[3, 8, 11, 13, 15, 18, 19, 20, 20A, and 22 of the]~~ Insurance Code, Chapter 533, Government Code, or Title XIX of the federal Social Security Act. The term does not include ~~[but excluding]~~ local mutual aid associations, fraternal benefit societies or associations, and societies that limit their membership to one occupation. For purposes of computing the premium tax under this article, a managed care organization shall be treated in the same manner as a health maintenance organization.

(c) "Gross premiums" are the total gross amount of all premiums, membership fees, assessments, dues, and any other considerations for such insurance received during the taxable year on each and every kind of such insurance policy or contract covering persons located in the State of Texas and arising from the types of insurance specified in Section 1 of this article, but deducting returned premiums, any dividends applied to purchase paid-up additions to insurance or to shorten the endowment or premium payment period, and excluding those premiums received from insurance carriers for reinsurance and there shall be no deduction for premiums paid for reinsurance. For purposes of this article, a stop-loss or excess loss insurance policy issued to a health

maintenance organization, as defined under the Texas Health Maintenance Organization Act (Chapter 20A, Vernon's Texas Insurance Code), shall be considered reinsurance. Such gross premiums shall not include premiums received from the ~~[Treasury of the State of Texas or from the]~~ Treasury of the United States for ~~[insurance contracted for by the state or federal government for the purpose of providing welfare benefits to designated welfare recipients or for]~~ insurance contracted for by the ~~[state or]~~ federal government in accordance with or in furtherance of the provisions of Title XVIII of ~~[2, Human Resources Code, or]~~ the Federal Social Security Act (42 U.S.C. Section 1395c et seq.) and its subsequent amendments. The gross premiums receipts so reported shall not include the amount of premiums paid on group health, accident, and life policies in which the group covered by the policy consists of a single nonprofit trust established to provide coverage primarily for employees of:

- (1) a municipality, county, or hospital district in this state; or
- (2) a county or municipal hospital, without regard to whether the employees are employees of the county or municipality or another entity operating the hospital on behalf of the county or municipality.

(b) The change in law made by this section applies only to a tax report originally due on or after January 1, 2004.

SECTION 2.120. (a) Article 4.17(a), Insurance Code, is amended to read as follows:

(a) The commissioner shall annually determine the rate of assessment of a maintenance tax to be paid on an annual, semiannual, or other periodic basis, as determined by the comptroller. The rate of assessment may not exceed .04 percent of the correctly reported gross premiums of life, health, and accident insurance coverages and the gross considerations for annuity and endowment contracts collected by all authorized insurers writing life, health, and accident insurance, annuity, or endowment contracts in this state. The comptroller shall collect the maintenance tax. For purposes of this article, the gross premiums on which an assessment is based may not include premiums received from ~~[this state or]~~ the United States for insurance contracted for by ~~[this state or]~~ the United States ~~[for the purpose of providing welfare benefits to designated welfare recipients or for insurance contracted for by this state or the United States]~~ in accordance with or in furtherance of Title XVIII of ~~[2, Human Resources Code, or]~~ the federal Social Security Act (42 U.S.C. Section 1395c et seq.) and its subsequent amendments ~~[(42 U.S.C. Section 301 et seq.)]~~.

(b) The change in law made by this section applies only to a tax report originally due on or after January 1, 2004.

SECTION 2.121. (a) Section 33(d), Texas Health Maintenance Organization Act (Article 20A.33, Vernon's Texas Insurance Code), is amended to read as follows:

(d) The commissioner shall annually determine the rate of assessment of a per capita maintenance tax to be paid on an annual or semiannual basis, on the correctly reported gross revenues for the issuance of health maintenance certificates or contracts collected by all authorized health maintenance organizations issuing such coverages in this state. The rate of assessment may not

exceed \$2 for each enrollee. The rate of assessment may differ between basic health care plans, limited health care service plans, and single health care service plans and shall equitably reflect any differences in regulatory resources attributable to each type of plan. The comptroller shall collect the maintenance tax. For purposes of this section, the amount of maintenance tax assessed may not be computed on enrollees who as individual certificate holders or their dependents are covered by a master group policy paid for by revenues received from ~~[this state or]~~ the United States for insurance contracted for by ~~[this state or]~~ the United States ~~[for the purpose of providing welfare benefits to designated welfare recipients or for insurance contracted for by this state or the United States]~~ in accordance with or in furtherance of Title XVIII of ~~[2, Human Resources Code, or]~~ the federal Social Security Act (42 U.S.C. Section 1395c et seq.) and its subsequent amendments ~~[(42 U.S.C. Section 301 et seq.)]~~.

(b) The change in law made by this section applies only to a tax report originally due on or after January 1, 2004.

SECTION 2.122. Section 2, Article 21.52K, Insurance Code, is amended by amending Subsections (c) and (d) and adding Subsection (g) to read as follows:

(c) If an individual described by Subsection (a), ~~(b)~~, or (g) of this section is not eligible to enroll in the plan unless a family member of the individual is also enrolled in the plan, the issuer, on receipt of the written notice or request under Subsection (a), ~~(b)~~, or (g) of this section, shall enroll both the individual and the family member in the plan.

(d) Unless enrollment occurs during an established enrollment period, enrollment under this article takes effect on the first day of the calendar month that begins at least 30 days after the date written notice or request is received by the issuer under Subsection (a), ~~(b)~~, or (g) of this section.

(g) The issuer of a group health benefit plan shall permit an individual who is otherwise eligible for enrollment in the plan to enroll in the plan without regard to any enrollment period restriction if the individual:

(1) becomes ineligible for medical assistance under the state Medicaid program or enrollment in the state child health plan under Chapter 62, Health and Safety Code, after initially establishing eligibility; and

(2) provides a written request for enrollment in the group health benefit plan not later than the 30th day after the date the individual's eligibility for the state Medicaid program or the state child health plan terminated.

SECTION 2.123. (a) Article 21.53F, Insurance Code, as added by Chapter 683, Acts of the 75th Legislature, Regular Session, 1997, is amended by adding Section 9 to read as follows:

Sec. 9. OFFER OF COVERAGE REQUIRED; CERTAIN THERAPIES FOR CHILDREN WITH DEVELOPMENTAL DELAYS. (a) For purposes of this section, rehabilitative and habilitative therapies include:

(1) occupational therapy evaluations and services;

(2) physical therapy evaluations and services;

(3) speech therapy evaluations and services; and

(4) dietary or nutritional evaluations.

(b) The issuer of a health benefit plan must offer coverage that complies with this section. The individual or group policy or contract holder may reject coverage required to be offered under this subsection.

(c) A health benefit plan that provides coverage for rehabilitative and habilitative therapies under this section may not prohibit or restrict payment for covered services provided to a child and determined to be necessary to and provided in accordance with an individualized family service plan issued by the Interagency Council on Early Childhood Intervention under Chapter 73, Human Resources Code.

(d) Rehabilitative and habilitative therapies described by Subsection (c) of this section must be covered in the amount, duration, scope, and service setting established in the child's individualized family service plan.

(e) Under the coverage required to be offered under this section, a health benefit plan issuer may not:

(1) apply the cost of rehabilitative and habilitative therapies described by Subsection (c) of this section to an annual or lifetime maximum plan benefit or similar provision under the plan; or

(2) use the cost of rehabilitative or habilitative therapies described by Subsection (c) of this section as the sole justification for:

(A) increasing plan premiums; or

(B) terminating the insured's or enrollee's participation in the plan.

(b) The change in law made by this section applies only to a health benefit plan that is delivered, issued for delivery, or renewed on or after January 1, 2004. A health benefit plan that is delivered, issued for delivery, or renewed before January 1, 2004, is governed by the law as it existed immediately before the effective date of this section, and the former law is continued in effect for that purpose.

SECTION 2.124. Article 27.05, Insurance Code, is amended to read as follows:

Art. 27.05. EXEMPTION FROM PREMIUM TAX. The issuer of a children's health benefit plan approved under Article 27.03 of this code is not subject to the premium tax imposed by Article 4.11 of this code or the tax on revenues imposed under Section 33, Texas Health Maintenance Organization Act (Article 20A.33, Vernon's Texas Insurance Code), with respect to money received for coverage provided under that plan.

SECTION 2.125. Chapter 27, Insurance Code, is amended by adding Article 27.07 to read as follows:

Art. 27.07. INAPPLICABILITY TO CERTAIN PLANS. This chapter does not apply to a health benefit plan provided under the state Medicaid program or the state child health plan.

SECTION 2.126. 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 medication 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 medicines returned to a pharmacy under this section.

Sec. 562.1086. LIMITATION ON LIABILITY. (a) A pharmacy that returns unused drugs and a manufacturer that accepts the unused drugs under Section 562.1085 and the employees of the pharmacy or manufacturer 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.

(d) This section does not apply to a pharmacy or manufacturer that fails to comply with the insurance provisions of Chapter 84, Civil Practice and Remedies Code.

SECTION 2.127. Section 455.0015, Transportation Code, is amended by amending Subsection (b) and adding Subsections (c) and (d) to read as follows:

(b) It is the intent of the legislature that, whenever possible, and to the maximum extent feasible, the existing network of transportation providers, and in particular the fixed route components of the existing networks, be used to meet the client transportation requirements of the state's social service agencies and their agents. The legislature recognizes the contributions of nonprofit entities dedicated to providing social services and related activities and encourages the continued community involvement of these entities in this area. The legislature likewise recognizes the potential cost savings and other benefits for utilizing existing private sector transportation resources. The department will contract with and promote the use of private sector transportation resources to the maximum extent feasible consistent with the goals of this subsection.

(c) The Texas Department of Health and the Health and Human Services Commission shall contract with the department for the department to assume all responsibilities of the Texas Department of Health and the Health and Human Services Commission relating to the provision of transportation services for clients of eligible programs. The department shall hold at least one public hearing to solicit the views of the public concerning the transition of transportation services to the department under this subsection and shall meet with and consider the views of interested persons, including persons representing transportation clients.

(d) The department may contract with any public or private transportation provider or with any regional transportation broker for the provision of public transportation services.

SECTION 2.128. Section 40.002, Human Resources Code, is amended by adding Subsection (f) to read as follows:

(f) The department may contract with the Texas Department of Transportation for the Texas Department of Transportation to assume all responsibilities of the department relating to the provision of transportation services for clients of eligible programs.

SECTION 2.129. Section 22.001, Human Resources Code, is amended by adding Subsection (e) to read as follows:

(e) The department shall contract with the Texas Department of Transportation for the Texas Department of Transportation to assume all responsibilities of the department relating to the provision of transportation services for clients of eligible programs.

SECTION 2.130. Section 91.021, Human Resources Code, is amended by adding Subsection (g) to read as follows:

(g) The commission shall contract with the Texas Department of Transportation for the Texas Department of Transportation to assume all responsibilities of the commission relating to the provision of transportation services for clients of eligible programs.

SECTION 2.131. Section 101.0256, Human Resources Code, is amended to read as follows:

Sec. 101.0256. COORDINATED ACCESS TO LOCAL SERVICES. (a) The department and the Texas Department of Human Services shall develop standardized assessment procedures to share information on common clients served in a similar service region.

(b) The department shall contract with the Texas Department of Transportation for the Texas Department of Transportation to assume all responsibilities of the department relating to the provision of transportation services for clients of eligible programs.

SECTION 2.132. Section 111.0525, Human Resources Code, is amended by adding Subsection (d) to read as follows:

(d) The commission shall contract with the Texas Department of Transportation for the Texas Department of Transportation to assume all responsibilities of the commission relating to the provision of transportation services for clients of eligible programs.

SECTION 2.133. Section 461.012(a), Health and Safety Code, is amended to read as follows:

(a) The commission shall:

(1) provide for research and study of the problems of chemical dependency in this state and seek to focus public attention on those problems through public information and education programs;

(2) plan, develop, coordinate, evaluate, and implement constructive methods and programs for the prevention, intervention, treatment, and rehabilitation of chemical dependency in cooperation with federal and state agencies, local governments, organizations, and persons, and provide technical assistance, funds, and consultation services for statewide and community-based services;

(3) cooperate with and enlist the assistance of:

(A) other state, federal, and local agencies;

(B) hospitals and clinics;

(C) public health, welfare, and criminal justice system authorities;

(D) educational and medical agencies and organizations; and

(E) other related public and private groups and persons;

(4) expand chemical dependency services for children when funds are available because of the long-term benefits of those services to the state and its citizens;

(5) sponsor, promote, and conduct educational programs on the prevention and treatment of chemical dependency, and maintain a public information clearinghouse to purchase and provide books, literature, audiovisuals, and other educational material for the programs;

(6) sponsor, promote, and conduct training programs for persons delivering prevention, intervention, treatment, and rehabilitation services and for persons in the criminal justice system or otherwise in a position to identify chemically dependent persons and their families in need of service;

(7) require programs rendering services to chemically dependent persons to safeguard those persons' legal rights of citizenship and maintain the confidentiality of client records as required by state and federal law;

(8) maximize the use of available funds for direct services rather than administrative services;

(9) consistently monitor the expenditure of funds and the provision of services by all grant and contract recipients to assure that the services are effective and properly staffed and meet the standards adopted under this chapter;

(10) make the monitoring reports prepared under Subdivision (9) a matter of public record;

(11) license treatment facilities under Chapter 464;

(12) use funds appropriated to the commission to carry out this chapter and maximize the overall state allotment of federal funds;

(13) develop and implement policies that will provide the public with a reasonable opportunity to appear before the commission and to speak on any issue under the commission's jurisdiction;

(14) establish minimum criteria that peer assistance programs must meet to be governed by and entitled to the benefits of a law that authorizes licensing and disciplinary authorities to establish or approve peer assistance programs for impaired professionals;

(15) adopt rules governing the functions of the commission, including rules that prescribe the policies and procedures followed by the commission in administering any commission programs;

(16) plan, develop, coordinate, evaluate, and implement constructive methods and programs to provide healthy alternatives for youth at risk of selling controlled substances;

(17) submit to the federal government reports and strategies necessary to comply with Section 1926 of the federal Alcohol, Drug Abuse, and Mental Health Administration Reorganization Act, Pub. L. 102-321 (42 U.S.C. Section 300x-26); reports and strategies are to be coordinated with appropriate state governmental entities; ~~and~~

(18) regulate, coordinate, and provide training for alcohol awareness courses required under Section 106.115, Alcoholic Beverage Code, and may charge a fee for an activity performed by the commission under this subdivision; and

(19) contract with the Texas Department of Transportation for the Texas Department of Transportation to assume all responsibilities of the commission relating to the provision of transportation services for clients of eligible programs.

SECTION 2.134. Section 533.012, Health and Safety Code, is amended to read as follows:

Sec. 533.012. COOPERATION OF STATE AGENCIES. (a) At the department's request, all state departments, agencies, officers, and employees shall cooperate with the department in activities that are consistent with their functions.

(b) The department shall contract with the Texas Department of Transportation for the Texas Department of Transportation to assume all responsibilities of the department relating to the provision of transportation services for clients of eligible programs.

SECTION 2.135. (a) Section 1551.159, Insurance Code, as effective June 1, 2003, is amended by amending Subsection (a) and adding Subsection (h) to read as follows:

(a) Subject to any applicable limit in the General Appropriations Act, the board of trustees shall use money appropriated for employer contributions to fund 80 percent of the cost of basic coverage for a child who:

(1) is a dependent of an employee;

(2) would be eligible, if the child were not the dependent of the employee, for benefits under the state child health plan established under Chapter 62, Health and Safety Code [~~the program established by the state to implement Title XXI, Social Security Act (42 U.S.C. Section 1397aa et seq.), as amended~~]; and

(3) is not eligible for the state Medicaid program.

(h) A child enrolled in dependent child coverage under this section is subject to the same requirements and restrictions relating to income eligibility, continuous coverage, and enrollment, including applicable waiting periods, as a child enrolled in the state child health plan under Chapter 62, Health and Safety Code.

(b) The change in law made by this section applies only to a child enrolled in dependent child coverage under the state employees group benefits program on and after September 1, 2003.

SECTION 2.136. 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 2.137. 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 2.138. 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 2.139. 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 2.140. Section 57.046, Utilities Code, is amended by adding Subsection (c) to read as follows:

(c) In addition to the purposes for which the qualifying entities account may be used, the board may use money in the account to award grants to the Health and Human Services Commission for technology initiatives of the commission.

SECTION 2.141. 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 2.142. 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 2.143. STUDY. (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 2.144. STUDY: REVENUE ENHANCEMENT RELATED TO MEDICAID VENDOR DRUG REBATE. (a) A task force is created to study the prescription drug rebate system established and operated under the medical assistance program and other related programs.

(b) The commission shall establish a task force, composed of appropriate legislators, state agency personnel, and other appropriate personnel to study the prescription drug rebate system established and operated under the medical assistance program and other related programs.

(c) The study must include:

(1) a background on the development and operation of the federal vendor drug rebate and state supplemental rebate system;

(2) a description of current and historical state efforts to develop and implement alternatives to the federal vendor drug rebate system;

(3) a review of any relevant case law or legal precedents related to the vendor drug rebate system;

(4) an analysis of state implementation, including attempted implementation, of an exemption of federal requirements, including the federal Social Security Act, related to vendor drug rebates, prior authorization provisions, and formulary; and

(5) feasibility of developing either an alternative rebate system or other mechanism to enhance the state's share of prescription drug rebates.

(d) The study must be completed by December 1, 2004, and presented to the governor and the presiding officers of each house, the House Committee on Appropriations, and the Senate Finance Committee.

SECTION 2.145. LEGISLATIVE INTENT REGARDING PROVISION OF HEALTH AND HUMAN SERVICE TRANSPORTATION THROUGH THE TEXAS DEPARTMENT OF TRANSPORTATION. It is the intent of the legislature that the provision of health and human service transportation through the Texas Department of Transportation will improve the delivery of transportation services to clients and enhance their access to transportation services. Furthermore, it is the intent of the legislature that these services be provided in a manner that will generate efficiencies in operation, control costs, and permit increased levels of service. The Texas Department of Transportation shall encourage cooperation and coordination among transportation providers, regional transportation brokers, and actual and potential clients in an effort to achieve the stated legislative goals.

SECTION 2.146. (a) A change in law made by this article to Section 242.047, Health and Safety Code, that requires the Texas Department of Health to accept an annual accreditation review from the Joint Commission on Accreditation of Health Organizations for a nursing home in satisfaction of the requirements for certification:

(1) applies only to a nursing home that participates in the medical assistance program under Chapter 32, Human Resources Code, before September 1, 2003; and

(2) may be implemented only as a pilot program.

(b) A pilot program operated in accordance with this section expires September 1, 2007.

SECTION 2.147. (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 2.148. 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 2.149. TRANSFER OF MEDICAL TRANSPORTATION PROGRAM. (a) On September 1, 2004, or on an earlier date specified by the Health and Human Services Commission:

(1) all powers, duties, functions, activities, obligations, rights, contracts, records, property, and appropriations or other money of the Texas Department of Health that are determined by the commissioner of health and human services to be essential to the administration of the medical transportation program are transferred to the Health and Human Services Commission;

(2) a rule or form adopted by the Texas Department of Health that relates to the medical transportation program is a rule or form of the Health and Human Services Commission and remains in effect until altered by the commission;

(3) a reference in law or an administrative rule to the Texas Department of Health that relates to the medical transportation program means the Health and Human Services Commission;

(4) a license, permit, or certification in effect that was issued by the Texas Department of Health and that relates to the medical transportation program is continued in effect as a license, permit, or certification of the Health and Human Services Commission; and

(5) a complaint, investigation, or other proceeding pending before the Texas Department of Health that relates to the medical transportation program is transferred without change in status to the Health and Human Services Commission.

(b) The Health and Human Services Commission shall take all action necessary to provide for the transfer of the medical transportation program to the commission as soon as possible after the effective date of this section but not later than September 1, 2004.

SECTION 2.150. CONSOLIDATION OF CERTAIN DIVISIONS AND ACTIVITIES. (a) Not later than March 1, 2004, the Health and Human Services Commission shall consolidate the Medicaid post-payment third-party recovery divisions or activities of the Texas Department of Human Services, the Medicaid vendor drug program, and the state's Medicaid claims administrator with the Medicaid post-payment third-party recovery function.

(b) The Health and Human Services Commission shall use the commission's Medicaid post-payment third-party recovery contractor for the consolidated division.

(c) The Health and Human Services Commission shall update its computer system to facilitate the consolidation.

SECTION 2.151. ABOLITION OF ADVISORY COMMITTEES. (a) Notwithstanding any other provision of state law, each advisory committee, as that term is defined by Section 2110.001, Government Code, created before the effective date of this section that advises the Health and Human Services Commission or a health and human services agency is abolished on the effective date of this section unless the committee:

(1) is required by federal law; or

(2) advises an agency with respect to certification or licensing programs, the regulation of entities providing health and human services, or the implementation of a duty prescribed under this article, as determined by the commissioner of health and human services.

(b) The commissioner of health and human services shall certify which advisory committees are exempt from abolition under Subsection (a) of this section and shall publish that certification in the Texas Register.

(c) An advisory committee that is created on or after the effective date of this section or that is exempt under Subsection (b) of this section from abolition shall make recommendations to the executive director of the health and human services agency the advisory committee was created to advise and to the commissioner of health and human services to assist with eliminating or minimizing overlapping functions or required duties between the health and human services agencies or between those agencies and the Health and Human Services Commission.

(d) This section does not apply to the telemedicine advisory committee established under Section 531.02172, Government Code, as added by Chapters 661 and 959, Acts of the 77th Legislature, Regular Session, 2001, and that committee continues in existence.

SECTION 2.152. Community mental health centers may coordinate with local community health centers, federally qualified health centers (FQHC), and/or disproportionate share hospitals for the purpose of accessing local, state, and federal programs that could result in lower cost pharmaceuticals. In particular, community mental health centers may form a referral relationship with community health centers, federally qualified health centers (FQHC), disproportionate share hospitals, and/or other eligible entities for the purpose of obtaining federal 340B pricing for pharmaceuticals. Community mental health centers may form a referral relationship with community health centers, federally qualified health centers (FQHC), disproportionate share hospitals, and/or other eligible entities for the purpose of taking advantage of 340B or other lower cost drug programs regardless of any statewide preferred drug list or vendor drug program which may be adopted.

SECTION 2.153. CHILD HEALTH PLAN PROGRAM WAIVER. Not later than October 1, 2003, the Health and Human Services Commission shall request and actively pursue any necessary waivers from a federal agency or any other appropriate entity to allow families enrolled in the state Medicaid program to opt into the child health plan program under Chapter 62, Health and Safety Code, while retaining the appropriate federal match rate, the state's entitlement to federal matching funds, and the child's entitlement to Medicaid coverage. The waiver shall, on at least an annual basis, allow families eligible for Medicaid who have previously opted to enroll their children in the child health plan program under Chapter 62, Health and Safety Code, to return those children to the Medicaid program.

SECTION 2.154. STATE CHILD HEALTH PLAN AMENDMENT. (a) In this section, "group plan" means the group health benefit plan under the health insurance premium payment reimbursement program established under Section 62.059, Health and Safety Code.

(b) As soon as possible after the effective date of this section, the Health and Human Services Commission shall submit for approval a plan amendment relating to the state child health plan under 42 U.S.C. Section 1397ff, as amended, as necessary to include the employers' share of required premiums for coverage of individuals enrolled in the group plan as expenditures for the purpose of determining the state children's health insurance expenditures, as that term is

defined by 42 U.S.C. Section 1397ee(d)(2)(B), as amended, for federal match funding for the child health plan program provided under Chapter 62, Health and Safety Code.

SECTION 2.155. STATE MEDICAID PLAN AMENDMENT. (a) In this section, "group plan" means the group health benefit plan under the health insurance premium payment reimbursement program for Medicaid recipients established under Section 32.0422, Human Resources Code.

(b) As soon as possible after the effective date of this section, the Health and Human Services Commission shall submit an amendment to the state Medicaid plan as necessary to allow this state to include the employers' share of required premiums for coverage of individuals enrolled in the group plan as expenditures for the purpose of determining this state's Medicaid program expenditures for federal match funding for the state Medicaid program.

SECTION 2.156. REPEAL. (a) The following are repealed:

(1) Sections 62.055(b) and (c), 62.056, 62.057, 142.006(d), (e), and (f), 142.009(i), 142.0176, 242.0372, 252.206(d), and 252.207(b), Health and Safety Code; and

(2) Sections 32.027(b) and (e), Human Resources Code.

(b) An advisory committee established under Section 62.057, Health and Safety Code, is abolished on the effective date of this section.

SECTION 2.157. 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 2.158. FEDERAL AUTHORIZATION OR WAIVER. 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 2.159. Any funds that are used by the Texas Department of Transportation to implement the transportation services provided in Sections 2.127, 2.128, 2.129, 2.130, 2.131, 2.132, 2.133, and 2.134 of this Act shall be accounted for and budgeted separately from other funds appropriated to the Texas Department of Transportation for any other public transportation program or budget strategy.

SECTION 2.160. Section 38.001, Education Code, is amended by amending Subsection (c) and adding Subsections (c-1) and (f) to read as follows:

(c) Immunization is not required for a person's admission to any elementary or secondary school if the person applying for admission:

(1) submits to the admitting official:

(A) an affidavit or a certificate signed by a physician who is duly registered and licensed to practice medicine in the United States, in which it is stated that, in the physician's opinion, the immunization required poses a significant risk [~~would be injurious~~] to the health and well-being of the applicant or any member of the applicant's family or household; or

(B) an affidavit signed by the applicant or, if a minor, by the applicant's parent or guardian stating that the applicant declines immunization for reasons of conscience, including a religious belief ~~[conflicts with the tenets and practice of a recognized church or religious denomination of which the applicant is an adherent or member, except that this exemption does not apply in times of emergency or epidemic declared by the commissioner of public health]~~; or

(2) is a member of the armed forces of the United States and is on active duty.

(c-1) An affidavit submitted under Section (c)(1)(B) must be on a form described by Section 161.0041, Health and Safety Code, and must be submitted to the admitting official not later than the 90th day after the date the affidavit is notarized.

(f) A person who has not received the immunizations required by this section for reasons of conscience, including because of the person's religious beliefs, may be excluded from school in times of emergency or epidemic declared by the commissioner of public health.

SECTION 2.161. Section 51.933, Education Code, is amended by amending Subsection (d) and adding Subsection (d-1) to read as follows:

(d) No form of immunization is required for a person's admission to an institution of higher education if the person applying for admission:

(1) submits to the admitting official:

(A) an affidavit or a certificate signed by a physician who is duly registered and licensed to practice medicine within the United States in which it is stated that, in the physician's opinion, the immunization required poses a significant risk ~~[would be injurious]~~ to the health and well-being of the applicant or any member of the applicant's family or household; or

(B) an affidavit signed by the applicant or, if a minor, by the applicant's parent or guardian stating that the applicant declines immunization for reasons of conscience, including a religious belief ~~[conflicts with the tenets and practice of a recognized church or religious denomination of which the applicant is an adherent or member]~~; or

(2) is a member of the armed forces of the United States and is on active duty.

(d-1) An affidavit submitted under Section (d)(1)(B) must be on a form described by Section 161.0041, Health and Safety Code, and must be submitted to the admitting official not later than the 90th day after the date the affidavit is notarized.

SECTION 2.162. Section 161.004(d), Health and Safety Code, is amended to read as follows:

(d) A child is exempt from an immunization required by this section if:

(1) ~~[immunization conflicts with the tenets of an organized religion to which]~~ a parent, managing conservator, or guardian states that the immunization is being declined for reasons of conscience, including a religious belief ~~[belongs]~~; or

(2) the immunization is medically contraindicated based on the opinion of [an examination of the child by] a physician licensed by any state in the United States who has examined the child.

SECTION 2.163. Subchapter A, Chapter 161, Health and Safety Code, is amended by adding Section 161.0041 to read as follows:

Sec. 161.0041. IMMUNIZATION EXEMPTION AFFIDAVIT FORM. (a) A person claiming an exemption from a required immunization based on reasons of conscience, including a religious belief, under Section 161.004 of this code, Section 38.001 or 51.933, Education Code, or Section 42.043, Human Resources Code, must complete an affidavit on a form provided by the department stating the reason for the exemption.

(b) The affidavit must be signed by the person claiming the exemption or, if the person is a minor, the person's parent, managing conservator, or guardian, and the affidavit must be notarized.

(c) A person claiming an exemption from a required immunization under this section may only obtain the affidavit form by submitting a written request for the affidavit form to the department.

(d) The department shall develop a blank affidavit form that contains a seal or other security device to prevent reproduction of the form. The affidavit form shall contain a statement indicating that the person or, if a minor, the person's parent, managing conservator, or guardian understands the benefits and risks of immunizations and the benefits and risks of not being immunized.

(e) The department shall maintain a record of the total number of affidavit forms sent out each year and shall report that information to the legislature each year. The department may not maintain a record of the names of individuals who request an affidavit under this section.

SECTION 2.164. Section 42.043, Human Resources Code, is amended by amending Subsection (d) and adding Subsection (d-1) to read as follows:

(d) No immunization may be required for admission to a facility regulated under this chapter if a person applying for a child's admission submits one of the following affidavits:

(1) an affidavit signed by a licensed physician stating that the immunization poses a significant risk ~~[would be injurious]~~ to the health and well-being of the child or a member of the child's family or household; or

(2) an affidavit signed by the child's parent or guardian stating that the applicant declines immunization for reasons of conscience, including a religious belief ~~[conflicts with the tenets and practices of a recognized religious organization of which the applicant is an adherent or a member].~~

(d-1) An affidavit submitted under Section (d)(2) must be on a form described by Section 161.0041, Health and Safety Code, and must be submitted not later than the 90th day after the date the affidavit is notarized.

SECTION 2.165. (a) Chapter 51, Government Code, is amended by adding Subchapter M to read as follows:

SUBCHAPTER M. ADDITIONAL FILING FEE FOR FAMILY PROTECTION

Sec. 51.961. FAMILY PROTECTION FEE. (a) The commissioners court of a county may adopt a family protection fee in an amount not to exceed \$15.

(b) Except as provided by Subsection (c), the district clerk or county clerk shall collect the family protection fee at the time a suit for dissolution of a marriage under Chapter 6, Family Code, is filed. The fee is in addition to any other fee collected by the district clerk or county clerk.

(c) The clerk may not collect a fee under this section from a person who is protected by an order issued under:

(1) Subtitle B, Title 4, Family Code; or

(2) Article 17.292, Code of Criminal Procedure.

(d) The clerk shall pay a fee collected under this section to the appropriate officer of the county in which the suit is filed for deposit in the county treasury to the credit of the family protection account. The account may be used by the commissioners court of the county only to fund a service provider located in that county or an adjacent county. The commissioners court may provide funding to a nonprofit organization that provides services described by Subsection (e).

(e) A service provider who receives funds under Subsection (d) may provide family violence prevention, intervention, mental health, counseling, legal, and marriage preservation services to families that are at risk of experiencing or that have experienced family violence or the abuse or neglect of a child.

(f) In this section, "family violence" has the meaning assigned by Section 71.004, Family Code.

(b) Subchapter M, Chapter 51, Government Code, as added by this section, applies only to a filing fee collected for a suit for the dissolution of a marriage under Chapter 6, Family Code, on or after the effective date of this section. A filing fee collected for a suit for the dissolution of a marriage under Chapter 6, Family Code, before the effective date of this section is governed by the law as it existed immediately before the effective date of this section, and that law is continued in effect for that purpose.

SECTION 2.166. (a) Chapter 531, Government Code, is amended by adding Subchapter L to read as follows:

SUBCHAPTER L. PROVISION OF SERVICES FOR CERTAIN CHILDREN
WITH MULTIAGENCY NEEDS

Sec. 531.421. DEFINITIONS. In this subchapter:

(1) "Children with severe emotional disturbances" includes:

(A) children who are at risk of incarceration or placement in a residential mental health facility;

(B) children for whom a court may appoint the Department of Protective and Regulatory Services as managing conservator;

(C) children who are students in a special education program under Subchapter A, Chapter 29, Education Code; and

(D) children who have a substance abuse disorder or a developmental disability.

(2) "Community resource coordination group" means a coordination group established under a memorandum of understanding adopted under Section 531.055, as added by Chapter 114, Acts of the 77th Legislature, Regular Session, 2001.

(3) "Consortium" means the consortium that oversees the Texas Integrated Funding Initiative under Subchapter G, Chapter 531, as added by Chapter 446, Acts of the 76th Legislature, Regular Session, 1999.

(4) "Systems of care services" means a comprehensive state system of mental health services and other necessary and related services that is organized as a coordinated network to meet the multiple and changing needs of children with severe emotional disturbances and their families.

Sec. 531.422. EVALUATIONS BY COMMUNITY RESOURCE COORDINATION GROUPS. (a) Each community resource coordination group shall evaluate the provision of systems of care services in the community that the group serves. Each evaluation must:

(1) describe and prioritize services needed by children with severe emotional disturbances in the community;

(2) review and assess the systems of care services that are available in the community to meet those needs;

(3) assess the integration of the provision of those services; and

(4) identify any barriers to the effective provision of those services.

(b) Each community resource coordination group shall create a report that includes the evaluation in Subsection (a) and makes related recommendations, including:

(1) suggested policy and statutory changes at agencies that provide systems of care services; and

(2) recommendations for overcoming barriers to the provision of systems of care services and improving the integration of those services.

(c) Each community resource coordination group shall submit the report described by Subsection (b) to the consortium. The consortium shall provide a deadline to each group for submitting the reports. The time frame for completing the reports must be coordinated with any regional reviews by the commission of the delivery of related services.

Sec. 531.423. SUMMARY REPORT BY TEXAS INTEGRATED FUNDING INITIATIVE CONSORTIUM. (a) The consortium shall create a summary report based on the evaluations in the reports submitted to the consortium by community resource coordination groups under Section 531.422. The consortium's report must include recommendations for policy and statutory changes at each agency that is involved in the provision of systems of care services and the outcome expected from implementing each recommendation.

(b) The consortium shall coordinate, where appropriate, the recommendations in the report created under this section with recommendations in the assessment developed under **SB 491**, Acts of the 78th Legislature, Regular Session, 2003, and with the continuum of care developed under **SB 490**, Acts of the 78th Legislature, Regular Session, 2003.

(c) The consortium may include in the report created under this section recommendations for the statewide expansion of sites participating in the Texas Integrated Funding Initiative under Subchapter G, Chapter 531, as added by

Chapter 446, Acts of the 76th Legislature, Regular Session, 1999, and the integration of services provided at those sites with services provided by community resource coordination groups.

(d) The consortium shall provide a copy of the report created under this section to each agency for which the report makes a recommendation and to other agencies as appropriate.

Sec. 531.424. AGENCY IMPLEMENTATION OF RECOMMENDATIONS. An agency described by Section 531.423(a) shall, as appropriate, adopt rules, policy changes, and memoranda of understanding with other agencies to implement the recommendations in the report created under Section 531.423.

(b) The consortium that oversees the Texas Integrated Funding Initiative under Subchapter G, Chapter 531, Government Code, as added by Chapter 446, Acts of the 76th Legislature, Regular Session, 1999, in cooperation with the Health and Human Services Commission and the Texas Department of Health, shall report to the governor and the 79th Legislature not later than January 11, 2005, on:

(1) recommendations in the report under Section 531.423, Government Code, as added by this section, including recommendations for statutory changes; and

(2) agency implementation of recommendations under Section 531.424, Government Code, as added by this section.

SECTION 2.167. Subdivisions (2) and (7), Section 81.003, Health and Safety Code, are amended to read as follows:

(2) "Health authority" means:

(A) a physician appointed as a health authority [such] under Chapter 121 (Local Public Health Reorganization Act) or the health authority's designee; or

(B) a physician appointed as a regional director under Chapter 121 (Local Public Health Reorganization Act) who performs the duties of a health authority or the regional director's designee.

(7) "Public health disaster" means:

(A) a declaration by the governor of a state of disaster; and

(B) a determination by the commissioner that there exists an immediate threat from a communicable disease that:

(i) poses a high risk of death or serious long-term disability to a large number of people; and

(ii) creates a substantial risk of public exposure because of the disease's high level of contagion or the method by which the disease is transmitted ["Regional director" means a physician appointed as such under Chapter 121 (Local Public Health Reorganization Act)].

SECTION 2.168. Section 81.004, Health and Safety Code, is amended by adding Subsection (d) to read as follows:

(d) A designee of the commissioner may exercise a power granted to or perform a duty imposed on the commissioner under this chapter except as otherwise required by law.

SECTION 2.169. Subsection (d), Section 81.023, Health and Safety Code, is transferred to Subchapter A, Chapter 81, Health and Safety Code, redesignated as Section 81.011, Health and Safety Code, and amended to read as follows:

Sec. 81.011. REQUEST FOR INFORMATION. ~~[(d)]~~ In times of emergency or epidemic declared by the commissioner, the department ~~[board]~~ is authorized to request information pertaining to names, dates of birth, and most recent addresses of individuals from the driver's license records of the Department of Public Safety for the purpose of notification to individuals of the need to receive certain immunizations or diagnostic, evaluation, or treatment services for suspected communicable diseases.

SECTION 2.170. Section 81.041, Health and Safety Code, is amended by adding Subsection (f) to read as follows:

(f) In a public health disaster, the commissioner may require reports of communicable diseases or other health conditions from providers without board rule or action. The commissioner shall issue appropriate instructions relating to complying with the reporting requirements of this section.

SECTION 2.171. Subsection (a), Section 81.042, Health and Safety Code, is amended to read as follows:

(a) A report under Subsection (b), (c), or (d) shall be made to the local health authority ~~[or, if there is no local health authority, the regional director].~~

SECTION 2.172. Section 81.043, Health and Safety Code, is amended to read as follows:

Sec. 81.043. RECORDS AND REPORTS OF HEALTH AUTHORITY ~~[AND REGIONAL DIRECTOR].~~ (a) Each health authority ~~[or regional director]~~ shall keep a record of each case of a reportable disease that is reported to the authority ~~[or director].~~

(b) A health authority ~~[or regional director]~~ shall report reportable diseases to the department's central office at least as frequently as the interval set by board rule.

SECTION 2.173. Section 81.046, Health and Safety Code, is amended by amending Subsection (b) and adding Subsection (f) to read as follows:

(b) Reports, records, and information relating to cases or suspected cases of diseases or health conditions are not public information under Chapter 552, Government Code, and may not be released or made public on subpoena or otherwise except as provided by Subsections (c)₂ ~~[and]~~ (d)₂ ~~and~~ (f).

(f) Reports, records, and information relating to cases or suspected cases of diseases or health conditions may be released to the extent necessary during a public health disaster to law enforcement personnel solely for the purpose of protecting the health or life of the person identified in the report, record, or information. Only the minimum necessary information may be released under this subsection, as determined by the health authority or the department.

SECTION 2.174. Section 81.064, Health and Safety Code, is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

(a) The department or ~~[commissioner, the commissioner's designee,]~~ a health authority~~[, or a health authority's designee]~~ may enter at reasonable times and inspect within reasonable limits a public place in the performance of that

person's duty to prevent or control the entry into or spread in this state of communicable disease by enforcing this chapter or the rules of the board adopted under this chapter.

(c) Evidence gathered during an inspection by the department or health authority under this section may not be used in a criminal proceeding other than a proceeding to assess a criminal penalty under this chapter.

SECTION 2.175. Section 81.065, Health and Safety Code, is amended to read as follows:

Sec. 81.065. RIGHT OF ENTRY. (a) For an investigation or inspection, the commissioner, an employee of the department, or a health authority has the right of entry on land or in a building, vehicle, watercraft, or aircraft and the right of access to an individual, animal, or object that is in isolation, detention, restriction, or quarantine instituted by the commissioner, an employee of the department, or a health authority or instituted voluntarily on instructions of a private physician.

(b) Evidence gathered during an entry by the commissioner, department, or health authority under this section may not be used in a criminal proceeding other than a proceeding to assess a criminal penalty under this chapter.

SECTION 2.176. Subsection (a), Section 81.066, Health and Safety Code, is amended to read as follows:

(a) A person commits an offense if the person knowingly conceals or attempts to conceal from the department [board], a health authority, or a peace officer, during the course of an investigation under this chapter, the fact that:

(1) the person has, has been exposed to, or is the carrier of a communicable disease that is a threat to the public health; or

(2) a minor child or incompetent adult of whom the person is a parent, managing conservator, or guardian has, has been exposed to, or is the carrier of a communicable disease that is a threat to the public health.

SECTION 2.177. Subsection (a), Section 81.067, Health and Safety Code, is amended to read as follows:

(a) A person commits an offense if the person knowingly conceals, removes, or disposes of an infected or contaminated animal, object, vehicle, watercraft, or aircraft that is the subject of an investigation under this chapter by the department [board], a health authority, or a peace officer.

SECTION 2.178. Section 81.068, Health and Safety Code, is amended to read as follows:

Sec. 81.068. REFUSING ENTRY OR INSPECTION; CRIMINAL PENALTY. (a) A person commits an offense if the person knowingly refuses or attempts to refuse entry to the department [board], a health authority, or a peace officer on presentation of a valid search warrant to investigate, inspect, or take samples on premises controlled by the person or by an agent of the person acting on the person's instruction.

(b) A person commits an offense if the person knowingly refuses or attempts to refuse inspection under Section 81.064 or entry or access under Section 81.065.

(c) An offense under this section is a Class A misdemeanor.

SECTION 2.179. Section 81.082, Health and Safety Code, is amended to read as follows:

Sec. 81.082. ADMINISTRATION OF CONTROL MEASURES. (a) A health authority has supervisory authority and control over the administration of communicable disease control measures in the health authority's jurisdiction unless specifically preempted by the department [board]. Control measures imposed by a health authority must be consistent with, and at least as stringent as, the control measure standards in rules adopted by the board.

(b) A communicable disease control measure imposed by a health authority in the health authority's jurisdiction may be amended, revised, or revoked by the department [board] if the department [board] finds that the modification is necessary or desirable in the administration of a regional or statewide public health program or policy. A control measure imposed by the department may not be modified or discontinued until the department authorizes the action.

(c) The control measures may be imposed on an individual, animal, place, or object, as appropriate.

(d) A declaration of a public health disaster may continue for not more than 30 days. A public health disaster may be renewed one time by the commissioner for an additional 30 days.

(e) The governor may terminate a declaration of a public health disaster at any time.

(f) In this section, "control measures" includes:

- (1) immunization;
- (2) detention;
- (3) restriction;
- (4) disinfection;
- (5) decontamination;
- (6) isolation;
- (7) quarantine;
- (8) disinfestation;
- (9) chemoprophylaxis;
- (10) preventive therapy;
- (11) prevention; and
- (12) education.

SECTION 2.180. Subsection (e), Section 81.083, Health and Safety Code, is amended to read as follows:

(e) An individual may be subject to court orders under Subchapter G if the individual is infected or is reasonably suspected of being infected with a communicable disease that presents an immediate threat to the public health and:

(1) the individual, or the individual's parent, legal guardian, or managing conservator if the individual is a minor, does not comply with the written orders of the department or a health authority under this section; or [and]

(2) a public health disaster exists, regardless of whether the department or health authority has issued a written order and the individual has indicated that the individual will not voluntarily comply with control measures [is infected or is reasonably suspected of being infected with a communicable disease that presents an immediate threat to the public health].

SECTION 2.181. Section 81.084, Health and Safety Code, is amended by amending Subsection (b) and adding Subsections (d-1) and (k) to read as follows:

(b) The department or health authority shall send notice of its action by registered or certified mail or by personal delivery to the person who owns or controls the property. If the property is land or a structure or an animal or other property on the land, the department or health authority shall also post the notice on the land and at a place convenient to the public in [on] the county courthouse [door]. If the property is infected or contaminated as a result of a public health disaster, the department or health authority is not required to provide notice under this subsection.

(d-1) In a public health disaster, the department or health authority by written order may require a person who owns or controls property to impose control measures that are technically feasible to disinfect or decontaminate the property or, if technically feasible control measures are not available, may order the person who owns or controls the property:

(1) to destroy the property, other than land, in a manner that disinfects or decontaminates the property to prevent the spread of infection or contamination;

(2) if the property is land, to securely fence the perimeter of the land or any part of the land that is infected or contaminated; or

(3) to securely seal off an infected or contaminated structure or other property on land to prevent entry into the infected or contaminated area until the department or health authority authorizes entry into the structure or property.

(k) In a public health disaster, the department or a health authority may impose additional control measures the department or health authority considers necessary and most appropriate to arrest, control, and eradicate the threat to the public health.

SECTION 2.182. Section 81.085, Health and Safety Code, is amended by amending Subsections (a), (b), (c), (e), (f), and (h), and adding Subsection (i) to read as follows:

(a) If an outbreak of communicable disease occurs in this state, the commissioner or one or more health authorities may impose an area quarantine coextensive with the area affected. The commissioner may impose an area quarantine, if the commissioner has reasonable cause to believe that individuals or property in the area may be infected or contaminated with a communicable disease, for the period necessary to determine whether an outbreak of communicable disease has occurred. A health authority may impose the quarantine only within the boundaries of the health authority's jurisdiction.

(b) A health authority may not impose an area quarantine until the authority consults with [and obtains the approval of] the department. A health authority that imposes an area quarantine shall give written notice to and shall consult with

~~[commissioner and of]~~ the governing body of each county and municipality in the health authority's jurisdiction that has territory in the affected area as soon as practicable.

(c) The department may impose additional disease control measures in a quarantine area that the department considers necessary and most appropriate to arrest, control, and eradicate the threat to the public health. Absent preemptive action by the department ~~[board]~~ under this chapter or by the governor under Chapter 418, Government Code (Texas Disaster Act of 1975), a health authority may impose in a quarantine area under the authority's jurisdiction additional disease control measures that the health authority considers necessary and most appropriate to arrest, control, and eradicate the threat to the public health.

(e) The department or health authority may use all reasonable means of communication to inform persons in the quarantine area of the department's ~~[board's]~~ or health authority's orders and instructions during the period of area quarantine. The department or health authority shall publish at least once each week during the area quarantine period, in a newspaper of general circulation in the area, a notice of the orders or instructions in force with a brief explanation of their meaning and effect. Notice by publication is sufficient to inform persons in the area of their rights, duties, and obligations under the orders or instructions.

(f) The department ~~[commissioner]~~ or, with the department's ~~[commissioner's]~~ consent, a health authority may terminate an area quarantine.

(h) A person commits an offense if the person knowingly fails or refuses to obey a rule, order, or instruction of the department ~~[board]~~ or an order or instruction of a health authority issued under a department ~~[board]~~ rule and published during an area quarantine under this section. An offense under this subsection is a felony of the third degree.

(i) On request of the department during a public health disaster, an individual shall disclose the individual's immunization information. If the individual does not have updated or appropriate immunizations, the department may take appropriate action during a quarantine to protect that individual and the public from the communicable disease.

SECTION 2.183. Subsections (b) and (i), Section 81.086, Health and Safety Code, are amended to read as follows:

(b) If the department or health authority has reasonable cause to believe that a carrier or conveyance has departed from or traveled through an area infected or contaminated with a communicable disease, the department or health authority may order the owner, operator, or authorized agent in control of the carrier or conveyance to:

(1) stop the carrier or conveyance at a port of entry or place of first landing or first arrival in this state; and

(2) provide ~~[a statement in a form approved by the board that includes information required by board rules, including]~~ information on passengers and cargo manifests~~[-and]~~ that includes the details of:

(A) any illness suspected of being communicable that occurred during the journey;

(B) any condition on board the carrier or conveyance during the journey that may lead to the spread of disease; and

(C) any control measures imposed on the carrier or conveyance, its passengers or crew, or its cargo or any other object on board during the journey.

(i) The department or health authority may require an individual transported by carrier or conveyance who the department or health authority has reasonable cause to believe has been exposed to or is the carrier of a communicable disease to be isolated from other travelers and to disembark with the individual's personal effects and baggage at the first location equipped with adequate investigative and disease control facilities, whether the person is in transit through this state or to an intermediate or ultimate destination in this state. The department or health authority may investigate and, if necessary, isolate or involuntarily hospitalize the individual until the department or health authority approves the discharge as authorized by Section 81.083 [~~81.084~~].

SECTION 2.184. Subsection (a), Section 81.088, Health and Safety Code, is amended to read as follows:

(a) A person commits an offense if the person knowingly or intentionally:

(1) removes, alters, or attempts to remove or alter an object the person knows is a quarantine device, notice, or security item in a manner that diminishes the [~~device's~~] effectiveness of the device, notice, or item; or

(2) destroys an object the person knows is a quarantine device, notice, or security item.

SECTION 2.185. Subsection (a), Section 81.089, Health and Safety Code, is amended to read as follows:

(a) A person commits an offense if, before notifying the department [~~board~~] or health authority at a port of entry or a place of first landing or first arrival in this state, the person knowingly or intentionally:

(1) transports or causes to be transported into this state an object the person knows or suspects may be infected or contaminated with a communicable disease that is a threat to the public health;

(2) transports or causes to be transported into this state an individual who the person knows has or is the carrier of a communicable disease that is a threat to the public health; or

(3) transports or causes to be transported into this state a person, animal, or object in a private or common carrier or a private conveyance that the person knows is or suspects may be infected or contaminated with a communicable disease that is a threat to the public health.

SECTION 2.186. Subsection (d), Section 81.151, Health and Safety Code, is amended to read as follows:

(d) A copy of written orders made under Section 81.083, if applicable, and a medical evaluation must be filed with the application, except that a copy of the written orders need not be filed with an application for outpatient treatment.

SECTION 2.187. Subsection (c), Section 81.152, Health and Safety Code, is amended to read as follows:

(c) Any application must contain the following information according to the applicant's information and belief:

- (1) the person's name and address;
- (2) the person's county of residence in this state;
- (3) a statement that the person is infected with or is reasonably suspected of being infected with a communicable disease that presents a threat to public health and that the person meets the criteria of this chapter for court orders for the management of a person with a communicable disease; and
- (4) a statement, to be included only in an application for inpatient treatment, that the person fails or refuses to comply with written orders of the department or health authority under Section 81.083, if applicable.

SECTION 2.188. Subsection (a), Section 81.162, Health and Safety Code, is amended to read as follows:

(a) The judge or designated magistrate may issue a protective custody order if the judge or magistrate determines:

- (1) that the health authority or department has stated its opinion and the detailed basis for its opinion that the person is infected with or is reasonably suspected of being infected with a communicable disease that presents an immediate threat to the public health; and
- (2) that the person fails or refuses to comply with the written orders of the health authority or the department under Section 81.083, if applicable.

SECTION 2.189. Section 161.011, Health and Safety Code, is amended to read as follows:

Sec. 161.011. PERMISSION REQUIRED. A person, including an officer or agent of this state or of an instrumentality or political subdivision of this state, may not enter a private residence to conduct a health inspection without first receiving:

- (1) permission obtained from a lawful adult occupant of the residence;
- or
- (2) an authorization to inspect the residence for a specific public health purpose by a magistrate or by an order of a court of competent jurisdiction on a showing of a probable violation of a state health law, a control measure under Chapter 81, or a health ordinance of a political subdivision.

SECTION 2.190. Subsection (d), Article 49.10, Code of Criminal Procedure, is amended to read as follows:

(d) A justice of the peace may not order a person to perform an autopsy on the body of a deceased person whose death was caused by Asiatic cholera, bubonic plague, typhus fever, or smallpox. A justice of the peace may not order a person to perform an autopsy on the body of a deceased person whose death was caused by a communicable disease during a public health disaster.

SECTION 2.191. Sections 10 and 10a, Article 49.25, Code of Criminal Procedure, are amended to read as follows:

Sec. 10. DISINTERMENTS AND CREMATIONS. When a body upon which an inquest ought to have been held has been interred, the medical examiner may cause it to be disinterred for the purpose of holding such inquest.

Before any body, upon which an inquest is authorized by the provisions of this Article, can be lawfully cremated, an autopsy shall be performed thereon as provided in this Article, or a certificate that no autopsy was necessary shall be

furnished by the medical examiner. Before any dead body can be lawfully cremated, the owner or operator of the crematory shall demand and be furnished with a certificate, signed by the medical examiner of the county in which the death occurred showing that an autopsy was performed on said body or that no autopsy thereon was necessary. It shall be the duty of the medical examiner to determine whether or not, from all the circumstances surrounding the death, an autopsy is necessary prior to issuing a certificate under the provisions of this section. No autopsy shall be required by the medical examiner as a prerequisite to cremation in case death is caused by the pestilential diseases of Asiatic cholera, bubonic plague, typhus fever, or smallpox. All certificates furnished to the owner or operator of a crematory by any medical examiner, under the terms of this Article, shall be preserved by such owner or operator of such crematory for a period of two years from the date of the cremation of said body. A medical examiner is not required to perform an autopsy on the body of a deceased person whose death was caused by a communicable disease during a public health disaster.

Sec. 10a. The body of a deceased person shall not be cremated within 48 ~~forty-eight~~ hours after the time of death as indicated on the regular death certificate, unless the death certificate indicates death was caused by the pestilential diseases of Asiatic cholera, bubonic plague, typhus fever, or smallpox, or unless the time requirement is waived in writing by the county medical examiner or, in counties not having a county medical examiner, a justice of the peace. In a public health disaster, the commissioner of public health may designate other communicable diseases for which cremation within 48 hours of the time of death is authorized.

SECTION 2.192. (a) Section 104.011(a), Health and Safety Code, is amended to read as follows:

(a) The statewide health coordinating council is composed of 17 members determined as follows:

(1) the commissioner of health and human services or a representative designated by the commissioner;

(2) the presiding officer of the Texas Higher Education Coordinating Board or a representative designated by the presiding officer;

(3) the presiding officer of the department or a representative designated by the presiding officer;

(4) ~~the presiding officer of the Texas Health Care Information Council or a representative designated by the presiding officer;~~

~~(5)~~ the presiding officer of the Texas Department of Mental Health and Mental Retardation or a representative designated by the presiding officer; and

(5) ~~(6)~~ the following members appointed by the governor:

(A) three health care professionals from the allied health, dental, medical, mental health, ~~nursing,~~ and pharmacy professions, no two of whom may be from the same profession;

(B) one registered nurse;

(C) two representatives of a university or health-related institution of higher education;

(D) ~~(E)~~ one representative of a junior or community college with a nursing program;

(E) ~~(D)~~ one hospital administrator;

(F) ~~(E)~~ one managed care administrator; and

(G) ~~(F)~~ four public members.

(b) The changes in law made by this section do not affect the entitlement of a member serving on the statewide health coordinating council immediately before the effective date of this section to continue to carry out the council's functions for the remainder of the member's term. Any vacancy that occurs after the effective date of this section shall be filled in a manner that complies with Section 104.011(a), Health and Safety Code, as amended by this section.

SECTION 2.193. Section 142.001, Health and Safety Code, is amended by amending Subdivisions (6), (13), and (22) and adding Subdivision (22-a) to read as follows:

(6) "Certified agency" means a home and community support services agency, or a portion of the agency, that:

(A) provides a home health service; and

(B) is certified by an official of the Department of Health and Human Services as in compliance with conditions of participation in Title XVIII, Social Security Act (42 U.S.C. Section 1395 et seq.).

(13) "Home health service" means the provision of one or more of the following health services required by an individual in a residence or independent living environment:

(A) nursing, including blood pressure monitoring and diabetes treatment;

(B) physical, occupational, speech, or respiratory therapy;

(C) medical social service;

(D) intravenous therapy;

(E) dialysis;

(F) service provided by unlicensed personnel under the delegation or supervision of a licensed health professional;

(G) the furnishing of medical equipment and supplies, excluding drugs and medicines; or

(H) nutritional counseling.

(22) "Personal assistance service" means routine ongoing care or services required by an individual in a residence or independent living environment that enable the individual to engage in the activities of daily living or to perform the physical functions required for independent living, including respite services. The term includes:

(A) personal care;

(B) health-related services performed under circumstances that are defined as not constituting the practice of professional nursing by the Board of Nurse Examiners through a memorandum of understanding with the department in accordance with Section 142.016; and

(C) health-related tasks provided by unlicensed personnel under the delegation of a registered nurse or that a registered nurse determines do not require delegation.

(22-a) "Personal care" means the provision of one or more of the following services required by an individual in a residence or independent living environment:

(A) bathing;

(B) dressing;

(C) grooming;

(D) feeding;

(E) exercising;

(F) toileting;

(G) positioning;

(H) assisting with self-administered medications;

(I) routine hair and skin care; and

(J) transfer or ambulation.

SECTION 2.194. Section 142.002, Health and Safety Code, is amended by adding Subsection (f) to read as follows:

(f) A person who is not licensed to provide personal assistance services under this chapter may not indicate or imply that the person is licensed to provide personal assistance services by the use of the words "personal assistance services" or in any other manner.

SECTION 2.195. Section 142.0062(a), Health and Safety Code, is amended to read as follows:

(a) A home and community support services agency or its employees who are registered nurses or licensed vocational nurses may purchase, store, or transport for the purpose of administering to the agency's employees, home health or hospice patients, or patient family members under physician's standing orders the following dangerous drugs:

(1) hepatitis B vaccine;

(2) influenza vaccine; ~~and~~

(3) tuberculin purified protein derivative for tuberculosis testing; and

(4) pneumococcal polysaccharide vaccine.

SECTION 2.196. Sections 142.016(a) and (b), Health and Safety Code, are amended to read as follows:

(a) The Board of Nurse Examiners and the department shall adopt a memorandum of understanding governing the circumstances under which the provision of health-related tasks or services do not constitute the practice of professional nursing. The agencies periodically ~~annually~~ shall review and shall renew or modify the memorandum as necessary.

(b) The Board of Nurse Examiners and the department shall consult with an advisory committee in developing, modifying, or renewing the memorandum of understanding. The advisory committee shall be appointed by the Board of Nurse Examiners and the department and at a minimum shall include:

(1) one representative from the Board of Nurse Examiners and one representative from the department to serve as cochairmen;

(2) one representative from the Texas Department of Mental Health and Mental Retardation;

(3) ~~one representative from the Texas Department of Human Services;~~

~~[(4)]~~ one representative from the Texas Nurses Association;

(4) ~~[(5)]~~ one representative from the Texas Association for Home Care, Incorporated, or its successor;

(5) ~~[(6)]~~ one representative from the Texas Hospice Organization, Incorporated, or its successor;

(6) ~~[(7)]~~ one representative of the Texas Respite Resource Network or its successor; and

(7) ~~[(8)]~~ two representatives of organizations such as the Personal Assistance Task Force or the Disability Consortium that advocate for clients in community-based settings.

SECTION 2.197. Sections 142.018(b) and (c), Health and Safety Code, are amended to read as follows:

(b) A home and community support services agency that has cause to believe that a person receiving services from the agency has been abused, exploited, or neglected by an employee of the agency shall report the information to:

(1) the department; and

(2) the Department of Protective and Regulatory Services or other appropriate state agency as required by Section 48.051 ~~[Sections 48.036 and 48.082]~~, Human Resources Code.

(c) This section does not affect the duty or authority of any state agency to conduct an investigation of alleged abuse, exploitation, or neglect as provided by other law. An investigation of alleged abuse, exploitation, or neglect may be conducted without an on-site survey, as appropriate.

SECTION 2.198. Section 250.001(3), Health and Safety Code, is amended to read as follows:

(3) "Facility" means:

(A) a nursing home, custodial care home, or other institution licensed by the Texas Department of Human Services under Chapter 242;

(B) an assisted living facility licensed by the Texas Department of Human Services under Chapter 247;

(C) a home and community support services ~~[health]~~ agency licensed under Chapter 142;

(D) an adult day care facility licensed by the Texas Department of Human Services under Chapter 103, Human Resources Code;

(E) a facility for persons with mental retardation licensed under Chapter 252;

(F) ~~[an unlicensed attendant care agency that contracts with the Texas Department of Human Services;~~

~~[(G)]~~ an adult foster care provider that contracts with the Texas Department of Human Services;

(G) [(H)] a facility that provides mental health services and that is operated by or contracts with the Texas Department of Mental Health and Mental Retardation; ~~or~~

(H) [(H)] a local mental health or mental retardation authority designated under Section 533.035; or

(I) a person exempt from licensing under Section 142.003(a)(19).

SECTION 2.199. Section 431.116, Health and Safety Code, is amended by adding Subsections (f)-(i) to read as follows:

(f) Notwithstanding any other state law, pricing information disclosed by manufacturers or labelers under this section may be provided by the department only to the Medicaid vendor drug purchase program for its sole use. The Medicaid vendor drug purchase program may use the information only as necessary to administer its drug programs, including Medicaid drug programs.

(g) Notwithstanding any other state law, pricing information disclosed by manufacturers or labelers under this section is confidential and, except as necessary to permit the attorney general to enforce state and federal laws, may not be disclosed by the Health and Human Services Commission or any other state agency in a form that discloses the identity of a specific manufacturer or labeler or the prices charged by a specific manufacturer or labeler for a specific drug.

(h) The attorney general shall treat information obtained under this section in the same manner as information obtained by the attorney general through a civil investigative demand under Section 36.054, Human Resources Code.

(i) Notwithstanding any other state law, the penalties for unauthorized disclosure of confidential information under Chapter 552, Government Code, apply to unauthorized disclosure of confidential information under this section.

SECTION 2.200. Section 534.003(a), Health and Safety Code, is amended to read as follows:

(a) The board of trustees of a community center established by an organizational combination of local agencies is composed of not fewer than five or more than 13 ~~nine~~ members.

SECTION 2.201. (a) Section 31.032(d), Human Resources Code, is amended to read as follows:

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

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

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

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

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

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

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

(b) Section 31.032(d), Human Resources Code, as amended by this section, applies to a person receiving financial assistance on or after the effective date of this section, regardless of the date on which eligibility for financial assistance was determined.

SECTION 2.202. (a) Subchapter B, Chapter 32, Human Resources Code, is amended by adding Section 32.066 to read as follows:

Sec. 32.066. CONSUMER-DIRECTED SERVICES PROGRAM. (a) In this section:

(1) "Consumer" means a participant in the consumer-directed services program established under this section who receives a stipend under the program.

(2) "Home and community-based services" include:

(A) personal care services;

(B) a home modification and assistive device that may increase the consumer's independence;

(C) respite services, as defined by Section 142.001, Health and Safety Code; and

(D) personal assistance services, as defined by Section 142.001, Health and Safety Code.

(3) "Medical assistance waiver program" means:

(A) the community-based alternatives program;

(B) the community living assistance and support services program;

(C) the deaf-blind/multiple disabilities program;

(D) the consolidated waiver pilot program; or

(E) the medically dependent children program.

(b) The department by rule shall establish a consumer-directed services program in which certain individuals enrolled in a medical assistance waiver program are given a monthly stipend to direct the delivery of home and community-based services provided to the individual under the waiver program.

(c) The department shall work in conjunction with the Texas Rehabilitation Commission, the comptroller, and any other appropriate agency to develop the consumer-directed services program.

(d) In establishing the consumer-directed services program, the department shall:

(1) ensure that the amount of a consumer's stipend is based on the assessed functional needs of a consumer and the financial resources available to the medical assistance waiver program providing services to the consumer;

(2) develop purchasing guidelines to assist consumers in using the stipend to purchase necessary and cost-effective home and community-based services;

(3) design the program in a manner in which a private entity or local governmental entity may apply with the department for approval to act as the fiscal intermediary for a consumer for the limited purpose of:

- (A) managing the consumer's stipend;
- (B) computing federal and state employment taxes;
- (C) preparing and filing income tax forms and reports; and
- (D) distributing money to a service provider;

(4) ensure that a consumer is the employer of and retains control over the selection, management, and dismissal of an individual providing home and community-based services; and

(5) develop a system to monitor the program to ensure:

- (A) adherence to existing applicable program standards;
- (B) appropriate use of funds; and
- (C) consumer satisfaction with the delivery of services.

(e) The Texas Rehabilitation Commission and comptroller shall provide information to the department as necessary to facilitate the development and implementation of the consumer-directed services program.

(f) The department may not implement the consumer-directed services program within the consolidated waiver pilot program before January 2, 2004.

(g) The department, in consultation with the Centers for Medicare and Medicaid Services, shall:

(1) determine which state or other government-funded programs are appropriate for inclusion in the consumer-directed services program; and

(2) provide for the inclusion of cost-sharing provisions as practicable.

(h) Not later than February 1 of each year, the department shall submit to the governor, the lieutenant governor, and the clerks of the standing committees of the senate and house of representatives with primary jurisdiction over long-term care services a report on the effectiveness, including the cost-effectiveness, of the consumer-directed services program. The report must include recommendations for improvements to the program.

(i) This section expires September 1, 2007.

(b) The state agency responsible for implementing the consumer-directed services program required by Section 32.066, Human Resources Code, as added by this section, shall request and actively pursue any necessary waivers or authorizations from the Centers for Medicare and Medicaid Services or other appropriate entities to enable the agency to implement the program not later than January 1, 2004. The agency may delay implementing the program until the necessary waivers or authorizations are granted.

SECTION 2.203. Section 533.007, Government Code, is amended by adding Subsections (g), (h), (i), (j), and (k) to read as follows:

(g) To ensure appropriate access to an adequate provider network, each managed care organization that contracts with the commission to provide health care services to recipients in a health care service region shall submit to the commission, in the format and manner prescribed by the commission, a report detailing the number, type, and scope of services provided by out-of-network providers to recipients enrolled in a managed care plan provided by the managed care organization. If, as determined by the commission, a managed care organization exceeds maximum limits established by the commission for out-of-network access to health care services, or if, based on an investigation by

the commission of a provider complaint regarding reimbursement, the commission determines that a managed care organization did not reimburse an out-of-network provider based on a reasonable reimbursement methodology, the commission shall initiate a corrective action plan requiring the managed care organization to maintain an adequate provider network, provide reimbursement to support that network, and educate recipients enrolled in managed care plans provided by the managed care organization regarding the proper use of the provider network under the plan.

(h) The corrective action plan required by Subsection (g) must include at least one of the following elements:

(1) a requirement that reimbursements paid by the managed care organization to out-of-network providers for a health care service provided to a recipient enrolled in a managed care plan provided by the managed care organization equal the allowable rate for the service, as determined under Sections 32.028 and 32.0281, Human Resources Code, for all health care services provided during the period:

(A) the managed care organization is not in compliance with the utilization benchmarks determined by the commission; or

(B) the managed care organization is not reimbursing out-of-network providers based on a reasonable methodology, as determined by the commission;

(2) an immediate freeze on the enrollment of additional recipients in a managed care plan provided by the managed care organization, to continue until the commission determines that the provider network under the managed care plan can adequately meet the needs of additional recipients; and

(3) other actions the commission determines are necessary to ensure that recipients enrolled in a managed care plan provided by the managed care organization have access to appropriate health care services and that providers are properly reimbursed for providing medically necessary health care services to those recipients.

(i) Not later than the 60th day after the date a provider files a complaint with the commission regarding reimbursement for or overuse of out-of-network providers by a managed care organization, the commission shall provide to the provider a report regarding the conclusions of the commission's investigation. The report must include:

(1) a description of the corrective action, if any, required of the managed care organization that was the subject of the complaint; and

(2) if applicable, a conclusion regarding the amount of reimbursement owed to an out-of-network provider.

(j) If, after an investigation, the commission determines that additional reimbursement is owed to a provider, the managed care organization shall, not later than the 90th day after the date the provider filed the complaint, pay the additional reimbursement or provide to the provider a reimbursement payment plan under which the managed care organization must pay the entire amount of the additional reimbursement not later than the 120th day after the date the provider filed the complaint. If the managed care organization does not pay the

entire amount of the additional reimbursement on or before the 90th day after the date the provider filed the complaint, the commission may require the managed care organization to pay interest on the unpaid amount. If required by the commission, interest accrues at a rate of 18 percent simple interest per year on the unpaid amount from the 90th day after the date the provider filed the complaint until the date the entire amount of the additional reimbursement is paid.

(k) The commission shall pursue any appropriate remedy authorized in the contract between the managed care organization and the commission if the managed care organization fails to comply with a corrective action plan under Subsection (g).

SECTION 2.204. Subchapter B, Chapter 32, Human Resources Code, is amended by adding Section 32.067 to read as follows:

Sec. 32.067. DELIVERY OF COMPREHENSIVE CARE SERVICES TO CERTAIN RECIPIENTS OF MEDICAL ASSISTANCE. (a) In this section, "certified agency" and "home health service" have the meanings assigned by Section 142.001, Health and Safety Code.

(b) The department shall assure that any agency licensed to provide home health services under Chapter 142, Health and Safety Code, and not only a certified agency licensed under that chapter, may provide home health services to individuals enrolled in the Texas Health Steps Comprehensive Care Program.

SECTION 2.205. The section heading to Section 403.1066, Government Code, is amended to read as follows:

Sec. 403.1066. PERMANENT HOSPITAL FUND FOR CAPITAL IMPROVEMENTS AND THE TEXAS CENTER FOR INFECTIOUS DISEASE [COMMUNITY HOSPITAL CAPITAL IMPROVEMENT FUND].

SECTION 2.206. Sections 403.1066(a) and (c), Government Code, are amended to read as follows:

(a) The permanent hospital [community hospital capital improvement] fund for capital improvements and the Texas Center for Infectious Disease is a dedicated account in the general revenue fund. The fund is composed of:

- (1) money transferred to the fund at the direction of the legislature;
- (2) payments of interest and principal on loans and fees collected under this section;
- (3) gifts and grants contributed to the fund; and
- (4) the available earnings of the fund determined in accordance with Section 403.1068.

(c) The available earnings of the fund may be appropriated to the Texas Department of Health for the purpose of providing services at the Texas Center for Infectious Disease and grants, loans, or loan guarantees to public or nonprofit community hospitals with 125 beds or fewer located in an urban area of the state.

SECTION 2.207. (a) Section 32.024(w), Human Resources Code, is amended to read as follows:

(w) The department shall set a personal needs allowance of not less than \$45 [\$60] a month for a resident of a convalescent or nursing home or related institution licensed under Chapter 242, Health and Safety Code, personal care facility, ICF-MR facility, or other similar long-term care facility who receives

medical assistance. The department may send the personal needs allowance directly to a resident who receives Supplemental Security Income (SSI) (42 U.S.C. Section 1381 et seq.). This subsection does not apply to a resident who is participating in a medical assistance waiver program administered by the department.

(b) Section 32.024(w), Human Resources Code, as amended by this section, applies only to a personal needs allowance paid on or after the effective date of this Act.

SECTION 2.208. Section 281.002, Health and Safety Code, is amended by adding Subsection (c) to read as follows:

(c) A county with at least 190,000 inhabitants that has within its boundaries a municipality that owns a hospital or hospital system for indigent or needy persons that is operated by or on behalf of the municipality may create a countywide hospital district to assume ownership of the hospital or hospital system and to furnish medical aid and hospital care to indigent and needy persons residing in the district.

SECTION 2.209. Section 281.004, Health and Safety Code, is amended to read as follows:

Sec. 281.004. BALLOT PROPOSITIONS. (a) Except as provided by Subsection (a-1) or (b), the ballot for an election under this chapter shall be printed to provide for voting for or against the proposition: "The creation of a hospital district and the levy of a tax not to exceed 75 cents on each \$100 of the taxable value of property taxable by the district."

(a-1) The ballot for an election under this chapter held in a county with a population of more than 800,000 that is not included in the boundaries of a hospital district before September 1, 2003, shall be printed to provide for voting for or against the proposition: "The creation of a hospital district and the levy of a tax not to exceed 25 cents on each \$100 of the taxable value of property taxable by the district."

(b) If the county or a municipality in the county has any outstanding bonds issued for hospital purposes, the ballot for an election under this chapter shall contain the proposition prescribed by Subsection (a) or (a-1), as appropriate, followed by "~~be printed to provide for voting for or against the proposition: "The creation of a hospital district, the levy of a tax not to exceed 75 cents on each \$100 of the taxable value of property taxable by the district]~~", and the assumption by the district of all outstanding bonds previously issued for hospital purposes by _____ County and by any municipality in the county."

SECTION 2.210. Section 281.021, Health and Safety Code, is amended by adding Subsection (d) to read as follows:

(d) If a district is created under this chapter in a county with a population of more than 800,000 that was not included in the boundaries of a hospital district before September 1, 2003, the district shall be governed by a nine-member board of hospital managers, appointed as follows:

- (1) the commissioners court of the county shall appoint four members;
- (2) the governing body of the municipality with the largest population in the county shall appoint four members; and

(3) the commissioners court and the governing body of the municipality described by Subdivision (2) shall jointly appoint one member.

SECTION 2.211. Section 281.022, Health and Safety Code, is amended by adding Subsection (c) to read as follows:

(c) The members of a board of hospital managers appointed under Section 281.021(d) serve staggered four-year terms, with as near as possible to one-fourth of the members' terms expiring each year. The terms of the members appointed under that section are as follows:

(1) the members appointed solely by the governing body of the municipality with the largest population in the county shall draw lots to determine which member serves a one-year term, which member serves a two-year term, which member serves a three-year term, and which member serves a four-year term;

(2) the members appointed solely by the commissioners court of the county shall draw lots to determine which member serves a one-year term, which member serves a two-year term, which member serves a three-year term, and which member serves a four-year term; and

(3) the member appointed jointly by the governing body of the municipality described by Subdivision (1) and the commissioners court serves a four-year term.

SECTION 2.212. Section 281.041, Health and Safety Code, is amended by amending Subsections (a) and (b) and adding Subsections (e) and (f) to read as follows:

(a) Except as provided by Subsection (e), on ~~On~~ the creation of a district under this chapter and the appointment and qualification of the district board, the county owning the hospital or hospital system, ~~or~~ the county and municipality jointly operating a hospital or hospital system, or the municipality owning a hospital or hospital system shall execute and deliver to the district board a written instrument conveying to the district the title to land, buildings, and equipment jointly or separately owned by the county and municipality and used to provide medical services or hospital care, including geriatric care, to indigent or needy persons of the county or municipality.

(b) On the creation of a district under this chapter and the appointment and qualification of the district board, the county owning the hospital or hospital system, ~~or~~ the county and municipality jointly operating a hospital or hospital system, or the municipality owning a hospital or hospital system shall, on the receipt of a certificate executed by the board's chairman stating that a depository for the district has been chosen and qualified, transfer to the district:

(1) all joint or separate county and municipal funds that are the proceeds of any bonds assumed by the district under Section 281.044; and

(2) all unexpended joint or separate county and municipal funds that have been established or appropriated by the county or municipality to support and maintain the hospital facilities for the year in which the district is created, to be used by the district to operate and maintain those facilities for the remainder of the year.

(e) A county or municipality transferring property or funds under this section is not required to transfer to the district:

(1) a medical facility used primarily for the treatment of inmates of a jail or any other correctional facilities, including juvenile justice facilities;

(2) property owned by the municipality that is used in connection with the provision of utility services, including electricity, water, wastewater, and sewer services;

(3) any real property or other assets related to a medical clinic facility on which construction has begun, but has not been completed, by the date on which the board members have been appointed and qualified to serve;

(4) a building and related land owned by the county or municipality that are used for purposes related or unrelated to the hospital or hospital system, except that:

(A) if the county or municipality retains ownership of the building and related land, the county or municipality shall lease the space used for hospital or hospital system purposes to the district for an initial term of three years unless a shorter term is otherwise agreed to by the district and the transferring entity; or

(B) if the county or municipality transfers the building and related land to the district, the district shall lease to the transferring entity the space not used for hospital or hospital system purposes for an initial term of three years unless a shorter term is otherwise agreed to by the district and the transferring entity;

(5) any or all of the public health services and related facilities of the county or municipality, other than a hospital or hospital district, unless the transfer of the public health services or a related facility to the district is mutually agreed to by the district and the transferring entity; or

(6) an ambulance service, emergency medical service, search and rescue service, or medical transport service that is owned or operated by the county or municipality, unless the transfer of all or part of the service and related buildings and equipment to the district is mutually agreed to by the district and the transferring entity.

(f) A transfer of an asset under this section, including a federally qualified health center, that would violate federal or state law unless a waiver or other authorization or approval is granted by a federal or state agency may not occur until the required waiver, authorization, or approval is obtained. A facility designated as a federally qualified health center under 42 U.S.C. Section 1396d(l)(2)(B), as amended, may not be transferred to the district until the district board has confirmed that the transfer will not jeopardize the federal designation of that facility.

SECTION 2.213. Section 281.043, Health and Safety Code, is amended to read as follows:

Sec. 281.043. ASSUMPTION OF CONTRACT OBLIGATIONS. On the creation of the district, the district assumes, without prejudice to the rights of third parties, any outstanding contract obligations legally incurred by the county or municipality, or both, for the construction, support, ~~or~~ maintenance, or

operation of hospital facilities and the provision of health care services or hospital care, including mental health care, to indigent residents of the county or municipality before the creation of the district.

SECTION 2.214. Subchapter C, Chapter 281, Health and Safety Code, is amended by adding Section 281.0461 to read as follows:

Sec. 281.0461. STUDY. (a) This section applies only to a district created in a county with a population of more than 800,000 that was not included in the boundaries of a hospital district before September 1, 2003.

(b) The board shall contract with an independent and disinterested person or entity to conduct a study to:

(1) examine the necessity of increased indigent, pediatric, trauma, and mental health care in the geographical area served by the district over the 5-year, 15-year, and 30-year periods following the date of the district's creation;

(2) examine the necessity of an increased number of health care specialists and nurses to adequately serve the district over the 5-year, 15-year, and 30-year periods following the date of the district's creation; and

(3) determine whether additional education and training programs will be required to address the issues studied under this section.

SECTION 2.215. The heading to Subchapter G, Chapter 281, Health and Safety Code, is amended to read as follows:

SUBCHAPTER G. TAXES [~~TO PAY BONDS~~]

SECTION 2.216. Section 281.121(b), Health and Safety Code, is amended to read as follows:

(b) The tax amount:

(1) must be sufficient to create an interest and sinking fund to pay the principal of and interest on the bonds as they mature; and

(2) may not exceed 75 cents on each \$100 of the taxable value of property taxable by the district, or the rate authorized in the election to create the district.

SECTION 2.217. Subchapter G, Chapter 281, Health and Safety Code, is amended by adding Sections 281.122 and 281.123 to read as follows:

Sec. 281.122. REDUCTION IN AD VALOREM TAX RATE BY GOVERNMENTAL ENTITY. (a) This section applies only to a district created in a county with a population of more than 800,000 that was not included in the boundaries of a hospital district before September 1, 2003.

(b) The commissioners court of the county and the governing body of the municipality with the largest population in the county, in determining the ad valorem tax rate of the county or municipality, as appropriate, for the first year in which the district imposes ad valorem taxes on property in the district, shall:

(1) take into account the decrease in the amount the county or municipality will spend for health care purposes in that year because the district is providing health care services previously provided or paid for by the county or municipality; and

(2) reduce the ad valorem tax rate adopted for the county or municipality, as appropriate, in accordance with the amount of the decrease.

(c) The commissioners court of the county and the governing body of the municipality with the largest population in the county shall retain an independent auditor to verify that the ad valorem tax rate of the county or municipality, as appropriate, has been reduced as required by Subsection (b).

Sec. 281.123. SALES AND USE TAX PROHIBITED FOR CERTAIN DISTRICTS. (a) This section applies only to a district created in a county with a population of more than 800,000 that was not included in the boundaries of a hospital district before September 1, 2003.

(b) The board may not impose a sales and use tax under Subchapter E, Chapter 285, or any other law.

SECTION 2.218. EFFECTIVE DATE. Except as otherwise provided by this article, this article takes effect September 1, 2003.

HB 2292 - DEBATE

REPRESENTATIVE CAPELO: Madam Chair, in the house version there were certain drugs that were listed to be studied before they were going to be put on the PDL list.

REPRESENTATIVE WOHLGEMUTH: That's correct.

CAPELO: And now, there have been changes with regards to that language. Could you explain what the changes in the study requirements are?

WOHLGEMUTH: In the house version, we had about five or six different specific disease and illness categories listed. Now, the criteria is for life-threatening chronic, life-threatening, chronic, and requiring complex medical management. And those include cancer—and we know of our list that was in there before, that those that are included now are cancer and cancer supportive care, end-stage renal disease, hemophilia, multiple sclerosis.

CAPELO: Thank you, madam chair.

WOHLGEMUTH: Thank you.

REPRESENTATIVE URESTI: Representative Wohlgemuth, I wanted to ask you some questions regarding the fiscal note that LBB prepared. And, specifically, on page 3 of 4, the third line, I'm reading that the CHIP eligibility and benefits are estimated to produce general revenue savings of \$66.2 million in fiscal year 2004, and then that amount increases to \$82.6 million in fiscal year 2008. I guess that means the biennium, is that correct? Am I reading that right? I'm confused, because it states 2004, and then it goes on four years later, 2008.

REPRESENTATIVE WOHLGEMUTH: That is for—and it says to 2008? I'm sorry, I don't have the fiscal note in front of me. But if it—the five year impact is also included on the fiscal notes.

URESTI: I understand. So, those benefits are achieved as a result of eliminating—or, I apologize. Those savings are achieved as a result of eliminating benefits that we currently had and provided to children, is that correct?

WOHLGEMUTH: The savings from the changes that were made to CHIP are from several different sources. The benefit package has been changed. The premium payment required of the family has been increased. And the eligibility has been changed to disallow income disregard, and to create an asset test.

URESTI: OK, so the benefit package—when you say the benefit package has changed, can you be a little more specific with regard to what benefits our children will no longer have under CHIP?

WOHLGEMUTH: To the best of my recollection—and that is not a direct result of **HB 2292—HB 2292** changes the number of months, and it changes the eligibility.

URESTI: Well, the fiscal note reads "CHIP eligibility and benefits", and that's why I ask that question.

WOHLGEMUTH: The dental is not covered, and I believe that mental is not covered. I believe that eyeglasses are not covered. Chiropractic is not covered.

URESTI: So, the first three that you talk about, though, dental—so, we are eliminating completely from the CHIP package, dental coverage. Is that correct?

WOHLGEMUTH: That is correct.

URESTI: And we are also eliminating vision and hearing benefits. So, if a young child needs glasses, we are not going—Texas is not going to cover them under the CHIP plan, is that correct?

WOHLGEMUTH: That is correct.

URESTI: And, another item is mental health. If we have a young child who has a mental illness of any sort, we are saying, in this package, that we are not going to cover those children, is that correct?

WOHLGEMUTH: That is correct. And that makes our CHIP plan be more equivalent to what would be available in the private sector.

URESTI: But, it saves us only \$66 million to eliminate those three items, and from not covering those children. Is that correct? It's still a policy issue, nonetheless, is it not?

WOHLGEMUTH: Yes, it is.

URESTI: And so the policy that we are sending with this bill, is that we have chosen to save \$66 million balanced against eliminating dental insurance, mental health coverage, or eyeglasses. So it still comes down to being a policy decision, correct?

WOHLGEMUTH: That is correct. And, most of the private sector plans also do not have those coverages.

URESTI: But some of them do. Some of them do, correct?

WOHLGEMUTH: I know of no plan that covers dental unless you buy a specific policy for dental. Many of the plans in the private sector have an add-on policy, but you perhaps know more about that than I.

URESTI: But nonetheless, we're talking about families that are between 100-200 percent of the federal poverty level, so we're not talking about families that are making \$60,000, \$70,000, or \$80,000 a year, and therefore qualify or can purchase different types of insurance policy that could provide those benefits, correct?

WOHLGEMUTH: We are talking about people between 100—generally—well, it's up to 200 percent of poverty.

URESTI: Correct. And so, that's my point. We're not talking about the families that are making \$60,000, or \$70,000, or \$80,000 a year. So when you talk about, it's in line with the insurance policies that are out there in the private sector, we're talking about families that can afford those types of policies, correct?

WOHLGEMUTH: I assume that you're saying that someone above 200 percent can more easily afford additional coverage, and I'm assuming that that would be correct.

URESTI: Representative Wohlgemuth, further down on the page, I don't know if you have this or not, but there's a paragraph that reads, "Premium tax sections are estimated to produce a gain to GR of \$30.9 million per year." And I don't know what that means, but it says "premium tax sections." What are we taxing that we're going to increase \$30.9 million per year?

WOHLGEMUTH: They are—up to this point, HMOs that provide Medicaid and CHIP have been excluded from the premium tax for insurance companies, and we are going to remove that exclusion. But we are doing so in order to bring that premium tax into the budget, use that to draw down federal money, and the insurance companies will eventually be able to get that back in their rates, if they prove up their rates.

URESTI: And this money, though, would go into the general revenue fund, correct?

WOHLGEMUTH: It's Medicaid—GR, you're right.

URESTI: According to this, it reads, "Premium tax sections are estimated to produce a gain to GR of \$30.9 million." So it would go into the general revenue fund.

WOHLGEMUTH: Yes.

URESTI: OK. And so this is a new tax that we haven't taxed before?

WOHLGEMUTH: This is not a new tax. This is—every other HMO pays that premium tax. This is removing an exemption from a current tax. It is not a new tax.

URESTI: And I guess the last page, the fourth page of four of the fiscal note reads, "Home and Community Support Service Agencies section is estimated to produce a loss in GR of \$227,000 per year."

WOHLGEMUTH: And what section is that? I'm sorry?

URESTI: It's Home and Community Support Services Agency section. Is that as a result of the consolidation? And I apologize, I know you don't have a copy in front of you, but that's exactly how it reads. And I'm just wondering, if it's a result of consolidation, why would we want to do that if it's going to result in a loss to GR of \$227,000 per year?

WOHLGEMUTH: Sorry, I don't quite understand which section we're talking about.

URESTI: But you can understand my concern, if it's—if we're losing money on that issue, it may not be in the best interest of Texas to do that. I'd just like to ask you a few more questions if I may, Representative Wohlgemuth. Do you know how many children that will no longer qualify for CHIP as a result of **HB 2292**?

WOHLGEMUTH: 17,000.

URESTI: But actually, it's about 160,000, is it not?

WOHLGEMUTH: The number of children who are on CHIP today, who would lose coverage because they are no longer eligible, is 17,000. There are additional children who, because the eligibility is determined every six months instead of every year, will lose that coverage because they fail to reapply, or because their family income exceeds the 200 percent of poverty, or because they have assets that no longer allow them to qualify.

URESTI: And what are those assets?

WOHLGEMUTH: There's a 90-day waiting period, and it's effective for only six months instead of effective for a year.

URESTI: And what are the assets that would disqualify a child from qualifying for CHIP?

WOHLGEMUTH: I don't believe that has yet been determined.

URESTI: So, if we don't know what those assets are, how can we determine that only 17,000 kids will not qualify for CHIP? I mean, that's not logical. I mean, because no one can make that estimate, if we don't know what the asset test is. I mean, if the asset test is you have \$500 in a savings account, or \$5,000—and if we don't know that, then how can anyone say that we're only going to lose 17,000 kids from CHIP? It's just not logical.

WOHLGEMUTH: I don't believe that it is spelled out in **HB 2292**. It is a part of **HB 1**, and the asset test is—accounts for 1.6 percent of the caseload that is being estimated.

URESTI: And I guess, Ms. Wohlgemuth, what I'm trying to get to, is what are those assets? I mean, how can we go back and tell our constituents, "Your children will not qualify for CHIP," or, "according to **HB 2292** or **HB 1**, only 17,000 kids won't qualify, but we can't tell you quite yet what assets qualify you or don't qualify you?"

WOHLGEMUTH: I believe that what we are talking about, is that the income is being verified and that there are no income disregards.

URESTI: And those income disregards mean if you're receiving child support, is that correct?

WOHLGEMUTH: Or paying child support out. It's primarily child support and transportation costs.

URESTI: Now—but what about if you're paying child care? What if you're a working family, you're going to work, you have your kids in daycare, you've got a full-time job, are you able to deduct the child care expenses?

WOHLGEMUTH: Not in consideration of your 200 percent of poverty.

URESTI: I'm sorry, I didn't hear you.

WOHLGEMUTH: Not in consideration of your 200 percent of poverty, which is \$36,800 a year.

URESTI: Right. And so, if you're a working family, if you've got a job, you're working, you're paying your taxes, but you pay child care to have your two kids or whatever in child care while you're holding down a job—we're saying that we're not going to allow you disregard that child support—or rather, the daycare expense. Is that correct?

WOHLGEMUTH: Are you able to disregard your child care expenses for qualifying for any other insurance?

URESTI: I'm sorry?

WOHLGEMUTH: I don't believe that you're able to disregard your child care dollars for qualifying for any other kind of insurance.

URESTI: But currently—

WOHLGEMUTH: This is about insurance. This is not about health care, this is about insurance.

URESTI: You don't believe that CHIP provides health care to the children of Texas?

WOHLGEMUTH: It is health insurance, but it is not health care. It is health insurance.

URESTI: So, health insurance does not relate to health care.

WOHLGEMUTH: Relates to, but is not the same as.

URESTI: Isn't the reason that we filed—that we passed CHIP to begin with, is so we can provide health care to our children? Isn't that why the governor signed this bill four years ago?

WOHLGEMUTH: We have any number of programs that provide health care to our children. And there are no children that are doing without health care. This is a way to provide health insurance for those up to 200 percent of poverty.

URESTI: But at the end of the day, it allows our children to see a doctor, to get their shots, and to stay out of the emergency room, does it not?

WOHLGEMUTH: Mr. Speaker, I move passage.

URESTI: Speaker, fellow members, I rise before you to respectfully speak in opposition to adopting the conference committee report on **HB 2292**. I do so because the policies contained therein are such that they will affect the daily lives of so many Texas citizens and are so different from the way we have conducted the government's business; that is the business of taking care of our poor, our needy, our elderly, and our sick.

Up to now, the legislature has established much of our health and human services policy in terms of program expansion, maintenance of effort, program eligibility, as is appropriate under every circumstance, because each of us is supposed to represent the people.

The conference committee report on **HB 2292** so drastically changes this structure in a way that I find it extremely objectionable for the following reasons: First of all, it gives the executive commissioner of the Health and Human Services Commission, who is selected solely by the governor, the full authority and responsibility to determine eligibility for benefits for CHIP, Medicaid, food stamps, and other nutritional assistance programs. This means anything and everything the executive commission thinks is appropriate. Members, what this means is that the house of representatives, the people's body, is giving away our power to the governor. The power that has been entrusted to us will be gone, the decision that our constituents sent us to make.

Secondly, it deletes the requirement that the commission adopt rules in consultation with the policy councils of the agencies that operate programs. Now the councils may assist and may make recommendations to the executive commissioner. So, what is the point of even having these policy councils?

It also requires that the state agency related to MHMR and local mental health agencies develop and implement a plan to privatize all services by intermediate facilities for persons under the Medicaid program with mental retardation.

It provides for extensive and extremely punitive family sanctions measures for individuals and families, and may result in the loss of important support and assistance if they fail to meet the long list of requirements under the personal responsibility agreement. It should be left at work related sanctions, because loss of benefits punishes the entire family, especially our children.

It provides that a child is only eligible for Medicaid for six months at a time; whereas, they have been eligible for Medicaid for one year. This is just another attempt to prevent as many of our little children as possible from receiving medical care from our state. What a shameful and unnecessary barrier to keeping the poor and our smallest and most innocent from receiving preventive care and medical care so that they can be healthy and grow up to be productive citizens. What will our legacy be if we deny these children, our future leaders, health care? What will they think of us when they grow up to realize that we just didn't care enough about them to keep them healthy, and prevent them from developing worse conditions?

Finally, and probably most disturbing, it reduces, in statute, the amount of personal needs allowance for a resident of nursing homes. Members, this is a reprehensible example of poor judgment in cuts. Moving the personal needs

allowance down to \$45 from \$60, permanently. I have spoken to you on this issue before. All this saves Texas is \$18 million. That is all we are saving, but we are doing it on the backs of our senior citizens. What this body is saying is that we are willing to cut these precious dollars to our elderly to save a measly \$18 million dollars in a \$118 billion dollar budget. That equates to .01% of our massive budget.

Members, this bill will pass. And as a result, our children, mentally retarded, and mentally ill, sick, and elderly will fail. They will fail because we will have failed to fight for them at the risk of our political careers. Proverbs 29:18 states, "where there is no vision, the people will perish."

I respectfully suggest to you that this bill has no vision for the poorest of the poor, and the sickest of the sick. We must speak for those whose voices will not be heard. Today, you can speak for them. Vote no on adoption of the conference committee report on **HB 2292**.

REPRESENTATIVE THOMPSON: Mr. Speaker, members, I'm not going to be long, but I'm going to just make one point before this bad bill is voted out of the house. We have talked a lot this session about personal needs cuts. And I think we won a vote recently last week—we talked about the poorest of the poor nursing homes, who really needed the \$60 a month to buy really minimal things like tennis shoes, mouthwash, shampoo, diapers, clothes, socks, shirts, sweaters, and so forth and so on. And you know what? You are really not giving these people anything. This money comes from their social security, from their pensions, and from their SSI. You are taking their money, their 25%, that's what you're doing. And what you are doing, is, you've taken one hundredth of 1% of what this budget really is. And you're hurting another group of people, who are the poorest of the poor, who really cannot afford these cuts. And so I'm going to vote against this bill. Finally, I've served here long enough where this legislature has considered giving up powers to the executive branch. And each time there was a democratic governor, and the house was wise enough, during those sessions, to use common sense and good judgement. Not for the moment, not for the personality who was there, not because we liked the person, but to look toward what was going to be good for the future. And we denied every one of those governors those rights that they requested. And I'm going to deny this one with my vote.

WOHLGEMUTH: Thank you, Mr. Speaker and members. **HB 2292** will streamline government, will allow us to devote our resources to improving the delivery of care to those who need it in Texas. And I think that we are being good stewards of the taxpayers' money by making it easier for the client to access those services and at the same time taking the money out of the bureaucracy and I move passage.

Representative Wohlgemuth moved to adopt the conference committee report on **HB 2292**.

A record vote was requested.

The motion prevailed by (Record 948): 87 Yeas, 58 Nays, 1 Present, not voting.

Yeas — Mr. Speaker(C); Allen; Berman; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Callegari; Campbell; Casteel; Chisum; Christian; Cook, B.; Cook, R.; Corte; Crabb; Crownover; Davis, J.; Dawson; Delisi; Denny; Driver; Eissler; Elkins; Ellis; Flynn; Gattis; Geren; Goolsby; Griggs; Grusendorf; Gutierrez; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Heflin; Hegar; Hilderbran; Hill; Hope; Howard; Hughes; Hunter; Hupp; Isett; Jones, E.; Keel; Keffer, B.; Keffer, J.; King; Kolkhorst; Kuempel; Laubenberg; Madden; Marchant; McCall; Mercer; Merritt; Miller; Morrison; Mowery; Nixon; Paxton; Phillips; Pitts; Reyna; Riddle; Ritter; Seaman; Smith, T.; Smith, W.; Smithee; Solomons; Stick; Swinford; Talton; Taylor; Truitt; Van Arsdale; West; Wohlgenuth; Wong; Woolley; Zedler.

Nays — Alonzo; Bailey; Burnam; Canales; Capelo; Castro; Chavez; Coleman; Davis, Y.; Deshotel; Dukes; Dunnam; Dutton; Edwards; Escobar; Farabee; Farrar; Flores; Gallego; Giddings; Goodman; Guillen; Haggerty; Hochberg; Hodge; Homer; Hopson; Jones, D.; Jones, J.; Laney; Lewis; Luna; Mabry; Martinez Fischer; McClendon; McReynolds; Menendez; Moreno, J.; Moreno, P.; Naishtat; Oliveira; Olivo; Peña; Pickett; Puente; Quintanilla; Raymond; Rodriguez; Rose; Solis; Telford; Thompson; Turner; Uresti; Villarreal; Wilson; Wise; Wolens.

Present, not voting — Baxter.

Absent, Excused — Garza.

Absent — Eiland; Krusee; Noriega.

STATEMENTS OF VOTE

When Record No. 948 was taken, I was temporarily out of the house chamber. I would have voted no.

Eiland

When Record No. 948 was taken, my vote failed to register. I would have voted no.

Noriega

REASONS FOR VOTE

I cast a "yes" vote for **HB 2292** because of the need to reorganize the Health and Human Services agencies of Texas state government; the millions of dollars that will be saved in the process, and the need to ensure the certification of the state budget by the comptroller. I object strenuously to Section 2.70, Chapter 285, Subchapter M, which provides local government the option to pay for free or low cost health insurance for illegal aliens, even though state funds are not used.

Berman, B. Cook,
Flynn, and Griggs

HB 2292 - STATEMENT OF LEGISLATIVE INTENT

As a conferee on **HB 2292**, I was particularly interested in broadening the availability of providers under the Texas Health Steps Comprehensive Care Program. This issue is addressed in the conference committee report as Section 2.204, on page 258 of the conference committee report on **HB 2292**.

This section is intended to increase the availability of providers in the Comprehensive Care Program and reduce administrative burdens on those providers. This section is not intended to increase costs to the Comprehensive Care Program over or above those appropriated in **HB 1**, but will ensure that children receiving services have adequate access to providers. The services provided under the Comprehensive Care Program allow medically fragile children to remain at home with their families, rather than being housed in hospitals or institutions at greater cost to the state.

J. Davis

**HR 1878 - ADOPTED
(by Eiland and Laney)**

Representative Eiland moved to suspend all necessary rules to take up and consider at this time **HR 1878**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 1878, Honoring Connie Mabin of the Associated Press for her work as a member of the Capitol Press Corps.

HR 1878 was adopted without objection.

On motion of Representative Raymond, the names of all the members of the house were added to **HR 1878** as signers thereof.

**HR 1881 - ADOPTED
(by Seaman)**

The following privileged resolution was laid before the house:

HR 1881

BE IT RESOLVED by the House of Representatives of the State of Texas, 78th Legislature, Regular Session, 2003, That House Rule 13, Section 9(a), be suspended in part as provided by House Rule 13, Section 9(f), to enable the conference committee appointed to resolve the differences on **SB 14**, relating to certain insurance rates, forms, and practices; providing penalties, to consider and take action on the following matters:

House Rule 13, Section 9(a)(4), is suspended to permit the committee to add the following new subdivision to Section 4(c), Article 5.142, Insurance Code, as added by the bill:

(2) a "new insurer" is defined as an insurer that, as of the effective date of **SB 14**, Acts of the 78th Legislature, Regular Session, 2003, is not authorized to write residential property insurance in this state and not affiliated with another

insurer that is authorized to write and is writing residential property insurance as of the effective date of SB 14, Acts of the 78th Legislature, Regular Session, 2003;

Explanation: This subsection is necessary to clarify certain filing requirements for certain insurers that were not writing residential property insurance or that were not affiliated with an insurer that was writing residential property insurance on the effective date of the bill.

House Rule 13, Section 9(a)(4), is suspended to permit the committee to add the following new article to the bill:

ARTICLE 16. RULEMAKING

SECTION 16.01. Section 36.001, Insurance Code, is amended to read as follows:

Sec. 36.001. ~~[RULES FOR]~~ GENERAL RULEMAKING AUTHORITY [AND UNIFORM APPLICATION]. (a) The commissioner may adopt any rules necessary and appropriate to implement [for the conduct and execution of] the powers and duties of the department under this code and other laws of this state [only as authorized by statute].

(b) Rules adopted under this section must have general and uniform application.

~~[(c) The commissioner shall publish the rules in a format organized by subject matter. The published rules shall be kept current and be available in a form convenient to any interested person.]~~

SECTION 16.02. Section 36.004, Insurance Code, is amended to read as follows:

Sec. 36.004. COMPLIANCE WITH NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS REQUIREMENTS. Except as provided by Section 36.005, the [The] department may not require an insurer to comply with a rule, regulation, directive, or standard adopted by the National Association of Insurance Commissioners, including a rule, regulation, directive, or standard relating to policy reserves, unless application of the rule, regulation, directive, or standard is expressly authorized by statute and approved by the commissioner.

SECTION 16.03. Subchapter A, Chapter 36, Insurance Code, is amended by adding Section 36.005 to read as follows:

Sec. 36.005. INTERIM RULES TO COMPLY WITH FEDERAL REQUIREMENTS. (a) The commissioner may adopt rules to implement state responsibility in compliance with a federal law or regulation or action of a federal court relating to a person or activity under the jurisdiction of the department if:

(1) federal law or regulation, or an action of a federal court, requires:

(A) a state to adopt the rules; or

(B) action by a state to ensure protection of the citizens of the state;

(2) the rules will avoid federal preemption of state insurance regulation;

or

(3) the rules will prevent the loss of federal funds to this state.

(b) The commissioner may adopt a rule under this section only if the federal action requiring the adoption of a rule occurs or takes effect between sessions of the legislature or at such time during a session of the legislature that sufficient

time does not remain to permit the preparation of a recommendation for legislative action or permit the legislature to act. A rule adopted under this section shall remain in effect only until 30 days following the end of the next session of the legislature unless a law is enacted that authorizes the subject matter of the rule. If a law is enacted that authorizes the subject matter of the rule, the rule will continue in effect.

SECTION 16.04. Article 3.42(p), Insurance Code, is amended to read as follows:

(p) The commissioner is hereby authorized to adopt [~~such~~] reasonable rules [~~and regulations~~] as [~~are~~] necessary to implement and accomplish the [~~specific provisions of this Article and are within the standards and~~] purposes of this Article. The commissioner shall adopt rules under this Article in compliance with Chapter 2001, Government Code [~~(Administrative Procedure Act)~~]. A rule adopted under this Article may not be repealed or amended until after the first anniversary of the adoption of the rule unless the commissioner finds that it is in the significant and material interests of the citizens of the state or that it is necessary as a result of legislative enactment to amend, repeal, or adopt a [~~in a public hearing after notice that there is a compelling public need for the amendment or repeal of the~~] rule or part of a [~~the~~] rule.

SECTION 16.05. Section 36.002, Insurance Code, is repealed.

Explanation: This article is necessary to broaden the commissioner's general rulemaking authority and to give the commissioner the authority to adopt certain interim rules.

House Rule 13, Section 9(a)(4), is suspended to permit the committee to add the following new article to the bill:

ARTICLE 20A. INSURER INTERESTS IN CERTAIN REPAIR FACILITIES

SECTION 20A.01. Section 2306.001(4), Occupations Code, as added by H.B. 1131, Acts of the 78th Legislature, Regular Session, 2003, is amended to read as follows:

(4) "Insurer" means an insurer authorized by the Texas Department of Insurance to write motor vehicle insurance in this state, including a county mutual insurance company, a Lloyd's plan, and a reciprocal or interinsurance exchange if that insurer owns an interest in a repair facility in this state. The term includes an entity that is an affiliate of an insurer as described by Section 823.003, Insurance Code.

SECTION 20A.02. Section 2306.001(4), Occupations Code, as amended by this article, is contingent on the passage of H.B. 1131, Acts of the 78th Legislature, Regular Session. If that legislation does not become law, Section 2306.001(4), Occupations Code, as amended by this article, has no effect.

Explanation: This article is necessary to clarify that an insurer who owns an interest in a motor vehicle repair facility in this state is subject to Chapter 2306, Occupations Code.

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

SECTION 21.405. Subchapter A, Chapter 912, Insurance Code, is amended by adding Section 912.005 to read as follows:

Sec. 912.005. LIMITATION ON TRANSFER OF BUSINESS TO COUNTY MUTUAL INSURANCE COMPANY. An insurer may not transfer more than 10 percent of the insurer's insurance policies to a county mutual insurance company without the prior approval of the commissioner.

Explanation: This section is necessary to prevent insurers from shifting business into markets that are less strictly regulated.

House Rule 13, Section 9(a)(2), is suspended to permit the committee to omit text which is not in disagreement:

SECTION 21.47. The following laws are repealed:

- (1) Articles 5.03-2, 5.03-3, 5.03-4, and 5.03-5, Insurance Code;
- (2) Articles 5.26(h), 5.33C, and 5.50, Insurance Code;
- (3) Section 5(b), Article 5.13-2, Insurance Code;
- (4) Section 4C, Article 5.73, Insurance Code;
- (5) Article 5.33B, Insurance Code, as added by Chapter 337, Acts of the 74th Legislature, Regular Session, 1995;
- (6) Articles 5.14, 5.15, and 5.15B, Insurance Code;
- (7) Article 5.97(e), Insurance Code; and
- (8) Section 4(b)(2), Article 21.49-3, Insurance Code.

Explanation: This section is necessary to preserve certain hearing requirements for the operation of the flexible rating program under Article 5.101, Insurance Code.

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

SECTION 21.48. Article 5.33A, Insurance Code, is repealed.

Explanation: This section is necessary to conform the bill to the elimination of certain insurance premium discounts.

HR 1881 was adopted.

SB 14 - 24 HOUR LAYOUT RULE SUSPENDED

Representative Seaman moved to suspend Rule 13, Section 10 of the house rules to consider the conference committee report on **SB 14** which was ineligible for consideration at this time.

The motion prevailed.

HR 1899 - ADOPTED (by Hegar)

Representative Hegar moved to suspend all necessary rules to take up and consider at this time **HR 1899**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 1899, Honoring Representative Jack Stick on his many achievements.

HR 1899 was adopted without objection.

HR 1898 - ADOPTED
(by Heflin)

Representative Heflin moved to suspend all necessary rules to take up and consider at this time **HR 1898**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 1898, Honoring Duong Du Hai of Houston for his many achievements.

HR 1898 was adopted without objection.

HR 1894 - ADOPTED
(by Riddle)

Representative Riddle moved to suspend all necessary rules to take up and consider at this time **HR 1894**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 1894, Honoring Harris County Republican Party precinct chair Alan Fritsche.

HR 1894 was adopted without objection.

On motion of Representative Seaman, the names of all the members of the house were added to **HR 1894** as signers thereof.

HR 1895 - ADOPTED
(by Riddle)

Representative Riddle moved to suspend all necessary rules to take up and consider at this time **HR 1895**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 1895, Honoring Harris County Republican Party precinct chair Peggy Hensley.

HR 1895 was adopted without objection.

On motion of Representative Seaman, the names of all the members of the house were added to **HR 1895** as signers thereof.

HR 1896 - ADOPTED
(by Riddle)

Representative Riddle moved to suspend all necessary rules to take up and consider at this time **HR 1896**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 1896, Honoring Harris County Republican Party precinct chair Zina H. Holland.

HR 1896 was adopted without objection.

On motion of Representative Seaman, the names of all the members of the house were added to **HR 1896** as signers thereof.

HR 1897 - ADOPTED
(by Riddle)

Representative Riddle moved to suspend all necessary rules to take up and consider at this time **HR 1897**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 1897, Honoring Harris County Republican Party precinct chair Sue Gerhart Kikis.

HR 1897 was adopted without objection.

On motion of Representative Seaman, the names of all the members of the house were added to **HR 1897** as signers thereof.

HR 1883 - ADOPTED
(by Riddle)

Representative Riddle moved to suspend all necessary rules to take up and consider at this time **HR 1883**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 1883, Honoring Harris County Republican Party precinct chair Dwight "Clint" Moore.

HR 1883 was adopted without objection.

On motion of Representative Seaman, the names of all the members of the house were added to **HR 1883** as signers thereof.

HR 1884 - ADOPTED
(by Riddle)

Representative Riddle moved to suspend all necessary rules to take up and consider at this time **HR 1884**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 1884, Honoring Harris County Republican Party precinct chair F. James Wunderlich.

HR 1884 was adopted without objection.

On motion of Representative Seaman, the names of all the members of the house were added to **HR 1884** as signers thereof.

HR 1885 - ADOPTED
(by Riddle)

Representative Riddle moved to suspend all necessary rules to take up and consider at this time **HR 1885**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 1885, Honoring Harris County Republican Party precinct chair Ron Crier.

HR 1885 was adopted without objection.

On motion of Representative Seaman, the names of all the members of the house were added to **HR 1885** as signers thereof.

HR 1886 - ADOPTED
(by Riddle)

Representative Riddle moved to suspend all necessary rules to take up and consider at this time **HR 1886**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 1886, Honoring Harris County Republican Party precinct chair Rudy Zoch.

HR 1886 was adopted without objection.

On motion of Representative Seaman, the names of all the members of the house were added to **HR 1886** as signers thereof.

HR 1887 - ADOPTED
(by Riddle)

Representative Riddle moved to suspend all necessary rules to take up and consider at this time **HR 1887**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 1887, Honoring Harris County Republican Party precinct chair John G. Haessly.

HR 1887 was adopted without objection.

On motion of Representative Seaman, the names of all the members of the house were added to **HR 1887** as signers thereof.

HR 1716 - ADOPTED
(by Krusee)

Representative Krusee moved to suspend all necessary rules to take up and consider at this time **HR 1716**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 1716, Commending the 2003 graduating class of Hill Country Christian School of Austin.

HR 1716 was adopted without objection.

HR 1744 - ADOPTED
(by Krusee)

Representative Krusee moved to suspend all necessary rules to take up and consider at this time **HR 1744**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 1744, Honoring Francine Lehr of Taylor on her retirement as district assistant for State Representative Mike Krusee.

HR 1744 was adopted without objection.

HR 1892 - ADOPTED
(by Gallego)

Representative Krusee moved to suspend all necessary rules to take up and consider at this time **HR 1892**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 1892, Honoring Kenneth Sorrells for his service as county commissioner for Edwards County.

HR 1892 was adopted without objection.

HR 1872 - ADOPTED
(by Gallego)

Representative Gallego moved to suspend all necessary rules to take up and consider at this time **HR 1872**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 1872, Honoring the life of Dr. Thomas L. Coats of Alpine.

HR 1872 was unanimously adopted by a rising vote.

HCR 293 - ADOPTED
(by Christian)

The following privileged resolution was laid before the house:

HCR 293

WHEREAS, **HB 425** has been adopted by the house of representatives and the senate and is being prepared for enrollment; and

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

RESOLVED by the 78th Legislature of the State of Texas, That the enrolling clerk of the house of representatives be instructed to correct **HB 425** by inserting page six, which was inadvertently omitted from the conference committee report as adopted, to read as follows:

officer or employee responsible for preparing or approving the note and stating for each year of the first five years that the rule will be in effect:

(A) the additional estimated cost to the state and to local governments expected as a result of enforcing or administering the rule;

(B) the estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule;

(C) the estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering the rule; and

(D) if applicable, that enforcing or administering the rule does not have foreseeable implications relating to cost or revenues of the state or local governments;

(5) a note about public benefits and costs showing the name and title of the officer or employee responsible for preparing or approving the note and stating for each year of the first five years that the rule will be in effect:

(A) the public benefits expected as a result of adoption of the proposed rule; and

(B) the probable economic cost to persons required to comply with the rule;

(6) the local employment impact statement prepared under Section 2001.022, if required;

HCR 293 was adopted without objection.

HCR 294 - ADOPTED
(by McReynolds)

The following privileged resolution was laid before the house:

HCR 294

WHEREAS, **HB 2044** has been adopted by the house of representatives and the senate and is being prepared for enrollment; and

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

RESOLVED by the 78th Legislature of the State of Texas, That the enrolling clerk of the house be instructed to correct **HB 2044** as follows:

Insert the following appropriately numbered SECTION into the bill and renumber existing SECTIONS of the bill accordingly:

SECTION ____. (a) On or before January 1, 2004, the School Land Board shall approve a patent to release all of the state's interest in the land described by Subsection (b) of this section, excluding mineral rights, to a person holding the land under a contract for deed with the Veterans' Land Board on January 1, 1964, or an heir or assign of that person, in exchange for consideration in an amount determined by the School Land Board in consultation with the Veterans' Land Board.

(b) This section applies to the tract of land described as follows: that 35.686 acre tract in that certain Judgement under cause No. 75-49, The Veterans Land Board of the State of Texas vs. Alice Christian, in the 4th Judicial District Court of Rusk County, Texas and in that certain judgement in Cause No. 55,765, State vs. Humble Oil, et al in the 98th District Court of Travis County, Texas; Said 117.436 acre tract is also further described in that Contract of Sale to said GRANTEE(s) dated October 14, 1963, recorded in Volume 782, Page 46, Deed Records of said County, Texas.

(c) The School Land Board, in determining the appropriate price for the sale of land described by this section, shall consider the title dispute and the history of the prior transactions.

(d) This section expires January 1, 2006.

HCR 294 was adopted without objection.

HCR 290 - ADOPTED

(by McCall)

The following privileged resolution was laid before the house:

HCR 290

WHEREAS, **HB 2425** has been adopted by the house of representatives and the senate and is being prepared for enrollment; and

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

RESOLVED by the 78th Legislature of the State of Texas, That the enrolling clerk of the house of representatives be instructed to correct **HB 2425** as follows:

(1) In Section 19(f), Article 42.12, Code of Criminal Procedure, as amended by SECTION 3 of the bill, strike "to the credit of the sexual assault program established under Section 44.0061, Health and Safety Code." and substitute "to the credit of the sexual assault program fund established under Section 420.008, Government [~~44.0061, Health and Safety~~] Code."

(2) In Section 661.152(e), Government Code, as amended by Senate Floor Amendment No. 7, strike "subsection, \"duty\" means" and substitute "subsection, \"duty day\" means".

(3) In Section 661.202(b), Government Code, as amended by Senate Floor Amendment No. 7, strike "subsection, \"duty\" means" and substitute "subsection, \"duty day\" means".

(4) Strike Section 403.413(b), Government Code, as amended by Senate Floor Amendment No. 12, and substitute the following:

(b) In determining eligible products and [~~small~~] businesses, the board shall give special preference to products or businesses in the areas of semiconductors, nanotechnology, biotechnology, and biomedicine that have the greatest likelihood of commercial success, job creation, and job retention in this state. The board shall give further preference to providing financing to projects or businesses that are:

(1) grantees under the small business innovation research program established under 15 U.S.C. Section 638, as amended;

- (2) companies formed in this state to commercialize research funded at least in part with state funds;
- (3) applicants that have acquired other sources of financing;
- (4) companies formed in this state and receiving assistance from designated state small business development centers; or
- (5) applicants who are residents of this state doing business in this state and performing financed activities predominantly in this state.

HCR 290 was adopted without objection.

SB 14 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Smithee submitted the conference committee report on **SB 14**.

SB 14 - STATEMENT OF LEGISLATIVE INTENT

REPRESENTATIVE SMITHEE: Mr. Speaker and members, up until about an hour ago, I was going to come to you with this bill this evening and regretfully tell you that I was going to have to vote against my own bill. And the reason for that, was there was some language that had been removed from the bill in conference committee that I thought was absolutely critical. I thought it was wrong to take the language out. And what it was, was to give the commissioner specific authority to review management fees. Now, we had a long discussion about management fees on the floor, and most of you know what they are. They are fees that are added to insurer's expenses for purposes of figuring rates, that have been abused in the past here in Texas, and have been a real source of concern. And it caused me great concern, and great pain, that the bill did not specifically address that. That language should have never been taken out. It should be in the bill, and I'm disappointed that it's not. I did—I didn't think I could go back and tell my constituents—and I couldn't tell you to tell your constituents—to go back home and say that we adopted an insurance reform bill that left out the management fee issue.

There were two things that I saw as solutions to this today, because I didn't want to get this bill killed. The first was to get a commitment from those insurers who use management fees, that they will allow—to voluntarily submit to the department over the next two years, their management fees. That effort met an absolute brick wall. I can tell you, that the carriers that use management fees—and one in particular—has treated the legislature, the department of insurance, and everyone else in Texas, with utter contempt today in our efforts to get them to deal with this. Let me repeat what I just said, because I want everyone in the legislature to understand this. This problem could have been resolved today, if we could have gotten one specific carrier—and several of the carriers that do management fees—but specifically one carrier that has been in the news lately. If they would have simply come and said, "We will voluntarily submit our management fees for review by the department, and we won't object to it"—and they wouldn't even get back with us on it. They treated us, especially the commissioner—and this is what upsets me—with utter contempt. With utter—ignoring that the State of Texas even exists. And I think that's wrong.

Now, I was prepared to try to defeat the bill based on that. But I will say that the other thing that I came up with yesterday evening, that I thought would adequately protect the ratepayers of Texas, is if we could get a two-way commitment. First of all, from the commissioner, to specifically examine these fees based on a provision in the bill, which relates to any unreasonably incurred expenses as determined by the commissioner after notice and hearing. If the commissioner would do that, and would review management fees, and then if he would report to the legislature on a quarterly basis that he had done that, and indicate any lack of cooperation—and I mean any, even the slightest lack of cooperation. And the third thing was, that if Governor Perry would commit to call—or to put this item on—and specifically the item of management fees on the special session agenda for public school finance—that if we could do that we would have adequate protection.

In the last hour, those things have occurred. I didn't want to have to ask the governor to do that. But I have, and he has consented. And here is the commitment that I have received within the last hour. The commissioner will specifically look at management fees under this provision—Paragraph H in the bill. He will report quarterly to the legislative oversight committee that's set up in the bill—the speaker, lieutenant governor, and governor—and if there is any hint of noncompliance or noncooperation, he will report that on a quarterly basis, or immediately if possible. And if there is that hint, the governor will publicly commit to add this agenda, this item—management fees—to the agenda of the special session. Based on Governor Perry's specific commitment—public commitment—to put this on a special session agenda when the financing special session is called, I believe that the consumers of Texas will be adequately protected from the abuse of management fees. But it's going to take the strong commitment of both the commissioner and the governor, and also—I think—the legislature to enforce this. But I believe if that happens, we will be adequately protected. It's a shame that it had to come to this, but that's where we are at 11:00 on the last night that we can pass this bill. But that's where we are.

REMARKS ORDERED PRINTED

Representative Wolens moved to print remarks by Representative Smithee.

The motion prevailed without objection.

Representative Smithee moved to adopt the conference committee report on **SB 14**.

A record vote was requested.

The motion prevailed by (Record 949): 113 Yeas, 34 Nays, 1 Present, not voting.

Yeas — Allen; Bailey; Baxter; Berman; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Callegari; Campbell; Capelo; Casteel; Chisum; Christian; Cook, B.; Cook, R.; Corte; Crabb; Crownover; Davis, J.; Dawson; Delisi; Denny; Deshotel; Driver; Dunnam; Eiland; Eissler; Elkins; Ellis; Farabee; Flynn; Gallego; Gattis; Goolsby; Griggs; Grusendorf; 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.; Keel; Keffer, B.; Keffer, J.; King; Kolkhorst; Krusee; Kuempel; Laney; Laubenberg; Lewis; Luna; Mabry; Madden; Marchant; McCall; McReynolds; Menendez; Mercer; Merritt; Miller; Morrison; Mowery; Nixon; Noriega; Paxton; Peña; Phillips; Pickett; Pitts; Quintanilla; Raymond; Reyna; Riddle; Ritter; Seaman; Smith, T.; Smith, W.; Smithee; Solomons; Stick; Swinford; Talton; Taylor; Telford; Truitt; Van Arsdale; Villarreal; West; Wise; Wohlgenuth; Wong; Woolley; Zedler.

Nays — Alonzo; Canales; Castro; Chavez; Coleman; Davis, Y.; Dukes; Dutton; Edwards; Escobar; Farrar; Flores; Geren; Giddings; Goodman; Guillen; Hodge; Jones, J.; Martinez Fischer; McClendon; Moreno, J.; Moreno, P.; Naishtat; Oliveira; Olivo; Puente; Rodriguez; Rose; Solis; Thompson; Turner; Uresti; Wilson; Wolens.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Garza.

Absent — Burnam.

STATEMENTS OF VOTE

When Record No. 949 was taken, I was in the house but away from my desk. I would have voted no.

Burnam

I was shown voting no on Record No. 949. I intended to vote yes.

Castro

I was shown voting no on Record No. 949. I intended to vote yes.

Edwards

I was shown voting no on Record No. 949. I intended to vote yes.

Martinez Fischer

I was shown voting no on Record No. 949. I intended to vote yes.

McClendon

I was shown voting no on Record No. 949. I intended to vote yes.

Rose

I was shown voting no on Record No. 949. I intended to vote yes.

Solis

I was shown voting no on Record No. 949. I intended to vote yes.

Turner

I was shown voting no on Record No. 949. I intended to vote yes.

Uresti

REASONS FOR VOTE

I believe the provisions in **SB 14** should be stronger. I will continue to work towards more comprehensive insurance reform that benefits homeowners, consumers, and the San Antonians hit hard by high insurance premiums.

Castro

I voted against **SB 14** for the following reasons:

(1) The conference committee report removed the credit scoring ban that the house voted for and protects consumers from unfair discrimination.

(2) Starting in December 2004 "file and use" takes effect and allows insurance companies to set any rate they want without state regulation. Allowing companies to set any rate they want on a required commodity cannot be good for consumers.

(3) The conference committee report removes the house rollback provision. The entire point of declaring this emergency legislation was to reduce insurance rates. Without this provision we have no guarantee of rate reduction.

(4) The provisions on management fees were removed and management fees by Farmer's Insurance have artificially inflated rates.

Chavez

The implications of passing the final version of **SB 14** remain to be seen. The bill was intended to be the centerpiece of this body's efforts to address the current insurance crisis and rate increases that plague so many Texans. To say that we are passing a comprehensive bill that was written to assist the individual insurance customer is simply not true.

The public held hope for an aggressive effort by the 78th Legislature to pass meaningful laws when the session began in January, and Governor Perry even labeled the insurance problem an "emergency issue" to highlight the urgency. However, in the final hours of the legislative session, it has become clear that any effort to reign in premium rates, empower the commissioner of insurance, or even address certain business practices of the large insurance companies has been stalled.

The conference committee report for **SB 14** is a varied mix of weak policy that may not be able to guarantee any significant relief for Texans who have seen significant rate increases for their insurance premiums. The Texas Department of Insurance has little scrutiny to address rate increases or management fees. Texan ratepayers who had hoped for a definite rate rollback are left with no guarantee. The conference committee report's final language used to direct a rate rollback is now suitably vague and the chance for no rollback at all is entirely possible. In earlier versions of the bill, a specific date was given to reduce rates back to a reasonable and justifiable level.

As for the practice of using credit scores in determining insurance rates, this provision has also been placed back in the bill even after the house voted to end the practice. Although the bill allows the use of credit-scores by insurance

companies to determine rates, nobody has been able to explain to the legislature how someone's ability to pay their Sears bill on time in any way makes them less likely to have hail damage to their home or car.

I almost always agree with free-market theories. However, when a product is required to be purchased to finance a home or drive an automobile, and when only four providers sell over seventy-five percent of the state's policies, how free is the market? The cost or regulation of a product cannot be blindly held to the mercy of market forces if a handful of businesses have cornered the market on a product that most Texans are required to purchase.

The willingness of this body to offer real relief to Texas insurance ratepayers was ignored in the conference committee report for **SB 14**. I am voting for **SB 14** because it is the only option given to me. I take issue with the lack of meaningful reforms provided in the bill. I encourage my fellow legislators to join me in studying the effects of **SB 14** to determine if any rate relief occurs.

Kolkhorst

In reference to **SB 14**, I am disappointed management fees continue to be an allowable practice for insurance companies and passed on to consumers, as well as the fact that credit scoring will continue to be used to deny insurance to Texans. However, I voted for **SB 14** because it appears to be the only relief our homeowners will get until legislators come back in two years to attempt to make real changes that will bring down insurance rates.

McClendon

I support insurance reform and therefore voted in favor of **SB 14**. However, I do not support credit scoring as a consideration in determining eligibility for homeowner's insurance.

Uresti

HB 2292 - REMARKS ORDERED PRINTED

Representative Solis moved to print remarks on **HB 2292**.

The motion prevailed without objection.

HB 1606 - RULES SUSPENDED

Representative Wolens moved to suspend Rule 8, Section 13, Rule 13, Section 10 of the house rules, and all other necessary rules to consider the conference committee report on **HB 1606** which was ineligible for consideration at this time.

The motion prevailed.

HB 1606 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Wolens submitted the following conference committee report on **HB 1606** :

Austin, Texas, May 31, 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 1606** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Ellis, Rodney
 Brimer
 Ogden
 Ratliff
 Whitmire

Wolens
 Denny
 Keel
 Madden
 Wilson

On the part of the senate

On the part of the house

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.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:
 ARTICLE 1. FUNCTIONS AND DUTIES OF TEXAS ETHICS COMMISSION

SECTION 1.01. Section 571.002, Government Code, is amended by adding Subdivision (2-a) to read as follows:

(2-a) "Executive director" means the executive director of the commission.

SECTION 1.02. Section 571.022, Government Code, is amended to read as follows:

Sec. 571.022. SUNSET PROVISION. The commission is subject to review under Chapter 325 (Texas Sunset Act), but is not abolished under that chapter. The commission shall be reviewed during the periods in which state agencies abolished in 2015 ~~[2003]~~ and every 12th year after that year are reviewed.

SECTION 1.03. Subchapter B, Chapter 571, Government Code, is amended by adding Sections 571.0231 and 571.0232 to read as follows:

Sec. 571.0231. RESTRICTION ON COMMISSION MEMBERSHIP. A person may not be a member of the commission if the person is required to register as a lobbyist under Chapter 305.

Sec. 571.0232. GROUNDS FOR REMOVAL. (a) It is a ground for removal from the commission that a member:

(1) does not have at the time of taking office the qualifications required by Section 24a, Article III, Texas Constitution;

(2) does not maintain during service on the commission the qualifications required by Section 24a, Article III, Texas Constitution;

(3) is ineligible for membership under Section 571.0231;

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

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

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

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

SECTION 1.04. Section 571.026(c), Government Code, is amended to read as follows:

(c) An ~~[Except as otherwise provided by this chapter, an]~~ action or recommendation of the commission requiring a vote of the commission is not valid unless:

(1) the action or recommendation is approved by a record ~~[the]~~ vote ~~[is]~~ taken at a meeting of the commission with a quorum present; and

(2) except as otherwise provided by this chapter, the action or recommendation receives an affirmative vote of a majority of the membership of the commission.

SECTION 1.05. Section 571.027(a), Government Code, is amended to read as follows:

(a) A member of the commission may not participate in a commission proceeding relating to any of the following actions if the member is the subject of the action:

(1) a formal investigation by the commission;

(2) a sworn complaint filed with the commission; or

(3) a motion adopted by ~~[an affirmative record]~~ vote of at least six members of the commission.

SECTION 1.06. Subchapter B, Chapter 571, Government Code, is amended by adding Sections 571.0271 and 571.030-571.0303 to read as follows:

Sec. 571.0271. COMMISSION MEMBER TRAINING. (a) A person who is appointed to and qualifies for office as a member of the commission may not vote, deliberate, or be counted as a member in attendance at a meeting of the commission until the person completes a training program that complies with this section.

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

(1) the legislation that created the commission;

(2) the programs operated by the commission;

(3) the role and functions of the commission;

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

(5) the current budget for the commission;

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

(7) the requirements of:

- (A) the open meetings law, Chapter 551;
 - (B) the public information law, Chapter 552;
 - (C) the administrative procedure law, Chapter 2001; and
 - (D) other laws relating to public officials, including conflict-of-interest laws; and
- (8) any applicable ethics policies adopted by the commission.

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

Sec. 571.030. SEPARATION OF RESPONSIBILITIES. The commission shall develop and implement policies that clearly separate the policy-making responsibilities of the commission and the management responsibilities of the executive director and the staff of the commission.

Sec. 571.0301. INFORMATION TO MEMBERS AND EMPLOYEES. The executive director or the executive director's designee shall provide to members and employees of the commission, 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. 571.0302. EQUAL EMPLOYMENT POLICY. (a) The executive director or the executive director's designee shall prepare and maintain a written policy statement that implements a program of equal employment opportunity to ensure that all personnel decisions are made without regard to race, color, disability, sex, religion, age, or national origin.

(b) The policy statement must include:

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

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

(c) The policy statement must:

(1) be updated annually;

(2) be reviewed by the state Commission on Human Rights for compliance with Subsection (b)(1); and

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

Sec. 571.0303. TRAINING ON STATE EMPLOYEE INCENTIVE PROGRAM. The executive director or the executive director's designee shall provide to commission employees information and training on the benefits and methods of participation in the state employee incentive program.

SECTION 1.07. Section 571.033, Government Code, is renumbered as Section 571.0221, Government Code, and amended to read as follows:

Sec. 571.0221 [~~571.033~~]. DISCRIMINATION PROHIBITED. Appointments to the commission shall be made without regard to the [This chapter may not be applied to discriminate on the basis of] race, color, disability, sex, age, national origin, or religion of the appointees.

SECTION 1.08. Section 254.0361, Election Code, is transferred to Subchapter C, Chapter 571, Government Code, is redesignated as Section 571.0671, Government Code, and is amended to read as follows:

Sec. 571.0671 [~~254.0361~~]. REQUIREMENTS FOR ELECTRONIC FILING SOFTWARE. (a) Computer software provided or approved by the commission for use under Section 254.036(b), Election Code, or Section 302.013 or 305.0064 must:

(1) use a standardized format for the entry of names, addresses, and zip codes;

(2) provide for secure and encoded transmission of data from the computer of a person filing a report to the computers used by the commission;

(3) be capable of being used by a person with basic computing skills [~~who uses a computer that uses a Windows operating system, Macintosh operating system, or another operating system that the commission determines is as popular as those systems for use with personal computers~~]; ~~[and]~~

(4) provide confirmation to a person filing a report that the report was properly received; and

(5) permit a person using a computer to prepare a report or to retrieve information from a report to import information to the report from a variety of computer software applications that meet commission specifications for a standard file format or export information from the report to a variety of computer software applications that meet commission specifications for a standard file format without the need to reenter information.

(b) Before determining the specifications for computer software developed, purchased, or licensed for use under Section 254.036, Election Code, or Section 302.013 or 305.0064, the commission shall conduct at least one public hearing to discuss the specifications. For at least 10 days following the hearing, the commission shall accept public comments concerning the software specifications.

(c) The commission may provide software for use under Section 254.036(b), Election Code, or Section 302.013 or 305.0064 by making the software available on the Internet. If the commission makes the software available on the Internet, the commission is not required to provide the software on computer diskettes, CD-ROMs, or other storage media without charge to persons required to file reports under that section, but may charge a fee for providing the software on storage media. A fee under this subsection may not exceed the cost to the commission of providing the software.

SECTION 1.09. Subchapter C, Chapter 571, Government Code, is amended by adding Section 571.0672 to read as follows:

Sec. 571.0672. PROPOSITION OF TECHNOLOGICAL SOLUTIONS.

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

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

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

(A) interact with the commission 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 commission's planning processes.

SECTION 1.10. Section 571.069, Government Code, is amended by amending Subsections (a) and (b) and adding Subsection (f) to read as follows:

(a) The commission shall ~~[may]~~ review for facial compliance randomly selected statements and reports ~~[a statement or report]~~ filed with the commission and may review any available documents. The commission shall ~~[may]~~ return for resubmission with corrections or additional documentation a statement or report that does not, in the opinion of the commission, comply with the law requiring the statement or report. A statement or report returned for resubmission is considered to have been filed on the date the statement or report was originally filed if:

(1) the statement or report is resubmitted to the commission not later than the seventh business day after the date the person filing the statement or report receives the returned statement or report; and

(2) the resubmitted statement or report complies with law.

(b) The commission may by a ~~[an affirmative record]~~ vote of at least six commission members initiate a preliminary review as provided by Section 571.124 or perform a complete audit of a statement or report:

(1) if, before the 31st day after the date the statement or report was originally due, the executive director does not obtain from the person information that permits the executive director to determine that the statement or report complies with law;

(2) if a statement or report returned for resubmission is not resubmitted within the time prescribed by Subsection (a); or

(3) on an affirmative vote of at least six commission members that a statement or report resubmitted under Subsection (a), together with any corrections or additional documentation, does not, in the opinion of the commission, comply with the law requiring the statement or report ~~[only at an informal or formal hearing].~~

(f) This section may not be construed as limiting or affecting the commission's authority to, on the filing of a motion or receipt of a sworn complaint, review or investigate the sufficiency of a statement or report.

SECTION 1.11. Section 571.071, Government Code, is amended by adding Subsection (c) to read as follows:

(c) The commission may provide a seminar for persons required to register under Chapter 305 that addresses issues involving lobbying, political contributions and expenditures, and other issues as determined by the commission. The commission may charge a fee for attending the seminar in an amount necessary to cover the costs associated with the seminar.

SECTION 1.12. Section 571.073, Government Code, is amended to read as follows:

Sec. 571.073. REPORT. On or before December 31 of each even-numbered year, the commission shall report to the governor and legislature. The report must include:

(1) each advisory opinion issued by the commission under Subchapter D in the preceding two years;

(2) a summary of commission activities in the preceding two years, including:

(A) the number of sworn complaints filed with the commission;

(B) the number of sworn complaints dismissed for noncompliance with statutory form requirements;

(C) the number of sworn complaints dismissed for lack of jurisdiction;

(D) the number of sworn complaints dismissed after a finding of no credible evidence of a violation;

(E) the number of sworn complaints dismissed after a finding of a lack of sufficient evidence to determine whether a violation within the jurisdiction of the commission has occurred;

(F) the number of sworn complaints resolved by the commission through an agreed order;

(G) the number of sworn complaints in which the commission issued an order finding a violation and the resulting penalties, if any; and

(H) the number and amount of civil penalties imposed for failure to timely file a statement or report, the number and amount of those civil penalties fully paid, the number and amount of those civil penalties partially paid, and the number and amount of those civil penalties no part of which has been paid, for each of the following category of statements and reports, listed separately:

(i) financial statements required to be filed under Chapter 572;

(ii) political contribution and expenditure reports required to be filed under Section 254.063, 254.093, 254.123, 254.153, or 254.157, Election Code;

(iii) political contribution and expenditure reports required to be filed under Section 254.064(b), 254.124(b), or 254.154(b), Election Code;

(iv) political contribution and expenditure reports required to be filed under Section 254.064(c), 254.124(c), or 254.154(c), Election Code;

(v) political contribution and expenditure reports required to be filed under Section 254.038 or 254.039, Election Code; and

(vi) political contribution and expenditure reports required to be filed under Section 254.0391, Election Code; and

(3) recommendations for any necessary statutory changes.

SECTION 1.13. Subchapter C, Chapter 571, Government Code, is amended by adding Sections 571.0771, 571.078, and 571.079 to read as follows:

Sec. 571.0771. CORRECTED STATEMENTS, REGISTRATIONS, AND REPORTS CONSIDERED TIMELY FILED. (a) A statement, registration, or report required that is filed with the commission is not considered to be late for purposes of any applicable civil penalty for late filing of the statement, registration, or report if:

(1) the statement, registration, or report as originally filed substantially complies with the applicable law; and

(2) the person filing the statement, registration, or report files a corrected or amended statement, registration, or report not later than the 14th business day after the date the person learns that the statement, registration, or report as originally filed is inaccurate or incomplete.

(b) This section does not apply to a penalty imposed under Section 571.069 or Subchapter E or F.

Sec. 571.078. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE RESOLUTION. (a) The commission shall develop and implement a policy to encourage the use of:

(1) negotiated rulemaking procedures under Chapter 2008 for the adoption of commission rules; and

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

(b) Subsection (a)(2) does not apply to a preliminary review or preliminary review hearing under Sections 571.124 through 571.126.

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

(d) The commission shall designate a trained person to:

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

(2) serve as a resource for any training needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and

(3) collect data concerning the effectiveness of those procedures, as implemented by the commission.

Sec. 571.079. POSTING INFORMATION RELATING TO UNPAID PENALTIES ON WEBSITE. (a) Not later than the 15th day after the date on which an application for a place on the general primary election ballot or for nomination by convention is required to be filed, the commission shall post on its Internet website:

(1) the name and address of each candidate for an office specified by Section 252.005(1), Election Code, who has failed to pay a civil penalty imposed by the commission for failure to file with the commission a required report or statement under Chapter 254, Election Code, or Chapter 572; and

(2) for each candidate listed under Subdivision (1), the amount of the penalty imposed and the amount paid, if any.

(b) The commission may not post information under this section that relates to a civil penalty while the penalty is the subject of an administrative or judicial appeal by the candidate against whom the penalty is imposed.

(c) The commission shall remove from the commission's Internet website information posted under this section as soon as practicable after the candidate pays the civil penalty in full.

SECTION 1.14. Section 571.121(a), Government Code, is amended to read as follows:

(a) The commission may:

(1) hold hearings, on its own motion adopted by an affirmative [~~record~~] vote of at least six commission members or on a sworn complaint, and render decisions on complaints or reports of violations as provided by this chapter; and

(2) agree to the settlement of issues.

SECTION 1.15. Subchapter E, Chapter 571, Government Code, is amended by adding Sections 571.1211 and 571.1212 to read as follows:

Sec. 571.1211. DEFINITIONS. In this subchapter:

(1) "Campaign communication" and "political advertising" have the meanings assigned by Section 251.001, Election Code.

(2) "Category One violation" means a violation of a law within jurisdiction of the commission as to which it is generally not difficult to ascertain whether the violation occurred or did not occur, including:

(A) the failure by a person required to file a statement or report to:

(i) file the required statement or report in a manner that complies with applicable requirements; or

(ii) timely file the required statement or report;

(B) a violation of Section 255.001, Election Code;

(C) a misrepresentation in political advertising or a campaign communication relating to the office held by a person in violation of Section 255.006, Election Code;

(D) a failure to include in any written political advertising intended to be seen from a road the right-of-way notice in violation of Section 255.007, Election Code; or

(E) a failure to timely respond to a written notice under Section 571.123(b).

(3) "Category Two violation" means a violation of a law within the jurisdiction of the commission that is not a Category One violation.

Sec. 571.1212. CATEGORIZATION OF VIOLATIONS. An allegation of a violation listed as a Category One violation shall be treated as a Category Two violation if the executive director at any time determines that:

(1) the allegation arises out of the same set of facts as those that give rise to an allegation of a Category Two violation, and the interests of justice or efficiency require resolution of the allegations together; or

(2) the facts and law related to a particular allegation or a defense to the allegation present a level of complexity that prevents resolution through the preliminary review procedures for Category One violations prescribed by Section 571.1242(a).

SECTION 1.16. Section 571.122(a), Government Code, is amended to read as follows:

(a) An individual may file with the commission a sworn complaint, on a form prescribed by the commission, alleging that a person subject to a law administered and enforced by the commission has violated a rule adopted by or a law administered and enforced by the commission. The commission shall make the complaint form available on the Internet.

SECTION 1.17. Section 571.123(b), Government Code, is amended to read as follows:

(b) Not later than the fifth [~~fourth~~] business day after the date a complaint is filed, the commission shall send written notice to the complainant and the respondent. The notice must state whether the complaint complies with the form requirements of Section 571.122.

SECTION 1.18. Sections 571.124(a)-(c), (e), and (f), Government Code, are amended to read as follows:

(a) The commission staff [~~promptly~~] shall promptly conduct a preliminary review on receipt of a written complaint that is in compliance with the form requirements of Section 571.122.

(b) On a motion adopted by an affirmative [~~record~~] vote of at least six commission members, the commission, without a sworn complaint, may initiate a preliminary review of the matter that is the subject of the motion.

(c) The executive director [~~commission by record vote~~] shall determine in writing whether the commission has jurisdiction over the violation of law alleged in a sworn complaint processed under Section 571.123.

(e) If the executive director [~~commission~~] determines that the commission has jurisdiction, the notice under Section 571.123(b) must include:

(1) a statement that the commission has jurisdiction over the violation of law alleged in the complaint;

(2) a statement of whether the complaint will be processed as a Category One violation or a Category Two violation, subject to reconsideration as provided for by Section 571.1212;

(3) the date by which the respondent is required to respond to the notice;

(4) a copy of the complaint and the rules of procedure of the commission;

(5) [(-)] a statement of the rights of the respondent;

(6) [(-)] a statement inviting the respondent to provide to the commission any information relevant to the complaint; and

(7) a statement that a failure to timely respond to the notice will be treated as a separate violation [(4) the date the commission will begin a preliminary review of the complaint].

(f) If the executive director [commission] determines that the commission does not have jurisdiction over the violation alleged in the complaint, the executive director [commission] shall:

(1) dismiss the complaint; and

(2) not later than the fifth business day after the date of the dismissal, send to the complainant and the respondent written notice of the dismissal and the grounds for the dismissal.

SECTION 1.19. Subchapter E, Chapter 571, Government Code, is amended by adding Sections 571.1241-571.1244 to read as follows:

Sec. 571.1241. REVIEW OF EXECUTIVE DIRECTOR'S DETERMINATION OF NO JURISDICTION. (a) If the executive director determines that the commission does not have jurisdiction over the violation alleged in the complaint, the complainant may request that the commission review the determination. A request for review under this section must be filed not later than the 30th day after the date the complainant receives the executive director's determination.

(b) The commission may reverse the executive director's determination only on the affirmative vote of at least six members.

(c) Not later than the fifth business day after the date of the commission's determination under this section, the commission shall send written notice to the complainant and the respondent stating whether the commission has jurisdiction over the violation alleged in the complaint. If the commission determines that the commission has jurisdiction, the notice must include the items listed in Section 571.124(e).

Sec. 571.1242. PRELIMINARY REVIEW: RESPONSE BY RESPONDENT. (a) If the alleged violation is a Category One violation:

(1) the respondent must respond to the notice required by Section 571.123(b) not later than the 10th business day after the date the respondent receives the notice; and

(2) if the matter is not resolved by agreement between the commission and the respondent before the 30th business day after the date the respondent receives the notice under Section 571.123(b), the commission shall set the matter for a preliminary review hearing to be held at the next commission meeting for which notice has not yet been posted.

(b) If the alleged violation is a Category Two violation:

(1) the respondent must respond to the notice required by Section 571.123(b) not later than the 25th business day after the date the respondent receives the notice under Section 571.123(b); and

(2) if the matter is not resolved by agreement between the commission and the respondent before the 75th business day after the date the respondent receives the notice under Section 571.123(b), the commission shall set the matter for a preliminary review hearing to be held at the next commission meeting for which notice has not yet been posted.

(c) A respondent's failure to timely respond as required by Subsection (a)(1) or (b)(1) is a Category One violation.

(d) The response required by Subsection (a) or (b) must include any challenge the respondent seeks to raise to the commission's exercise of jurisdiction. In addition, the respondent may:

(1) acknowledge the occurrence or commission of a violation;

(2) deny the allegations contained in the complaint and provide evidence supporting the denial; or

(3) agree to enter into an assurance of voluntary compliance or other agreed order, which may include an agreement to immediately cease and desist.

(e) If the commission sets the matter for a preliminary review hearing, the commission shall promptly send to the complainant and the respondent written notice of the date, time, and place of the preliminary review hearing.

Sec. 571.1243. PRELIMINARY REVIEW: WRITTEN QUESTIONS. During a preliminary review, the commission staff may submit to the complainant or respondent written questions reasonably intended to lead to the discovery of matters relevant to the investigation.

Sec. 571.1244. PRELIMINARY REVIEW AND PRELIMINARY REVIEW PROCEDURES. The commission shall adopt procedures for the conduct of preliminary reviews and preliminary review hearings. The procedures must include:

(1) a reasonable time for responding to questions submitted by the commission and commission staff and subpoenas issued by the commission; and

(2) the tolling or extension of otherwise applicable deadlines where:

(A) the commission issues a subpoena and the commission's meeting schedule makes it impossible both to provide a reasonable time for response and to comply with the otherwise applicable deadlines; or

(B) the commission determines that, despite commission staff's diligence and the reasonable cooperation of the respondent, a matter is too complex to resolve within the otherwise applicable deadlines without compromising either the commission staff's investigation or the rights of the respondent.

SECTION 1.20. Section 571.125, Government Code, is amended to read as follows:

Sec. 571.125. PRELIMINARY REVIEW HEARING: PROCEDURE. (a) The commission shall conduct a preliminary review hearing if:

(1) following the preliminary review, the commission and the respondent cannot agree to the disposition of the complaint or motion; or

(2) the respondent in writing requests a hearing.

(b) The commission shall provide written notice to the complainant, if any, and the respondent of the date, time, and place the commission will conduct the preliminary review hearing.

(c) At or after the time the commission provides notice of a preliminary review hearing, the commission may submit to the complainant and the respondent written questions and require those questions to be answered under oath within a reasonable time.

(d) During a preliminary review hearing, the commission:

(1) may consider all submitted evidence related to the complaint or to the subject matter of a motion under Section 571.124(b);

(2) may review any documents or material related to the complaint or to the motion; and

(3) shall determine whether there is credible evidence that provides cause for the commission to conclude that a violation within the jurisdiction of the commission has occurred.

(e) ~~(b)~~ During a preliminary review hearing, the respondent may appear before the commission with the assistance of counsel, if desired by the respondent, and present any relevant evidence, including a written statement.

SECTION 1.21. The heading to Section 571.126, Government Code, is amended to read as follows:

Sec. 571.126. PRELIMINARY REVIEW HEARING: RESOLUTION.

SECTION 1.22. Sections 571.126(a), (b), and (d), Government Code, are amended to read as follows:

(a) As soon as practicable after the completion of a preliminary review hearing, the commission by ~~[record]~~ vote shall issue a decision stating:

(1) whether there is credible evidence for the commission to determine that a violation within the jurisdiction of the commission has occurred and whether the violation is technical or de minimis; or

(2) that there is insufficient evidence for the commission to determine whether a violation within the jurisdiction of the commission has occurred.

(b) If the commission determines that there is credible evidence for the commission to determine that a violation has occurred, the commission shall resolve and settle the complaint or motion to the extent possible. If the commission successfully resolves and settles the complaint or motion, not later than the fifth business day after the date of the final resolution of the complaint or motion, the commission shall send to the complainant, if any, and the respondent a copy of the decision stating the commission's determination and written notice of the resolution and the terms of the resolution. If the commission is unsuccessful in resolving and settling the complaint or motion, the commission ~~[in its discretion]~~ shall:

(1) order a formal ~~[an informal]~~ hearing to be held in accordance with Sections 571.129 through 571.132 ~~[Section 571.127]~~; and

(2) not later than the fifth business day after the date of the decision, send to the complainant, if any, and the respondent:

(A) a copy of the decision;

(B) ~~[and]~~ written notice of the date, time, and place of the formal ~~[informal]~~ hearing;

(C) a statement of the nature of the alleged violation;

(D) a description of the evidence of the alleged violation;

(E) a copy of the complaint or motion;

(F) a copy of the commission's rules of procedure; and

(G) a statement of the rights of the respondent.

(d) If the commission determines that there is insufficient credible evidence for the commission to determine that a violation within the jurisdiction of the commission has occurred, the commission may dismiss the complaint or motion or promptly conduct a formal [~~an informal~~] hearing under Sections 571.129 through 571.132 [~~Section 571.127~~]. Not later than the fifth business day after the date of the commission's determination under this subsection, the commission shall send to the complainant, if any, and the respondent a copy of the decision stating the commission's determination and written notice of the grounds for the determination.

SECTION 1.23. Section 571.129, Government Code, is amended to read as follows:

Sec. 571.129. FORMAL HEARING: STANDARD OF EVIDENCE. During a formal hearing, the commission shall determine by a preponderance of the [~~clear and convincing~~] evidence whether a violation within the jurisdiction of the commission has occurred.

SECTION 1.24. Sections 571.132(a) and (b), Government Code, are amended to read as follows:

(a) Not later than the 30th business day after the date the State Office of Administrative Hearings issues a proposal for decision [~~formal hearing is completed~~], the commission shall convene a meeting and by motion shall issue:

(1) a final decision stating the resolution of the formal hearing; and
(2) a written report stating in detail the commission's findings of fact, conclusions of law, and recommendation of criminal referral or imposition of a civil penalty, if any.

(b) The motion must be adopted by a [~~record~~] vote of at least six members if the final decision is that a violation has occurred or by five members if the final decision is that a violation has not occurred.

SECTION 1.25. Subchapter E, Chapter 571, Government Code, is amended by amending Sections 571.135 and 571.136 and adding Section 571.1351 to read as follows:

Sec. 571.135. PUBLIC INTEREST INFORMATION[; ~~STATUS OF COMPLAINT~~]. (a) The commission shall develop plain-language materials as described by this section [~~prepare information of public interest describing the functions of the commission and the procedures by which sworn or other complaints are filed with and resolved by the commission~~]. The commission shall distribute the materials [~~make the information available~~] to the public and appropriate state agencies.

(b) The materials must include:

(1) a description of:
(A) the commission's responsibilities;
(B) the types of conduct that constitute a violation of a law within the jurisdiction of the commission;
(C) the types of sanctions the commission may impose;
(D) the commission's policies and procedures relating to complaint investigation and resolution; and

(E) the duties of a person filing a complaint with the commission;
and

(2) a diagram showing the basic steps in the commission's procedures relating to complaint investigation and resolution.

(c) The commission shall provide the materials described by this section to each complainant and respondent.

(d) The commission shall adopt a policy to effectively distribute materials as required by this section.

Sec. 571.1351. STATUS OF COMPLAINT. (a) ~~(b)~~ The commission shall keep an information file about each sworn or other complaint filed with the commission. The file must include:

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

(2) the date the complaint is received by the commission;

(3) the subject matter of the complaint;

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

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

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

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

(c) In addition to the notice required by Sections 571.123 ~~[571.124]~~ through 571.132, the commission, at least quarterly ~~and~~ until final disposition of a complaint, shall notify the person who filed the complaint ~~[complainant]~~ and each person who is a subject of the complaint ~~[the respondent]~~, if any, of the status of the sworn or other complaint.

Sec. 571.136. EXTENSION OF DEADLINE. The commission may, on its own motion or on the reasonable request of a respondent, extend any deadline for action relating to a sworn complaint, motion, preliminary review~~[-informal]~~ hearing, or formal hearing.

SECTION 1.26. Section 571.137, Government Code, is amended by amending Subsections (a) and (e) and adding Subsections (a-1)-(a-3) to read as follows:

(a) In connection with ~~[an informal or]~~ a formal hearing, the commission, as authorized by this chapter, may subpoena and examine witnesses and documents that directly relate to a sworn complaint.

(a-1) In connection with a preliminary review, the commission, for good cause and as authorized by this chapter, may subpoena documents and witnesses on application by the commission staff and a motion adopted by a vote of at least six members of the commission, for the purpose of attempting to obtain from the documents or witnesses specifically identified information, if the commission reasonably believes that the specifically identified information:

(1) is likely to be determinative as to whether the subject of an investigation has violated a law within the jurisdiction of the commission;

(2) can be determined from the documents or is known by the witnesses; and

(3) is not reasonably available through a less intrusive means.

(a-2) The commission shall adopt procedures for the issuance of subpoenas under this section.

(a-3) A copy of a subpoena issued under this section [of the commission] must be delivered to the respondent.

(e) A subpoenaed witness who attends a commission hearing is entitled to the same mileage and per diem payments as a witness who appears before a grand jury. A person who provides subpoenaed documents to the commission is entitled to reimbursement from the commission for the person's reasonable cost of producing the documents.

SECTION 1.27. Section 571.138, Government Code, is amended to read as follows:

Sec. 571.138. STATUS OF COMPLAINANT. The complainant is not a party to a preliminary review, preliminary review[~~-, informal~~] hearing, or formal hearing under this subchapter.

SECTION 1.28. Sections 571.139(a) and (b), Government Code, are amended to read as follows:

(a) Except as provided by Section 571.140(b), Chapter 552 does not apply to documents or any additional evidence relating to the processing, preliminary review, preliminary review[~~-, informal~~] hearing, or resolution of a sworn complaint or motion.

(b) Chapter 551 does not apply to the processing, preliminary review, preliminary review[~~-, informal~~] hearing, or resolution of a sworn complaint or motion, but does apply to a formal hearing held under Sections 571.129 through 571.131.

SECTION 1.29. Section 571.140, Government Code, is amended by amending Subsections (a)-(c) and adding Subsections (b-1), (e), and (f) to read as follows:

(a) Except as provided by Subsection (b) or (b-1) or by Section 571.171, proceedings at a preliminary review [~~or informal~~] hearing performed by the commission, a sworn complaint, and documents and any additional evidence relating to the processing, preliminary review, preliminary review[~~-, informal~~] hearing, or resolution of a sworn complaint or motion are confidential and may not be disclosed unless entered into the record of a formal hearing or a judicial proceeding, except that a document or statement that was previously public information remains public information.

(b) An order issued by the commission after the completion of a preliminary review or [~~an informal~~] hearing determining that a violation other than a technical or de minimis violation has occurred is not confidential.

(b-1) A commission employee may, for the purpose of investigating a sworn complaint or motion, disclose to the complainant, the respondent, or a witness information that is otherwise confidential and relates to the sworn complaint if:

(1) the employee makes a good faith determination that the disclosure is necessary to conduct the investigation;

(2) the employee's determination under Subdivision (1) is objectively reasonable;

(3) the executive director authorizes the disclosure; and

(4) the employee discloses only the information necessary to conduct the investigation.

(c) A person commits an offense if the person discloses information made confidential by this section. An offense under this subsection is a Class C [~~A~~] misdemeanor.

(e) The commission shall terminate the employment of a commission employee who violates Subsection (a).

(f) A commission employee who discloses confidential information in compliance with Subsection (b-1) is not subject to Subsections (c), (d), and (e).

SECTION 1.30. Subchapter E, Chapter 571, Government Code, is amended by adding Section 571.141 to read as follows:

Sec. 571.141. AVAILABILITY OF COMMISSION ORDERS ON INTERNET. (a) As soon as practicable following a preliminary review, preliminary review hearing, or formal hearing at which the commission determines that a person has committed a violation within the commission's jurisdiction, the commission shall make available on the Internet:

(1) a copy of the commission's order stating the determination; or

(2) a summary of the commission's order.

(b) This section does not apply to a determination of a violation that is technical or de minimis.

SECTION 1.31. Section 571.171, Government Code, is amended to read as follows:

Sec. 571.171. INITIATION AND REFERRAL. (a) On a motion adopted by an affirmative [record] vote of at least six commission members, the commission may initiate civil enforcement actions and refer matters to the appropriate prosecuting attorney for criminal prosecution.

(b) On receipt of a sworn complaint, if the executive director reasonably believes that the person who is the subject of the complaint has violated Chapter 36 or 39, Penal Code, the executive director may refer the matter to the appropriate prosecuting attorney for criminal prosecution.

(c) In making a referral to a prosecuting attorney under this section, the commission or executive director may disclose confidential information.

SECTION 1.32. Subchapter F, Chapter 571, Government Code, is amended by adding Section 571.1731 to read as follows:

Sec. 571.1731. WAIVER OR REDUCTION OF LATE FILING PENALTY. (a) A person may request the waiver or reduction of a civil penalty under Section 305.033(b) or 572.033(b) of this code or Section 254.042(b), Election Code, by submitting an affidavit to the executive director that states the filer's reasons for requesting a waiver or reduction.

(b) The commission may waive or reduce a civil penalty if the commission finds that a waiver or reduction is in the public interest and in the interest of justice. The commission shall consider the following before acting to waive or reduce a civil penalty:

(1) the facts and circumstances supporting the person's request for a waiver or reduction;

(2) the seriousness of the violation, including the nature, circumstances, consequences, extent, and gravity of the violation, and the amount of the penalty;

(3) any history of previous violations by the person;

(4) the demonstrated good faith of the person, including actions taken to rectify the consequences of the violation;

(5) the penalty necessary to deter future violations; and

(6) any other matter that justice may require.

(c) After hearing the waiver request, the commission may affirm, reduce, or waive the civil penalty.

SECTION 1.33. Sections 571.124(d), 571.127, and 571.128, Government Code, are repealed.

SECTION 1.34. Sections 571.0231 and 571.0271, Government Code, as added by this Act, do not affect the entitlement of a member of the Texas Ethics Commission serving on the commission immediately before September 1, 2003, to continue to serve and function as a member of the commission for the remainder of the member's term. Sections 571.0231 and 571.0271, Government Code, as added by this Act, apply only to a member appointed on or after September 1, 2003.

SECTION 1.35. The changes in law made to Chapter 571, Government Code, as amended by this article, do not affect the authority of the Texas Ethics Commission regarding a statement, report, or registration filed before the effective date of this Act. A statement, report, or registration filed before that date is governed by the law in effect immediately before that date, and the former law is continued in effect for that purpose.

ARTICLE 2. CAMPAIGN FINANCE AND POLITICAL ADVERTISING

SECTION 2.01. Section 251.001(16), Election Code, is amended to read as follows:

(16) "Political advertising" means a communication supporting or opposing a candidate for nomination or election to a public office or office of a political party, a political party, a public officer, or a measure that:

(A) in return for consideration, is published in a newspaper, magazine, or other periodical or is broadcast by radio or television; or

(B) appears:

(i) in a pamphlet, circular, flier, billboard or other sign, bumper sticker, or similar form of written communication; or

(ii) on an Internet website.

SECTION 2.02. Section 251.005, Election Code, is amended by amending Subsection (a) and adding Subsection (d) to read as follows:

(a) An out-of-state political committee is not subject to Chapter 252 or 254, except as provided by Subsection (b), ~~(c)~~, or (d).

(d) An out-of-state political committee that does not file a campaign treasurer appointment shall comply with Section 254.1581.

SECTION 2.03. Chapter 252, Election Code, is amended by adding Section 252.0011 to read as follows:

Sec. 252.0011. INELIGIBILITY FOR APPOINTMENT AS CAMPAIGN TREASURER. (a) Except as provided by Subsection (b) or (c), a person is ineligible for appointment as a campaign treasurer if the person is the campaign treasurer of a political committee that does not file a report required by Chapter 254.

(b) The period for which a person is ineligible under Subsection (a) for appointment as a campaign treasurer ends on the date on which the political committee in connection with which the person's ineligibility arose has filed each report required by Chapter 254 that was not timely filed or has paid all fines and penalties in connection with the failure to file the report.

(c) Subsection (a) does not apply to a person if, in any semiannual reporting period prescribed by Chapter 254:

(1) the political committee in connection with which the person's ineligibility arose did not accept political contributions that in the aggregate exceed \$5,000 or make political expenditures that in the aggregate exceed \$5,000; and

(2) the candidate who or political committee that subsequently appoints the person does not accept political contributions that in the aggregate exceed \$5,000 or make political expenditures that in the aggregate exceed \$5,000.

(d) Subsection (c) applies to a person who is the campaign treasurer of a general-purpose committee regardless of whether the committee files monthly reports under Section 254.155. For purposes of this subsection, political contributions accepted and political expenditures made during a monthly reporting period are aggregated with political contributions accepted and political expenditures made in each other monthly reporting period that corresponds to the semiannual reporting period that contains those months.

(e) A candidate or political committee is considered to have not appointed a campaign treasurer if the candidate or committee appoints a person as campaign treasurer whose appointment is prohibited by Subsection (a).

(f) A person who violates this section is liable for a civil penalty not to exceed three times the amount of political contributions accepted or political expenditures made in violation of this section.

SECTION 2.04. Chapter 252, Election Code, is amended by adding Section 252.0131 to read as follows:

Sec. 252.0131. TERMINATION OF CAMPAIGN TREASURER APPOINTMENT BY COMMISSION. (a) The commission by rule shall adopt a process by which the commission may terminate the campaign treasurer appointment of an inactive candidate or political committee that:

(1) is required to file a campaign treasurer appointment with the commission;

(2) has never filed or has ceased to file reports under Chapter 254;

(3) in the case of a candidate, has not been elected to an office specified by Section 252.005(1) or (5); and

(4) has not filed:

(A) a final report under Section 254.065 or 254.125; or

(B) a dissolution report under Section 254.126 or 254.159.

(b) Before the commission may terminate a campaign treasurer appointment, the commission must consider the proposed termination in a regularly scheduled open meeting.

(c) Rules adopted under this section must:

(1) define "inactive candidate or political committee" for purposes of terminating the candidate's or committee's campaign treasurer appointment; and

(2) require written notice to the affected candidate or committee of:

(A) the proposed termination of the candidate's or committee's campaign treasurer appointment;

(B) the date, time, and place of the meeting at which the commission will consider the proposed termination; and

(C) the effect of termination of the candidate's or committee's campaign treasurer appointment.

(d) The termination of a campaign treasurer appointment under this section takes effect on the 30th day after the date of the commission meeting at which the commission votes to terminate the appointment. Following that meeting, the commission shall promptly notify the affected candidate or political committee that the appointment has been terminated. The notice must state the effective date of the termination.

SECTION 2.05. The heading to Section 253.034, Election Code, is amended to read as follows:

Sec. 253.034. RESTRICTIONS ON CONTRIBUTIONS DURING AND FOLLOWING REGULAR LEGISLATIVE SESSION.

SECTION 2.06. Section 253.034(a), Election Code, is amended to read as follows:

(a) During the period beginning on the 30th day before the date a regular legislative session convenes and continuing through the 20th day after the date of final adjournment, a person may not knowingly make a political contribution to:

(1) a statewide officeholder;

(2) a member of the legislature; or

(3) a specific-purpose committee for supporting, opposing, or assisting a statewide officeholder or member of the legislature.

SECTION 2.07. The heading to Section 253.0341, Election Code, is amended to read as follows:

Sec. 253.0341. RESTRICTIONS ON CONTRIBUTIONS TO LEGISLATIVE CAUCUSES DURING AND FOLLOWING REGULAR LEGISLATIVE SESSION.

SECTION 2.08. Section 253.0341(a), Election Code, is amended to read as follows:

(a) During the period beginning on the 30th day before the date a regular legislative session convenes and continuing through the 20th day after the date of final adjournment, a person not a member of the caucus may not knowingly make a contribution to a legislative caucus.

SECTION 2.09. Subchapter B, Chapter 253, Election Code, is amended by adding Sections 253.040 and 253.043 to read as follows:

Sec. 253.040. SEPARATE ACCOUNTS. (a) Each candidate or officeholder shall keep the person's campaign and officeholder contributions in one or more accounts that are separate from any other account maintained by the person.

(b) A person who violates this section commits an offense. An offense under this section is a Class B misdemeanor.

Sec. 253.043. POLITICAL CONTRIBUTIONS USED IN CONNECTION WITH APPOINTIVE OFFICE. A former candidate or former officeholder who lawfully accepts political contributions may use those contributions to make an expenditure to defray expenses incurred by the person in performing a duty or engaging in an activity in connection with an appointive office of a state board or commission.

SECTION 2.091. Section 254.031, Election Code, is amended by amending Subsection (a) and adding Subsection (a-1) to read as follows:

(a) Except as otherwise provided by this chapter, each report filed under this chapter must include:

(1) the amount of political contributions from each person that in the aggregate exceed \$50 and that are accepted during the reporting period by the person or committee required to file a report under this chapter, the full name and address of the person making the contributions, and the dates of the contributions;

(2) the amount of loans that are made during the reporting period for campaign or officeholder purposes to the person or committee required to file the report and that in the aggregate exceed \$50, the dates the loans are made, the interest rate, the maturity date, the type of collateral for the loans, if any, the full name and address of the person or financial institution making the loans, the full name and address, principal occupation, and name of the employer of each guarantor of the loans, the amount of the loans guaranteed by each guarantor, and the aggregate principal amount of all outstanding loans as of the last day of the reporting period;

(3) the amount of political expenditures that in the aggregate exceed \$50 and that are made during the reporting period, the full name and address of the persons to whom the expenditures are made, and the dates and purposes of the expenditures;

(4) the amount of each payment made during the reporting period from a political contribution if the payment is not a political expenditure, the full name and address of the person to whom the payment is made, and the date and purpose of the payment;

(5) the total amount or a specific listing of the political contributions of \$50 or less accepted and the total amount or a specific listing of the political expenditures of \$50 or less made during the reporting period;

(6) the total amount of all political contributions accepted and the total amount of all political expenditures made during the reporting period; ~~and~~

(7) the name of each candidate or officeholder who benefits from a direct campaign expenditure made during the reporting period by the person or committee required to file the report, and the office sought or held, excluding a direct campaign expenditure that is made by the principal political committee of a political party on behalf of a slate of two or more nominees of that party; and

(8) as of the last day of a reporting period for which the person is required to file a report, the total amount of political contributions accepted, including interest or other income on those contributions, maintained in one or more accounts in which political contributions are deposited as of the last day of the reporting period.

(a-1) A de minimis error in calculating or reporting a cash balance under Subsection (a)(8) is not a violation of this section.

SECTION 2.10. Subchapter B, Chapter 254, Election Code, is amended by adding Section 254.0312 to read as follows:

Sec. 254.0312. BEST EFFORTS. (a) A person required to file a report under this chapter is considered to be in compliance with Section 254.0612, 254.0912, or 254.1212 only if the person or the person's campaign treasurer shows that the person has used best efforts to obtain, maintain, and report the information required by those sections. A person is considered to have used best efforts to obtain, maintain, and report that information if the person or the person's campaign treasurer complies with this section.

(b) Each written solicitation for political contributions from an individual must include:

(1) a clear request for the individual's full name and address, the individual's principal occupation or job title, and the full name of the individual's employer; and

(2) an accurate statement of state law regarding the collection and reporting of individual contributor information, such as:

(A) "State law requires (certain candidates, officeholders, or political committees, as applicable) to use best efforts to collect and report the full name and address, principal occupation or job title, and full name of employer of individuals whose contributions equal or exceed \$500 in a reporting period."; or

(B) "To comply with state law, (certain candidates, officeholders, or political committees, as applicable) must use best efforts to obtain, maintain, and report the full name and address, principal occupation or job title, and full name of employer of individuals whose contributions equal or exceed \$500 in a reporting period."

(c) For each political contribution received from an individual that, when aggregated with all other political contributions received from the individual during the reporting period, equals or exceeds \$500 and for which the information required by Section 254.0612, 254.0912, or 254.1212 is not provided, the person must make at least one oral or written request for the missing information. A request under this subsection:

(1) must be made not later than the 30th day after the date the contribution is received;

(2) must include a clear and conspicuous statement that complies with Subsection (b);

(3) if made orally, must be documented in writing; and

(4) may not be made in conjunction with a solicitation for an additional political contribution.

(d) A person must report any information required by Section 254.0612, 254.0912, or 254.1212 that is not provided by the individual making the political contribution and that the person has in the person's records of political contributions or previous reports under this chapter.

(e) A person who receives information required by Section 254.0612, 254.0912, or 254.1212 after the filing deadline for the report on which the contribution is reported must include the missing information on the next report the person is required to file under this chapter.

SECTION 2.11. Section 254.035, Election Code, is amended by adding Subsections (c) and (d) to read as follows:

(c) The amount of a political expenditure made by credit card is readily determinable by the person making the expenditure on the date the person receives the credit card statement that includes the expenditure.

(d) Subsection (c) does not apply to a political expenditure made by credit card during the period covered by a report required to be filed under Section 254.064(b) or (c), 254.124(b) or (c), or 254.154(b) or (c).

SECTION 2.12. Section 254.036, Election Code, is amended by amending Subsections (b) and (c) and adding Subsection (c-1) to read as follows:

(b) Except as provided by Subsection (c), ~~[(d);~~ (e), or (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.

(c) A candidate, officeholder, or political committee that is required to file reports with the commission may file reports that comply with Subsection (a) if:

(1) the candidate, officeholder, or campaign treasurer of the committee files with the commission an affidavit stating that the candidate, officeholder, or committee, an agent of the candidate, officeholder, or committee, or a person with whom the candidate, officeholder, or committee contracts does not use computer equipment to keep the current records of political contributions, political expenditures, or persons making political contributions to the candidate, officeholder, or committee; and

(2) the candidate, officeholder, or committee does not, in a calendar year, accept political contributions that in the aggregate exceed \$20,000 or make political expenditures that in the aggregate exceed \$20,000.

(c-1) An affidavit under Subsection (c) [~~this subsection~~] must be filed with each report filed under Subsection (a). The affidavit must include a statement that the candidate, officeholder, or political committee understands that the candidate, officeholder, or committee shall file reports as required by Subsection (b) if:

(1) the candidate, officeholder, or committee, a consultant of the candidate, officeholder, or committee, or a person with whom the candidate, officeholder, or committee contracts uses computer equipment for a purpose described by Subsection (c); or

(2) the candidate, officeholder, or committee exceeds \$20,000 in political contributions or political expenditures in a calendar year [~~this subsection, the candidate, officeholder, or committee is required to file reports under Subsection (b).~~].

SECTION 2.13. Sections 254.038(a) and (c), Election Code, are amended to read as follows:

(a) In addition to other reports required by this chapter, the following persons shall file additional reports during the period beginning the ninth day before election day and ending at 12 noon on the [~~second~~] day before election day:

(1) a candidate for an [statewide] office specified by Section 252.005(1) who [~~has an opponent whose name is to appear on the ballot and who~~] accepts political contributions from a person that in the aggregate exceed \$1,000 during that reporting period; and

(2) [~~a candidate for state senator who has an opponent whose name is to appear on the ballot and who accepts political contributions from a person that in the aggregate exceed \$1,000 during that reporting period;~~

[~~(3) a candidate for state representative who has an opponent whose name is to appear on the ballot and who accepts political contributions from a person that in the aggregate exceed \$200 during that reporting period;~~

[~~(4) a specific-purpose committee for supporting or opposing a candidate described by Subdivision (1) [for statewide office] and that accepts political contributions from a person that in the aggregate exceed \$1,000 during that reporting period;~~

[~~(5) a specific purpose committee for supporting or opposing a candidate for state senator and that accepts political contributions from a person that in the aggregate exceed \$1,000 during that reporting period; and~~

[~~(6) a specific purpose committee for supporting or opposing a candidate for state representative and that accepts political contributions from a person that in the aggregate exceed \$200 during that reporting period.~~

(c) A report under this section shall be filed electronically, by telegram or telephonic facsimile machine, or by hand with the commission not later than 5 p.m. of the first business day [48 hours] after the date the contribution is accepted.

SECTION 2.14. Section 254.0401(a), Election Code, is amended to read as follows:

(a) The [~~Except as provided by Subsection (b), the~~] commission shall make each report filed with the commission under Section 254.036(b) available to the public on the Internet not later than the second business day after the date the report is filed.

SECTION 2.15. Section 254.042(b), Election Code, is amended to read as follows:

(b) If a report other than a report under Section 254.064(c), 254.124(c), or 254.154(c) or the first report under Section 254.063 or 254.123 that is required to be filed following the primary or general election is determined to be late, the person required to file the report is [civilly] liable to the state for a civil penalty of \$500 [an amount determined by commission rule, but not to exceed \$100 for each day that the report is late]. If a report under Section 254.064(c), 254.124(c), or 254.154(c) or the first report under Section 254.063 or 254.153 that is required to be filed following the primary or general election is determined to be late, the person required to file the report is liable to the state for a civil penalty of \$500 for the first day the report is late and \$100 for each day thereafter that the report is late. If a report is more than 30 days late, the commission shall issue a warning of liability by registered mail to the person required to file the report. If the penalty is not paid before the 10th day after the date on which the warning is received, the person is liable for a civil penalty in an amount determined by commission rule, but not to exceed \$10,000.

SECTION 2.16. Subchapter B, Chapter 254, Election Code, is amended by adding Section 254.043 to read as follows:

Sec. 254.043. ACTION TO REQUIRE COMPLIANCE. (a) This section applies only to:

(1) a person required to file reports under this chapter with the commission; or

(2) a person required to file reports under this chapter with an authority other than the commission in connection with an office of a political subdivision in a county with a population of at least 500,000.

(b) A resident of the territory served by an office may bring an action for injunctive relief against a candidate for or holder of that office or a specific-purpose committee for supporting or opposing such a candidate or assisting such an officeholder to require the person to file a report under this chapter that the person has failed to timely file.

(c) An action under this section may be brought against a person required to file reports under this chapter only if:

(1) the report is not filed before the 60th day after the date on which the report was required to be filed;

(2) not earlier than the 60th day after the date on which the report was required to be filed, the person bringing the action delivers written notice by certified mail to the person required to file the report, stating:

(A) the person's intention to bring an action under this section if the report is not filed; and

(B) that an action to require the filing of the report may be filed if the report is not filed before the 30th day after the date on which the person required to file the report receives the notice; and

(3) the report is not filed before the 30th day after the date on which the person required to file the report receives the notice required by Subdivision (2).

(d) The court shall award a plaintiff who prevails in an action under this section reasonable attorney's fees and court costs.

SECTION 2.17. Subchapter C, Chapter 254, Election Code, is amended by adding Section 254.0612 to read as follows:

Sec. 254.0612. ADDITIONAL CONTENTS OF REPORTS BY CANDIDATE FOR STATEWIDE EXECUTIVE OFFICE OR LEGISLATIVE OFFICE. In addition to the contents required by Sections 254.031 and 254.061, each report by a candidate for a statewide office in the executive branch or a legislative office must include, for each individual from whom the person filing the report has accepted political contributions that in the aggregate equal or exceed \$500 and that are accepted during the reporting period:

- (1) the individual's principal occupation or job title; and
- (2) the full name of the individual's employer.

SECTION 2.18. Subchapter D, Chapter 254, Election Code, is amended by adding Section 254.0912 to read as follows:

Sec. 254.0912. ADDITIONAL CONTENTS OF REPORTS BY STATEWIDE EXECUTIVE OFFICEHOLDERS AND LEGISLATIVE OFFICEHOLDERS. In addition to the contents required by Sections 254.031 and 254.091, each report by a holder of a statewide office in the executive branch or a legislative office must include the contents prescribed by Section 254.0612.

SECTION 2.19. Subchapter E, Chapter 254, Election Code, is amended by adding Section 254.1212 to read as follows:

Sec. 254.1212. ADDITIONAL CONTENTS OF REPORTS OF COMMITTEE SUPPORTING OR OPPOSING CANDIDATE FOR STATEWIDE EXECUTIVE OFFICEHOLDERS OR LEGISLATIVE OFFICEHOLDERS OR ASSISTING STATEWIDE EXECUTIVE OFFICEHOLDERS OR LEGISLATIVE OFFICEHOLDERS. In addition to the contents required by Sections 254.031 and 254.121, each report by a specific-purpose committee for supporting or opposing a candidate for or assisting a holder of a statewide office in the executive branch or a legislative office must include the contents prescribed by Section 254.0612.

SECTION 2.20. Section 254.151, Election Code, is amended to read as follows:

Sec. 254.151. ADDITIONAL CONTENTS OF REPORTS. In addition to the contents required by Section 254.031, each report by a campaign treasurer of a general-purpose committee must include:

- (1) the committee's full name and address;
- (2) the full name, residence or business street address, and telephone number of the committee's campaign treasurer;
- (3) the identity and date of the election for which the report is filed, if applicable;
- (4) the name of each identified candidate or measure or classification by party of candidates supported or opposed by the committee, indicating whether the committee supports or opposes each listed candidate, measure, or classification by party of candidates;
- (5) the name of each identified officeholder or classification by party of officeholders assisted by the committee;

(6) the principal occupation of each person from whom political contributions that in the aggregate exceed \$50 are accepted during the reporting period;

(7) the amount of each political expenditure in the form of a political contribution made to a candidate, officeholder, or another political committee that is returned to the committee during the reporting period, the name of the person to whom the expenditure was originally made, and the date it is returned; ~~and~~

(8) on a separate page or pages of the report, the identification of any contribution from a corporation or labor organization made and accepted under Subchapter D, Chapter 253; and

(9) on a separate page or pages of the report, the identification of the name of the donor, the amount, and the date of any expenditure made by a corporation or labor organization to:

(A) establish or administer the political committee; or

(B) finance the solicitation of political contributions to the committee under Section 253.100.

SECTION 2.21. Subchapter F, Chapter 254, Election Code, is amended by adding Section 254.1581 to read as follows:

Sec. 254.1581. REPORTING BY OUT-OF-STATE POLITICAL COMMITTEE. For each reporting period under this subchapter in which an out-of-state political committee accepts political contributions or makes political expenditures, the committee shall file with the commission a copy of one or more reports filed with the Federal Election Commission or with the proper filing authority of at least one other state that shows the political contributions accepted, political expenditures made, and other expenditures made by the committee. A report must be filed within the same period in which it is required to be filed under federal law or the law of the other state.

SECTION 2.22. Section 254.204(a), Election Code, is amended to read as follows:

(a) At the end of the six-year period prescribed by Section 254.203, the former officeholder or candidate shall remit any unexpended political contributions to one or more of the following:

(1) the political party with which the person was affiliated when the person's name last appeared on a ballot;

(2) a candidate or political committee;

(3) the comptroller ~~[of public accounts]~~ for deposit in the state treasury ~~[State Treasury];~~

(4) one or more persons from whom political contributions were received, in accordance with Subsection (d);

(5) a recognized ~~[tax exempt,]~~ charitable organization formed for educational, religious, or scientific purposes that is exempt from taxation under Section 501(c)(3), Internal Revenue Code of 1986, and its subsequent amendments; or

(6) a public or private postsecondary educational institution or an institution of higher education as defined by Section 61.003(8), Education Code, solely for the purpose of assisting or creating a scholarship program.

SECTION 2.23. Section 255.001, Election Code, is amended to read as follows:

Sec. 255.001. REQUIRED DISCLOSURE ON POLITICAL ADVERTISING. (a) A person may not knowingly cause to be published, distributed ~~[enter into a contract or other agreement to print, publish]~~, or broadcast political advertising containing express advocacy that does not indicate in the advertising:

(1) that it is political advertising; and

(2) the full name of:

(A) the person who paid for the political advertising;

(B) the political committee authorizing the political advertising; or

(C) the candidate or specific-purpose committee supporting the candidate, if the political advertising is authorized by the candidate ~~[either the individual who personally entered into the contract or agreement with the printer, publisher, or broadcaster or the person that individual represents; and~~

~~[(3) in the case of advertising that is printed or published, the address of either the individual who personally entered into the agreement with the printer or publisher or the person that individual represents].~~

(b) Political advertising that is authorized by a candidate, an agent of a candidate, or a political committee filing reports under this title shall be deemed to contain express advocacy.

(c) A person may not knowingly use, cause or permit to be used, or continue to use any published, distributed, or broadcast political advertising containing express advocacy that the person knows does not include the disclosure required by Subsection (a). A person is presumed to know that the use of political advertising is prohibited by this subsection if the commission notifies the person in writing that the use is prohibited. A person who learns that political advertising signs, as defined by Section 255.007, that have been distributed do not include the disclosure required by Subsection (a) or include a disclosure that does not comply with Subsection (a) does not commit a continuing violation of this subsection if the person makes a good faith attempt to remove or correct those signs. A person who learns that printed political advertising other than a political advertising sign that has been distributed does not include the disclosure required by Subsection (a) or includes a disclosure that does not comply with Subsection (a) is not required to attempt to recover the political advertising and does not commit a continuing violation of this subsection as to any previously distributed political advertising.

(d) This section does not apply to:

(1) tickets or invitations to political fund-raising events;

(2) ~~or to~~ campaign buttons, pins, hats, or similar campaign materials;

or

(3) circulars or flyers that cost in the aggregate less than \$500 to publish and distribute.

(e) ~~[(e)]~~ A person who violates this section is liable to the state for a civil penalty in an amount determined by the commission not to exceed \$4,000 ~~[commits an offense. An offense under this section is a Class A misdemeanor].~~

SECTION 2.24. The heading to Section 257.005, Election Code, is amended to read as follows:

Sec. 257.005. CANDIDATE FOR STATE OR COUNTY CHAIR [~~STATE CHAIRMAN~~] OF POLITICAL PARTY.

SECTION 2.25. Section 257.005(a), Election Code, is amended to read as follows:

(a) Except as provided by this section, the following are subject to the requirements of this title that apply to a candidate for public office:

(1) a [~~A~~] candidate for state chair of a political party with a nominee on the ballot in the most recent gubernatorial general election; and

(2) a candidate for election to the office of county chair of a political party with a nominee on the ballot in the most recent gubernatorial general election if the county has a population of 350,000 or more [~~is subject to the requirements of this title that apply to a candidate for public office, except as provided by this section~~].

SECTION 2.26. Sections 253.100(d), 254.036(d) and (g), and 254.0401(b) and (c), Election Code, are repealed.

SECTION 2.27. (a) Section 254.036, Election Code, as amended by this Act, applies only to a report required to be filed under Chapter 254, Election Code, on or after September 1, 2003. A report required to be filed under Chapter 254, Election Code, before September 1, 2003, is governed by the law in effect on the date the report was required to be filed, and the former law is continued in effect for that purpose.

(b) Section 254.0312, Election Code, as added by this Act, applies only to a report that is required to be filed under Chapter 254, Election Code, on or after July 1, 2005.

(c) Section 254.042(b), Election Code, as amended by this Act, applies only to a civil penalty imposed for a late report under Chapter 254, Election Code, that is required to be filed on or after September 1, 2003. A civil penalty imposed for a late report under Chapter 254, Election Code, that is required to be filed before September 1, 2003, is governed by the law in effect on the date the report was required to be filed, and the former law is continued in effect for that purpose.

(d) Sections 254.0612, 254.0912, and 254.1212, Election Code, as added by this Act, apply only to the reporting of a political contribution accepted on or after January 1, 2004. The reporting of a political contribution accepted before January 1, 2004, is governed by the law in effect at the time the contribution was accepted, and the former law is continued in effect for that purpose.

(e) Section 254.151, Election Code, as amended by this Act, applies to the reporting of an expenditure made on or after September 1, 2003. The reporting of an expenditure made before September 1, 2003, is governed by the law in effect at the time the expenditure was made.

(f) Section 255.001, Election Code, as amended by this Act, applies only to political advertising that is published, distributed, or broadcast on or after September 1, 2003.

ARTICLE 3. SPEAKER'S RACE

SECTION 3.01. Subchapter B, Chapter 302, Government Code, is amended by adding Section 302.0121 to read as follows:

Sec. 302.0121. DECLARATION OF SPEAKER CANDIDACY. (a) Each speaker candidate shall file a declaration of candidacy with the Texas Ethics Commission as provided by this section.

(b) A declaration of speaker candidacy must:

(1) be in writing;

(2) identify the legislative session as to which the candidacy relates;

and

(3) include:

(A) the speaker candidate's name;

(B) the speaker candidate's residence or business street address;

and

(C) the speaker candidate's telephone number.

(c) Except as provided by Subsection (e), a speaker candidate may not knowingly accept a contribution, loan, or promise of a contribution or loan in connection with the speaker candidacy or make or authorize a campaign expenditure at a time when a declaration of candidacy for the candidate is not in effect.

(d) A declaration of speaker candidacy terminates on the earlier of:

(1) the date the speaker candidate files a written statement with the Texas Ethics Commission stating that the candidate has terminated the candidacy;

or

(2) the date a speaker is elected for the legislative session as to which the speaker candidate filed the statement.

(e) A former speaker candidate whose declaration of speaker candidacy is terminated under Subsection (d) may make a campaign expenditure in connection with a debt incurred during the period the former speaker candidate's declaration of candidacy was in effect.

SECTION 3.02. Section 302.013, Government Code, is amended by amending Subsections (b) and (d) and adding Subsection (e) to read as follows:

(b) Each speaker candidate shall file the statement on:

(1) the first filing date after the date on which the speaker candidate files the declaration of candidacy required by Section 302.0121 [~~announcement or initiation of the candidacy~~];

(2) each filing date during the candidacy; and

(3) each filing date until all campaign loans have been repaid.

(d) Each speaker candidate shall file the statement by computer diskette, modem, or other means of electronic transfer, using computer software provided [~~on an official form designed~~] by the Texas Ethics Commission or computer software that meets commission specifications for a standard file format.

(e) The Texas Ethics Commission shall implement an electronic filing system under Subsection (d) not later than September 1, 2004. The commission by rule shall identify the date on which the requirement that a statement must be

made as required by Subsection (d) takes effect and the first reporting period under Subsection (c) for which a statement must be made as required by Subsection (d). This subsection expires January 1, 2005.

SECTION 3.03. Section 302.015(b), Government Code, is amended to read as follows:

(b) A statement required to be filed on the day before a regular or called session convenes must actually be delivered and in the possession of the Texas Ethics Commission not later than 5 [4] p.m. of that day.

SECTION 3.04. Subchapter B, Chapter 302, Government Code, is amended by adding Sections 302.0191 and 302.0201 to read as follows:

Sec. 302.0191. CONTRIBUTIONS AND EXPENDITURES FROM POLITICAL CONTRIBUTIONS. A person, including a speaker candidate, may not make a contribution to a speaker candidate's campaign or an expenditure to aid or defeat a speaker candidate from:

(1) political contributions accepted under Title 15, Election Code;

(2) interest earned on political contributions accepted under Title 15, Election Code; or

(3) an asset purchased with political contributions accepted under Title 15, Election Code.

Sec. 302.0201. DISPOSITION OF UNEXPENDED FUNDS; REPORT. (a) A former speaker candidate may:

(1) use unexpended campaign funds to retire debt incurred in connection with the speaker candidacy; or

(2) remit unexpended campaign funds to one or more of the following:

(A) one or more persons from whom campaign funds were received, in accordance with Subsection (c); or

(B) a recognized charitable organization formed for educational, religious, or scientific purposes that is exempt from taxation under Section 501(c)(3), Internal Revenue Code of 1986, and its subsequent amendments.

(b) A former speaker candidate may not retain contributions covered by this subchapter, assets purchased with the contributions, or interest and other income earned on the contributions for more than six years after the date the person ceases to be a speaker candidate or hold the office of speaker.

(c) The amount of campaign funds disposed of under Subsection (a)(2)(A) to one person may not exceed the aggregate amount accepted from that person in connection with the former speaker candidate's most recent campaign for election to the office of speaker.

(d) Not later than January 15 of each year, a former speaker candidate who retains unexpended campaign funds shall file a sworn report with the Texas Ethics Commission that includes:

(1) the full name and address of each person to whom a payment from unexpended campaign funds is made;

(2) the date and amount of each payment reported under Subdivision (1); and

(3) the information required by Section 302.014 as to any contribution, loan, or expenditure not previously reported on a statement filed under Section 302.013.

(e) A report filed under this section covers, as applicable:

(1) the period:

(A) beginning on the date after the last day of the period covered by the most recent statement filed by the former speaker candidate under Section 302.013; and

(B) ending on December 31 of the preceding year; or

(2) the preceding calendar year.

(f) A former speaker candidate shall file the report on an official form designed by the Texas Ethics Commission. Sections 302.015 and 302.016 apply to a report filed under this section.

(g) For purposes of this section, a speaker candidate elected as speaker of the house of representatives is considered to be a former speaker candidate.

SECTION 3.05. Section 302.021, Government Code, is amended by amending Subsections (a) and (f) and adding Subsection (e-1) to read as follows:

(a) A speaker candidate or former speaker candidate commits an offense if the person [speaker candidate]:

(1) knowingly fails to file the declaration of candidacy required by Section 302.0121;

(2) knowingly [wilfully] fails to file the statement required by Section 302.013;

(3) knowingly accepts a contribution, loan, or promise of a contribution or loan in violation of Section 302.0121(c);

(4) [~~2~~] knowingly accepts [receives] a contribution, loan, or promise of a contribution or loan prohibited by Section 302.017 from a corporation, partnership, association, firm, union, foundation, committee, club, or other organization or group of persons; [~~or~~]

(5) knowingly accepts a contribution from a person who uses political contributions, interest earned on political contributions, or an asset purchased with political contributions to make the contribution in violation of Section 302.0191;

(6) [~~3~~] expends campaign funds for any purpose other than those enumerated in Section 302.020;

(7) knowingly retains contributions, assets purchased with contributions, or interest or other income earned on contributions in violation of Section 302.0201(b); or

(8) knowingly fails to file the report of unexpended campaign funds as required by Section 302.0201(d).

(e-1) A person commits an offense if the person knowingly makes a contribution to a speaker candidate's campaign or an expenditure to aid or defeat a speaker candidate from political contributions, interest earned on political contributions, or an asset purchased with political contributions in violation of Section 302.0191.

(f) An offense under this section is a Class A misdemeanor [~~punishable by a fine of not less than \$500 nor more than \$5,000, by imprisonment for not more than one year, or by both~~].

SECTION 3.06. (a) Section 302.021, Government Code, as amended by this Act, applies only to an offense committed on or after September 1, 2003. For the purposes of this section, an offense is committed before September 1, 2003, if any element of the offense occurs before that date.

(b) 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.

ARTICLE 4. LOBBYING

SECTION 4.01. The heading to Subchapter A, Chapter 305, Government Code, is amended to read as follows:

SUBCHAPTER A. GENERAL PROVISIONS; REGISTRATION

SECTION 4.02. Section 305.002, Government Code, is amended by adding Subdivisions (12)-(14) to read as follows:

(12) "Client" means a person or entity for which the registrant is registered or is required to be registered.

(13) "Matter" means the subject matters for which a registrant has been reimbursed, retained, or employed by a client to communicate directly with a member of the legislative or executive branch.

(14) "Person associated with the registrant" or "other associated person" means a partner or other person professionally associated with the registrant through a common business entity, other than a client, that reimburses, retains, or employs the registrant.

SECTION 4.03. Section 305.003, Government Code, is amended by amending Subsection (b) and adding Subsections (b-1) and (b-2) to read as follows:

(b) Subsection (a)(2) requires a person to register if the person, as part of his regular employment, has communicated directly with a member of the legislative or executive branch to influence legislation or administrative action on behalf of the person by whom he is compensated or reimbursed, whether or not the person receives any compensation for the communication in addition to the salary for that regular employment.

(b-1) [~~However,~~] Subsection (a)(2) does not require a member of the judicial, legislative, or executive branch of state government or an officer or employee of a political subdivision of the state to register. This subsection does not apply to an officer or employee of a quasi-governmental agency. For purposes of this subsection, "quasi-governmental agency" means a governmental agency, other than an institution of higher education as defined by Section 61.003, Education Code, that has as one of its primary purposes engaging in an activity that is normally engaged in by a nongovernmental agency, including:

(1) acting as a trade association; or

(2) competing in the public utility business with private entities.

(b-2) Subsection (a)(2) does not require an officer or an employee of a state agency that provides utility services under Section 35.102, Utilities Code, and Sections 31.401 and 52.133, Natural Resources Code, to register.

SECTION 4.04. Section 305.005(a), Government Code, is amended to read as follows:

(a) Each person required to register under this chapter shall file a written registration [form] with the commission [on a form prescribed by the commission] and shall submit a registration fee.

SECTION 4.05. Section 305.006(a), Government Code, is amended to read as follows:

(a) Each registrant shall file with the commission a written, verified report [on a form prescribed by the commission] concerning the activities described by this section.

SECTION 4.06. Section 305.0061, Government Code, is amended by amending Subsections (a) and (b) and adding Subsection (g) to read as follows:

(a) If a registrant or a person on the registrant's behalf and with the registrant's consent or ratification makes expenditures that exceed 60 percent of the amount of the legislative per diem in [\$50] a day for transportation or lodging for a member of the legislative or executive branch, the registrant shall also state the following on the report filed under Section 305.006:

(1) the name of the member of the legislative or executive branch in whose behalf the expenditure is made;

(2) the place and date of the transportation or lodging; and

(3) the purpose of the transportation or lodging.

(b) If a registrant or a person on the registrant's behalf and with the registrant's consent or ratification makes expenditures that exceed 60 percent of the amount of the legislative per diem in [\$50] a day for food and beverages for a member of the legislative or executive branch or makes expenditures that exceed 60 percent of the amount of the legislative per diem in [\$50] a day for entertainment for a member of the legislative or executive branch or for the immediate family of a member of the legislative or executive branch, the registrant shall also state the following on the report filed under Section 305.006:

(1) the name of the member of the legislative or executive branch in whose behalf the expenditure is made;

(2) the place and date of the expenditure; and

(3) the amount of the expenditure by the appropriate category of the amount, as determined by the commission.

(g) In this section, "legislative per diem" means the per diem set by the commission for members of the legislature as provided by Section 24(a), Article III, Texas Constitution.

SECTION 4.07. Subchapter A, Chapter 305, Government Code, is amended by adding Section 305.0064 to read as follows:

Sec. 305.0064. ELECTRONIC FILING OF REGISTRATIONS AND ACTIVITY REPORTS. (a) Except as provided by Subsection (b), each registration filed under Section 305.005 and each report filed under Section

305.006 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.

(b) The commission shall adopt rules under which a registrant may file paper registrations or reports on forms prescribed by the commission. The rules must be designed to ensure that:

(1) use of the electronic filing system under Subsection (a) is maximized; and

(2) registrants may file paper registrations or reports for good cause only.

(c) The commission shall implement an electronic filing system under Subsection (a) not later than December 1, 2004. The commission by rule shall identify the date on which the requirement that a registration must be made as required by Subsection (a) takes effect and the first reporting period under Section 305.007 for which a report must be made as required by Subsection (a). This subsection expires January 1, 2005.

(d) A registration fee under Section 305.005(c)(1) or (2) for the calendar years 2004 and 2005 is increased by an amount determined by the commission as sufficient to generate additional revenue necessary to develop and implement an electronic filing system under Subsection (a). Additional revenue generated by a fee increase under this subsection may be used only to develop and implement the electronic filing system under Subsection (a). The commission may impose a different increase for each fee under Section 305.005(c). This subsection expires January 1, 2006.

SECTION 4.08. Sections 305.028(b), (c), and (f)-(h), Government Code, are amended to read as follows:

(b) Except as permitted by Subsection (c), a registrant may not represent a client ~~[person]~~ in communicating directly with a member of the legislative or executive branch to influence a legislative subject matter ~~[legislation]~~ or an administrative action if the representation of that client ~~[person]~~:

(1) involves a substantially related matter in which that client's ~~[person's]~~ interests are materially and directly adverse to the interests of:

(A) another client of the registrant;

(B) an employer or concern employing the registrant; or

(C) another client of a ~~[partner or other]~~ person associated with the registrant; or

(2) reasonably appears to be ~~[or potentially be]~~ adversely limited by:

(A) the registrant's, the employer's or concern's, or the ~~[partner's or]~~ other associated person's responsibilities to another client ~~[or to a third person]~~; or

(B) the registrant's, employer's or concern's own interests, or ~~[partner's or]~~ other associated person's own business interests.

(c) A registrant may represent a client in the circumstances described in Subsection ~~[(a) or]~~ (b) if:

(1) the registrant reasonably believes the representation of each client will not be materially affected;

(2) not later than the second business day after the date the registrant becomes aware of a ~~an actual or potential~~ conflict described by Subsection ~~[(a) or]~~ (b), the registrant provides written notice, in the manner required by the commission, to each affected ~~[or potentially affected]~~ client; and

(3) not later than the 10th day after the date the registrant becomes aware of a ~~an actual or potential~~ conflict described by Subsection ~~[(a) or]~~ (b), the registrant files with the commission a statement that:

(A) indicates [indicating] that there is a ~~an actual or potential~~ conflict;

(B) states ~~and~~ that the registrant has notified each affected ~~[or potentially affected]~~ client as required by Subdivision (2); and

(C) states the name and address of each affected client.

(f) In each report filed with the commission, a registrant shall, under oath, affirm that the registrant has, to the best of the registrant's knowledge, complied with this section.

(g) The commission may receive complaints regarding a violation of this section. If the commission determines a violation of this section has occurred, the commission, after notice and hearing:

(1) shall ~~may~~ impose a civil ~~[any]~~ penalty in an amount not to exceed \$2,000 [that the commission may impose under another state law]; and

(2) may rescind the person's registration and may prohibit the person from registering with the commission for a period not to exceed two years from the date of the rescission of the person's registration.

(h) A penalty under this section is in addition to any other enforcement, criminal, or civil action that the commission or another person may take under this chapter or other law.

SECTION 4.09. Section 305.031(a), Government Code, is amended to read as follows:

(a) A person commits an offense if the person intentionally or knowingly violates a provision of this chapter other than Section 305.0011, 305.012, 305.022, or 305.028. An offense under this subsection is a Class A misdemeanor.

SECTION 4.10. Section 305.033(b), Government Code, is amended to read as follows:

(b) If a registration or report is determined to be late, the person responsible for the filing is liable to the state for payment of a civil penalty of \$500 ~~[in an amount determined by commission rule, but not to exceed \$100 for each day that the registration or report is late].~~

SECTION 4.11. Section 556.005(b), Government Code, is amended to read as follows:

(b) A state agency may not use appropriated money to pay, on behalf of the agency or an officer or employee of the agency, membership dues to an organization that pays part or all of the salary of a person who is required by Chapter 305 to register as a lobbyist. This subsection does not apply to the payment by a state agency of membership fees under Chapter 81.

SECTION 4.12. Sections 305.028(a) and 305.031(c), Government Code, are repealed.

SECTION 4.13. (a) Sections 305.0061(a) and (b), Government Code, as amended by this Act, apply only to the reporting under Chapter 305, Government Code, of an expenditure for transportation, lodging, food and beverages, or entertainment made on or after September 1, 2003. The reporting under Chapter 305, Government Code, of an expenditure for transportation, lodging, food and beverages, or entertainment made before September 1, 2003, is governed by the law in effect at the time the expenditure is made, and the former law is continued in effect for that purpose.

(b) Sections 305.028 and 305.031, Government Code, as amended by this Act, apply only to an offense committed on or after September 1, 2003. For the purposes of this section, an offense is committed before September 1, 2003, if any element of the offense occurs before that date. 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.

(c) Section 305.033(b), Government Code, as amended by this Act, applies only to a civil penalty imposed for a late registration or report under Chapter 305, Government Code, that is required to be filed on or after September 1, 2003. A civil penalty imposed for a late registration or report under Chapter 305, Government Code, that is required to be filed before September 1, 2003, is governed by the law in effect on the date the report was required to be filed, and the former law is continued in effect for that purpose.

ARTICLE 5. PERSONAL FINANCIAL DISCLOSURE BY AND STANDARDS OF

CONDUCT FOR STATE OFFICERS AND EMPLOYEES

SECTION 5.01. Section 572.021, Government Code, is amended to read as follows:

Sec. 572.021. FINANCIAL STATEMENT REQUIRED. A state officer, a partisan or independent candidate for an office as an elected officer, and a party chairman shall file with the commission a verified financial statement complying with Sections 572.022 through 572.0252 [~~572.025~~].

SECTION 5.02. Section 572.022(c), Government Code, is amended to read as follows:

(c) The individual filing the statement shall report a description of real property by reporting:

(1) the street address, if available, or the number of lots or number of acres, as applicable, in each county, and the name of the county, if the street address is not available; and

(2) the names of all persons retaining an interest in the property, excluding an interest that is a severed mineral interest.

SECTION 5.03. Section 572.023, Government Code, is amended by amending Subsection (b) and adding Subsections (c) and (d) to read as follows:

(b) The account of financial activity consists of:

(1) a list of all sources of occupational income, identified by employer, or if self-employed, by the nature of the occupation, including identification of a person or other organization from which the individual or a business in which the individual has a substantial interest received a fee as a retainer for a claim on

future services in case of need, as distinguished from a fee for services on a matter specified at the time of contracting for or receiving the fee, if professional or occupational services are not actually performed during the reporting period equal to or in excess of the amount of the retainer, and the category of the amount of the fee;

(2) identification by name and the category of the number of shares of stock of any business entity held or acquired, and if sold, the category of the amount of net gain or loss realized from the sale;

(3) a list of all bonds, notes, and other commercial paper held or acquired, and if sold, the category of the amount of net gain or loss realized from the sale;

(4) identification of each source and the category of the amount of income in excess of \$500 derived from each source from interest, dividends, royalties, and rents;

(5) identification of each guarantor of a loan and identification of each person or financial institution to whom a personal note or notes or lease agreement for a total financial liability in excess of \$1,000 existed at any time during the year and the category of the amount of the liability;

(6) identification by description of all beneficial interests in real property and business entities held or acquired, and if sold, the category of the amount of the net gain or loss realized from the sale;

(7) identification of a person or other organization from which the individual or the individual's spouse or dependent children received a gift of anything of value in excess of \$250 and a description of each gift, except:

(A) a gift received from an individual related to the individual at any time within the second degree by consanguinity or affinity, as determined under Subchapter B [~~A~~], Chapter 573;

(B) a political contribution that was reported as required by Chapter 254, Election Code [~~law~~]; and

(C) an expenditure required to be reported by a person required to be registered under Chapter 305;

(8) identification of the source and the category of the amount of all income received as beneficiary of a trust, other than a blind trust that complies with Subsection (c), and identification of each trust asset, if known to the beneficiary, from which income was received by the beneficiary in excess of \$500;

(9) identification by description and the category of the amount of all assets and liabilities of a corporation, firm, [~~or~~] partnership, limited partnership, limited liability partnership, professional corporation, professional association, joint venture, or other business association in which 50 percent or more of the outstanding ownership was held, acquired, or sold;

(10) a list of all boards of directors of which the individual is a member and executive positions that the individual holds in corporations, firms, partnerships, limited partnerships, limited liability partnerships, professional corporations, professional associations, joint ventures, or other business associations or proprietorships, stating the name of each corporation, firm,

partnership, limited partnership, limited liability partnership, professional corporation, professional association, joint venture, or other business association or proprietorship and the position held;

(11) identification of any person providing transportation, meals, or lodging expenses permitted under Section 36.07(b), Penal Code, and the amount of those expenses, other than expenditures required to be reported under Chapter 305; ~~and~~

(12) any corporation, firm, partnership, limited partnership, limited liability partnership, professional corporation, professional association, joint venture, or other business association, excluding a publicly held corporation, in which both the individual ~~[state officer]~~ and a person registered under Chapter 305 have an interest;

(13) identification by name and the category of the number of shares of any mutual fund held or acquired, and if sold, the category of the amount of net gain or loss realized from the sale; and

(14) identification of each blind trust that complies with Subsection (c), including:

(A) the category of the fair market value of the trust;

(B) the date the trust was created;

(C) the name and address of the trustee; and

(D) a statement signed by the trustee, under penalty of perjury,

stating that:

(i) the trustee has not revealed any information to the individual, except information that may be disclosed under Subdivision (8); and

(ii) to the best of the trustee's knowledge, the trust complies with this section.

(c) For purposes of Subsections (b)(8) and (14), a blind trust is a trust as to which:

(1) the trustee:

(A) is a disinterested party;

(B) is not the individual;

(C) is not required to register as a lobbyist under Chapter 305;

(D) is not a public officer or public employee; and

(E) was not appointed to public office by the individual or by a public officer or public employee the individual supervises; and

(2) the trustee has complete discretion to manage the trust, including the power to dispose of and acquire trust assets without consulting or notifying the individual.

(d) If a blind trust under Subsection (c) is revoked while the individual is subject to this subchapter, the individual must file an amendment to the individual's most recent financial statement, disclosing the date of revocation and the previously unreported value by category of each asset and the income derived from each asset.

SECTION 5.04. Subchapter B, Chapter 572, Government Code, is amended by adding Sections 572.0251 and 572.0252 to read as follows:

Sec. 572.0251. INFORMATION ABOUT LEGISLATIVE CONTINUANCES. A member or member-elect of the legislature licensed to practice law in this state who represents a party to a civil or criminal case for compensation and on that party's behalf applies for or obtains a legislative continuance under Section 30.003, Civil Practice and Remedies Code, or under another law or rule that requires or permits a court to grant a continuance on the grounds that an attorney for a party is a member or member-elect of the legislature shall report on the financial statement:

(1) the name of the party represented;

(2) the date on which the member or member-elect was retained to represent the party;

(3) the style and cause number of the action in which the continuance was sought and the court and jurisdiction in which the action was pending when the continuance was sought;

(4) the date on which the member or member-elect applied for a continuance; and

(5) whether the continuance was granted.

Sec. 572.0252. INFORMATION ABOUT REFERRALS. A state officer who is an attorney shall report on the financial statement:

(1) making or receiving any referral for compensation for legal services; and

(2) the category of the amount of any fee accepted for making a referral for legal services.

SECTION 5.05. Section 572.026(b), Government Code, is amended to read as follows:

(b) An individual who is appointed to serve as a salaried appointed officer or an appointed officer of a major state agency or who is appointed to fill a vacancy in an elective office shall file a financial statement not later than the 14th [~~30th~~] day after the date of appointment or the date of qualification for the office, or if confirmation by the senate is required, before the first committee hearing on the confirmation, whichever date is earlier.

SECTION 5.06. Section 572.033(b), Government Code, is amended to read as follows:

(b) If a statement is determined to be late, the individual responsible for filing the statement is [~~civily~~] liable to the state for a civil penalty of \$500 [~~an amount determined by commission rule, but not to exceed \$100 for each day that the statement is late~~]. If a statement is more than 30 days late, the commission shall issue a warning of liability by registered mail to the individual responsible for the filing. If the penalty is not paid before the 10th day after the date on which the warning is received, the individual is liable for a civil penalty in an amount determined by commission rule, but not to exceed \$10,000.

SECTION 5.07. Section 572.052(a), Government Code, is amended to read as follows:

(a) A member of the legislature may not, for compensation, represent another person before a state agency in the executive branch of state government unless[-

~~[(1)]~~ the representation:

~~(1) [(A)] is pursuant to an attorney-client relationship in a criminal law matter [made in a proceeding that is adversary in nature or in another public hearing that is a matter of record]; or~~

~~(2) [(B)] involves the filing of documents[, contacts with the agency, or other relations,] that involve only ministerial acts on the part of the commission, agency, board, department, or officer [; and~~

~~[(2) the member discloses to the agency that the member is being compensated for the representation].~~

SECTION 5.08. Subchapter C, Chapter 572, Government Code, is amended by adding Section 572.0531 to read as follows:

Sec. 572.0531. NOTICE REQUIRED FOR INTRODUCTION OR SPONSORSHIP OF OR VOTING ON CERTAIN MEASURES OR BILLS BY LEGISLATORS. (a) A member shall file a notice as required by Subsection (b) before introducing, sponsoring, or voting on a measure or bill if the member's spouse or a person related to the member within the first degree by consanguinity, as determined under Subchapter B, Chapter 573, is registered as a lobbyist under Chapter 305 with respect to the subject matter of the measure or bill.

(b) A member of the house of representatives to whom Subsection (a) applies shall file a written notice of that fact with the chief clerk of the house of representatives. A senator to whom Subsection (a) applies shall file a written notice of that fact with the secretary of the senate. The member shall also file a notice with the commission. A notice filed under this subsection must:

(1) identify:

(A) the member;

(B) the measure, bill, or class of measures or bills with respect to which the notice is required under this section; and

(C) the person registered as a lobbyist; and

(2) be included in the journal of the house to which the member belongs.

(c) A person related to the member to whom Subsection (a) applies shall file a notice with the commission identifying:

(1) the person;

(2) the member; and

(3) the class of measures or bills with respect to which notice is required under this section.

(d) A person related to the member to whom Subsection (a) applies shall file the notice required by Subsection (c) not later than:

(1) the beginning of a regular or special legislative session as to which the person is registered as a lobbyist under Chapter 305 and will communicate directly with a member of the legislative branch with respect to the measure, bill, or class of measures or bills; or

(2) the seventh business day after the day the person agrees to accept reimbursement or compensation to communicate directly with a member of the legislative branch with respect to the measure, bill, or class of measures or bills, if the person agrees to accept the reimbursement or compensation after the beginning of a legislative session.

(e) A member of the legislature who violates this section is subject to discipline by the house to which the member belongs, as provided by Section 11, Article III, Texas Constitution.

(f) In this section, "communicates directly with" and "member of the legislative branch" have the meanings assigned by Section 305.002.

SECTION 5.09. Section 30.003, Civil Practice and Remedies Code, is amended by adding Subsection (g) to read as follows:

(g) If the attorney for a party seeking a continuance under this section is a member or member-elect of the legislature, the attorney shall file a copy of the application for a continuance with the Texas Ethics Commission. The copy must be sent to the commission not later than the third business day after the date on which the attorney files the application with the court.

SECTION 5.10. (a) Section 572.026(b), Government Code, as amended by this Act, applies only to the filing of a financial statement by an individual appointed on or after September 1, 2003, to serve as a salaried appointed officer or an appointed officer of a major state agency or to fill a vacancy in an elective office. The filing of a financial statement by an individual appointed before September 1, 2003, to serve as a salaried appointed officer or an appointed officer of a major state agency or to fill a vacancy in an elective office is governed by the law in effect on the date the individual is appointed, and the former law is continued in effect for that purpose.

(b) Section 572.052, Government Code, as amended by this Act, applies only to representation before a state agency in regard to a matter as to which a member of the legislature is hired on or after September 1, 2003. Representation in regard to a matter as to which a member of the legislature was hired before September 1, 2003, and the reporting of that representation are governed by the law in effect at the time the member was hired, and that law is continued in effect for that purpose.

(c) Sections 572.022 and 572.023, Government Code, as amended by this Act, and Sections 572.0251 and 572.0252, Government Code, as added by this Act, apply only to a financial statement required to be filed under Subchapter B, Chapter 572, Government Code, on or after January 1, 2005. A financial statement required to be filed under Subchapter B, Chapter 572, Government Code, before January 1, 2005, is governed by the law in effect immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

(d) Section 572.033(b), Government Code, as amended by this Act, applies only to a civil penalty imposed for a late report under Subchapter B, Chapter 572, Government Code, that is required to be filed on or after September 1, 2003. A civil penalty imposed for a late report under Subchapter B, Chapter 572,

Government Code, that is required to be filed before September 1, 2003, is governed by the law in effect on the date the report was required to be filed, and the former law is continued in effect for that purpose.

(e) Section 30.003, Civil Practice and Remedies Code, as amended by this Act, applies only to an application for a continuance under that section that is made on or after September 1, 2003. An application for a continuance under Section 30.003, Civil Practice and Remedies Code, that is made before September 1, 2003, is covered by the law in effect when the application was made, and the former law is continued in effect for that purpose.

ARTICLE 6. PERSONAL FINANCIAL DISCLOSURE BY AND
STANDARDS OF

CONDUCT FOR LOCAL GOVERNMENT OFFICERS

SECTION 6.01. Subtitle A, Title 5, Local Government Code, is amended by adding Chapter 145 to read as follows:

CHAPTER 145. FINANCIAL DISCLOSURE BY AND STANDARDS
OF CONDUCT FOR LOCAL GOVERNMENT OFFICERS

Sec. 145.001. APPLICABILITY OF CHAPTER. This chapter applies only to a municipality with a population of 100,000 or more.

Sec. 145.002. DEFINITION. In this chapter, "municipal officer" means the mayor, a member of the governing body, the municipal attorney, or the city manager of a municipality.

Sec. 145.003. FINANCIAL STATEMENT REQUIRED. (a) A municipal officer or a candidate for a municipal office filled by election shall file a financial statement as required by this chapter.

(b) The statement must:

(1) be filed with the clerk or secretary of the municipality in which the officer or candidate resides; and

(2) comply with Sections 572.022 and 572.023, Government Code.

Sec. 145.004. FILING DATES; TIMELINESS OF FILING. (a) A municipal officer shall file the financial statement required by this chapter within the time prescribed by Section 572.026(a), Government Code.

(b) A person who is appointed to a municipal office shall file the financial statement required by this chapter within the time prescribed by Section 572.026(c), Government Code.

(c) A candidate for a municipal office filled by election shall file the financial statement required by this chapter not later than the earlier of:

(1) the 20th day after the deadline for filing an application for a place on the ballot in the election; or

(2) the fifth day before the date of the election.

(d) The timeliness of the filing is governed by Section 572.029, Government Code.

(e) A municipal officer or a person who is appointed to a municipal office may request the clerk or secretary of the municipality to grant an extension of not more than 60 days for filing the statement. The clerk or secretary shall grant the request if it is received before the filing deadline or if the officer's physical or

mental incapacity prevents the officer from filing the statement or requesting an extension before the filing deadline. The clerk or secretary may not grant more than one extension to a person in one year except for good cause shown.

(f) The clerk or secretary may not grant an extension to a candidate for a municipal office filled by election.

Sec. 145.005. FORM OF STATEMENT. (a) The clerk or secretary of the municipality shall require that the form designed by the Texas Ethics Commission under Chapter 572, Government Code, be used for filing the financial statement.

(b) The clerk or secretary shall mail two copies of the form to each municipal officer or person who is appointed to a municipal office who is required to file under this chapter within the time prescribed by Section 572.030(c)(1), Government Code. The clerk or secretary shall mail a copy of the form to each candidate for a municipal office filled by election who is required to file under this chapter not later than the 10th day before the deadline for filing the statement under Section 145.004(c).

Sec. 145.006. DUPLICATE OR SUPPLEMENTAL STATEMENTS. If a person has filed a financial statement under one provision of this chapter covering the preceding calendar year, the person is not required to file a financial statement required under another provision of this chapter covering that same year if, before the deadline for filing the statement under the other provision, the person notifies the clerk or secretary of the municipality in writing that the person has already filed a financial statement under this chapter covering that year.

Sec. 145.007. PUBLIC ACCESS TO STATEMENTS. (a) Financial statements filed under this chapter are public records. The clerk or secretary of the municipality shall maintain the statements in separate alphabetical files and in a manner that is accessible to the public during regular office hours.

(b) Until the first anniversary of the date a financial statement is filed, each time a person, other than the clerk or secretary of the municipality or an employee of the clerk or secretary who is acting on official business, requests to see the financial statement, the clerk or secretary shall place in the file a statement of the person's name and address, whom the person represents, and the date of the request. The clerk or secretary shall retain that statement in the file until the first anniversary of the date the requested financial statement is filed.

(c) The clerk or secretary of the municipality may, and on notification from a former officer or candidate shall, destroy any financial statements filed by the officer or candidate after the second anniversary of the date the person ceases to be an officer or candidate, as applicable.

Sec. 145.008. NOTIFICATION TO PROSECUTING ATTORNEY. The clerk or secretary of each municipality shall maintain a list of the municipal officers and candidates for municipal office required to file a financial statement under this chapter. Not later than the 10th day after each applicable filing deadline, the municipal clerk shall provide to the municipal attorney a copy of the list showing for each municipal officer and candidate for municipal office:

(1) whether the officer or candidate timely filed a financial statement as required by this chapter;

(2) whether the officer or candidate timely requested and was granted an extension of time to file as provided for by Section 145.004 and the new due date for each such officer or candidate; or

(3) whether the officer or candidate did not timely file a financial statement or receive an extension of time.

Sec. 145.009. CRIMINAL PENALTY. (a) A municipal officer or a candidate for a municipal office filled by election commits an offense if the officer or candidate knowingly fails to file a financial statement as required by this chapter.

(b) An offense under this section is a Class B misdemeanor.

(c) It is a defense to prosecution under this section that the officer or candidate did not receive copies of the financial statement form required to be mailed to the officer or candidate by this chapter.

Sec. 145.010. CIVIL PENALTY. (a) A person who determines that a person required to file a financial statement under this chapter has failed to do so may notify in writing the municipal attorney of the municipality.

(b) On receipt of a written notice under Subsection (a), the municipal attorney shall determine from any available evidence whether the person to whom the notice relates has failed to file a statement. On making that determination, the municipal attorney shall immediately mail by certified mail a notice of the determination to the person responsible for filing the statement.

(c) If the person responsible for filing the statement fails to file the statement before the 30th day after the date the person receives the notice under Subsection (b), the person is civilly liable to the municipality for an amount not to exceed \$1,000.

(d) A penalty paid under this section shall be deposited to the credit of the general fund of the municipality.

SECTION 6.02. Subchapter A, Chapter 159, Local Government Code, is amended by adding Section 159.0071 to read as follows:

Sec. 159.0071. NOTIFICATION TO PROSECUTING ATTORNEY. The county clerk of each county shall maintain a list of the county officers and candidates for county office required to file a financial statement under this subchapter. Not later than the 10th day after each applicable filing deadline, the county clerk shall provide to the county attorney or criminal district attorney a copy of the list showing for each county officer and candidate for county office:

(1) whether the officer or candidate timely filed a financial statement as required by this subchapter;

(2) whether the officer or candidate timely requested and was granted an extension of time to file as provided for by Section 159.004 and the new due date for each such officer or candidate; or

(3) whether the officer or candidate did not timely file a financial statement or receive an extension of time.

SECTION 6.03. Subchapter F, Chapter 335, Local Government Code, is amended by adding Section 335.1085 to read as follows:

Sec. 335.1085. FILING OF FINANCIAL STATEMENT BY DIRECTOR.

(a) A director shall file the financial statement required of state officers under Subchapter B, Chapter 572, Government Code, with:

- (1) the board; and
- (2) the Texas Ethics Commission.

(b) Subchapter B, Chapter 572, Government Code:

(1) applies to a director as if the director were a state officer; and
(2) governs the contents, timeliness of filing, and public inspection of a statement filed under this section.

(c) A director commits an offense if the director fails to file the statement required by this section. An offense under this section is a Class B misdemeanor.

SECTION 6.04. Subchapter C, Chapter 11, Education Code, is amended by adding Section 11.064 to read as follows:

Sec. 11.064. FILING OF FINANCIAL STATEMENT BY TRUSTEE. (a)

A trustee of an independent school district with an enrollment of at least 5,000 students shall file the financial statement required of state officers under Subchapter B, Chapter 572, Government Code, with:

- (1) the board of trustees; and
- (2) the Texas Ethics Commission.

(b) Subchapter B, Chapter 572, Government Code:

(1) applies to a trustee subject to this section as if the trustee were a state officer; and
(2) governs the contents, timeliness of filing, and public inspection of a statement filed under this section.

(c) A trustee subject to this section commits an offense if the trustee fails to file the statement required by this section. An offense under this section is a Class B misdemeanor.

SECTION 6.05. Chapter 60, Water Code, is amended by adding Subchapter O to read as follows:

SUBCHAPTER O. FINANCIAL DISCLOSURE BY
MEMBERS OF GOVERNING BODY

Sec. 60.451. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to a port authority or navigation district created or operating under Section 52, Article III, or Section 59, Article XVI, Texas Constitution.

Sec. 60.452. FILING OF FINANCIAL STATEMENT BY MEMBER OF GOVERNING BODY. (a) A member of the governing body of a port authority or navigation district shall file the financial statement required of state officers under Subchapter B, Chapter 572, Government Code, with:

- (1) the authority or district, as appropriate; and
- (2) the Texas Ethics Commission.

(b) Subchapter B, Chapter 572, Government Code:

(1) applies to a member of the governing body of an authority or district as if the member were a state officer; and
(2) governs the contents, timeliness of filing, and public inspection of a statement filed under this section.

(c) A member of the governing body of an authority or district commits an offense if the member fails to file the statement required by this section. An offense under this section is a Class B misdemeanor.

SECTION 6.06. Chapter 145, Local Government Code, as added by this Act, applies beginning January 1, 2005. A municipal officer or candidate for municipal office is not required to include financial activity occurring before January 1, 2004, in a financial disclosure statement under Chapter 145, Local Government Code, as added by this Act.

SECTION 6.07. Section 335.1085, Local Government Code, as added by this Act, applies beginning January 1, 2005. A director subject to Subchapter F, Chapter 335, Local Government Code, is not required to include financial activity occurring before January 1, 2004, in a financial disclosure statement under Section 335.1085, Local Government Code, as added by this Act.

SECTION 6.08. Section 11.064, Education Code, as added by this Act, applies beginning January 1, 2005. A trustee subject to Section 11.064, Education Code, as added by this Act, is not required to include financial activity occurring before January 1, 2004, in a financial disclosure statement under that section.

SECTION 6.09. Subchapter O, Chapter 60, Water Code, as added by this Act, applies beginning January 1, 2005. A member of the governing body of a port authority or navigation district subject to Subchapter O, Chapter 60, Water Code, is not required to include financial activity occurring before January 1, 2004, in a financial disclosure statement under Section 60.452, Water Code, as added by this Act.

ARTICLE 7. MISUSE OF CONFIDENTIAL INFORMATION BY GOVERNMENTAL OFFICER OR EMPLOYEE

SECTION 7.01. The heading to Section 552.352, Government Code, is amended to read as follows:

Sec. 552.352. DISTRIBUTION OR MISUSE OF CONFIDENTIAL INFORMATION.

SECTION 7.02. 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.

ARTICLE 8. EFFECTIVE DATE

SECTION 8.01. This Act takes effect September 1, 2003.

HB 1606 - STATEMENT OF LEGISLATIVE INTENT

REPRESENTATIVE CANALES: I know it probably comes as no surprise that I'm asking a question on legislative continuances. Because if there's anybody who's gotten any grief over that this session it would be me. But I want to start off by telling you, Mr. Wolens, I think you have an excellent bill. And I am going to vote for it.

REPRESENTATIVE WOLENS: Thank you so much.

CANALES: My question is on legislative continuances. The way the law exists today, do you think that a legislator has to disclose what continuances they have filed?

WOLENS: They have to disclose it to whom?

CANALES: To the public. The way the law exists today.

WOLENS: Well, let me answer your question directly, in a circuitous manner. Any request for a legislative continuance must be done by motion. The motion must be filed in a court, and documents filed in a court are a matter of public record. And, ergo, I would say that they are a matter of public record and are disclosed.

CANALES: They are already disclosed, correct?

WOLENS: But that is not the question that I think you mean to ask me.

CANALES: What I want to find out is, is there a necessity for the change?

WOLENS: What change?

CANALES: The way your bill reads now, when I file a legislative continuance, I'm going to have to list that and make it public record. Before, I was under the impression I didn't have to list that.

WOLENS: The reason that you're going to do it—there are two reasons that we're going to do it. We had discussed prohibiting it, and as you know, we decided not to prohibit it. But there will be disclosure that will be available so the public can determine if it's being abused or not. The legislature as a body, and as a matter of public policy, is not going to prohibit it. But as a matter of public policy, we are going to make it disclosed in two places where it's easy for the public to find out how frequently it's being used, and if it's being used appropriately. It will be filed annually in the personal financial statement, and then it will be simultaneous with filing it in court with the Texas Ethics Commission.

CANALES: And I think that's a wonderful idea. My question is, we don't have to do that currently the way the law exists?

WOLENS: Well, no, you do not have to file it at the ethics commission or anyplace else, but it must be filed in a court. And I was just simply making the point that records filed in a court are, as a matter of public policy, public records unless sealed by the court.

CANALES: Correct. Now, another question. Are legislative continuances granted automatically?

WOLENS: No, I think that there are time limitations currently in the law on the granting of legislative continuances. It's also my understanding, that even after they are denied, that they are sometimes appealed to a higher authority and granted. And I also understand that there is some discretion by the trial court in granting them.

CANALES: That was my question—that it was my understanding that a judge—if the judge felt that it would cause an undue hardship on the plaintiff—had every right to overrule your motion just like they would any other motion. And I just feel that this legislative body, as well as the rest of the general public, believe that a legislative continuance isn't automatic, and it's granted regardless of the case or the issues. And I just wanted to—maybe I had misinterpreted the law, and I thought maybe you might know it.

WOLENS: No, I'm not that familiar. But I thought they must be granted in certain instances depending on where they're filed.

REMARKS ORDERED PRINTED

Representative Canales moved to print remarks between Representative Canales and Representative Wolens.

The motion prevailed without objection.

Representative Wolens moved to adopt the conference committee report on **HB 1606**.

A record vote was requested.

The motion prevailed by (Record 950): 133 Yeas, 8 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.; Dawson; Delisi; Denny; Deshotel; Driver; Dukes; Dunnam; Edwards; Eiland; Eissler; Elkins; Ellis; Escobar; Farabee; Farrar; Flynn; Gallego; Gattis; Geren; Giddings; Goodman; Goolsby; Griggs; Grusendorf; Guillen; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Heflin; Hegar; Hill; Hochberg; Hodge; Homer; Hope; Hopson; Hughes; Hunter; Hupp; Isett; Jones, D.; Jones, E.; Keel; Keffer, B.; Keffer, J.; King; Kolkhorst; Krusee; Kuempel; Laney; Laubenberg; Lewis; Mabry; Madden; Marchant; Martinez Fischer; McCall; McClendon; McReynolds; Menendez; Mercer; Merritt; Miller; Moreno, J.; Morrison; Mowery; Naishtat; Nixon; Noriega; Oliveira; Olivo; Paxton; Phillips; Pickett; Pitts; Puente; Quintanilla; Raymond; Reyna; Ritter; Rodriguez; Rose; Smith, T.; Smith, W.; Smithee; Solis; Solomons; Stick; Talton; Taylor; Telford; Thompson; Turner; Uresti; Van Arsdale; Villarreal; West; Wilson; Wise; Wohlgenuth; Wolens; Wong; Woolley; Zedler.

Nays — Chisum; Davis, Y.; Dutton; Jones, J.; Luna; Moreno, P.; Swinford; Truitt.

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

Absent, Excused — Garza.

Absent — Flores; Gutierrez; Howard; Peña; Riddle; Seaman.

STATEMENTS OF VOTE

I was shown voting yes on Record No. 950. I intended to vote no.

Guillen

When Record No. 950 was taken, I was in the house but away from my desk. I would have voted yes.

Howard

When Record No. 950 was taken, I was in the house but away from my desk. I would have voted yes.

Riddle

When Record No. 950 was taken, I was in the house but away from my desk. I would have voted yes.

Seaman

HB 1606 - STATEMENT OF LEGISLATIVE INTENT

As the original author of the language found in the Conference Committee Report to **HB 1606** and referenced as Section 572.0252 of the Government Code, I submit to the journal the following statement of legislative intent concerning this section dealing with information required to be reported about referrals.

This section, which is intended to apply to all state officers who are attorneys, requires all persons covered by the section to file information regarding the receiving or making of referrals for legal business for compensation. It is my intent that the ethics commission shall promulgate guidelines that will require the filing on the required financial statement of the names and dates of persons to whom or from whom referrals are made. Additionally, it is my intent that the commission shall determine the categories of amounts of the fees to be reported to be descriptive and should include categories beyond that found in other sections of the financial statement. Finally, this section is specifically intended to apply to fees received or paid by or to a state officer for referrals either directly or through a business entity which employs or compensates the state officer.

Wilson

HCR 295 - ADOPTED (by Wolens)

The following privileged resolution was laid before the house:

HCR 295

WHEREAS, **HB 1606** has been adopted by the house of representatives and the senate; and

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

RESOLVED by the 78th Legislature of the State of Texas, That the enrolling clerk of the house of representatives be instructed to make the following correction:

In SECTION 6.04 of the bill (conference committee report, page 76, line 6), strike "500" and substitute "5,000".

HCR 295 was adopted. (Griggs and Truitt recorded voting no)

HR 1937 - ADOPTED
(by Ritter)

The following privileged resolution was laid before the house:

HR 1937

BE IT RESOLVED by the House of Representatives of the State of Texas, 78th Legislature, Regular Session, 2003, That House Rule 13, Section 9(a), be suspended in part as provided by House Rule 13, Section 9(f), to enable the conference committee appointed to resolve the differences on **HB 2359**, relating to the programs and systems administered by the Employees Retirement System of Texas, to consider and take action on the following matter:

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

SECTION ____ . Section 812.003, Government Code, is amended by amending Subsection (d) and adding Subsections (e) through (h) to read as follows:

(d) For persons whose employment or office holding begins on or after September 1, 2005, membership [~~Membership~~] in the employee class begins on the first day ~~the~~ [a] person is employed or holds office.

(e) For persons whose employment or office holding begins before September 1, 2005, membership in the employee class begins on the 91st day after the first day a person is employed or holds office.

(f) A person who is reemployed or who again holds office after withdrawing contributions under Subchapter B for previous service credited in the employee class begins membership in the employee class on the 91st day after the first day the person is reemployed or again holds office.

(g) Notwithstanding any other provision of law, a member may establish service credit only as provided by Section 813.514 for service performed during the 90-day waiting period provided by Subsection (e) or (f).

(h) Subsections (e), (f), and (g) and this subsection expire September 1, 2005.

SECTION ____ . Subchapter F, Chapter 813, Government Code, is amended by adding Section 813.514 to read as follows:

Sec. 813.514. CREDIT PURCHASE OPTION FOR CERTAIN SERVICE.

(a) A member may establish service credit under this section in the employee class only for service performed during a 90-day waiting period to become a member after beginning employment or holding office.

(b) A member may establish service credit under this section by depositing with the retirement system, for each month of service credit, the actuarial present value, at the time of deposit, of the additional standard retirement annuity benefits that would be attributable to the purchase of the service credit under this section based on rates and tables recommended by the retirement system's actuary and adopted by the board of trustees.

(c) After a member makes the deposits required by this section, the retirement system shall grant the member one month of equivalent membership service credit for each month of credit approved. A member may establish not more than three months of equivalent membership service credit under this section.

(d) The retirement system shall deposit the amount of the actuarial present value of the service credit purchased in the member's individual account in the employees saving account.

(e) The board of trustees may adopt rules to administer this section, including rules that impose restrictions on the application of this section as necessary to cost-effectively administer this section.

SECTION ____ . Section 812.003, Government Code, as amended by this Act, and Section 813.514, Government Code, as added by this Act, apply only to a person who is first employed by or begins to hold an office of the state on or after the effective date of this Act and to a former employee or office holder who has withdrawn retirement contributions under Subchapter B, Chapter 812, Government Code, and is reemployed by or begins to again hold an office of the state on or after the effective date of this Act.

Explanation: The added text is needed to provide that a new state employee or a reemployed state employee who has withdrawn contributions for previous service does not begin to receive service credit until the 91st day of employment. Such employees have the option to purchase service credit for the 90-day period at the actuarial value. This is a temporary change that expires September 1, 2005.

HR 1937 was adopted without objection.

HB 2359 - 24 HOUR LAYOUT RULE SUSPENDED

Representative Ritter moved to suspend Rule 13, Section 10 of the house rules to consider the conference committee report on **HB 2359** which was ineligible for consideration at this time.

The motion prevailed.

HB 2359 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Ritter submitted the following conference committee report on **HB 2359** :

Austin, Texas, June 1, 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 2359** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Armbrister
Duncan
Zaffirini

Ritter
King
Hill

On the part of the senate

On the part of the house

HB 2359, A bill to be entitled An Act relating to the programs and systems administered by the Employees Retirement System of Texas.

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

SECTION 1. Section 609.008, Government Code, is amended to read as follows:

Sec. 609.008. CREDITING TRUST FUND INTEREST. Interest earned on an employee's deferred amounts and investment income deposited in any of the deferred compensation trust funds [fund], as defined by Section 609.101, or ~~in the TexasSaver trust fund or the other deferred compensation trust fund~~ to which Section 609.512 applies is credited to the employee.

SECTION 2. Sections 609.011 and 609.012, Government Code, are amended to read as follows:

Sec. 609.011. NOTIFICATION BY ~~[457]~~ PLAN ADMINISTRATOR. (a) The plan administrator of a ~~[457]~~ plan established under this chapter may notify an employee participating in the plan that the administrator believes that:

- (1) a qualified vendor is having significant financial difficulties; or
- (2) the amount of the employee's deferred amounts and investment income invested with a qualified vendor exceeds an insured or guaranteed level.

(b) A plan administrator is not liable to a participating [an] employee for a loss resulting from the failure to notify the employee under this section.

Sec. 609.012. TRANSFER FROM A ~~[457]~~ PLAN VENDOR. The plan administrator of a ~~[457]~~ plan established under this chapter may immediately transfer to the plan's deferred compensation trust fund all deferred amounts and investment income from a vendor who at any time fails to satisfy the requirements of this chapter or the plan administrator. A vendor may not charge a fee or penalty as the result of a plan administrator's transfer under this section. Immediately after making the transfer, the plan administrator shall give to each employee whose deferred amounts and investment income were transferred a notice that states that:

- (1) the vendor's investment products are ineligible to receive additional deferred amounts;
- (2) the amounts have been transferred from the vendor to the deferred compensation trust fund; and

(3) the employee is required to promptly designate another qualified investment product to receive the transferred amount.

SECTION 3. Section 609.502, Government Code, is amended to read as follows:

Sec. 609.502. CREATION OF PLAN; PARTICIPATION. (a) The board of trustees of the Employees Retirement System of Texas is the trustee and the plan administrator of a 401(k) plan and a 457 plan, collectively known as the TexaSaver program, established under this subchapter.

(b) ~~[The board of trustees is the trustee and the plan administrator of a 457 plan established under this subchapter.~~

~~(c)~~ The board of trustees shall administer all aspects of each plan.

~~(c)~~ ~~(d)~~ The board of trustees may designate a person to assist in the execution of the board's authority and responsibilities as plan administrator.

~~(d)~~ ~~(e)~~ A state agency may participate in either or both plans.

SECTION 4. Section 609.505(a), Government Code, is amended to read as follows:

(a) The board of trustees or a third party administrator approved by the board, in accordance with rules adopted under this subchapter, may contract with a vendor qualified to participate in a deferred compensation plan.

SECTION 5. Section 609.508, Government Code, is amended to read as follows:

Sec. 609.508. RULES. (a) The board of trustees may adopt rules, including plans and procedures, and orders necessary to carry out the purposes of this subchapter, including rules or orders relating to:

(1) the selection and regulation of vendors for a deferred compensation plan;

(2) the regulation of the practices of agents employed by vendors and a participating employee's use and reimbursement of investment advisors participating in the program;

(3) the disclosure of information concerning investment products;

(4) the regulation of advertising materials to be used by vendors;

(5) the submission of financial information by a vendor; and

(6) the development of a system to facilitate electronic authorization, distribution, transfer, and investment of deferrals.

(b) The plan administrator of the TexaSaver 401(k) or the TexaSaver 457 plan may adopt rules and procedures to allow a participating employee, subject to applicable requirements of the Internal Revenue Code of 1986, to obtain a loan from the employee's account.

SECTION 6. Sections 609.512(a) and (b), Government Code, are amended to read as follows:

(a) The TexaSaver 401(k) trust fund is in the state treasury. The fund is for the benefit of the program described by Section 609.001(10) [TexaSaver].

(b) The TexaSaver 457 ~~[deferred compensation]~~ trust fund is in the state treasury. The fund is for the benefit of the program described by Section 609.001(11) [deferred compensation plan described by Section 609.502(b)].

SECTION 7. Section 615.023, Government Code, as amended by Chapter 1231 and repealed by Chapter 1438, Acts of the 77th Legislature, Regular Session, 2001, is reenacted to read as follows:

Sec. 615.023. PAYMENT TO SURVIVING MINOR CHILD. (a) The state shall pay to the duly appointed or qualified guardian or other legal representative of an eligible surviving minor child:

- (1) \$200 each month, if there is one surviving child;
- (2) \$300 each month, if there are two surviving children; or
- (3) \$400 each month, if there are three or more surviving children.

(b) A child's entitlement to assistance payable under this section ends on the child's 18th birthday. At that time, payments to any other surviving minor children shall be adjusted, as necessary, to conform to the amounts payable under Subsection (a).

(c) A payment under this section is in addition to any payment made under Section 615.022.

SECTION 8. Section 615.045(a), Government Code, is amended to read as follows:

(a) Records of individuals listed by Section 615.003 and of survivors eligible for benefits under this chapter that are in the custody of the Employees Retirement System of Texas or an [a carrier,] administering firm as defined by Section 1551.003, Insurance Code [the Texas Employees Uniform Group Insurance Benefits Act (Article 3.50 2, Vernon's Texas Insurance Code)], or another [other] governmental agency acting with or on behalf of the retirement system are confidential and [;] not subject to public disclosure, and the retirement system is not required to accept or comply with a request for a record or information about a record or to seek an opinion from the attorney general, because the records are exempt from the public information provisions of Chapter 552, except as otherwise provided by this section.

SECTION 9. Section 659.102, Government Code, is amended by amending Subsection (c) and adding Subsection (d) to read as follows:

(c) The supplemental optional benefits program may include permanent life insurance, catastrophic illness insurance, disability insurance, [~~or~~] prepaid legal services, or a qualified transportation benefit.

(d) A qualified transportation benefit is a transportation benefit meeting the requirements of Section 132(f), Internal Revenue Code of 1986. The Employees Retirement System of Texas shall determine a fee or charge that may be paid as a qualified transportation benefit.

SECTION 10. Section 811.001(12), Government Code, is amended to read as follows:

(12) "Occupational death or disability" means death or disability from a sudden and unexpected [an] injury or disease that [directly] results solely from a specific act or occurrence determinable by a definite time and place[;] and solely [directly results] from an extremely dangerous risk of severe physical or mental trauma or disease that is not common to the public at large and that is [a risk or a hazard] peculiar to and inherent in a dangerous [a] duty that arises from the nature and in the course of a person's state employment.

SECTION 11. Subchapter A, Chapter 811, Government Code, is amended by adding Sections 811.007 and 811.008 to read as follows:

Sec. 811.007. IMMUNITY FROM LIABILITY. The board of trustees, executive director, and employees of the retirement system are not liable for any action taken or omission made or suffered by them in good faith in the performance of any duty in connection with any program or system administered by the retirement system.

Sec. 811.008. INSURANCE. Notwithstanding any other law, the board of trustees may self-insure or purchase any insurance in amounts the board considers reasonable and prudent.

SECTION 12. Section 812.003(a), Government Code, is amended to read as follows:

(a) Except as provided by Subsection (b), membership in the employee class of the retirement system includes all employees and appointed officers of every department, commission, board, agency, or institution of the state except:

(1) independent contractors and their employees performing work for the state; and

(2) persons disqualified from membership under Section 812.201 [~~and~~
~~(3) persons disqualified from membership under Section 812.004].~~

SECTION 13. Section 812.203, Government Code, is amended to read as follows:

Sec. 812.203. BENEFITS AFFECTED. ~~(a) [(e) Time during which retirement benefit payments are suspended as provided by this section does not reduce the number of months payments are to be made under an optional benefit plan providing for a specific amount of benefits for a guaranteed number of months after retirement.~~

~~[(d)]~~ If a retiree takes the oath for a position included in the elected class of membership, the retirement system shall suspend annuity payments to the person for service that was credited in that class, until the person no longer holds that position.

(b) Time during which annuity payments are suspended as provided by this section does not reduce the number of months payments are to be made under an optional benefit selection providing for a specific amount of benefits for a guaranteed number of months after retirement.

(c) [(e)] If a member who originally retired with service credited at the time of that retirement only in the elected class of membership again retires, the person at the time of subsequent retirement may select an annuity based on service in the elected class as if the person were retiring for the first time. If the person selects an annuity under Section 814.108(c)(3) or (c)(4), the retirement system shall reduce the number of months of guaranteed payment by the number of months for which an annuity was paid under the person's original retirement.

SECTION 14. The heading of Section 813.104, Government Code, is amended to read as follows:

Sec. 813.104. ALTERNATIVE PAYMENTS AND METHODS TO ESTABLISH OR REESTABLISH SERVICE CREDIT.

SECTION 15. Section 813.104, Government Code, is amended by adding Subsection (e) to read as follows:

(e) The retirement system may provide for the electronic filing of agreements to establish or reestablish service credit. In this subsection "electronic filing" has the meaning assigned by Section 814.010(a).

SECTION 16. Subchapter A, Chapter 814, Government Code, is amended by adding Section 814.010 to read as follows:

Sec. 814.010. ELECTRONIC FILING OF BENEFICIARY DESIGNATION. (a) In this section, "electronic filing" means the filing of data in the form of digital electronic signals transformed by computer and stored on magnetic tape, optical disks, or any other medium.

(b) A person entitled to designate a beneficiary under any system or program administered by the retirement system may make the designation by electronic filing under procedures adopted by the retirement system.

SECTION 17. Section 814.104(b), Government Code, is amended to read as follows:

(b) A member who is at least 55 years old and who has at least 10 years of service credit as a commissioned peace officer engaged in criminal law enforcement activities of the Department of Public Safety, the Texas Alcoholic Beverage Commission, the State Board of Pharmacy, or the Parks and Wildlife Department, ~~[as an employee of the Railroad Commission of Texas who is licensed by the Commission on Law Enforcement Officer Standards and Education and has served at least five years as an investigator for the oil field theft detection division,]~~ or as a custodial officer, is eligible to retire and receive a service retirement annuity.

SECTION 18. Section 814.108(f), Government Code, is amended to read as follows:

(f) The computation of an optional annuity must be made without regard to the gender ~~[sex]~~ of the annuitant or designee involved.

SECTION 19. Section 814.203, Government Code, is amended to read as follows:

Sec. 814.203. CERTIFICATION OF DISABILITY. As soon as practicable after an application for disability retirement is filed, the medical board shall evaluate the medical and other pertinent information regarding the member's application. If the medical board finds that the member is mentally or physically incapacitated for the further performance of duty and~~[-]~~ that the incapacity is likely to be permanent, ~~[and that the member should be retired,]~~ the medical board shall issue a certification of disability and submit it to the executive director.

SECTION 20. Sections 814.207(a) and (e), Government Code, are amended to read as follows:

(a) An annuity payable for ~~[because of]~~ an occupational disability resulting ~~[that directly results]~~ from a risk ~~[or hazard]~~ to which law enforcement or custodial officers are exposed because of the nature of law enforcement or

custodial duties is payable under the same terms and conditions that apply to other occupational disability retirement annuities under this subtitle, except that the source and amount of the annuity are as provided by this section.

(e) If a retiring member or retiree under this section presents evidence satisfactory to the retirement system that the person's occupational disability [condition] makes the person incapable of substantial gainful activity solely because of the disability [occupation] and is considered a total disability under federal social security law, the retirement system shall increase the person's occupational disability retirement annuity to 100 percent of the officer's average monthly compensation.

SECTION 21. Section 814.603, Government Code, is amended to read as follows:

Sec. 814.603. SUPPLEMENTAL PAYMENTS [ONE TIME PAYMENT].

(a) The retirement system may [shall] make a supplemental payment as provided by this section [Subsection (d)] to persons whose annuities are described by Section 814.107, 814.207, 814.305, or 814.601(a) and that are based on service retirements, disability retirements, or deaths. A [This] supplemental payment made under this section is in addition to the regular monthly annuity payment. [Each person who receives an annuity described by this subsection is entitled to receive one payment equal to 10 percent of one month's annuity payment for each fiscal year that preceded or includes the effective date of the requirement or authorization under Subsection (d) and in which the annuity has been paid. A supplemental payment may not exceed 350 percent of a monthly annuity.] Supplemental payments under this section [subsection] must comply with Section 811.006.

(b) The board of trustees shall determine the amount and timing of a supplemental payment and the manner in which the payment is made.

(c) The retirement system shall pay any [the] supplemental payment made under this section [provided by Subsection (a)] from the retirement annuity reserve account and may transfer to that account from the state accumulation account any portion of the amount that exceeds the amount in the retirement annuity reserve account available to finance this supplemental payment and that is actuarially determined to be necessary to finance the supplemental payment.

~~[(e) The board of trustees may adopt rules to implement the payment, including rules that govern the timing of the supplemental payment described by Subsection (a).~~

~~[(d) The retirement system shall make a supplemental payment under this section in the fiscal year ending August 31, 1997. The board of trustees may by rule authorize similar supplemental payments in succeeding fiscal years, if the payments are in compliance with Section 811.006.]~~

SECTION 22. Section 815.008(c), Government Code, is amended to read as follows:

(c) If the executive director has knowledge that a potential ground for removal exists, the executive director shall notify the presiding officer [chairman] of the board of the ground. The presiding officer [chairman] shall then notify the appropriate appointing officer, if any, that a potential ground for removal exists.

SECTION 23. Section 815.103, Government Code, is amended by adding Subsection (f) to read as follows:

(f) Chapter 412, Labor Code, does not apply to the retirement system. The board of trustees may acquire services described by that chapter in any manner or amount the board considers reasonable.

SECTION 24. Section 815.201, Government Code, is amended to read as follows:

Sec. 815.201. PRESIDING OFFICER [~~CHAIRMAN~~]. The board of trustees shall elect a presiding officer from the membership [~~chairman. The chairman must be a member~~] of the board.

SECTION 25. Section 815.202(c), Government Code, is amended to read as follows:

(c) To be eligible to serve as the executive director, a person must:

(1) be a citizen of the United States and have been a resident [~~citizen~~] of the state for the three years immediately preceding the person's appointment; and

(2) have executive ability and experience to carry out the duties of the office.

SECTION 26. Section 815.207(b), Government Code, is amended to read as follows:

(b) The comptroller shall pay money from the funds of the retirement system on warrants drawn by the comptroller supported only on vouchers signed by the executive director and the presiding officer [~~chairman~~] of the board of trustees or their authorized representatives.

SECTION 27. Section 815.307, Government Code, is amended to read as follows:

Sec. 815.307. DUTY OF CARE. The assets of the retirement system shall be invested and reinvested without distinction as to their source in accordance with Section 67, Article XVI, Texas Constitution. A determination of whether the board of trustees has exercised prudence with respect to an investment decision must be made taking into consideration the investment of all assets of the trust or all assets of the collective investment vehicle, as applicable, over which the board has management and control, rather than considering the prudence of a single investment of the trust or the collective investment vehicle, as applicable. [~~Investment decisions are subject to the standard provided in the Texas Trust Code by Section 113.056(a), Property Code.~~]

SECTION 28. Section 815.503(a), Government Code, is amended to read as follows:

(a) Records of members, annuitants, retirees, beneficiaries, and alternate payees under retirement plans administered by the retirement system that are in the custody of the system or of an administrator, carrier, or other governmental agency acting in cooperation with or on behalf of the retirement system are confidential and not subject to public disclosure, and the retirement system is not required to accept or comply with a request for a record or information about a

record or to seek an opinion from the attorney general, because the records are exempt from the public access provisions of Chapter 552, except as otherwise provided by this section.

SECTION 29. Section 815.511, Government Code, is amended to read as follows:

Sec. 815.511. ADMINISTRATIVE DECISION; APPEAL AND NEGOTIATION. (a) A person aggrieved by a decision of the retirement system relating to any program or system administered by the system under this code denying or limiting membership, service credit, or eligibility for or the amount of benefits payable under the program or system may appeal the decision to the board of trustees.

(b) The executive director or the executive director's designee may refer an appeal made under Subsection (a) to the State Office of Administrative Hearings for a hearing or employ, select, or contract for the services of an administrative law judge or hearing examiner not affiliated with the State Office of Administrative Hearings to conduct a hearing. This subsection prevails over any other law to the extent of any conflict.

(c) An appeal under this section is considered to be a contested case under Chapter 2001. The appellant in a contested case under this section has the burden of proof on all issues, including issues in the nature of an affirmative defense.

(d) The board of trustees may in its sole discretion make a final decision on a contested case under this section. Notwithstanding any other law, the [The] board of trustees may in its sole discretion modify, refuse to accept, or delete any [a] proposed finding of fact or conclusion of law contained in a proposal for decision submitted by an administrative law judge or other hearing examiner, or make alternative findings of fact and conclusions of law, in a proceeding considered to be a contested case under Chapter 2001. The board of trustees shall state in writing the specific reason for its determination and may adopt rules for the implementation of this subsection. The board of trustees may delegate its authority under this subsection to the executive director, and the executive director may delegate the authority to another employee of the retirement system.

(e) Notwithstanding Subsections (c) and (d), the retirement system and a person aggrieved by a decision of the system may at any time informally negotiate an award of benefits. Negotiated benefits may not exceed the maximum benefits otherwise available or required by law.

(f) A person aggrieved by a final decision of the retirement system in a contested case under this section is entitled to judicial review under Chapter 2001. Venue of the appeal is only in a district court in Travis County. [(b) A person aggrieved by a decision of any retirement system administered by the board of trustees denying or limiting membership, service credit, or eligibility for or the amount of benefits payable by a system may appeal the decision to the board. The appeal is considered to be an appeal of a contested case under the administrative procedure law, Chapter 2001.] On judicial appeal the standard of review is by substantial evidence.

~~[(e) Notwithstanding Subsection (b), the retirement system and a person aggrieved by a decision of the system may at any time informally negotiate an award of benefits. Negotiated benefits may not exceed the maximum benefits otherwise available or required by law.~~

~~[(d) On behalf of the retirement system, the executive director may refer an appeal made under Subsection (b) to the State Office of Administrative Hearings for a hearing or, notwithstanding Section 2003.021 or other law, employ or contract for the services of an administrative law judge or hearing examiner not affiliated with the State Office of Administrative Hearings to conduct the hearing.]~~

SECTION 30. Section 838.103(b), Government Code, is amended to read as follows:

(b) A member eligible to establish military service credit is one who:

- (1) ~~[currently contributes to the retirement system;~~
~~[(2)]~~ has at least eight years of service credit in the retirement system;
- (2) ~~[(3)]~~ does not receive and is not eligible to receive federal retirement payments based on 20 years or more of active federal military duty or its equivalent; and
- (3) ~~[(4)]~~ has been released from military duty under conditions not dishonorable.

SECTION 31. Section 838.106(a), Government Code, is amended to read as follows:

(a) A ~~[contributing]~~ member may establish service credit in the retirement system for any calendar year during which the member:

- (1) held an office included in the membership of the retirement system;
- or
- (2) was eligible to take the oath for an office included in the membership of the retirement system.

SECTION 32. Section 840.303, Government Code, is amended to read as follows:

Sec. 840.303. DUTY OF CARE. The assets of the retirement system shall be invested and reinvested without distinction as to their source in accordance with Section 67, Article XVI, Texas Constitution. A determination of whether the board of trustees has exercised prudence with respect to an investment decision must be made taking into consideration the investment of all assets of the trust or all assets of the collective investment vehicle, as applicable, over which the board has management and control, rather than considering the prudence of a single investment of the trust or the collective investment vehicle, as applicable. [Investment decisions are subject to the standard provided in the Texas Trust Code by Section 113.056(a), Property Code.]

SECTION 33. Section 1551.063(a), Insurance Code, as effective June 1, 2003, is amended to read as follows:

(a) The records of a participant in the group benefits program in the custody of the board of trustees, or of an administrator or carrier acting on behalf of the board, are confidential and not subject to disclosure, and the board is not required to accept or comply with a request for a record or information about a record or to

seek an opinion from the attorney general, because the records [and] are exempt from the public access provisions of Chapter 552, Government Code, except as provided by this section.

SECTION 34. Section 1551.102(d), Insurance Code, as effective June 1, 2003, is amended to read as follows:

(d) An individual is eligible to participate in the group benefits program as provided by Subsection (a) if the individual:

(1) retires under the optional retirement program established by Chapter 830, Government Code, with at least 10 years of eligible service; and

(2) receives or is eligible to receive an annuity under that program and the individual:

(A) would have been eligible to retire and receive a service or disability retirement annuity from the Teacher Retirement System of Texas or the Employees Retirement System of Texas based on at least 10 years of service credit if the individual had not elected to participate in the optional retirement program; or

(B) is disabled as determined by the Employees Retirement System of Texas.

SECTION 36. Section 1551.209, Insurance Code, as effective June 1, 2003, is amended to read as follows:

Sec. 1551.209. [~~SELF FUNDED~~] COVERAGE EXEMPT FROM INSURANCE LAW. A coverage plan provided [for which the board of trustees does not purchase coverage but provides] under this chapter [~~on a self-funded basis~~] is exempt from any other insurance law, including common law, that does not expressly apply to the plan or this chapter.

SECTION 37. Section 1551.351(d), Insurance Code, as effective June 1, 2003, is amended to conform to Section 33, Chapter 1231, Acts of the 77th Legislature, Regular Session, 2001, and further amended to read as follows:

(d) A person may appeal a determination made under Subsection (a) or (b) or Section 1551.352 only to the board of trustees. A proceeding under this subsection is a contested case under Chapter 2001, Government Code. This subchapter applies to an appeal to the board of trustees under this subsection. The appellant has the burden of proof on all issues, including issues in the nature of an affirmative defense, and any sanction imposed is stayed during an appeal under this subsection. If a person fails to make a timely appeal, any sanction relates back to the date of the Employees Retirement System of Texas' determination. An appeal of a decision of the board of trustees under this subsection is under the substantial evidence rule.

SECTION 38. Section 1551.355(b), Insurance Code, as effective June 1, 2003, is amended to read as follows:

(b) On behalf of the board of trustees and notwithstanding any other law, including Section 2003.021, Government Code, the executive director may:

(1) refer an appeal to the State Office of Administrative Hearings for a hearing; or

(2) ~~[notwithstanding any other law, including Section 2003.021, Government Code,]~~ employ, select, or contract for the services of an administrative law judge or other hearing examiner not affiliated with the State Office of Administrative Hearings to conduct the hearing of an appeal.

SECTION 39. Section 1551.356, Insurance Code, as effective June 1, 2003, is amended to conform to Section 29, Chapter 1231, Acts of the 77th Legislature, Regular Session, 2001, and further amended to read as follows:

Sec. 1551.356. STANDING. (a) A person has standing to appeal a determination of the executive director under this subchapter only if the person is:

(1) an employee, participant, annuitant, or covered dependent participating in the group benefits program; or

(2) after the death of an employee, participant, annuitant, or covered dependent, the person's estate, personal representative, heir at law, or designated beneficiary.

(b) A person has no standing to appeal a determination of the executive director under this subchapter or to pursue a private cause of action against the state, the board of trustees, the retirement system, the executive director, an administering firm, or an employee of any of those persons based on a determination or the implementation by the board or executive director of the type or scope of plan design features under the group benefits program.

SECTION 40. Section 1551.357, Insurance Code, as effective June 1, 2003, is amended by amending Subsection (a) and adding Subsection (d) to read as follows:

(a) Notwithstanding any other law, in [H] a proceeding considered to be a contested case under Chapter 2001, Government Code, the board of trustees in its sole discretion may modify, refuse to accept, or delete any [a] proposed finding of fact or conclusion of law contained in a proposal for decision submitted by an administrative law judge or other hearing examiner, or make alternative findings of fact and conclusions of law.

(d) The appellant in a contested case under this subchapter has the burden of proof on all issues, including issues in the nature of an affirmative defense.

SECTION 41. Section 1551.359, Insurance Code, as effective June 1, 2003, is amended to read as follows:

Sec. 1551.359. JUDICIAL REVIEW [STANDARD OF REVIEW OF DETERMINATION OF BOARD OF TRUSTEES]. A person aggrieved by a final decision of the Employees Retirement System of Texas in a contested case under this subchapter is entitled to judicial review of the decision. Venue of an appeal under this subchapter is only in a district court in Travis County. The standard of review for the appeal of a determination made by the board of trustees under this subchapter is by substantial evidence.

SECTION 42. Section 812.003, Government Code is amended by amending Subsection (d) and adding Subsections (e) through (h) to read as follows:

(d) For persons whose employment or office holding begins on or after September 1, 2005, membership [Membership] in the employee class begins on the first day the [a] person is employed or holds office.

(e) For persons whose employment or office holding begins before September 1, 2005, membership in the employee class begins on the 91st day after the first day a person is employed or holds office.

(f) A person who is reemployed or who again holds office after withdrawing contributions under Subchapter B for previous service credited in the employee class begins membership in the employee class on the 91st day after the first day the person is reemployed or again holds office.

(g) Notwithstanding any other provision of law, a member may establish service credit only as provided by Section 813.514 for service performed during the 90-day waiting period provided by Subsection (e) or (f).

(h) Subsections (e), (f), and (g) and this subsection expire September 1, 2005.

SECTION 43. Subchapter F, Chapter 813, Government Code, is amended by adding Section 813.514 to read as follows:

Sec. 813.514. CREDIT PURCHASE OPTION FOR CERTAIN SERVICE.

(a) A member may establish service credit under this section in the employee class only for service performed during a 90-day waiting period to become a member after beginning employment or holding office.

(b) A member may establish service credit under this section by depositing with the retirement system, for each month of service credit, the actuarial present value, at the time of deposit, of the additional standard retirement annuity benefits that would be attributable to the purchase of the service credit under this section based on rates and tables recommended by the retirement system's actuary and adopted by the board of trustees.

(c) After a member makes the deposits required by this section, the retirement system shall grant the member one month of equivalent membership service credit for each month of credit approved. A member may establish not more than three months of equivalent membership service credit under this section.

(d) The retirement system shall deposit the amount of the actuarial present value of the service credit purchased in the member's individual account in the employees saving account.

(e) The board of trustees may adopt rules to administer this section, including rules that impose restrictions on the application of this section as necessary to cost-effectively administer this section.

"SECTION 44. Section 615.003, Government Code, is amended to read as follows:

Sec. 615.003. APPLICABILITY. This chapter applies only to eligible survivors of the following individuals:

(1) an individual elected, appointed, or employed as a peace officer by the state or a political subdivision of the state under Article 2.12, Code of Criminal Procedure, or other law;

(2) a paid probation officer appointed by the director of a community supervision and corrections department who has the duties set out in Section 76.002 and the qualifications set out in Section 76.005, or who was appointed in accordance with prior law;

(3) a parole officer employed by the pardons and paroles division of the Texas Department of Criminal Justice who has the duties set out in Section 508.001 and the qualifications set out in Section 508.113 or in prior law;

(4) a paid jailer;

(5) a member of an organized police reserve or auxiliary unit who regularly assists peace officers in enforcing criminal laws;

(6) a member of the class of employees of the institutional division or the state jail division of the Texas Department of Criminal Justice formally designated as custodial personnel under Section 615.006 by the Texas Board of Criminal Justice or its predecessor in function;

(7) a jailer or guard of a county jail who is appointed by the sheriff and who:

(A) performs a security, custodial, or supervisory function over the admittance, confinement, or discharge of prisoners; and

(B) is certified by the Commission on Law Enforcement Officer Standards and Education;

(8) a juvenile correctional employee of the Texas Youth Commission;

(9) an employee of the Texas Department of Mental Health and Mental Retardation who:

(A) works at the department's maximum security unit; or

(B) performs on-site services for the Texas Department of Criminal Justice;

(10) an individual who is employed by the state or a political or legal subdivision and is subject to certification by the Texas Commission on Fire Protection;

(11) an individual employed by the state or a political or legal subdivision whose principal duties are aircraft crash and rescue fire fighting;

(12) a member of an organized volunteer fire-fighting unit that:

(A) renders fire-fighting services without remuneration; and

(B) ~~[consists of not fewer than 20 active members, a majority of whom are present at each meeting, and~~ [(C)] conducts a minimum of two drills each month, each two hours long; or

(13) an individual who:

(A) performs emergency medical services or operates an ambulance;

(B) is employed by a political subdivision of the state or is an emergency medical services volunteer as defined by Section 773.003, Health and Safety Code; and

(C) is qualified as an emergency care attendant or at a higher level of training under Section 773.046, 773.047, 773.048, 773.049, or 773.0495, Health and Safety Code."

SECTION 45. (a) The change in law made by this Act to Section 1551.102(d), Insurance Code, applies only to a person who was not participating in the program provided by Chapter 1551, Insurance Code, as an annuitant on the effective date of this Act.

(b) The changes in law made by this Act to Section 815.511, Government Code, and Sections 1551.355 and 1551.357, Insurance Code, as effective June 1, 2003, prevail over any other Act of the 78th Legislature, Regular Session, 2003, regardless of the relative dates of enactment, that purports to deprive the Employees Retirement System of Texas of the powers described by Section 815.511, Government Code, or Section 1551.355 or 1551.357, Insurance Code, and to that extent that other Act has no effect.

(c) The changes in law made by this Act to Section 815.511, Government Code, and Section 1551.359, Insurance Code, prevail over any other Act of the 78th Legislature, Regular Session, 2003, regardless of the relative dates of enactment, that purports to establish venue for judicial review of a final decision in a contested case by the Board of Trustees of the Employees Retirement System of Texas, and to that extent that other Act has no effect.

(d) The change in law made by this Act to Section 811.001(12), Government Code, applies only to an application for occupational disability retirement filed with the Employees Retirement System of Texas on or after the effective date of this Act. A person who filed an application for occupational disability retirement before the effective date of this Act is subject to the law as it existed immediately before the effective date of this Act, and the former law is continued in effect for this purpose.

(e) The change in law made by this Act to Section 615.003, Government Code, relating to the death of a member of an organized volunteer fire-fighting unit applies only in relation to a death that occurs on or after the effective date of this Act. Matters regarding eligibility, payment, and benefits under Chapter 615, Government Code, in relation to a death that occurs before the effective date of this Act are governed by the law in effect when the death occurs, and the former law is continued in effect for that purpose.

SECTION 46. Section 812.003, Government Code, as amended by this Act, and Section 813.514, Government Code, as added by this Act, apply only to a person who is first employed by or begins to hold an office of the state on or after the effective date of this Act and to a former employee or office holder who has withdrawn retirement contributions under Subchapter B, Chapter 812, Government Code, and is reemployed by or begins to again hold an office of the state on or after the effective date of this Act.

SECTION 47. The following laws are repealed:

- (1) Section 609.515, Government Code;
- (2) Section 805.002(e), Government Code;
- (3) Section 812.004, Government Code;
- (4) Section 813.504(b), Government Code;
- (5) Section 814.1041, Government Code;
- (6) Section 815.211, Government Code;
- (7) Section 815.502, Government Code;
- (8) Section 840.210, Government Code;
- (9) Section 1551.054, Insurance Code, as effective June 1, 2003; and
- (10) Section 3(b), Chapter 22, Acts of the 57th Legislature, 3rd Called Session, 1962 (Article 6228a-5, Vernon's Texas Civil Statutes).

SECTION 48. To the extent of any conflict, this Act prevails over another Act of the 78th Legislature, Regular Session, 2003, relating to nonsubstantive additions to and corrections in enacted codes.

SECTION 49. This Act takes effect September 1, 2003.

Representative Ritter moved to adopt the conference committee report on **HB 2359**.

The motion prevailed. (D. Jones recorded voting no)

MESSAGE FROM THE SENATE

A message from the senate was received at this time (see the addendum to the daily journal, Messages from the Senate, Message No. 7).

ADJOURNMENT

Representative Turner moved that the house adjourn until 11 a.m. today.

The motion prevailed without objection.

The house accordingly, at 12:37 a.m. Monday, June 2, adjourned until 11 a.m. today.

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. 57

HB 736, HB 1108, HB 1268, HB 1297, HB 1534, HB 1691, HB 1858, HB 1941, HB 1971, HB 2006, HB 2036, HB 2249, HB 2485, HB 2500, HB 2522, HB 2866, HB 2895, HB 2931, HB 3061, HB 3325, HB 3419

House List No. 58

HB 76, HB 532, HB 599, HB 820, HB 944, HB 1097, HB 1660, HB 1833, HB 1997, HB 2240, HB 2350, HB 2912, HB 2933, HB 3011, HB 3017, HB 3141, HB 3486, HB 3534

House List No. 59

HB 59, HB 151, HB 325, HB 518, HB 555, HB 849, HB 897, HB 1282, HB 1326, HB 1363, HB 1378, HB 1420, HB 1470, HB 1487, HB 1649, HB 1844, HB 1869, HB 1883, HB 1979, HB 2019, HB 2053, HB 2072, HB 2073, HB 2095, HB 2188, HB 2189, HB 2212, HB 2457, HB 2519, HB 2881, HB 2947, HB 2964, HB 3378, HB 3384, HB 3562, HB 3592, HB 3629, HCR 250, HCR 256, HCR 281, HJR 44, HJR 84

Senate List No. 42

SB 161, SB 193, SB 211, SB 315, SB 541, SB 591, SB 597, SB 669, SB 688, SB 759, SB 833, SB 840, SB 876, SB 880, SB 895, SB 900, SB 923, SB 930, SB 1017, SB 1047, SB 1053, SB 1154, SB 1165, SB 1273, SB 1276, SB 1295, SB 1318, SB 1389, SB 1460, SB 1465, SB 1522, SB 1567, SB 1582, SB 1633, SB 1765, SB 1803, SCR 1, SCR 48, SCR 60

Senate List No. 43

SB 19, SB 275, SB 284, SB 392, SB 396, SB 418, SB 827, SB 1007, SB 1184, SB 1252, SB 1477, SB 1488, SB 1494, SB 1570, SB 1696, SB 1725, SB 1820, SB 1904, SB 1932, SJR 42

MESSAGES FROM THE SENATE

The following messages from the senate were today received by the house:

Message No. 1

MESSAGE FROM THE SENATE

SENATE CHAMBER

Austin, Texas

Sunday, June 1, 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:

SCR 62 Armbrister
Relating to ERS health benefits provision.

THE SENATE HAS CONCURRED IN HOUSE AMENDMENTS TO THE FOLLOWING MEASURES:

SB 482 (viva-voce vote)
SB 782 (30 Yeas, 0 Nays)
SB 800 (30 Yeas, 0 Nays)
SB 1073 (viva-voce vote)
SB 1659 (30 Yeas, 0 Nays)
SB 1705 (30 Yeas, 0 Nays)
SB 1784 (30 Yeas, 0 Nays)

THE SENATE HAS GRANTED THE REQUEST OF THE HOUSE FOR THE APPOINTMENT OF A CONFERENCE COMMITTEE ON THE FOLLOWING MEASURES:

HB 3035

Senate Conferees: Armbrister - Chair/Bivins/Duncan/Madla/Staples

THE SENATE HAS ADOPTED THE FOLLOWING CONFERENCE COMMITTEE REPORTS:

HB 11	(viva-voce vote)
HB 111	(28 Yeas, 2 Nays)
HB 547	(viva-voce vote)
HB 1163	(viva-voce vote)
HB 1865	(30 Yeas, 0 Nays)
HB 2588	(viva-voce vote)
HB 3420	(30 Yeas, 0 Nays)
SB 117	(viva-voce vote)
SB 277	(viva-voce vote)
SB 283	(viva-voce vote)
SB 340	(30 Yeas, 0 Nays)
SB 504	(viva-voce vote)
SB 1015	(30 Yeas, 0 Nays)
SB 1597	(viva-voce vote)
SJR 30	(30 Yeas, 0 Nays)

Respectfully,
Patsy Spaw
Secretary of the Senate

Message No. 2

MESSAGE FROM THE SENATE
SENATE CHAMBER
Austin, Texas
Sunday, June 1, 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 33 Lewis SPONSOR: Brimer
Recognizing Terrence Bunkley of Fort Worth for his selection as a finalist in the Discovery Channel Young Scientist Challenge.

HCR 47 Lewis SPONSOR: Brimer
Honoring Tarrant County extension agent Hurley E. Miller for receiving the 2002 Superior Service Award.

HCR 48 Lewis SPONSOR: Brimer

Honoring Sonya Blackwell Smith of the Dunbar 6th Grade Center in Fort Worth for being named an Academic Chair for Teaching Excellence in English.

HCR 49 Lewis SPONSOR: Brimer
Congratulating Ernest Mason of Dunbar High School in Fort Worth on being named a U.S. Army All-American.

HCR 79 Lewis SPONSOR: Brimer
In memory of Dr. Marion Jack Brooks of Fort Worth.

HCR 107 Lewis SPONSOR: Brimer
Congratulating RaShawn Washington of Fort Worth on the publication of her poem "Talk."

HCR 108 Lewis SPONSOR: Brimer
Honoring Dunbar Middle School student Tiffany Lewis of Fort Worth for her selection to attend the People to People Student Ambassador Program's 2003 Leadership Summit.

HCR 123 Lewis SPONSOR: Brimer
Congratulating Lori Freeman on being named a 2002-2003 Outstanding Teacher by the Fort Worth Independent School District.

HCR 124 Lewis SPONSOR: Brimer
Congratulating Willanette Williams on being named a 2002-2003 Outstanding Teacher by the Fort Worth Independent School District.

HCR 129 Lewis SPONSOR: Brimer
Congratulating Melzora Webster on being named a 2002-2003 Outstanding Teacher by the Fort Worth Independent School District.

HCR 130 Lewis SPONSOR: Brimer
Congratulating Kristen Williams on being named a 2002-2003 Outstanding Teacher by the Fort Worth Independent School District.

HCR 131 Lewis SPONSOR: Brimer
Congratulating Dorothy Westergren on being named a 2002-2003 Outstanding Teacher by the Fort Worth Independent School District.

HCR 132 Lewis SPONSOR: Brimer
Congratulating Patty Rose on being named a 2002-2003 Outstanding Teacher by the Fort Worth Independent School District.

HCR 133 Lewis SPONSOR: Brimer
Congratulating Mary Preston on being named a 2002-2003 Outstanding Teacher by the Fort Worth Independent School District.

HCR 134 Lewis SPONSOR: Brimer
Congratulating LaWanda Booghrey on being named a 2002-2003 Outstanding Teacher by the Fort Worth Independent School District.

HCR 135 Lewis SPONSOR: Brimer
Congratulating Ozella Campbell on being named a 2002-2003 Outstanding Teacher by the Fort Worth Independent School District.

HCR 136 Lewis SPONSOR: Brimer

Congratulating Mary Ornellas on being named a 2002-2003 Outstanding Teacher by the Fort Worth Independent School District.

HCR 137 Lewis SPONSOR: Brimer
Congratulating Latresa Kennard on being named a 2002-2003 Outstanding Teacher by the Fort Worth Independent School District.

HCR 138 Lewis SPONSOR: Brimer
Congratulating Roshea Phillips on being named a 2002-2003 Outstanding Teacher by the Fort Worth Independent School District.

HCR 139 Lewis SPONSOR: Brimer
Congratulating Erin Bushko on being named a 2002-2003 Outstanding Teacher by the Fort Worth Independent School District.

HCR 140 Lewis SPONSOR: Brimer
Congratulating La Tres Cole on being named a 2002-2003 Outstanding Teacher by the Fort Worth Independent School District.

HCR 141 Lewis SPONSOR: Brimer
Congratulating Ben Broadwater on being named a 2002-2003 Outstanding Teacher by the Fort Worth Independent School District.

HCR 142 Lewis SPONSOR: Brimer
Congratulating Juana Williams on being named a 2002-2003 Outstanding Teacher by the Fort Worth Independent School District.

HCR 143 Lewis SPONSOR: Brimer
Congratulating Karen Chaffin on being named a 2002-2003 Outstanding Teacher by the Fort Worth Independent School District.

HCR 144 Lewis SPONSOR: Brimer
Congratulating Shannon Wilson on being named a 2002-2003 Outstanding Teacher by the Fort Worth Independent School District.

HCR 145 Lewis SPONSOR: Brimer
Congratulating Jan Wilkins on being named a 2002-2003 Outstanding Teacher by the Fort Worth Independent School District.

HCR 146 Lewis SPONSOR: Brimer
Congratulating Kathy Elliott on being named a 2002-2003 Outstanding Teacher by the Fort Worth Independent School District.

HCR 147 Lewis SPONSOR: Brimer
Congratulating Jamie Cox on being named a 2002-2003 Outstanding Teacher by the Fort Worth Independent School District.

HCR 169 Lewis SPONSOR: Brimer
Honoring Jorge Davila of Bishop Elementary School as one of the Everman Independent School District 2002-2003 Spelling Bee winners.

HCR 170 Lewis SPONSOR: Brimer
Honoring Courtney Sumner of Hommel Elementary School as one of the Everman Independent School District 2002-2003 Spelling Bee winners.

HCR 172 Lewis SPONSOR: Brimer

Honoring Shatonja Hudson of E. Ray Elementary School as one of the Everman Independent School District 2002-2003 Spelling Bee winners.

HCR 173 Lewis SPONSOR: Brimer
Honoring Rickey Wilson of Souder Elementary School as one of the Everman Independent School District 2002-2003 Spelling Bee winners.

HCR 174 Lewis SPONSOR: Brimer
Honoring Nathan Seaman of Everman Junior High School on being named Teacher of the Year.

HCR 175 Lewis SPONSOR: Brimer
Honoring Melanie DeGrand of Roger E. Souder Elementary School on being named Teacher of the Year.

HCR 176 Lewis SPONSOR: Brimer
Honoring Myra Asberry of E. Ray Elementary School on being named Teacher of the Year.

HCR 177 Lewis SPONSOR: Brimer
Honoring Mary Heidgerken of Alpha Hommel Elementary School on being named Teacher of the Year.

HCR 178 Lewis SPONSOR: Brimer
Honoring LuAnn Beck of J. W. Bishop Elementary School on being named Teacher of the Year.

HCR 179 Lewis SPONSOR: Brimer
Honoring Texas Cooperative Extension in Tarrant County for its community service.

HCR 180 Lewis SPONSOR: Brimer
Honoring E. Ray Elementary School of Fort Worth on being awarded recognized status by the Texas Education Agency for 2001-2002.

HCR 181 Lewis SPONSOR: Brimer
Honoring Roger E. Souder Elementary School of Everman on being awarded recognized status by the Texas Education Agency for 2001-2002.

HCR 182 Lewis SPONSOR: Brimer
Honoring J. W. Bishop Elementary School of Everman on being awarded recognized status by the Texas Education Agency for 2001-2002.

HCR 183 Lewis SPONSOR: Brimer
Honoring Alpha Hommel Elementary School of Everman on being awarded recognized status by the Texas Education Agency for 2001-2002.

HCR 184 Lewis SPONSOR: Brimer
Honoring Tyehimba Crear of Fort Worth for being named first place and grand prize winner of the Fort Worth Star-Telegram Race Against Drugs poster contest.

HCR 185 Lewis SPONSOR: Brimer
Honoring Wendy Lockwood of Everman Joe C. Bean High School on being named Teacher of the Year.

HCR 207 Lewis SPONSOR: Brimer

Honoring Gilda Molina Marquez of J. L. Long Middle School as Teacher of the Year.

HCR 212 Lewis SPONSOR: Brimer
Congratulating the Area II participants in the Fort Worth Independent School District's 2002 spelling bee contest.

HCR 213 Lewis SPONSOR: Brimer
Honoring Monica DeSantiago and Arthur Moore, Area II champion and runner-up in the Fort Worth Independent School District 2003 spelling bee.

HCR 214 Lewis SPONSOR: Brimer
Honoring Alexis Whiteside and Shonte Roberts for their achievements in the Fort Worth Independent School District 2003 spelling bee.

HCR 215 Lewis SPONSOR: Brimer
Honoring Vanessa Norris and James Kemp, Area III champion and runner-up in the Fort Worth Independent School District 2003 spelling bee.

HCR 216 Lewis SPONSOR: Brimer
Congratulating the Area III participants in the Fort Worth Independent School District's 2002 spelling bee contest.

HCR 217 Lewis SPONSOR: Brimer
Congratulating the Fort Worth Ambassadors of Christ Christian Academy boys' basketball team on winning the 2002-2003 TAPPS Class 1A state title.

HCR 234 Lewis SPONSOR: Brimer
Honoring Morningside Elementary School as a "recognized school."

HCR 235 Lewis SPONSOR: Brimer
Honoring Harlean Beal Elementary School as a "recognized school."

HCR 236 Lewis SPONSOR: Brimer
Honoring Mitchell Boulevard Elementary School as a "recognized school."

HCR 237 Lewis SPONSOR: Brimer
Honoring Christene Moss Elementary School as a "recognized school."

HCR 238 Lewis SPONSOR: Brimer
Honoring A. M. Pate Elementary School as a "recognized school."

HCR 239 Lewis SPONSOR: Brimer
Honoring David K. Sellars Elementary School as a "recognized school."

HCR 240 Lewis SPONSOR: Brimer
Honoring Maudrie Walton Elementary School as a "recognized school."

HCR 241 Lewis SPONSOR: Brimer
Honoring Van Zandt-Guinn Elementary School as an "exemplary school."

HCR 242 Lewis SPONSOR: Brimer
Honoring East Handley Elementary School as an "exemplary school."

HCR 243 Lewis SPONSOR: Brimer
Honoring Edward J. Briscoe Elementary School as an "exemplary school."

HCR 244 Lewis SPONSOR: Brimer
Congratulating Deralyn Riles Davis of Fort Worth on the 50th anniversary of her graduation from Huston-Tillotson College.

HCR 253

Lewis

SPONSOR: Brimer

Honoring track and field legend Jim Hines for his remarkable athletic achievements.

Respectfully,

Patsy Spaw

Secretary of the Senate

Message No. 3

MESSAGE FROM THE SENATE

SENATE CHAMBER

Austin, Texas

Sunday, June 1, 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 278

Laney

SPONSOR: Duncan

Honoring Shirley Igo of Plainview on her distinguished tenure as National PTA president.

Respectfully,

Patsy Spaw

Secretary of the Senate

Message No. 4

MESSAGE FROM THE SENATE

SENATE CHAMBER

Austin, Texas

Sunday, June 1, 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 ADOPTED THE FOLLOWING CONFERENCE COMMITTEE REPORTS:

HB 1 (24 Yeas, 7 Nays)

HB 7 (24 Yeas, 7 Nays)

HB 425 (viva-voce vote)

HB 727 (31 Yeas, 0 Nays)
HB 3442 (viva-voce vote)
HJR 68 (31 Yeas, 0 Nays)
SB 4 (31 Yeas, 0 Nays)

Respectfully,
Patsy Spaw
Secretary of the Senate

Message No. 5

MESSAGE FROM THE SENATE
SENATE CHAMBER
Austin, Texas
Sunday, June 1, 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 PASSED THE FOLLOWING MEASURES:

HCR 282 Branch SPONSOR: Wentworth
Commending Warren B. Branch, D.D.S., on his professional accomplishments.

HCR 286 Wise SPONSOR: Lucio
Honoring U.S. Marine Corporal Manuel Espinoza, Jr., of Weslaco for his bravery during Operation Iraqi Freedom.

THE SENATE HAS ADOPTED THE FOLLOWING CONFERENCE COMMITTEE REPORTS:

HB 1365 (31 Yeas, 0 Nays)
HB 1538 (viva-voce vote)
HB 1576 (31 Yeas, 0 Nays)
HB 3042 (31 Yeas, 0 Nays)
HB 3459 (22 Yeas, 8 Nays)
HB 3578 (31 Yeas, 0 Nays)
SB 264 (viva-voce vote)
SB 279 (viva-voce vote)
SB 286 (viva-voce vote)
SB 287 (31 Yeas, 0 Nays)
SB 1639 (31 Yeas, 0 Nays)

THE SENATE HAS TAKEN THE FOLLOWING OTHER ACTION:

SB 280

Reconsidered the vote and passed by a record vote of 31 Yeas, 0 Nays

Respectfully,
Patsy Spaw
Secretary of the Senate

Message No. 6

MESSAGE FROM THE SENATE
SENATE CHAMBER
Austin, Texas
Sunday, June 1, 2003 - 6

The Honorable Speaker of the House
House Chamber
Austin, Texas

Mr. Speaker:

I am directed by the senate to inform the house that the senate has taken the following action:

THE SENATE HAS PASSED THE FOLLOWING MEASURES:

SCR 65 Ogden
Instructing the enrolling clerk of the house to correct **HB 3588**.

SCR 67 Armbrister
Instructing the enrolling clerk of the house to make corrections on **HB 2424**.

THE SENATE HAS ADOPTED THE FOLLOWING CONFERENCE COMMITTEE REPORTS:

HB 4	(27 Yeas, 4 Nays)
HB 2292	(viva-voce vote)
HB 2455	(viva-voce vote)
HB 3015	(17 Yeas, 14 Nays)
HB 3184	(31 Yeas, 0 Nays)
HB 3588	(31 Yeas, 0 Nays)
HJR 28	(31 Yeas, 0 Nays)
SB 14	(26 Yeas, 4 Nays)
SB 16	(viva-voce vote)
SB 463	(viva-voce vote)
SB 970	(viva-voce vote)
SB 1370	(viva-voce vote)
SB 1771	(viva-voce vote)

Respectfully,
Patsy Spaw
Secretary of the Senate

Message No. 7

MESSAGE FROM THE SENATE
SENATE CHAMBER
Austin, Texas
Sunday, June 1, 2003 - 7

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 611 (viva-voce vote)

THE SENATE HAS ADOPTED THE FOLLOWING CONFERENCE COMMITTEE REPORTS:

HB 9 (31 Yeas, 0 Nays)

HB 320 (31 Yeas, 0 Nays)

HB 329 (viva-voce vote)

HB 335 (viva-voce vote)

HB 411 (viva-voce vote)

HB 471 (viva-voce vote)

HB 638 (31 Yeas, 0 Nays)

HB 1082 (viva-voce vote)

HB 1119 (viva-voce vote)

HB 1129 (viva-voce vote)

HB 1204 (31 Yeas, 0 Nays)

HB 1314 (31 Yeas, 0 Nays)

HB 1493 (viva-voce vote)

HB 1541 (31 Yeas, 0 Nays)

HB 1566 (viva-voce vote)

HB 1606 (viva-voce vote)

HB 1817 (31 Yeas, 0 Nays)

HB 2075 (viva-voce vote)

HB 2359 (viva-voce vote)

HB 2415 (31 Yeas, 0 Nays)

HB 2424 (31 Yeas, 0 Nays)

HB 2533 (viva-voce vote)

HB 2593	(viva-voce vote)
HB 2971	(viva-voce vote)
HB 3546	(viva-voce vote)
HB 3587	(31 Yeas, 0 Nays)
HB 3622	(viva-voce vote)
HJR 85	(31 Yeas, 0 Nays)
SB 76	(viva-voce vote)
SB 103	(31 Yeas, 0 Nays)
SB 127	(31 Yeas, 0 Nays)
SB 160	(viva-voce vote)
SB 361	(31 Yeas, 0 Nays)
SB 473	(viva-voce vote)
SB 474	(viva-voce vote)
SB 585	(viva-voce vote)
SB 610	(viva-voce vote)
SB 631	(viva-voce vote)
SB 671	(31 Yeas, 0 Nays)
SB 755	(31 Yeas, 0 Nays)
SB 826	(viva-voce vote)
SB 894	(viva-voce vote)
SB 929	(viva-voce vote)
SB 976	(viva-voce vote)
SB 1000	(31 Yeas, 0 Nays)
SB 1010	(viva-voce vote)
SB 1059	(viva-voce vote)
SB 1108	(31 Yeas, 0 Nays)
SB 1131	(viva-voce vote)
SB 1182	(31 Yeas, 0 Nays)
SB 1272	(viva-voce vote)
SB 1303	(31 Yeas, 0 Nays)
SB 1369	(viva-voce vote)
SB 1413	(viva-voce vote)
SB 1551	(viva-voce vote)
SB 1652	(31 Yeas, 0 Nays)
SB 1664	(viva-voce vote)

SB 1708 (viva-voce vote)
SB 1782 (31 Yeas, 0 Nays)
SB 1828 (viva-voce vote)
SB 1835 (viva-voce vote)
SB 1936 (31 Yeas, 0 Nays)

THE SENATE HAS DISCHARGED ITS CONFEREES AND CONCURRED
 IN HOUSE AMENDMENTS TO THE FOLLOWING MEASURES:

SB 1320 (31 Yeas, 0 Nays)
SB 1862 (31 Yeas, 0 Nays)

Respectfully,
 Patsy Spaw
 Secretary of the Senate

APPENDIX

ENROLLED

May 31 - **HB 236, HB 249, HB 736, HB 948, HB 999, HB 1053, HB 1108, HB 1232, HB 1247, HB 1268, HB 1287, HB 1297, HB 1440, HB 1483, HB 1517, HB 1534, HB 1575, HB 1590, HB 1614, HB 1621, HB 1634, HB 1650, HB 1661, HB 1691, HB 1696, HB 1702, HB 1733, HB 1743, HB 1773, HB 1858, HB 1887, HB 1895, HB 1940, HB 1941, HB 1971, HB 2006, HB 2036, HB 2249, HB 2308, HB 2379, HB 2400, HB 2453, HB 2458, HB 2485, HB 2500, HB 2522, HB 2525, HB 2718, HB 2795, HB 2866, HB 2895, HB 2931, HB 3034, HB 3061, HB 3109, HB 3168, HB 3303, HB 3305, HB 3324, HB 3325, HB 3419, HB 3503, HB 3526, HB 3563, HB 3565, HB 3577, HCR 7, HCR 86, HCR 274, HCR 277, HJR 51**

SENT TO THE GOVERNOR

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