

# HOUSE JOURNAL

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SEVENTY-NINTH LEGISLATURE, REGULAR SESSION

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## PROCEEDINGS

SEVENTY-FOURTH DAY — SUNDAY, MAY 22, 2005

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

The roll of the house was called and a quorum was announced present (Record 738).

Present — Mr. Speaker; Allen, A.; Allen, R.; Alonzo; Anchia; Anderson; Baxter; Berman; Blake; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Burnam; Callegari; Campbell; Casteel; Castro; Chavez; Chisum; Coleman; Cook, B.; Cook, R.; Corte; Crabb; Crownover; Davis, J.; Davis, Y.; Dawson; Delisi; Denny; Deshotel; Driver; Dukes; Dunnam; Dutton; Edwards; Eiland; Eissler; Elkins; Escobar; Farabee; Farrar; Flores; Flynn; Frost; Gattis; Geren; Giddings; Gonzales; Gonzalez Toureilles; Goodman; Goolsby; Griggs; Grusendorf; Guillen; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Hegar; Herrero; Hilderbran; Hill; Hochberg; Hodge; Homer; Hope; Hopson; Howard; Hughes; Hunter; Hupp; Isett; Jackson; Jones, D.; Jones, J.; Keel; Keffer, B.; Keffer, J.; King, P.; King, T.; Kolkhorst; Krusee; Kuempel; Laney; Laubenberg; Leibowitz; Luna; Madden; Martinez; Martinez Fischer; McCall; McClendon; McReynolds; Menendez; Merritt; Miller; Moreno, P.; Morrison; Mowery; Naishtat; Nixon; Noriega, M.; Oliveira; Olivo; Orr; Otto; Paxton; Peña; Phillips; Pickett; Puente; Quintanilla; Raymond; Reyna; Riddle; Ritter; Rodriguez; Rose; Seaman; Smith, T.; Smith, W.; Smithee; Solis; Solomons; Strama; Straus; Swinford; Talton; Taylor; Thompson; Truitt; Turner; Uresti; Van Arsdale; Veasey; Villarreal; Vo; West; Wong; Woolley; Zedler.

Absent, Excused — Bailey; Gallego; Pitts.

The invocation was offered by Representative Dutton, as follows:

To the God of the Panhandle. To the God of the Rio Grande Valley. To the God of the high plains. To the God of the Gulf Coast. To the God of the piney woods. To the God of Central Texas. To the God of West Texas. To the God of rural Texas. To the God of urban Texas. To the God of the poor. To the God of the powerful. We thank you for being one God, and we pray that our differences serve to keep Texas one under God. Amen.

The speaker recognized Representative Dutton who led the house in the pledges of allegiance to the United States and Texas flags.

### REGULAR ORDER OF BUSINESS SUSPENDED

On motion of Representative Denny and by unanimous consent, the reading and referral of bills was postponed until just prior to adjournment.

### LEAVES OF ABSENCE GRANTED

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

Pitts on motion of Woolley.

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

Bailey on motion of Hochberg.

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

Gallego on motion of Hochberg.

### 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).

### POSTPONED BUSINESS

The following bills were laid before the house as postponed business:

#### **SB 1246 ON SECOND READING (Woolley, Flores, et al. - House Sponsors)**

**SB 1246**, A bill to be entitled An Act relating to local option elections in certain populous areas on the sale of mixed beverages by food and beverage establishments.

**SB 1246** was read second time on May 20 and was postponed until 2 p.m. today.

(Taylor in the chair)

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

Representative Woolley offered the following amendment to **SB 1246**:

Amend **SB 1246** as follows:

(1) On page 1, line 11, between "county" and "adjacent" insert "with a population in excess of 300,000".

(2) On page 1, line 19, following Subsection (b), insert the following new subsection (c):

(c) If the issue fails to pass in a municipality located within a county described in Subsection (a), the election shall have no effect on the status of the municipality.

Amendment No. 1 was adopted.

### LEAVES OF ABSENCE GRANTED

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

Isett on motion of F. Brown.

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

Hodge on motion of Deshotel.

**SB 1246 - (consideration continued)**

**Amendment No. 2**

Representatives Deshotel and Ritter offered the following amendment to **SB 1246**:

Amend **SB 1246** as follows:

(1) On page 1, line 10, strike "and".

(2) On page 1, line 12, strike the period and substitute "; and".

(3) On page 1, between lines 12 and 13, insert the following:

(3) a municipality with a population of at least 50,000 located in a county with a population of at least 250,000 that is located on the Gulf of Mexico and along the Texas-Louisiana border.

Amendment No. 2 was adopted.

A record vote was requested.

**SB 1246**, as amended, was passed to third reading by (Record 739): 73 Yeas, 65 Nays, 1 Present, not voting.

Yeas — Allen, A.; Allen, R.; Alonzo; Baxter; Bonnen; Burnam; Casteel; Chavez; Coleman; Cook, R.; Crownover; Denny; Deshotel; Dukes; Dutton; Eiland; Elkins; Escobar; Farabee; Geren; Gonzalez Toureilles; Goodman; Goolsby; Grusendorf; Guillen; Haggerty; Hamilton; Hamric; Hartnett; Hegar; Herrero; Hilderbran; Homer; Hopson; Hunter; Hupp; Keel; King, T.; Kolkhorst; Krusee; Kuempel; Laney; Leibowitz; Martinez; Martinez Fischer; McClendon; Menendez; Merritt; Moreno, P.; Morrison; Naishtat; Nixon; Oliveira; Olivo; Pickett; Puente; Quintanilla; Raymond; Reyna; Ritter; Rodriguez; Rose; Solis; Strama; Straus; Truitt; Turner; Uresti; Veasey; Villarreal; Vo; Wong; Woolley.

Nays — Anchia; Anderson; Berman; Blake; Bohac; Branch; Brown, B.; Brown, F.; Callegari; Campbell; Chisum; Cook, B.; Corte; Crabb; Davis, J.; Davis, Y.; Dawson; Delisi; Driver; Dunnam; Edwards; Eissler; Farrar; Flynn; Frost; Gattis; Giddings; Gonzales; Griggs; Hardcastle; Harper-Brown; Hill; Hochberg; Hope; Howard; Hughes; Jackson; Jones, D.; Jones, J.; Keffer, B.; King, P.; Laubenberg; Luna; Madden; McCall; McReynolds; Mowery; Noriega, M.; Orr; Otto; Paxton; Peña; Phillips; Riddle; Seaman; Smith, T.; Smith, W.; Solomons; Swinford; Talton; Taylor(C); Thompson; Van Arsdale; West; Zedler.

Present, not voting — Mr. Speaker.

Absent, Excused — Bailey; Gallego; Hodge; Isett; Pitts.

Absent — Castro; Flores; Keffer, J.; Miller; Smithee.

**STATEMENTS OF VOTE**

I was shown voting yes on Record No. 739. I intended to vote no.

Hartnett

When Record No. 739 was taken, I was in the house but away from my desk. I would have voted no.

Miller

I was shown voting yes on Record No. 739. I intended to vote no.

Reyna

**SB 1494 ON SECOND READING  
(P. King - House Sponsor)**

**SB 1494**, A bill to be entitled An Act relating to the unbundling of electric utilities in the transition to competitive retail electric markets.

**SB 1494** was read second time on May 19 and was postponed until 3 p.m. today.

Representative P. King moved to postpone consideration of **SB 1494** until the end of today's calendar.

The motion prevailed.

**SB 1495 ON SECOND READING  
(P. King - House Sponsor)**

**SB 1495**, A bill to be entitled An Act relating to the securitization of the nonbypassable delivery rates of transmission and distribution utilities.

**SB 1495** was read second time on May 19 and was postponed until 3 p.m. today.

Representative P. King moved to postpone consideration of **SB 1495** until the end of today's calendar.

The motion prevailed.

**MAJOR STATE CALENDAR  
SENATE BILLS  
SECOND READING**

The following bills were laid before the house and read second time:

**SB 410 ON SECOND READING  
(Truitt - House Sponsor)**

**SB 410**, A bill to be entitled An Act relating to the continuation and functions of the Texas State Board of Pharmacy; providing administrative penalties.

**Amendment No. 1**

Representative Thompson offered the following amendment to **SB 410**:

Amend **SB 410**, SECTION 22, on page 14, as follows:

(1) on page 14, following line 7, insert a new SECTION 22, to read as follows, and renumber subsequent sections:

"SECTION 22. Section 483.042, Health and Safety Code, is amended by adding Subsection (g) to read as follows:

(g) It is an exception to the application of Subsection (a) that a dangerous drug was a contraceptive and was delivered by a pharmacist in accordance with Section 562.112 through 562.114, Occupations Code."

(2) on page 14, line 9, between "562.111" and "to" insert "through 562.114";

(3) on page 14, following line 21, add Subsection (c) to read as follows:

"(c) Under a protocol agreement between a pharmacy and a physician, pharmacists are exempted from the practitioner-patient relationship requirement when prescribing and dispensing emergency contraception.

Sec. 562.112. EMERGENCY CONTRACEPTION DRUG THERAPY. A pharmacist may initiate emergency contraception drug therapy in accordance with Section 562.113 and 562.114."

Sec. 562.113. EMERGENCY CONTRACEPTION DRUG THERAPY. (a) The board shall adopt rules necessary to administer this Chapter.

(b) a pharmacist may exercise the pharmacist's professional judgment to initiate and distribute emergency contraception drug therapy to a patient in accordance with:

(1) this Chapter and board rules; and

(2) standardized procedures and protocols developed by the pharmacist and a physician with whom the pharmacist has entered into an agreement required by Subsection (c).

(c) A pharmacist may not initiate and distribute emergency contraception drug therapy to a patient in accordance with standing drug therapy protocol unless the pharmacist enters into an agreement with at least one physician for purposes of the initiation and distribution of the drug therapy. The requirement of Section 157.101(c) (2) does not apply to drug therapy initiated and distributed under this section.

(d) For each emergency contraception drug therapy initiated and distributed, a pharmacist shall:

(1) provide the patient with a standardized fact sheet developed by the board in accordance with Subsection (f);

(2) require the patient to complete a form requesting information on possible contraindications to the drug therapy; and

(3) inform the physician with whom the pharmacist has an agreement of the initiation and distribution of the emergency contraception drug therapy in accordance with standing drug therapy protocol.

(e) In consultation with Texas State Board of Medical Examiners, the Department of State Health Services, and the American College of Obstetricians and Gynecologists, the board shall develop a standardized fact sheet that includes:

(1) the indications for use of the drug therapy;

(2) the appropriate method for using the drug therapy; and

(3) the necessity and importance of medical follow-up.

(f) Subsection (e) does not preclude the use of existing publications developed by nationally recognized medical organizations.

Sec. 562.114. TRAINING PROGRAM ON EMERGENCY CONTRACEPTION DRUG THERAPY INITIATION AND DISTRIBUTION.

(a) A pharmacist may not initiate or distribute emergency contraception drug therapy unless the pharmacist has successfully completed a training program on emergency contraception drug therapy initiation and distribution.

(b) The board and the Texas State Board of Medical Examiners must develop and approve the training program.

(c) The training program must address:

(1) the relevant medical circumstances and contraindications that make emergency contraception appropriate for a patient;

(2) appropriate methods of conducting sensitive communications related to providing the therapy;

(3) quality assurance;

(4) the availability of additional services and procedures for making referrals to the services; and

(5) the documentation required by the board.

(d) The program provider shall issue a certificate of completion to the pharmacist on completion of the training program.

(e) A pharmacist who initiates and distributes emergency contraception drug therapy may display the certificate of completion as provided by board rules."

Representative Truitt moved to table Amendment No. 1.

A record vote was requested.

The motion to table prevailed by (Record 740): 94 Yeas, 45 Nays, 1 Present, not voting.

Yeas — Allen, R.; Anderson; Baxter; Berman; Blake; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Callegari; Campbell; Chisum; Cook, B.; Cook, R.; Corte; Crabb; Crownover; Davis, J.; Dawson; Delisi; Denny; Driver; Dutton; Eissler; Elkins; Farabee; Flynn; Frost; Gattis; Geren; Goodman; Goolsby; Griggs; Grusendorf; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Hegar; Hilderbran; Hill; Homer; Hope; Hopson; Howard; Hughes; Hunter; Jackson; Jones, D.; Keel; Keffer, B.; Keffer, J.; King, P.; King, T.; Kolkhorst; Krusee; Kuempel; Laney; Laubenberg; Madden; McCall; Merritt; Miller; Morrison; Mowery; Nixon; Olivo; Orr; Otto; Paxton; Peña; Phillips; Pickett; Quintanilla; Reyna; Riddle; Ritter; Seaman; Smith, T.; Smith, W.; Solomons; Straus; Swinford; Talton; Taylor(C); Truitt; Van Arsdale; West; Wong; Woolley; Zedler.

Nays — Allen, A.; Alonzo; Anchia; Burnam; Casteel; Castro; Chavez; Coleman; Davis, Y.; Dukes; Dunnam; Edwards; Eiland; Escobar; Farrar; Flores; Giddings; Gonzales; Gonzalez Tourelles; Guillen; Herrero; Hochberg; Hupp;

Jones, J.; Leibowitz; Martinez; Martinez Fischer; McClendon; Menendez; Moreno, P.; Naishtat; Noriega, M.; Oliveira; Puente; Raymond; Rodriguez; Rose; Solis; Strama; Thompson; Turner; Uresti; Veasey; Villarreal; Vo.

Present, not voting — Mr. Speaker.

Absent, Excused — Bailey; Gallego; Hodge; Isett; Pitts.

Absent — Deshotel; Luna; McReynolds; Smithee.

### STATEMENTS OF VOTE

When Record No. 740 was taken, my vote failed to register. I would have voted yes.

Deshotel

When Record No. 740 was taken, I was temporarily out of the house chamber. I would have voted yes.

Smithee

### Amendment No. 2

Representative Hopson offered the following amendment to **SB 410**:

Amend **SB 410** by adding the following appropriately numbered section to the bill and renumbering existing sections accordingly:

SECTION \_\_. (a) Sections 481.074(o) and (p), Health and Safety Code, are amended to read as follows:

(o) A pharmacist may dispense a Schedule II controlled substance pursuant to a facsimile copy of an official prescription completed in the manner required by Section 481.075 and transmitted by the practitioner or the practitioner's agent to the pharmacy if:

(1) the prescription is written for:

(A) a Schedule II narcotic or nonnarcotic substance for a patient in a long-term care facility (LTCF), and the practitioner notes on the prescription "LTCF patient";

(B) a Schedule II narcotic product to be compounded for the direct administration to a patient by parenteral, intravenous, intramuscular, subcutaneous, or intraspinal infusion; or

(C) a Schedule II narcotic substance for a patient with a medical diagnosis documenting a terminal illness or a patient enrolled in a hospice care program certified or paid for by Medicare under Title XVIII, Social Security Act (42 U.S.C. Section 1395 et seq.), as amended, or a hospice program that is licensed under Chapter 142, and the practitioner or the practitioner's agent notes on the prescription "terminally ill" or "hospice patient"; and

(2) after transmitting the prescription, the prescribing practitioner or the practitioner's agent:

(A) writes across the face of the official prescription "VOID—sent by fax to (name and telephone number of receiving pharmacy)"; and

(B) files the official prescription in the patient's medical records instead of delivering it to the patient [promptly complies with Subsection (p)].

(p) ~~[Not later than the seventh day after the date a prescribing practitioner transmits the facsimile copy of the official prescription to the pharmacy, the prescribing practitioner shall deliver in person or mail the official written prescription to the dispensing pharmacist at the pharmacy where the prescription was dispensed. The envelope of a prescription delivered by mail must be postmarked not later than the seventh day after the date the official prescription was written.]~~ On receipt of the prescription, the dispensing pharmacy shall file the facsimile copy of the prescription ~~[with the official prescription]~~ and shall send information to the director as required by Section 481.075.

(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, 2005.

Amendment No. 2 was adopted.

### **Amendment No. 3**

Representative Hochberg offered the following amendment to **SB 410**:

Amend **SB 410** by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. The legislature finds that:

(1) prescription drugs are expensive to the point that some residents of this state have been forced to choose between purchasing prescription drugs and paying for other essentials, such as groceries or rent;

(2) prescription drugs can be purchased at much lower costs in Canada;

(3) scams offering low-cost prescription drugs are prevalent on the Internet and in spam e-mail, and these practices make it difficult for consumers in this state to determine how and where to purchase safe and effective prescription drugs at affordable prices;

(4) the Regulatory Procedures Manual of the Federal Drug Administration authorizes agency personnel to allow the importation of products regulated by that agency when the quantity and purpose are clearly for personal use and the product does not present an unreasonable risk to the user; and

(5) other states and municipalities provide Internet websites and other methods to allow residents of those states or municipalities to safely purchase prescription drugs from Canada.

SECTION \_\_\_\_\_. Subchapter A, Chapter 554, Occupations Code, is amended by adding Section 554.016 to read as follows:

Sec. 554.016. CANADIAN PHARMACY INSPECTION; DESIGNATION; FEES; INFORMATION. (a) The board shall designate at least one and not more than 10 Canadian pharmacies whose primary business is to dispense prescription drugs under prescription drug orders to Canadian residents, as having passed inspection by the board for shipping, mailing, or delivering to this state a prescription dispensed under a prescription drug order to a resident in this state.



(b) The board by rule shall set fees in amounts reasonable and necessary to cover the costs incurred by the board in inspecting Canadian pharmacies as provided by Subsection (a).

(c) The board shall establish and maintain an Internet website to provide information necessary to enable residents of this state to conveniently order prescription drugs from Canadian pharmacies designated by the board as having passed inspection to dispense prescription drugs to residents in this state in accordance with this subtitle and board rules. The board shall include on the website a statement that the board is not liable for any act or omission of a Canadian pharmacy designated as having passed inspection to dispense prescription drugs to residents in this state.

SECTION \_\_\_\_\_. Subchapter B, Chapter 556, Occupations Code, is amended by adding Section 556.0555 to read as follows:

Sec. 556.0555. INSPECTIONS. (a) At least annually, the board shall conduct random inspections of Canadian pharmacies designated under Section 554.016 as necessary to ensure compliance with the safety standards and other requirements of this subtitle and board rules.

(b) Notwithstanding the requirements of this chapter, the board by rule may establish the standards and procedures for inspections under this section.

(c) The board may enter into a written agreement with another state for an agency or employee of the state to perform services for the board related to inspecting a Canadian pharmacy designated by the board under Section 554.016 to dispense prescription drugs to residents in this state. This subsection does not apply to the initial inspection of the pharmacy.

SECTION \_\_\_\_\_. Section 560.001, Occupations Code, is amended by adding Subsection (c) to read as follows:

(c) A pharmacy located in Canada may not ship, mail, or deliver to this state a prescription drug dispensed under a prescription drug order to a resident of this state unless the pharmacy is designated by the board under Section 554.016.

SECTION \_\_\_\_\_. Subchapter B, Chapter 560, Occupations Code, is amended by adding Section 560.0525 to read as follows:

Sec. 560.0525. ADDITIONAL QUALIFICATION REQUIREMENTS FOR CANADIAN PHARMACIES. (a) To pass an inspection by the board, a Canadian pharmacy must meet Texas licensing standards.

(b) In addition to satisfying the other requirements of this chapter, to qualify for designation by the board under Section 554.016, a Canadian pharmacy applicant must submit to the board:

(1) evidence satisfactory to the board that the applicant holds a pharmacy license, registration, or permit in good standing issued by Canada or the Canadian province in which the pharmacy is located and is not subject to any pending disciplinary action or legal action by any regulatory authority;

(2) the name and address of the pharmacy's owner and pharmacist-in-charge for service of process;

(3) evidence of the applicant's ability to provide to the board, not later than 72 hours after the time the board requests the record, a record of a prescription drug order authorizing the pharmacy to dispense a prescription drug to a resident of this state;

(4) an affidavit by the pharmacist-in-charge that states the pharmacist has read and understands this subtitle and the rules adopted under this subtitle that relate to a Canadian pharmacy designated by the board as having passed inspection to dispense prescription drugs to residents in this state;

(5) evidence satisfactory to the board that the applicant meets the standards established by board rule to ensure customer safety for each order filled and in the dispensing, storing, packaging, shipping, and delivering of prescription drugs; and

(6) evidence satisfactory to the board that the applicant's employees hold the appropriate Canadian licenses required to dispense prescription drugs in Canada.

(c) Before a Canadian pharmacy is designated as having passed inspection to dispense prescription drugs to residents in this state, a representative of the board shall visit the pharmacy's facilities and review the pharmacy's compliance with the requirements and safety standards established under this subtitle.

SECTION \_\_\_\_. Section 562.101, Occupations Code, is amended by adding Subsection (f-1) to read as follows:

(f-1) A Canadian pharmacy designated by the board as having passed inspection to dispense prescription drugs to residents in this state is required to be under the continuous on-site supervision of a pharmacist and shall designate one pharmacist licensed to practice pharmacy by the regulatory or licensing agency of Canada or of the Canadian province in which the Canadian pharmacy is located to serve as the pharmacist-in-charge of the Canadian pharmacy.

SECTION \_\_\_\_. Subchapter C, Chapter 562, Occupations Code, is amended by adding Section 562.111 to read as follows:

Sec. 562.111. PRESCRIPTION DRUG ORDER FOR CONSUMER. (a) A pharmacy in this state may order for a consumer a prescription drug from a Canadian pharmacy designated by the board under Section 554.016 to dispense prescription drugs to residents in this state.

(b) A pharmacy may order a prescription drug under this section only with the knowledge and clear consent of the consumer.

SECTION \_\_\_\_. Chapter 562, Occupations Code, is amended by adding Subchapter E to read as follows:

#### SUBCHAPTER E. PRACTICE BY CANADIAN PHARMACY

Sec. 562.201. ADDITIONAL PRACTICE REQUIREMENTS. In addition to complying with the other requirements of this chapter, a Canadian pharmacy designated by the board under Section 554.016 shall:

(1) dispense a prescription drug to a resident of this state only under the lawful order of a practitioner licensed in the United States;

(2) dispense to a resident of this state only a prescription drug that is approved by Canada's Therapeutic Products Directorate for sale to residents of Canada;

(3) dispense to a resident of this state a prescription drug in the original, unopened manufacturer's packaging whenever possible; and

(4) dispense to a resident of this state only drugs prescribed for long-term use.

Sec. 562.202. LIMITATIONS ON PRACTICE. A Canadian pharmacy designated by the board under Section 554.016 to dispense prescription drugs to residents in this state may not:

(1) dispense to a resident of this state a prescription drug for which there is not an equivalent drug approved by the United States Food and Drug Administration for sale in the United States;

(2) dispense to a resident of this state a prescription drug that cannot be safely shipped by mail, common carrier, or delivery service;

(3) dispense in one order to a resident of this state a quantity of a prescription drug that exceeds:

(A) a three-month supply; or

(B) the amount ordered by the practitioner;

(4) fill a prescription drug order for a consumer who is a resident of this state that the consumer indicates is the consumer's first prescription for that drug;

or

(5) dispense to a resident of this state any of the following:

(A) a substance designated as a controlled substance under Chapter 481, Health and Safety Code (Texas Controlled Substances Act);

(B) a biological product, as described by Section 351, Public Health Service Act (42 U.S.C. Section 262);

(C) an infused drug, including a peritoneal dialysis solution;

(D) an intravenously injected drug; or

(E) a drug that is inhaled during surgery.

Sec. 562.203. COMPLAINT REPORT. A Canadian pharmacy designated by the board under Section 554.016 to dispense prescription drugs to residents in this state shall provide to the board periodic reports in accordance with board rules on each complaint received by the pharmacy from a consumer in this state who purchases a prescription drug from the pharmacy.

Sec. 562.204. PRICE LIST. A Canadian pharmacy designated by the board under Section 554.016 shall:

(1) compile and maintain a current price list for prescription drugs provided to residents in this state; and

(2) guarantee those prices for not less than 30 days from the date the list is effective.

SECTION \_\_\_\_. (a) Not later than the 30th day after the effective date of this Act, the Texas State Board of Pharmacy shall adopt the initial rules necessary to implement the changes in law made by this Act to Subtitle J, Title 3, Occupations Code, in the manner provided by law for adoption of emergency rules. This subsection expires January 1, 2006.

(b) Not later than January 1, 2006, the Texas State Board of Pharmacy shall adopt the rules necessary to implement the changes in law made by this Act to Subtitle J, Title 3, Occupations Code.

(c) The requirements for a Canadian pharmacy to be designated under Section 554.016, Occupations Code, as added by this Act, to dispense prescription drugs in this state under Subtitle J, Title 3, Occupations Code, as amended by this Act, take effect March 1, 2006.

Representative Truitt moved to table Amendment No. 3.

(Gattis in the chair)

A record vote was requested.

The motion to table was lost by (Record 741): 17 Yeas, 114 Nays, 4 Present, not voting.

Yeas — Anderson; Chisum; Cook, B.; Corte; Crownover; Dawson; Delisi; Hamric; Hardcastle; Harper-Brown; Hilderbran; Jones, D.; Miller; Straus; Talton; Taylor; Zedler.

Nays — Allen, A.; Allen, R.; Alonzo; Anchia; Baxter; Berman; Blake; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Burnam; Callegari; Campbell; Casteel; Castro; Chavez; Coleman; Cook, R.; Crabb; Davis, Y.; Denny; Deshotel; Driver; Dukes; Dunnam; Dutton; Edwards; Eiland; Eissler; Elkins; Escobar; Farabee; Farrar; Flores; Flynn; Frost; Geren; Giddings; Gonzales; Gonzalez Toureilles; Goodman; Goolsby; Griggs; Grusendorf; Guillen; Haggerty; Hamilton; Hartnett; Hegar; Herrero; Hill; Hochberg; Homer; Hope; Howard; Hunter; Hupp; Jackson; Jones, J.; Keel; Keffer, J.; King, P.; King, T.; Kolkhorst; Krusee; Kuempel; Laney; Leibowitz; Madden; Martinez; Martinez Fischer; McCall; McClendon; McReynolds; Menendez; Merritt; Moreno, P.; Morrison; Mowery; Naishtat; Noriega, M.; Oliveira; Olivo; Orr; Otto; Peña; Phillips; Pickett; Puente; Quintanilla; Raymond; Reyna; Ritter; Rodriguez; Rose; Seaman; Smith, T.; Smith, W.; Smithee; Solis; Solomons; Strama; Swinford; Thompson; Turner; Uresti; Van Arsdale; Veasey; Villarreal; Vo; West; Wong.

Present, not voting — Mr. Speaker; Gattis(C); Hopson; Nixon.

Absent, Excused — Bailey; Gallego; Hodge; Isett; Pitts.

Absent — Davis, J.; Hughes; Keffer, B.; Laubenberg; Luna; Paxton; Riddle; Truitt; Woolley.

### STATEMENTS OF VOTE

I was shown voting yes on Record No. 741. I intended to vote no.

B. Cook

I was shown voting yes on Record No. 741. I intended to vote no.

Dawson

I was shown voting yes on Record No. 741. I intended to vote no.

Hilderbran

I was shown voting yes on Record No. 741. I intended to vote no.

Zedler

Amendment No. 3 was adopted.

### **SB 410 - POINT OF ORDER**

Representative Thompson raised a point of order against further consideration of **SB 410** under Rule 4, Section 32(c)(3) of the House Rules on the grounds that the committee report is missing a statement indicating whether or not any rulemaking authority is expressly delegated to a state officer, department, agency, or institution.

(Speaker in the chair)

The point of order was withdrawn.

**SB 410**, as amended, was passed to third reading. (In accordance with House Rule 5, Section 51(b), every member present must have favored passage of the measure, but any member may register their position with the journal clerk. Members registering votes are as follows: Delisi recorded voting yes; Harper-Brown recorded voting no; Hopson recorded voting present, not voting.)

### **CSSB 411 ON SECOND READING**

**(Hamric - House Sponsor)**

**CSSB 411**, A bill to be entitled An Act relating to the regulation of barbers and cosmetologists by the Texas Department of Licensing and Regulation and the abolition of the State Board of Barber Examiners and the Texas Cosmetology Commission.

(Nixon in the chair)

### **Amendment No. 1**

On behalf of Representative Chisum, Representative Hamric offered the following amendment to **CSSB 411**:

Amend **CSSB 411** (House Committee Report) by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_. Section 1602.002, Occupations Code, is amended to read as follows:

Sec. 1602.002. DEFINITION OF COSMETOLOGY. In this chapter, "cosmetology" means the practice of performing or offering to perform for compensation any of the following services:

(1) treating a person's hair by:

(A) providing any method of treatment as a primary service, including arranging, beautifying, bleaching, cleansing, coloring, cutting, dressing, dyeing, processing, shampooing, shaping, singeing, straightening, styling, tinting, or waving;

(B) providing a necessary service that is preparatory or ancillary to a service under Paragraph (A), including bobbing, clipping, cutting, or trimming;  
or

(C) cutting the person's hair as a separate and independent service for which a charge is directly or indirectly made separately from charges for any other service;

(2) weaving [~~or braiding~~] a person's hair;

(3) shampooing and conditioning a person's hair;

(4) servicing a person's wig or artificial hairpiece on a person's head or on a block after the initial retail sale and servicing in any manner listed in Subdivision (1);

(5) treating a person's mustache or beard by arranging, beautifying, coloring, processing, styling, or trimming;

(6) cleansing, stimulating, or massaging a person's scalp, face, neck, or arms:

(A) by hand or by using a device, apparatus, or appliance; and

(B) with or without the use of any cosmetic preparation, antiseptic, tonic, lotion, or cream;

(7) beautifying a person's face, neck, or arms using a cosmetic preparation, antiseptic, tonic, lotion, powder, oil, clay, cream, or appliance;

(8) administering facial treatments;

(9) removing superfluous hair from a person's body using depilatories or mechanical tweezers;

(10) treating a person's nails by:

(A) cutting, trimming, polishing, tinting, coloring, cleansing, or manicuring; or

(B) attaching false nails; or

(11) massaging, cleansing, treating, or beautifying a person's hands or feet.

Amendment No. 1 was adopted.

**CSSB 411**, as amended, was passed to third reading. (In accordance with House Rule 5, Section 51(b), every member present must have favored passage of the measure, but any member may register their position with the journal clerk. Members registering votes are as follows: A. Allen, Edwards, Haper-Brown, J. Keffer, and Phillips recorded voting no.)

### **CSSB 408 ON SECOND READING**

**(P. King - House Sponsor)**

**CSSB 408**, A bill to be entitled An Act relating to the continuation, administration, and operations of the Public Utility Commission of Texas.

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

Representative P. King offered the following amendment to **CSSB 408**:

Amend **CSSB 408** as follows:

(1) In Section 11.0042(a)(5), Utilities Code, as added by SECTION 4 of the bill (page 6, lines 9-10), strike "but not more than 15 percent".

(2) In Section 11.0042(b), Utilities Code, as added by SECTION 4 of the bill (page 6, line 22), strike "five percent or more but not more than 15 percent of".

(3) In Section 11.010(a), Utilities Code, as added by SECTION 6 of the bill (page 8, line 17), strike "contested proceeding before" and substitute "contested proceeding hearing before".

(4) In Section 11.010(a), Utilities Code, as added by SECTION 6 of the bill (page 8, line 20), insert the following after the period:

This subsection does not affect the ability of an entity to hire or contract for other persons to provide services, including professional services, to the entity in relation to a contested proceeding, including a hearing related to a contested proceeding.

(5) Strike SECTION 9 (page 9, lines 7-11) and SECTION 44 of the bill (page 46, lines 17-23).

(6) In Section 14.101(d)(5), Utilities Code, as added by SECTION 25 of the bill (page 19, line 14), strike ", another state, or another state agency".

(7) In the recital to SECTION 27 of the bill (page 19, lines 22 and 23), strike "Subsections (d), (e), and (f)" and substitute "Subsections (d) and (e)".

(8) In Section 15.023(b), Utilities Code, as amended by SECTION 27 of the bill (page 19, line 25), strike "\$10,000" and substitute "\$25,000".

(9) Strike Subsection (f), Section 15.023, Utilities Code, as added by SECTION 27 of the bill (page 21, lines 5-10).

(10) In Section 16.001(b), Utilities Code, as amended by SECTION 34 of the bill (page 26, lines 5 and 6), strike "[public utility's, retail electric provider's, or electric cooperative's]" and substitute "[public] utility's, retail electric provider's, provider's, or electric cooperative's".

(11) In Section 39.301, Utilities Code, as amended by SECTION 37 of the bill (page 27, lines 14-17), strike "It is the policy of this state to encourage electric utilities and transmission and distribution utilities to use securitization financing [stranded costs,] because this" and substitute "This [stranded costs, because this]".

(12) Insert the following appropriately numbered SECTIONS to the bill and renumber following SECTIONS as appropriate:

SECTION \_\_. Section 31.003, Utilities Code, is amended by adding Subsection (c) to read as follows:

(c) The commission may include with the report required by this section any other report required to be made to the legislature before January 15 of an odd-numbered year. A report included with the report required by this section must be clearly distinct from the report required by this section.

SECTION \_\_\_\_. Section 32.001(b), Utilities Code, is amended to read as follows:

(b) The commission has exclusive appellate jurisdiction to review an order or ordinance of a municipality exercising exclusive original jurisdiction under this subtitle, including under Chapter 33.

SECTION \_\_. Section 39.151, Utilities Code, is amended by amending Subsections (b) through (e), (g), and (h) and adding Subsections (d-1) and (g-1) to read as follows:

(b) "Independent organization" means an independent system operator or other person that is sufficiently independent of any producer or seller of electricity that its decisions will not be unduly influenced by any producer or seller. ~~[An entity will be deemed to be independent if it is governed by a board that has three representatives from each segment of the electric market, with the consumer segment being represented by one residential customer, one commercial customer, and one industrial retail customer.]~~

(c) The commission shall certify an independent organization or organizations to perform the functions prescribed by this section. The commission shall apply the provisions of this section and Sections 39.1511, 39.1512, and 39.1515 so as to avoid conflict with a ruling of a federal regulatory body.

(d) ~~The commission shall adopt and enforce rules [An independent organization certified by the commission for a power region shall establish and enforce procedures, consistent with this title and the commission's rules,]~~ relating to the reliability of the regional electrical network and accounting for the production and delivery of electricity among generators and all other market participants, or may delegate to an independent organization responsibilities for establishing or enforcing such rules. Any such rules adopted by an independent organization and any enforcement actions taken by the organization are ~~[- The procedures shall be]~~ subject to commission oversight and review. An independent organization certified by the commission is directly responsible and accountable to the commission. The commission has complete authority to oversee and investigate the organization's finances, budget, and operations as necessary to ensure the organization's accountability and to ensure that the organization adequately performs the organization's functions and duties. The organization shall fully cooperate with the commission in the commission's oversight and investigatory functions. The commission may take appropriate action against an organization that does not adequately perform the organization's functions or duties or does not comply with this section, including decertifying the organization or assessing an administrative penalty against the organization. The commission by rule shall adopt procedures governing decertification of an independent organization, selecting and certifying a successor organization, and transferring assets to the successor organization to ensure continuity of operations in the region. The commission may not implement, by order or by rule, a requirement that is contrary to an applicable federal law or rule.

(d-1) The commission may:

(1) require an independent organization to provide reports and information relating to the independent organization's performance of the functions prescribed by this section and relating to the organization's revenues, expenses, and other financial matters;

(2) prescribe a system of accounts for an independent organization;

(3) conduct audits of an independent organization's performance of the functions prescribed by this section or relating to its revenues, expenses, and other financial matters and may require an independent organization to conduct such an audit;



(4) inspect an independent organization's facilities, records, and accounts during reasonable hours and after reasonable notice to the independent organization;

(5) assess administrative penalties against an independent organization that violates this title or a rule or order adopted by the commission and, at the request of the commission, the attorney general may apply for a court order to require an independent organization to comply with commission rules and orders in the manner provided by Chapter 15; and

(6) resolve disputes between an affected person and an independent organization and adopt procedures for the efficient resolution of such disputes.

(e) The commission may authorize an independent organization that is certified under this section to charge a reasonable and competitively neutral rate to wholesale buyers and sellers to cover the independent organization's costs. The commission shall investigate the organization's cost efficiencies, salaries and benefits, and use of debt financing and may require the organization to provide any information needed to effectively evaluate the organization's budget and the reasonableness and neutrality of a rate or proposed rate or to evaluate the effectiveness or efficiency of the organization. The commission shall work with the organization to establish the detail of information, both current and historical, and the time frames the commission needs to effectively evaluate a rate or a rate request.

(g) To maintain certification as an independent organization under this section, an organization's [If it amends its governance rules to provide that its governing body is composed as prescribed by this subsection, the existing independent system operator in ERCOT will meet the criteria provided by Subsection (a) with respect to ensuring access to the transmission systems for all buyers and sellers of electricity in the ERCOT region and ensuring the reliability of the regional electrical network. To comply with this subsection, the] governing body must be composed of persons specified by this section and selected in accordance with formal bylaws or protocols of the organization. The bylaws or protocols must be approved by the commission and must reflect the input of the commission. The bylaws must specify the process by which appropriate stakeholders elect members and, for unaffiliated members, prescribe professional qualifications for selection as a member. The bylaws must require the use of a professional search firm to identify candidates for membership of unaffiliated members. The process must allow for commission input in identifying candidates. The governing body must be composed of:

(1) the chairman of the commission as an ex officio nonvoting member;  
(2) the counsellor as an ex officio voting member representing residential and small commercial consumer interests;

(3) the chief executive officer [director] of the independent organization [system operator] as an ex officio voting member;

(4) six market participants elected by their respective market segments to serve one-year terms, with:

(A) one representing independent generators;

(B) one representing investor-owned utilities;

(C) one representing power marketers;  
(D) one representing retail electric providers;  
(E) one representing municipally owned utilities; and  
(F) one representing electric cooperatives [~~four representatives of the power generation sector as voting members~~];

(5) one member representing industrial consumer interests and elected by the industrial consumer market segment to serve a one-year term [~~four representatives of the transmission and distribution sector as voting members~~];

(6) one member representing large commercial consumer interests selected in accordance with the bylaws to serve a one-year term [~~four representatives of the power sales sector as voting members~~]; and

(7) five members unaffiliated with any market segment and selected by the other members of the governing body to serve three-year terms [~~the following people as voting members, appointed by the commission:~~

~~[(A) one representative of residential customers;~~

~~[(B) one representative of commercial customers; and~~

~~[(C) one representative of industrial customers].~~

~~[The four representatives specified in each of Subdivisions (4), (5), and (6) shall be selected in a manner that ensures equitable representation for the various sectors of industry participants.]~~

(g-1) The presiding officer of the governing body must be one of the members described by Subsection (g)(7).

(h) The ERCOT independent system operator may meet the criteria relating to the other functions of an independent organization provided by Subsection (a) by adopting procedures and acquiring resources needed to carry out those functions, consistent with any rules or orders of the commission.

SECTION \_\_. Subchapter D, Chapter 39, Utilities Code, is amended by adding Sections 39.1511 and 39.1512 to read as follows:

Sec. 39.1511. PUBLIC MEETINGS OF THE GOVERNING BODY OF AN INDEPENDENT ORGANIZATION. (a) Meetings of the governing body of an independent organization certified under Section 39.151 and meetings of a subcommittee that includes a member of the governing body must be open to the public. The bylaws of the independent organization and the rules of the commission may provide for the governing body or subcommittee to enter into executive session closed to the public to address sensitive matters such as confidential personnel information, contracts, lawsuits, competitively sensitive information, or other information related to the security of the regional electrical network.

(b) The bylaws of the independent organization and rules of the commission must ensure that a person interested in the activities of the independent organization has an opportunity to obtain at least seven days' advance notice of meetings and the planned agendas of the meetings and an opportunity to comment on matters under discussion at the meetings. The bylaws and commission rules governing meetings of the governing body may provide for a shorter period of advance notice and for meetings by teleconference technology for governing body meetings to take action on urgent matters. The bylaws and

rules must require actions taken on short notice or at teleconference meetings to be ratified at the governing body's next regular meeting. The notice requirements may be met by a timely electronic posting on the Internet.

Sec. 39.1512. DISCLOSURE OF INTEREST IN MATTER BEFORE INDEPENDENT ORGANIZATION'S GOVERNING BODY; PARTICIPATION IN DECISION. (a) If a matter comes before the governing body of an independent organization certified under Section 39.151 and a member has a direct interest in that matter or is employed by or has a substantial financial interest in a person who has a direct interest in that matter, that member shall publicly disclose the fact of that interest to the governing body at a public meeting of the body. The member shall recuse himself or herself from the governing body's deliberations and actions on the matter and may not vote on the matter or otherwise participate in a governing body decision on the matter.

(b) A disclosure made under Subsection (a) shall be entered in the minutes of the meeting at which the disclosure is made.

(c) The fact that a member is recused from a vote or decision by application of this section does not affect the existence of a quorum.

SECTION \_\_. An independent organization certified by the Public Utility Commission of Texas before September 1, 2005, shall modify the organization's governing body to comply with Subsection (g), Section 39.151, Utilities Code, as amended by this Act, not later than September 1, 2006. On or after September 1, 2006, the Public Utility Commission of Texas may decertify an independent organization whose governing body does not comply with Subsection (g), Section 39.151, Utilities Code, as amended by this Act.

SECTION \_\_. Subchapter D, Chapter 39, Utilities Code, is amended by adding Section 39.1515 to read as follows:

Sec. 39.1515. WHOLESALE ELECTRIC MARKET MONITOR. (a) An independent organization certified under Section 39.151 shall contract with an entity selected by the commission to act as the commission's wholesale electric market monitor to detect and prevent market manipulation strategies and recommend measures to enhance the efficiency of the wholesale market.

(b) The independent organization shall provide to the personnel of the market monitor:

(1) full access to the organization's main operations center and the organization's records that concern operations, settlement, and reliability; and

(2) other support and cooperation the commission determines is necessary for the market monitor to perform the market monitor's functions.

(c) The independent organization shall use money from the rate authorized by Section 39.151(e) to pay for the market monitor's activities.

(d) The commission is responsible for ensuring that the market monitor has the resources, expertise, and authority necessary to monitor the wholesale electric market effectively and shall adopt rules and perform oversight of the market monitor as necessary. The market monitor shall operate under the supervision and oversight of the commission. The commission shall retain all enforcement authority conferred under this title, and this section may not be construed to

confer enforcement authority on the market monitor or to authorize the commission to delegate the commission's enforcement authority to the market monitor. The commission by rule shall define:

(1) the market monitor's monitoring responsibilities, including reporting obligations and limitations;

(2) the standards for funding the market monitor, including staffing requirements;

(3) qualifications for personnel of the market monitor; and

(4) ethical standards for the market monitor and the personnel of the market monitor.

(e) In adopting rules governing the standards for funding the market monitor, the commission shall consult with a subcommittee of the independent organization's governing body to receive information on how money is or should be spent for monitoring functions. Rules governing ethical standards must include provisions designed to ensure that the personnel of the market monitor are professionally and financially independent from market participants. The commission shall develop and implement policies that clearly separate the policymaking responsibilities of the commission and the monitoring, analysis, and reporting responsibilities of the market monitor.

(f) The market monitor immediately shall report directly to the commission any potential market manipulations and any discovered or potential violations of commission rules or rules of the independent organization.

(g) The personnel of the market monitor may communicate with commission staff on any matter without restriction.

(h) The market monitor annually shall submit to the commission and the independent organization a report that identifies market design flaws and recommends methods to correct the flaws. The commission and the independent organization shall review the report and evaluate whether changes to rules of the commission or the independent organization should be made.

SECTION \_\_\_\_\_. Section 39.205, Utilities Code, is amended to read as follows:

Sec. 39.205. REGULATION OF COSTS FOLLOWING FREEZE PERIOD. At the conclusion of the freeze period, any remaining costs associated with nuclear decommissioning obligations continue to be subject to cost of service rate regulation and shall be included as a nonbypassable charge to retail customers. The commission may adopt rules necessary to ensure that money for decommissioning is prudently collected, managed, and spent for its intended purpose and that money that remains unspent after decommissioning is completed is returned to retail customers.

SECTION \_\_\_. Chapter 51, Utilities Code, is amended by adding Section 51.011 to read as follows:

Sec. 51.011. RECOVERY OF TAXABLE TELECOM RECEIPT ASSESSMENT. (a) To the extent an annual assessment is imposed on each telecommunications provider, including each commercial mobile service

provider, doing business in this state, a certificated telecommunications provider may, beginning June 1, 2005, recover from the provider's customers, an assessment imposed on the provider under this title.

(b) A certificated telecommunications provider may recover only the amount of the assessment imposed and may recover the assessment through a monthly billing process.

SECTION \_\_. Section 52.006, Utilities Code, is amended by adding Subsection (e) to read as follows:

(e) The commission may include with the report required by this section any other report required to be made to the legislature before January 15 of an odd-numbered year. A report included with the report required by this section must be clearly distinct from the report required by this section.

### **Amendment No. 2**

Representative Solomons offered the following amendment to Amendment No. 1:

Amend Amendment No. 1 by King to **CSSB 408** as follows:

(1) On page 9, strike lines 12 through 31.

(2) Strike page 10.

(3) On page 11, strike lines 1 through 10.

(4) Add the following new SECTIONS and renumber accordingly: Add the following new SECTIONS and renumber accordingly:

SECTION \_\_\_\_\_. Subchapter D, Chapter 39, Utilities Code, is amended by adding Section 39.1515 to read as follows:

Sec. 39.1515. WHOLESALE ELECTRIC MARKET MONITOR. (a) An independent organization certified under Section 39.151 shall contract with an entity selected by the commission to act as the commission's wholesale electric market monitor to detect and prevent market manipulation strategies and recommend measures to enhance the efficiency of the wholesale market.

(b) The independent organization shall provide to the personnel of the market monitor:

(1) full access to the organization's main operations center and the organization's records that concern operations, settlement, and reliability; and

(2) other support and cooperation the commission determines is necessary for the market monitor to perform the market monitor's functions.

(c) The independent organization shall use money from the rate authorized by Section 39.151(e) to pay for the market monitor's activities.

(d) The commission is responsible for ensuring that the market monitor has the resources, expertise, and authority necessary to monitor the wholesale electric market effectively and shall adopt rules and perform oversight of the market monitor as necessary. The market monitor shall operate under the supervision and oversight of the commission. The commission shall retain all enforcement authority conferred under this title, and this section may not be construed to confer enforcement authority on the market monitor or to authorize the commission to delegate the commission's enforcement authority to the market monitor. The commission by rule shall define:

(1) the market monitor's monitoring responsibilities, including reporting obligations and limitations;

(2) the standards for funding the market monitor, including staffing requirements;

(3) qualifications for personnel of the market monitor; and

(4) ethical standards for the market monitor and the personnel of the market monitor.

(e) In adopting rules governing the standards for funding the market monitor, the commission shall consult with a subcommittee of the independent organization's governing body to receive information on how money is or should be spent for monitoring functions. Rules governing ethical standards must include provisions designed to ensure that the personnel of the market monitor are professionally and financially independent from market participants. The commission shall develop and implement policies that clearly separate the policymaking responsibilities of the commission and the monitoring, analysis, and reporting responsibilities of the market monitor.

(f) The market monitor immediately shall report directly to the commission any potential market manipulations and any discovered or potential violations of commission rules or rules of the independent organization.

(g) The personnel of the market monitor may communicate with commission staff on any matter without restriction.

(h) The market monitor annually shall submit to the commission and the independent organization a report that identifies market design flaws and recommends methods to correct the flaws. The commission and the independent organization shall review the report and evaluate whether changes to rules of the commission or the independent organization should be made.

Representative P. King moved to table Amendment No. 2.

A record vote was requested.

The motion to table prevailed by (Record 742): 84 Yeas, 54 Nays, 2 Present, not voting.

Yeas — Allen, R.; Alonzo; Anderson; Baxter; Bohac; Bonnen; Branch; Brown, B.; Callegari; Campbell; Casteel; Coleman; Cook, R.; Corte; Crabb; Davis, J.; Dawson; Delisi; Denny; Deshotel; Driver; Dukes; Dunnam; Eissler; Elkins; Flynn; Frost; Gattis; Giddings; Gonzales; Gonzalez Toureilles; Goodman; Goolsby; Griggs; Grusendorf; Haggerty; Harper-Brown; Hartnett; Hegar; Hilderbran; Hill; Homer; Howard; Hughes; Hunter; Hupp; Jackson; Keel; Keffer, B.; Keffer, J.; King, P.; Kolkhorst; Krusee; Kuempel; Laubenberg; Madden; McClendon; Menendez; Merritt; Miller; Morrison; Mowery; Noriega, M.; Olivo; Orr; Otto; Paxton; Peña; Phillips; Puente; Quintanilla; Raymond; Riddle; Rose; Smith, T.; Smith, W.; Smithee; Straus; Swinford; Truitt; Turner; Van Arsdale; Woolley; Zedler.

Nays — Allen, A.; Anchia; Berman; Blake; Brown, F.; Burnam; Castro; Chavez; Chisum; Cook, B.; Crownover; Davis, Y.; Dutton; Edwards; Eiland; Escobar; Farabee; Farrar; Geren; Hamilton; Hamric; Hardcastle; Herrero; Hope;

Hopson; Jones, D.; Jones, J.; King, T.; Laney; Leibowitz; Luna; Martinez; Martinez Fischer; McCall; McReynolds; Moreno, P.; Naishtat; Oliveira; Pickett; Reyna; Ritter; Rodriguez; Seaman; Solis; Solomons; Strama; Talton; Taylor; Thompson; Uresti; Veasey; Vo; West; Wong.

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

Absent, Excused — Bailey; Gallego; Hodge; Isett; Pitts.

Absent — Flores; Guillen; Hochberg; Villarreal.

### STATEMENT OF VOTE

When Record No. 742 was taken, my vote failed to register. I would have voted yes.

Guillen

### Amendment No. 3

Representative Solomons offered the following amendment to Amendment No. 1:

Amend Amendment No. 1 by King to **CSSB 408** as follows:

(1) On page 2, strike lines 29 through 31.

(2) Strike pages 3 through 8.

(3) On page 9, strike lines 1 through 11.

(4) Add the following new SECTIONS and renumber accordingly:

SECTION \_\_\_\_\_. Section 39.151, Utilities Code, is amended by amending Subsections (b) through (e), (g), and (h) and adding Subsections (d-1) and (g-1) to read as follows:

(b) "Independent organization" means an independent system operator or other person that is sufficiently independent of any producer or seller of electricity that its decisions will not be unduly influenced by any producer or seller. ~~[An entity will be deemed to be independent if it is governed by a board that has three representatives from each segment of the electric market, with the consumer segment being represented by one residential customer, one commercial customer, and one industrial retail customer.]~~

(c) The commission shall certify an independent organization or organizations to perform the functions prescribed by this section. The commission shall apply the provisions of this section and Sections 39.1511, 39.1512, and 39.1515 so as to avoid conflict with a ruling of a federal regulatory body.

(d) The commission shall adopt and enforce rules [An independent organization certified by the commission for a power region shall establish and enforce procedures, consistent with this title and the commission's rules,] relating to the reliability of the regional electrical network and accounting for the production and delivery of electricity among generators and all other market participants, or may delegate to an independent organization responsibilities for establishing or enforcing such rules. Any such rules adopted by an independent organization and any enforcement actions taken by the organization are~~[- The procedures shall be]~~ subject to commission oversight and review. An independent

organization certified by the commission is directly responsible and accountable to the commission. The commission has complete authority to oversee and investigate the organization's finances, budget, and operations as necessary to ensure the organization's accountability and to ensure that the organization adequately performs the organization's functions and duties. The organization shall fully cooperate with the commission in the commission's oversight and investigatory functions. The commission may take appropriate action against an organization that does not adequately perform the organization's functions or duties or does not comply with this section, including decertifying the organization or assessing an administrative penalty against the organization. The commission by rule shall adopt procedures governing decertification of an independent organization, selecting and certifying a successor organization, and transferring assets to the successor organization to ensure continuity of operations in the region. The commission may not implement, by order or by rule, a requirement that is contrary to an applicable federal law or rule.

(d-1) The commission may:

(1) require an independent organization to provide reports and information relating to the independent organization's performance of the functions prescribed by this section and relating to the organization's revenues, expenses, and other financial matters;

(2) prescribe a system of accounts for an independent organization;

(3) conduct audits of an independent organization's performance of the functions prescribed by this section or relating to its revenues, expenses, and other financial matters and may require an independent organization to conduct such an audit;

(4) inspect an independent organization's facilities, records, and accounts during reasonable hours and after reasonable notice to the independent organization;

(5) assess administrative penalties against an independent organization that violates this title or a rule or order adopted by the commission and, at the request of the commission, the attorney general may apply for a court order to require an independent organization to comply with commission rules and orders in the manner provided by Chapter 15; and

(6) resolve disputes between an affected person and an independent organization and adopt procedures for the efficient resolution of such disputes.

(e) The commission may authorize an independent organization that is certified under this section to charge a reasonable and competitively neutral rate to wholesale buyers and sellers to cover the independent organization's costs. The commission shall investigate the organization's cost efficiencies, salaries and benefits, and use of debt financing and may require the organization to provide any information needed to effectively evaluate the organization's budget and the reasonableness and neutrality of a rate or proposed rate or to evaluate the effectiveness or efficiency of the organization. The commission shall work with the organization to establish the detail of information, both current and historical, and the time frames the commission needs to effectively evaluate a rate or a rate request.



(g) To maintain certification as an independent organization under this section, an organization's [If it amends its governance rules to provide that its governing body is composed as prescribed by this subsection, the existing independent system operator in ERCOT will meet the criteria provided by Subsection (a) with respect to ensuring access to the transmission systems for all buyers and sellers of electricity in the ERCOT region and ensuring the reliability of the regional electrical network. To comply with this subsection, the] governing body must be composed of persons specified by this section and selected in accordance with formal bylaws or protocols of the organization. The bylaws or protocols must be approved by the commission and must reflect the input of the commission. The bylaws must specify the process by which appropriate stakeholders elect members and, for unaffiliated members, prescribe professional qualifications for selection as a member. The bylaws must require the use of a professional search firm to identify candidates for membership of unaffiliated members. The process must allow for commission input in identifying candidates. The governing body must be composed of:

(1) the chairman of the commission as an ex officio nonvoting member;  
 (2) the counsellor as an ex officio voting member representing residential and small commercial consumer interests;

(3) the chief executive officer [director] of the independent organization [system operator] as an ex officio voting member;

(4) six market participants elected by their respective market segments to serve one-year terms, with:

(A) one representing independent generators;

(B) one representing investor-owned utilities;

(C) one representing power marketers;

(D) one representing retail electric providers;

(E) one representing municipally owned utilities; and

(F) one representing electric cooperatives [four representatives of the power generation sector as voting members];

(5) one member representing industrial consumer interests and elected by the industrial consumer market segment to serve a one-year term [four representatives of the transmission and distribution sector as voting members];

(6) one member representing large commercial consumer interests selected in accordance with the bylaws to serve a one-year term [four representatives of the power sales sector as voting members]; and

(7) five members unaffiliated with any market segment and selected by the other members of the governing body to serve three-year terms [the following people as voting members, appointed by the commission:

[(A) one representative of residential customers;

[(B) one representative of commercial customers; and

[(C) one representative of industrial customers].

[The four representatives specified in each of Subdivisions (4), (5), and (6) shall be selected in a manner that ensures equitable representation for the various sectors of industry participants.]

(g-1) The presiding officer of the governing body must be one of the members described by Subsection (g)(7).

(h) The ERCOT independent system operator may meet the criteria relating to the other functions of an independent organization provided by Subsection (a) by adopting procedures and acquiring resources needed to carry out those functions, consistent with any rules or orders of the commission.

SECTION \_\_\_\_\_. Subchapter D, Chapter 39, Utilities Code, is amended by adding Sections 39.1511 and 39.1512, to read as follows:

Sec. 39.1511. PUBLIC MEETINGS OF THE GOVERNING BODY OF AN INDEPENDENT ORGANIZATION. (a) Meetings of the governing body of an independent organization certified under Section 39.151 and meetings of a subcommittee that includes a member of the governing body must be open to the public. The bylaws of the independent organization and the rules of the commission may provide for the governing body or subcommittee to enter into executive session closed to the public to address sensitive matters such as confidential personnel information, contracts, lawsuits, competitively sensitive information, or other information related to the security of the regional electrical network.

(b) The bylaws of the independent organization and rules of the commission must ensure that a person interested in the activities of the independent organization has an opportunity to obtain at least seven days' advance notice of meetings and the planned agendas of the meetings and an opportunity to comment on matters under discussion at the meetings. The bylaws and commission rules governing meetings of the governing body may provide for a shorter period of advance notice and for meetings by teleconference technology for governing body meetings to take action on urgent matters. The bylaws and rules must require actions taken on short notice or at teleconference meetings to be ratified at the governing body's next regular meeting. The notice requirements may be met by a timely electronic posting on the Internet.

Sec. 39.1512. DISCLOSURE OF INTEREST IN MATTER BEFORE INDEPENDENT ORGANIZATION'S GOVERNING BODY; PARTICIPATION IN DECISION. (a) If a matter comes before the governing body of an independent organization certified under Section 39.151 and a member has a direct interest in that matter or is employed by or has a substantial financial interest in a person who has a direct interest in that matter, that member shall publicly disclose the fact of that interest to the governing body at a public meeting of the body. The member shall recuse himself or herself from the governing body's deliberations and actions on the matter and may not vote on the matter or otherwise participate in a governing body decision on the matter.

(b) A disclosure made under Subsection (a) shall be entered in the minutes of the meeting at which the disclosure is made.

(c) The fact that a member is recused from a vote or decision by application of this section does not affect the existence of a quorum.

SECTION \_\_\_\_\_. An independent organization certified by the Public Utility Commission of Texas before September 1, 2005, shall modify the organization's governing body to comply with Subsection (g), Section 39.151,

Utilities Code, as amended by this Act, not later than September 1, 2006. On or after September 1, 2006, the Public Utility Commission of Texas may decertify an independent organization whose governing body does not comply with Subsection (g), Section 39.151, Utilities Code, as amended by this Act.

Representative P. King moved to table Amendment No. 3.

A record vote was requested.

The motion to table was lost by (Record 743): 59 Yeas, 80 Nays, 2 Present, not voting.

Yeas — Alonzo; Anderson; Baxter; Bohac; Branch; Brown, B.; Callegari; Campbell; Casteel; Chisum; Cook, R.; Corte; Crabb; Davis, J.; Delisi; Driver; Eissler; Elkins; Flores; Flynn; Goolsby; Griggs; Guillen; Haggerty; Harper-Brown; Hartnett; Hegar; Hilderbran; Hill; Howard; Hughes; Hunter; Hupp; Jackson; Keel; Keffer, B.; Keffer, J.; King, P.; Krusee; Kuempel; Laubenberg; Madden; McClendon; Merritt; Miller; Moreno, P.; Morrison; Mowery; Olivo; Paxton; Quintanilla; Riddle; Smith, W.; Straus; Swinford; Taylor; Van Arsdale; Wong; Zedler.

Nays — Allen, A.; Anchia; Berman; Blake; Brown, F.; Burnam; Castro; Chavez; Coleman; Cook, B.; Crownover; Davis, Y.; Dawson; Denny; Deshotel; Dukes; Dunnam; Dutton; Edwards; Eiland; Escobar; Farabee; Farrar; Frost; Gattis; Geren; Giddings; Gonzales; Gonzalez Toureilles; Goodman; Grusendorf; Hamilton; Hamric; Hardcastle; Herrero; Hochberg; Homer; Hope; Hopson; Jones, D.; Jones, J.; King, T.; Kolkhorst; Leibowitz; Luna; Martinez; Martinez Fischer; McCall; McReynolds; Menendez; Naishtat; Noriega, M.; Oliveira; Orr; Otto; Peña; Phillips; Pickett; Puente; Raymond; Reyna; Ritter; Rodriguez; Rose; Seaman; Smith, T.; Smithee; Solis; Solomons; Strama; Talton; Thompson; Truitt; Turner; Uresti; Veasey; Villarreal; Vo; West; Woolley.

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

Absent, Excused — Bailey; Gallego; Hodge; Isett; Pitts.

Absent — Allen, R.; Bonnen; Laney.

#### STATEMENT OF VOTE

I was shown voting yes on Record No. 743. I intended to vote no.

Baxter

Amendment No. 3 was adopted.

#### Amendment No. 4

Representative Hopson offered the following amendment to Amendment No. 1:

Amend Amendment No. 1 by King to **CSSB 408** as follows:

(1) In item (12) of the amendment, in the recital to the unnumbered SECTION that amends Section 39.151, Utilities Code (page 2, line 31), strike "Subsections (d-1) and (g-1)" and substitute "Subsection (g-1)".

(2) In item (12) of the amendment, strike Subsections (c), (d), (d-1), and (e), Section 39.151, Utilities Code, as amended by the unnumbered SECTION (page 3, line 9, through page 5, line 18), and substitute the following:

(c) The commission shall certify an independent organization or organizations to perform the functions prescribed by this section. The commission has complete authority to oversee, require the commission's approval of, and order modifications of any part of the finances, budget, or operations of an independent organization certified under this section.

(d) An independent organization certified by the commission for a power region shall establish and enforce procedures, consistent with this title and the commission's rules, relating to the reliability of the regional electrical network and accounting for the production and delivery of electricity among generators and all other market participants. The procedures shall be subject to commission oversight and review. An independent organization certified by the commission is directly responsible and accountable to the commission. The organization shall fully cooperate with the commission in the commission's oversight and investigatory functions. The commission may decertify an organization that does not adequately perform the organization's functions or duties or does not comply with this section.

(e) The commission by rule shall require an independent organization certified under this section to provide the commission with sufficiently detailed information to allow the commission to review and approve or disapprove the independent organization's budget for cost efficiencies and for the reasonableness and necessity of budget items. The rules must include a timetable for an independent organization to file its budget for review under the rules. The commission's budget review must include a review of salaries, employee benefits, and the independent organization's use of debt financing. After determining the overall reasonableness and necessity of an independent organization's budget, the ~~The~~ commission, in the same proceeding, may authorize the ~~an~~ independent organization ~~[that is certified under this section]~~ to charge ~~[a reasonable and competitively neutral rate]~~ to wholesale buyers and sellers a reasonable and competitively neutral rate determined by the commission to allow ~~cover~~ the independent organization a reasonable opportunity to take in a reasonable and necessary amount of revenue, as determined by the commission in the budget review process. The independent organization may change the rate established by the commission in the budget review process only with the commission's approval. On the commission's own initiative or on receiving a complaint, the commission may inquire into the reasonableness of an independent organization's budget or rate ~~costs~~.

Amendment No. 4 was adopted.

#### **Amendment No. 5**

Representative Solomons offered the following amendment to Amendment No. 1:

Amend Amendment No. 1 by King to **CSSB 408** as follows:

(1) On page 1, strike lines 27 through 29 and insert the following:

(8) In Section 15.023(b), Utilities Code, as amended by SECTION 27 of the bill, strike lines 24 through 27 on page 19 and lines 1 through 4 on page 20, and insert the following:

(b) The penalty for a violation may be in an amount not to exceed \$25,000 [~~\$5,000~~]. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty."

Amendment No. 5 was adopted.

#### **Amendment No. 6**

Representative Hopson offered the following amendment to Amendment No. 1:

Amend Amendment No. 1 by King by adding the following appropriately numbered item to read as follows:

( ) Insert the following appropriately numbered SECTION to read as follows and renumber subsequent SECTIONS accordingly:

SECTION \_\_. (a) The Public Utility Commission of Texas, as part of the commission's continuing analysis of reserve margins and capacity needs for the ERCOT system, shall consider creating and may establish a new alternative market mechanism to allow a potential interruptible industrial load that is greater than one megawatt and that is not participating in the ERCOT market as a load acting as a resource to provide the benefits of interruptible load to the system and to be compensated for that service.

(b) The legislature finds that businesses in this state that are able to participate in an alternative interruptible service compete in interstate and global markets and that the opportunity for the businesses to be compensated for their interruptible loads is essential to the businesses' ability to remain competitive and to provide significant benefits to the economy of this state. The Public Utility Commission of Texas shall consider these economic benefits in analyzing the potential of interruptible service.

(c) Not later than January 1, 2006, The Public Utility Commission of Texas shall report any actions taken regarding interruptible service and the results of its analysis of interruptible service to the governor, the lieutenant governor, the speaker of the house of representatives, and the presiding officer of each legislative committee with jurisdiction over electric services.

Amendment No. 6 was adopted.

#### **Amendment No. 2 - Vote Reconsidered**

Representative Homer moved to reconsider the vote by which Amendment No. 2 was tabled.

The motion to reconsider prevailed.

Amendment No. 2 was adopted.

Amendment No. 1, as amended, was adopted. (Hopson recorded voting no.)

#### **Amendment No. 7**

Representative P. King offered the following amendment to **CSSB 408**:

Amend **CSSB 408** (House committee printing) by adding the following sections to the bill, numbered appropriately:

SECTION \_\_. The heading to Subtitle C, Title 2, Utilities Code, is amended to read as follows:

SUBTITLE C. ADVANCED SERVICE INFRASTRUCTURE AND INTERMODAL COMPETITION [~~TELECOMMUNICATIONS UTILITIES~~]

SECTION \_\_. Sections 51.001(a)-(f), Utilities Code, are amended to read as follows:

(a) Significant technological changes have occurred in telecommunications since the law from which this title is derived was originally adopted. To encourage and accelerate the development of a competitive and advanced services [~~telecommunications~~] environment and infrastructure, new rules, policies, and principles must be formulated consistent with the understanding that, as new technologies become available, all public policy must be driven by free market principles for the benefit of consumers in this state [~~and applied to protect the public interest. Changes in technology and market structure have increased the need for minimum standards of service quality, customer service, and fair business practices to ensure high quality service to customers and a healthy marketplace where competition is permitted by law. It is the purpose of this subtitle to grant the commission authority to make and enforce rules necessary to protect customers of telecommunications services~~] consistent with the public interest.

(b) It is the policy of this state to:

(1) promote diversity of telecommunications and advanced services providers and interconnectivity;

(2) promote and encourage the development of competitive broadband networks;

(3) encourage a fully competitive telecommunications and advanced services marketplace; and

(4) [~~3~~] maintain a wide availability of high quality, interoperable, standards-based telecommunications services at affordable rates.

(c) The policy goals described by Subsection (b) are best achieved by legislation that modernizes the state's regulatory framework [~~telecommunications regulation~~] by:

(1) guaranteeing the affordability of basic telephone service for low-income persons in a competitively neutral manner; and

(2) fostering free market intermodal competition; and

(3) maintaining and enforcing effective remedies to discourage and redress anticompetitive conduct [~~in the telecommunications industry~~].

(d) The technological advancements, deployment of broadband network [~~advanced telecommunications~~] infrastructure, and increased customer choices for telecommunications and advanced services generated by a truly competitive market play a critical role in this state's [~~Texas~~] economic future by raising living standards for Texans through:

(1) enhanced economic development; and

(2) improved delivery of education, health, and other public and private services.

(e) The strength of competitive forces varies widely between markets, products, and services. It is the policy of this state to require the commission to take action necessary to enhance competition by avoiding the imposition of unnecessary ~~adjusting~~ regulation in light of ~~to match~~ the degree of intramodal and intermodal competition in the marketplace to[~~:-~~

~~(1)~~ reduce the cost and burden of regulation~~[-]~~ and to

~~(2)~~ protect markets that are not competitive.

(f) It is the policy of this state to ensure that high quality telecommunications and advanced services are available, accessible, and usable by an individual with a disability, unless making the services available, accessible, or usable would:

(1) result in an undue burden, including unreasonable cost or technical infeasibility; or

(2) have an adverse competitive effect.

SECTION \_\_. Section 51.002, Utilities Code, is amended to read as follows:

Sec. 51.002. DEFINITIONS. In this title ~~subsection~~:

(1) "Advanced service" means a service that may be delivered only over a broadband network.

(2) "Basic local telecommunications service" means:

(A) ~~flat rate~~ residential and business local exchange telephone service, including primary directory listings;

(B) tone dialing service;

(C) access to operator services;

(D) access to directory assistance services;

(E) access to 911 service provided by a local authority or dual party relay service;

(F) the ability to report service problems seven days a week;

(G) lifeline ~~and tel-assistance~~ services; and

(H) any other service the commission determines after a hearing is a basic local telecommunications service.

(3) "Broadband network" means a wireline network that offers a minimum downstream speed of 200 kilobits a second and a minimum upstream speed of 128 kilobits a second to or from the premises of an end user. The term includes DSL, fiber-to-the-premises, and cable modem networks.

(4) ~~(2)~~ "Dominant carrier" means a provider of a communication service provided wholly or partly over a telephone system who the commission determines has sufficient market power in a telecommunications market to control prices for that service in that market in a manner adverse to the public interest. The term includes a provider who provided local exchange telephone service within a certificated exchange area on September 1, 1995, as to that service and as to any other service for which a competitive alternative is not available in a particular geographic market. In addition, with respect to[~~:-~~

~~[(A) intraLATA long distance message telecommunications service originated by dialing the access code "1 plus," the term includes a provider of local exchange telephone service in a certificated exchange area for whom the use of that access code for the origination of "1 plus" intraLATA calls in the exchange area is exclusive; and~~

~~[(B)] interexchange telecommunications services, the term does not include an interexchange carrier that is not a certificated local exchange company.~~

~~(5) [(3)] "Incumbent local exchange company" means a local exchange company that held [has] a certificate of convenience and necessity on September 1, 2004 [1995].~~

~~(6) "Information service" has the meaning assigned by 47 U.S.C. Section 153.~~

~~(7) "Interexchange telecommunications service" means landline telecommunications service provided between a point located within a local access and transport area and a point located within another local access and transport area.~~

~~(8) "IntraLATA interexchange" or "intraLATA message toll" service means landline telecommunications service between a point located within an exchange in a local access and transport area, as defined by the Federal Communications Commission, and a point within another exchange located in the same local access and transport area.~~

~~(9) [(4)] "Local exchange company" means an entity [~~te~~ telecommunications utility] that has a certificate and is providing [~~of convenience and necessity or a certificate of operating authority to provide~~] in this state:~~

(A) local exchange telephone service;

(B) basic local telecommunications service; or

(C) switched access service.

~~(10) [(5)] "Local exchange telephone service" means telecommunications service provided [~~within an exchange~~] to establish connections between customer premises [~~within the exchange~~], including connections between a customer premises within a local access and transport area and an entity providing interexchange telecommunications service, using any landline technology or radio or wireless type facility components used to provide traditional landline service [~~and a long distance provider serving the exchange~~]. The term includes basic network service as defined by Section 58.051, services classified as nonbasic network services by Section 58.151, [tone dialing service, service connection charges, and directory assistance services offered in connection with basic local telecommunications service] and interconnection with other service providers. The term does not include the following services, whether offered on an intraexchange or interexchange basis:~~

(A) central office based PBX-type services for systems of 75 stations or more;

(B) billing and collection services;

(C) high-speed private line services of 1.544 megabits or greater;

(D) customized services;

(E) private line or virtual private line services;



(F) resold or shared local exchange telephone services if permitted by tariff;

(G) dark fiber services;

(H) non-voice data transmission service offered as a separate service and not as a component of basic local telecommunications service;

(I) dedicated or virtually dedicated access services; or

(J) an information service or any other service the commission determines is not a "local exchange telephone service."

(11) "Network provider" means an entity, whether or not certificated, that is not a service provider, as defined by this section, and that uses any technology to offer voice communication to the public over a wireline network that the provider or an affiliate of the provider owns or controls.

~~(12) [(6) "Long-run incremental cost" has the meaning assigned by 16 T.A.C. Section 23.91 or its successor.~~

~~[(7)] "Pricing flexibility" includes:~~

~~(A) customer specific contracts;~~

~~(B) packaging of services;~~

~~(C) volume, term, and discount pricing;~~

~~(D) zone density pricing, with a zone to be defined as an exchange;~~

and

(E) other promotional pricing.

(13) "Provider" means a network provider or a service provider.

(14) [(8)] "Public utility" or "utility" means a person or river authority that owns or operates for compensation in this state equipment or facilities to convey, transmit, or receive communications over a telephone system as a dominant carrier. The term includes a lessee, trustee, or receiver of any of those entities, or a combination of those entities. The term does not include a municipal corporation. A person is not a public utility solely because the person:

(A) furnishes or furnishes and maintains a private system;

(B) manufactures, distributes, installs, or maintains customer premise communications equipment and accessories; or

(C) furnishes a telecommunications service or commodity only to itself, its employees, or its tenants as an incident of employment or tenancy, if that service or commodity is not resold to or used by others.

(15) "Rural incumbent local exchange company" means an incumbent local exchange company that:

(A) is a cooperative corporation; or

(B) has, together with all affiliated incumbent local exchange companies, fewer than 31,000 access lines in service in this state on September 1, 2005.

(16) [(9)] "Separation" means the division of plant, revenues, expenses, taxes, and reserves applicable to exchange or local service if these items are used in common to provide public [utility] service to both local exchange telephone service and other service, such as interstate or intrastate toll service.

(17) "Service provider" means a local exchange company or a provider of interexchange telecommunications service.

(18) "Telecommunications" has the meaning assigned by 47 U.S.C. Section 153.

(19) [(40)] "Telecommunications provider" means a person or entity that offers telecommunications to others for a fee[:

[(A) means:

[(i) a certificated telecommunications utility;

[(ii) a shared tenant service provider;

[(iii) a nondominant carrier of telecommunications services;

[(iv) a provider of commercial mobile service as defined by Section 332(d), Communications Act of 1934 (47 U.S.C. Section 151 et seq.), Federal Communications Commission rules, and the Omnibus Budget Reconciliation Act of 1993 (Public Law 103-66), except that the term does not include these entities for the purposes of Chapter 17, 55, or 64;

[(v) a telecommunications entity that provides central office based PBX type sharing or resale arrangements;

[(vi) an interexchange telecommunications carrier;

[(vii) a specialized common carrier;

[(viii) a reseller of communications;

[(ix) a provider of operator services;

[(x) a provider of customer owned pay telephone service; or

[(xi) a person or entity determined by the commission to provide telecommunications services to customers in this state; and

[(B) does not mean:

[(i) a provider of enhanced or information services, or another user of telecommunications services, who does not also provide telecommunications services; or

[(ii) a state agency or state institution of higher education, or a service provided by a state agency or state institution of higher education.

[(11) "Telecommunications utility" means:

[(A) a public utility;

[(B) an interexchange telecommunications carrier, including a reseller of interexchange telecommunications services;

[(C) a specialized communications common carrier;

[(D) a reseller of communications;

[(E) a communications carrier who conveys, transmits, or receives communications wholly or partly over a telephone system;

[(F) a provider of operator services as defined by Section 55.081, unless the provider is a subscriber to customer owned pay telephone service; and

[(G) a separated affiliate or an electronic publishing joint venture as defined in Chapter 63.

[(12) "Tier 1 local exchange company" has the meaning assigned by the Federal Communications Commission].

SECTION \_\_. Section 51.003, Utilities Code, is amended to read as follows:

Sec. 51.003. APPLICABILITY. (a) Except as otherwise expressly provided by this title, this title does not apply to:

- (1) a company that as its only form of business:
- (A) is a telecommunications manager; or
  - (B) administers central office based or customer based PBX-type sharing/resale arrangements;
- (2) telegraph services;
- (3) television or radio stations;
- (4) community antenna television services; or
- (5) a provider of commercial mobile service as defined by Section 332(d), Communications Act of 1934 (47 U.S.C. Section 151 et seq.), Federal Communications Commission rules, and the Omnibus Budget Reconciliation Act of 1993 (Public Law 103-66), other than conventional rural radio-telephone services provided by a wire-line telephone company under the Public Mobile Service rules of the Federal Communications Commission (47 C.F.R. Part 22).

(b) A service provider or network provider is subject to the commission's jurisdiction except to the extent federal law specifically preempts the commission from exercising authority.

(c) A state agency, a state institution of higher education, or a service provided by a state agency or state institution of higher education is not a network provider, service provider, or telecommunications provider for purposes of this title.

SECTION \_\_. Section 51.009, Utilities Code, is amended to read as follows:

Sec. 51.009. MUNICIPAL FEES. (a) Nothing in this title, including Section 53.201, may be construed as in any way limiting the right of a network provider or service provider [~~public utility~~] to pass through a municipal fee the provider is required to pay, including an increase in a municipal fee. A municipality must provide 30-day public notice of the fee and/or increase and the notice should include that the network provider or service provider may pass through the fee to the customer.

(b) A network provider or service provider [~~public utility~~] that [~~traditionally~~] passes through municipal fees shall promptly pass through any municipal fee reduction.

SECTION \_\_. Section 52.002, Utilities Code, is amended to read as follows:

Sec. 52.002. AUTHORITY TO REGULATE. [~~(a) To carry out the public policy stated by Section 52.001 and to regulate rates, operations, and services so that the rates are just, fair, and reasonable and the services are adequate and efficient, the commission has exclusive original jurisdiction over the business and property of a telecommunications utility in this state subject to the limitations imposed by this title.~~]

[(b)] The commission's regulatory authority [~~as to a telecommunications utility other than a public utility~~] is only as prescribed by this title.

SECTION \_\_. Section 52.003, Utilities Code, is amended to read as follows:

Sec. 52.003. COOPERATION WITH OTHER REGULATORY AUTHORITIES. In regulating the [~~rates, operations, and~~] services of a provider of local exchange telephone service [~~telecommunications utility~~] providing service in a municipality located on the state line adjacent to a municipality in an adjoining state, the commission may cooperate with the [~~utility~~] regulatory commission of the adjoining state or of the federal government and may hold a joint hearing or make a joint investigation with that commission.

SECTION \_\_. Section 51.005, Utilities Code, is transferred to Subchapter A, Chapter 52, Utilities Code, redesignated as Section 52.0041, and amended to read as follows:

Sec. 52.0041. COOPERATION WITH MUNICIPALITIES [~~51.005. ASSISTANCE TO MUNICIPALITY~~]. (a) On request of a municipality, the commission may advise and assist the municipality with respect to a question or proceeding arising under this title. Assistance provided by the commission may include aid to a municipality on a matter pending before the commission or a court, such as making a staff member available as a witness or otherwise providing evidence to the municipality.

(b) A municipality has standing in each case before the commission that relates to a provider of local exchange telephone service providing retail service to the municipality. A municipality's standing is subject to the right of the commission to:

(1) determine standing in a case involving a retail service area dispute that involves two or more providers of local exchange telephone service; and  
(2) consolidate municipalities on an issue of common interest.

(c) The governing body of a municipality participating in a ratemaking proceeding may engage rate consultants, accountants, auditors, attorneys, and engineers to:

(1) conduct investigations, present evidence, and advise and represent the governing body; and  
(2) assist the governing body with litigation before the commission or a court.

(d) A provider of local exchange telephone service in the ratemaking proceeding may not be required to reimburse the governing body of the municipality for the reasonable cost of the services of a person engaged under Subsection (c) except to the extent the commission determines is reasonable.

SECTION \_\_. Section 52.006, Utilities Code, is amended to read as follows:

Sec. 52.006. COMMISSION TO REPORT TO LEGISLATURE. (a) Before January 15 of each odd-numbered year, the commission shall report to the legislature on:

(1) the scope of competition in all [~~regulated~~] telecommunications and information services markets, regardless of technology used; and  
(2) the effect of competition on customers [~~in both competitive and noncompetitive markets~~], with a specific focus on rural markets and underserved areas in urban markets.

(b) The report shall include[-

~~[(1)] an assessment of the effect of competition on the rates and availability of all telecommunications and information services for residential and business customers, regardless of technology used;~~

~~[(2) a summary of commission action over the preceding two years that reflects changes in the scope of competition in regulated telecommunications markets; and~~

~~[(3) recommendations for legislation the commission determines is appropriate to promote the public interest in the context of a partially competitive telecommunications market].~~

(c) The commission, in its assessment under Subsection (b) ~~[(b)(1)]~~, shall specifically address any effects on universal service.

(d) Each network provider and service provider ~~[A telecommunications utility]~~ shall cooperate with the commission as reasonably necessary for the commission to satisfy the requirements of this section.

SECTION \_\_. The heading to Subchapter C, Chapter 52, Utilities Code, is amended to read as follows:

SUBCHAPTER C. PROVIDERS OF INTEREXCHANGE TELECOMMUNICATIONS SERVICES ~~[UTILITIES THAT ARE NOT DOMINANT CARRIERS]~~

SECTION \_\_. Section 52.101, Utilities Code, is amended to read as follows:

Sec. 52.101. APPLICABILITY. This subchapter applies only to a provider of interexchange telecommunications services ~~[utility that is not:~~

~~[(1) a dominant carrier; or~~

~~[(2) the holder of a certificate of operating authority or a service provider certificate of operating authority].~~

SECTION \_\_. Section 52.102, Utilities Code, is amended to read as follows:

Sec. 52.102. LIMITED REGULATORY AUTHORITY. ~~[(a)]~~ Except as otherwise provided by this subchapter and Subchapter~~[- Subchapters] D~~, ~~[and K,~~ Chapter 55, ~~[and Section 55.011,~~ the commission has ~~[only the following]~~ jurisdiction over a provider of interexchange telecommunications services only to require compliance with ~~[utility subject to]~~ this subchapter~~[:~~

~~[(1) to require registration under Section 52.103;~~

~~[(2) to conduct an investigation under Section 52.104;~~

~~[(3) to require the filing of reports as the commission periodically directs;~~

~~[(4) to require the maintenance of statewide average rates or prices of telecommunications service;~~

~~[(5) to require a telecommunications utility that had more than six percent of the total intrastate access minutes of use as measured for the most recent 12 month period to pass switched access rate reductions under this title to customers as required by Section 52.112;~~

~~[(6) to require access to telecommunications service under Section 52.105; and~~

~~[(7) to require the quality of telecommunications service provided to be adequate under Section 52.106.~~

~~[(b) The authority provided by Subsection (a)(5) expires on the date on which Section 52.112 expires].~~

SECTION \_\_. Section 52.103, Utilities Code, is amended to read as follows:

Sec. 52.103. REGISTRATION REQUIRED. (a) A provider of interexchange telecommunications service to customers residing in this state ~~[utility]~~ shall register with the commission not later than the 30th day after the date the provider ~~[utility]~~ commences service to the public.

(b) A provider of interexchange telecommunications service ~~[utility]~~ that registers under Subsection (a) shall file with the commission a description of:

- (1) the location and type of service provided; and
- (2) the price to the public of that service; ~~and~~
- ~~[(3) other registration information the commission directs].~~

(c) A provider of ~~[An]~~ interexchange telecommunications service ~~[utility]~~ doing business in this state shall maintain on file with the commission tariffs or lists governing the terms of providing its services.

SECTION \_\_. Section 52.108, Utilities Code, is amended to read as follows:

Sec. 52.108. OTHER PROHIBITED PRACTICES. The commission may enter any order necessary to protect the public interest if the commission finds after notice and hearing that a provider of interexchange telecommunications service ~~[utility]~~ has ceased providing ~~[-~~

- ~~[(1) failed to maintain statewide average rates;~~
- ~~[(2) abandoned] interexchange~~ ~~[message]~~ telecommunications service to a local exchange area in which there is no competitive alternative ~~[in a manner contrary to the public interest;~~
- ~~[(3) engaged in a pattern of preferential or discriminatory activities prohibited by Section 53.003, 55.005, or 55.006; or~~
- ~~[(4) failed to pass switched access rate reductions to customers under Chapter 56 or other law, as required by Section 52.112].~~

SECTION \_\_. The heading to Subchapter F, Chapter 52, Utilities Code, is amended to read as follows:

SUBCHAPTER F. REQUIRED ~~[REPORTS AND]~~ FILINGS AND ACCESS RATE PROHIBITIONS ~~[-RECORDS]~~

SECTION \_\_. Section 52.251, Utilities Code, is amended to read as follows:

Sec. 52.251. TARIFF FILINGS. (a) An incumbent local exchange company ~~[A public utility]~~ shall file with the commission a tariff or price list showing each rate that is:

- (1) subject to the commission's jurisdiction; or ~~[and]~~
- (2) in effect for the provision of local exchange telephone service ~~[a utility service, product, or commodity offered by the utility].~~

(b) The incumbent local exchange company ~~[public utility]~~ shall file as a part of the tariff required under Subsection (a) each term or condition ~~[rule]~~ that relates to or affects:

- (1) a rate ~~[of the utility]~~; or
- (2) the ~~[a utility]~~ service, product, or commodity furnished ~~[by the utility]~~.

(c) A certificated provider of local exchange telephone service that is not an incumbent local exchange company shall file a price list as provided by Subsection (a).

SECTION \_\_. Section 52.155, Utilities Code, is transferred to Subchapter F, Chapter 52, Utilities Code, redesignated as Section 52.2521, and amended to read as follows:

Sec. 52.2521 ~~[52.155]~~. PROHIBITION OF EXCESSIVE ACCESS CHARGES. (a) A provider of local exchange telephone service that is not an incumbent local exchange company ~~[telecommunications utility that holds a certificate of operating authority or a service provider certificate of operating authority]~~ may not charge a higher amount for a combined originating and ~~[or]~~ terminating intrastate switched access than the prevailing rates charged by the incumbent local exchange company ~~[holder of the certificate of convenience and necessity]~~ in whose territory the call originated or terminated unless:

- (1) the commission specifically approves the higher rate; or
- (2) subject to commission review, the provider of local exchange telephone service ~~[telecommunications utility]~~ establishes statewide average composite originating and terminating intrastate switched access rates based on a reasonable approximation of traffic originating and terminating between all certificated providers ~~[holders of certificates of convenience and necessity]~~ in this state.

(b) Notwithstanding any other provision of this title, the commission has all jurisdiction necessary to enforce this section.

SECTION \_\_. Section 52.255, Utilities Code, is amended to read as follows:

Sec. 52.255. AVAILABILITY OF RECORDS. Notwithstanding Section 14.152, a book, account, record, or memorandum of a provider of local exchange telephone service ~~[public utility]~~ may be removed from this state if the book, account, record, or memorandum is returned to this state for any commission inspection authorized by this title.

SECTION \_\_. Section 52.256(c), Utilities Code, is amended to read as follows:

(c) Each provider of local exchange telephone service ~~[telecommunications utility]~~ shall submit an annual report to the commission and the legislature relating to its efforts to improve workforce diversity and contracting opportunities for small and historically underutilized businesses. The report must include:

- (1) the diversity of the provider's ~~[telecommunications utility's]~~ workforce as of the time of the report;
- (2) the provider's ~~[telecommunications utility's]~~ level of contracting with small and historically underutilized businesses;

(3) the specific ~~[progress made under the plan under Subsection (b);~~  
~~[(4) the specific]~~ initiatives, programs, and activities undertaken ~~[under~~  
~~the plan]~~ during the preceding year;

(4) ~~[(5)]~~ an assessment of the success of each of those initiatives, programs, and activities;

(5) ~~[(6)]~~ the extent to which the provider ~~[telecommunications utility]~~ has carried out its initiatives to facilitate opportunities for contracts or joint ventures with small and historically underutilized businesses; and

(6) ~~[(7)]~~ the initiatives, programs, and activities the provider ~~[telecommunications utility]~~ will pursue during the next year to increase the diversity of its workforce and contracting opportunities for small and historically underutilized businesses.

SECTION \_\_. Subchapter A, Chapter 53, Utilities Code, is amended by adding Section 53.0001 to read as follows:

Sec. 53.0001. APPLICABILITY OF CHAPTER. This chapter applies only to an incumbent local exchange company that is not regulated under Chapter 58 or 59.

SECTION \_\_. Section 53.056(c), Utilities Code, is amended to read as follows:

(c) The rates and methods established under this section and the depreciation account required by the commission ~~[Section 52.252]~~ shall be used uniformly and consistently throughout rate-setting and appeal proceedings.

SECTION \_\_. Section 53.061(a), Utilities Code, is amended to read as follows:

(a) The commission may not allow as a cost or expense for ratemaking purposes:

(1) an expenditure for legislative advocacy; or

(2) an expenditure for business gifts and entertainment, advertising, or public relations, including expenditures for institutional and consumption-inducing purposes, ~~[described by Section 52.254]~~ that the commission determines to be not in the public interest.

SECTION \_\_. Section 53.065(b), Utilities Code, is amended to read as follows:

(b) This section does not limit the ability of an incumbent local exchange company to contract for high-speed private line services of 1.544 megabits or greater ~~[under Section 52.057]~~.

SECTION \_\_. Section 53.308, Utilities Code, is amended to read as follows:

Sec. 53.308. FEES AND ASSESSMENTS. The commission may prescribe and collect a fee or assessment from incumbent local exchange companies necessary to recover the cost to the commission and to the office of activities carried out and services provided under:

(1) this subchapter;

(2) Section 53.112; and

(3) Subchapter H; ~~and~~

~~[(4) Section 55.004].~~



SECTION \_\_. Chapter 53, Utilities Code, is amended by adding Subchapter I to read as follows:

SUBCHAPTER I. SPECIAL PROVISIONS FOR RURAL INCUMBENT LOCAL EXCHANGE COMPANIES

Sec. 53.401. APPLICATION OF SUBCHAPTER. This subchapter applies only to a rural incumbent local exchange company.

Sec. 53.402. NEW SERVICES. (a) A rural incumbent local exchange company shall price each new service at or above the service's long run incremental cost. The commission shall allow the company to establish a service's long run incremental cost by adopting, at that company's option, the cost studies of a larger company for that service that have been accepted by the commission.

(b) An affected person, the office on behalf of residential or small commercial customers, or the commission may file a complaint at the commission challenging whether the pricing by a rural incumbent local exchange company of a new service is in compliance with Subsection (a).

(c) If a complaint is filed under Subsection (b), the rural incumbent local exchange company has the burden of proving that the company set the price for the new service in accordance with the applicable provisions of this subchapter. If the complaint is finally resolved in favor of the complainant, the company:

(1) shall, not later than the 10th day after the date the complaint is finally resolved, amend the price of the service as necessary to comply with the final resolution; or

(2) may, at the company's option, discontinue the service.

Sec. 53.403. PRICING AND PACKAGING FLEXIBILITY; CUSTOMER PROMOTIONAL OFFERINGS. (a) Notwithstanding any other provision of this title, a rural incumbent local exchange company may exercise pricing flexibility in accordance with this section, including the packaging of any regulated service such as basic local telecommunications service with any other regulated or unregulated service or any service of an affiliate. Pricing flexibility includes all pricing arrangements included in the definition of "pricing flexibility" prescribed by Section 51.002 and includes packaging of any regulated service with any unregulated service or any service of an affiliate.

(b) A rural incumbent local exchange company, at the company's option, shall price each regulated service offered separately or as part of a package under Subsection (a) at either the service's tariffed rate or at a rate not lower than the service's long run incremental cost. The commission shall allow the company to establish a service's long run incremental cost by adopting, at that company's option, the cost studies of a larger company for that service that have been accepted by the commission.

(c) An affected person, the office on behalf of residential or small commercial customers, or the commission may file a complaint alleging that a rural incumbent local exchange company has priced a regulated service in a manner that does not meet the pricing standards of this subchapter. The complaint must be filed before the 31st day after the date the company implements the rate.

Sec. 53.404. CUSTOMER PROMOTIONAL OFFERINGS. (a) A rural incumbent local exchange company may offer a promotion for a regulated service for not more than 90 days in any 12-month period.

(b) The company shall file with the commission a promotional offering that consists of:

(1) a waiver of installation charges or service order charges, or both, for not more than 90 days in a 12-month period; or

(2) a temporary discount of not more than 25 percent from the tariffed rate for not more than 60 days in a 12-month period.

(c) A rural incumbent local exchange company is not required to obtain commission approval to make a promotional offering described by Subsection (b).

(d) A rural incumbent local exchange company may offer a promotion of any regulated service as part of a package of services consisting of any regulated service with any other regulated or unregulated service or any service of an affiliate.

SECTION \_\_. Section 54.001, Utilities Code, is amended to read as follows:

Sec. 54.001. CERTIFICATE REQUIRED. (a) Unless the entity qualifies for the exemption provided by Section 54.002, an entity [~~A person~~] may not provide a telecommunications service or an advanced service or otherwise conduct business in this state as a network provider or service provider without first obtaining a certificate issued by the commission under this chapter [~~local exchange telephone service, basic local telecommunications service, or switched access service unless the person obtains a:~~

(1) certificate of convenience and necessity;

(2) certificate of operating authority; or

(3) service provider certificate of operating authority].

(b) Effective October 1, 2005, an entity that holds a certificate of convenience and necessity, certificate of operating authority, or service provider certificate of operating authority is considered to hold a service provider certificate unless the certificate holder files with the commission before that date:

(1) a request for a network provider certificate; or

(2) a notice of certificate relinquishment declaring that the entity is exempt under Section 54.002 and stating the reasons the entity is exempt.

(c) An entity that holds a certificate of convenience and necessity, certificate of operating authority, or service provider certificate of operating authority on September 30, 2005, may present that certificate to the commission and the commission shall immediately issue to that entity a network provider or service provider certificate, as appropriate. The new certificate is effective October 1, 2005.

SECTION \_\_. Section 54.002, Utilities Code, is amended to read as follows:

Sec. 54.002. EXCEPTIONS [~~TO CERTIFICATE REQUIREMENT FOR SERVICE EXTENSION~~]. A network provider or service provider is [~~(a) A telecommunications utility is~~] not required to obtain a certificate if the Federal

Communications Commission has exercised lawful preemptive authority precluding state certification requirements in relation to the provider [of convenience and necessity, a certificate of operating authority, or a service provider certificate of operating authority for an:

(1) extension into territory that is:

[(A) contiguous to the territory the telecommunications utility serves;

[(B) not receiving similar service from another telecommunications utility; and

[(C) not in another telecommunications utility's certificated area;

(2) extension in or to territory the telecommunications utility serves or is authorized to serve under a certificate of public convenience and necessity, a certificate of operating authority, or a service provider certificate of operating authority; or

(3) operation, extension, or service in progress on September 1, 1975.

[(b) An extension allowed by Subsection (a) is limited to a device used:

[(1) to interconnect existing facilities; or

[(2) solely to transmit telecommunications utility services from an existing facility to a customer of retail utility service].

SECTION \_\_. Section 54.005(a), Utilities Code, is amended to read as follows:

(a) When an application for a network provider or service provider certificate is filed by an entity that did not possess a certificate of convenience and necessity, a certificate of operating authority, or a service provider certificate of operating authority on September 30, 2005 [is filed], the commission shall:

(1) give notice of the application to interested parties; and

(2) if requested:

(A) set a time and place for a hearing; and

(B) give notice of the hearing.

SECTION \_\_. Subchapter A, Chapter 54, Utilities Code, is amended by adding Section 54.0055 to read as follows:

Sec. 54.0055. GRANT OR DENIAL OF CERTIFICATE. (a) The commission must grant or deny an application for a certificate filed under Section 54.005 not later than the 60th day after the date the application is filed.

(b) The commission shall grant each certificate on a nondiscriminatory basis after considering the technical and financial qualifications of the applicant. An applicant may not receive a certificate if an officer or director of the applicant has ever been convicted of a felony.

SECTION \_\_. Section 54.008, Utilities Code, is amended to read as follows:

Sec. 54.008. REVOCATION OR AMENDMENT OF CERTIFICATE. ~~(a)~~ The commission shall ~~may~~ revoke or amend a certificate ~~[of convenience and necessity, a certificate of operating authority or a service provider certificate of operating authority]~~ after notice and hearing if the commission finds that the certificate holder has never provided or is no longer providing service in all or any part of the certificated area.

~~[(b) The commission may require one or more public utilities to provide service in an area affected by the revocation or amendment of a certificate held by a public utility.]~~

SECTION \_\_. Section 54.201, Utilities Code, is amended to read as follows:

Sec. 54.201. CERTIFICATION PROHIBITED. The commission may not grant to a municipality a network provider or service provider certificate:

- ~~[(1) certificate of convenience and necessity;~~
- ~~[(2) certificate of operating authority; or~~
- ~~[(3) service provider certificate of operating authority].~~

SECTION \_\_. Section 54.202, Utilities Code, is amended by amending Subsection (a) and adding Subsections (c) and (d) to read as follows:

(a) A municipality or municipally owned utility ~~[municipal electric system]~~ may not offer for sale to the public:

(1) a service for which a certificate ~~[of convenience and necessity, a certificate of operating authority, or a service provider certificate of operating authority]~~ is required; or

(2) a nonswitched telecommunications service used to connect a customer's premises with:

- (A) another customer's premises within the exchange; or
- (B) a long distance provider that serves the exchange.

(c) Subsection (a) does not prevent a municipally owned utility from:

(1) providing a governmental function or a service to its customers that is enabled, enhanced, delivered to, or available to the public using the Internet, including:

- (A) bill paying services;
- (B) emergency services;
- (C) constituent services;
- (D) utility meter reading; and
- (E) permitting; and

(2) providing access to its transmission and distribution facilities under a contract with another entity that allows the entity to offer to the entity's customers high speed data services using broadband over power line technology, provided, however, that the compensation owed to the municipally owned utility for such access shall, at a minimum, recover all costs including debt service incurred by the municipally owned utility in the provision of such access.

(d) This section may not be construed to prevent a municipally owned utility from providing to its energy customers, either directly or indirectly, any energy related service involving the transfer or receipt of information or data concerning the use, measurement, monitoring, or management of energy utility services provided by the municipally owned utility, including services such as load management or automated meter reading.

SECTION \_\_. Subchapter E, Chapter 54, Utilities Code, is amended by adding Section 54.2022 to read as follows:

Sec. 54.2022. PROHIBITION ON MUNICIPAL CHARGES FOR WIRELESS BROADBAND SERVICES. (a) Notwithstanding any other law, a municipality may not charge for wireless broadband services, including wireless fidelity, or Wi-Fi, services, that the municipality may provide under this title, except as provided by Subsection (b).

(b) A municipality that charged for services described by Subsection (a) on January 1, 2005, may continue to charge for those services.

SECTION \_\_. Sections 54.203(a)-(c), Utilities Code, are amended to read as follows:

(a) If an area is or will be included within a municipality as the result of annexation, incorporation, or another reason, each entity [~~telecommunications utility~~] that holds or is entitled to hold a certificate under this title to provide service or operate a facility in the area before the inclusion has the right to continue to provide the service or operate the facility and extend service in the entity's [~~utility's~~] certificated area within the annexed or incorporated area under the rights granted by the certificate and this title.

(b) Notwithstanding any other law, a certificated provider [~~telecommunications utility~~] has the right to:

(1) continue and extend service within the provider's [~~utility's~~] certificated area; and

(2) use roads, streets, highways, alleys, and public property to furnish communications [~~retail utility~~] service.

(c) The governing body of a municipality may require a certificated provider [~~telecommunications utility~~] to relocate the provider's [~~utility's~~] facility at the provider's [~~utility's~~] expense to permit the widening or straightening of a street by:

(1) giving the provider [~~utility~~] 30 days' notice; and

(2) simultaneously specifying the new location for the facility along the right-of-way of the street.

SECTION \_\_. Sections 54.204(a)-(c), Utilities Code, are amended to read as follows:

(a) Notwithstanding Section 14.008, a municipality or a municipally owned utility may not discriminate against a certificated provider [~~telecommunications utility~~] regarding:

(1) the authorization or placement of a [~~telecommunications~~] facility in a public right-of-way;

(2) access to a building; or

(3) a municipal utility pole attachment rate or term [~~to the extent not addressed by federal law~~].

(b) In granting consent, a franchise, or a permit for the use of a public street, alley, or right-of-way within its municipal boundaries, a municipality or municipally owned utility may not discriminate in favor of or against a certificated provider [~~telecommunications utility that holds or has applied for a certificate of convenience and necessity, a certificate of operating authority, or a service provider certificate of operating authority~~] regarding:

(1) municipal utility pole attachment or underground conduit rates or terms ~~[, to the extent not addressed by federal law];~~ or

(2) the authorization, placement, replacement, or removal of a ~~[telecommunications]~~ facility in a public right-of-way and the reasonable compensation for the authorization, placement, replacement, or removal regardless of whether the compensation is in the form of:

- (A) money;
- (B) services;
- (C) use of facilities; or
- (D) another kind of consideration.

(c) A municipality or municipally owned ~~[Notwithstanding Subsection (b)(1), a municipal]~~ utility may not charge any entity, regardless of the nature of the services provided by that entity, a pole attachment rate or underground conduit rate that exceeds the fee the municipality or municipally owned utility would be permitted to charge under rules adopted by the Federal Communications Commission under 47 U.S.C. Section 224(e) if the municipality's or municipally owned utility's rates were regulated under federal law and the rules of the Federal Communications Commission. In addition, not later than September 1, 2006, a municipality or municipally owned utility shall charge a single, uniform pole attachment or underground conduit rate to all entities that are not affiliated with the municipality or municipally owned utility regardless of the services carried over the networks attached to the poles or underground conduit.

SECTION \_\_. Section 54.206(a), Utilities Code, is amended to read as follows:

(a) A provider that is required to pay a municipal fee ~~[holder of a certificate of convenience and necessity, a certificate of operating authority, or a service provider certificate of operating authority]~~ has the right to collect a fee that a municipality imposes under Section 54.204 ~~[or 54.205]~~ through a pro rata charge to the customers in the boundaries of the municipality.

SECTION \_\_. Section 54.251, Utilities Code, is amended to read as follows:

Sec. 54.251. PROVISION OF SERVICE. ~~[(a)]~~ Except as provided by this subchapter and Subchapter G, an incumbent local exchange company has the obligation of a provider of last resort. The company may meet that obligation using any available technology [section, Section 54.252, Section 54.253, and Section 54.254, a telecommunications utility that holds a certificate of convenience and necessity or a certificate of operating authority shall:

(1) offer all basic local telecommunications services to each customer in the utility's certificated area; and

(2) provide continuous and adequate service in that area.

~~[(b) Except as specifically determined otherwise by the commission under this subchapter or Subchapter G, the holder of a certificate of convenience and necessity for an area has the obligations of a provider of last resort regardless of whether another provider has a certificate of operating authority or service provider certificate of operating authority for that area].~~

SECTION \_\_. Section 54.252, Utilities Code, is amended to read as follows:

Sec. 54.252. GROUNDS FOR REDUCTION OF SERVICE BY PREVIOUS HOLDER OF CERTIFICATE OF CONVENIENCE AND NECESSITY. ~~[(a)]~~ Except to the extent otherwise ordered by the commission in accordance with this subchapter, the holder of a certificate of convenience and necessity before October 1, 2005, may not discontinue, reduce, or impair local exchange telephone service to any part of the holder's certificated service area except for:

- (1) nonpayment of charges;
- (2) nonuse; or
- (3) another similar reason that occurs in the usual course of business.

~~[(b) A discontinuance, reduction, or impairment of service must be in compliance with and is subject to any condition or restriction the commission prescribes.]~~

SECTION \_\_. Section 54.254, Utilities Code, is amended to read as follows:

Sec. 54.254. REQUIRED REFUSAL OF SERVICE. A certificated provider ~~[holder of a certificate of convenience and necessity, a certificate of operating authority, or a service provider certificate of operating authority]~~ shall refuse to serve a customer in the provider's ~~holder's~~ certificated area if the provider ~~holder~~ is prohibited from providing the service under Section 212.012 or 232.029, Local Government Code.

SECTION \_\_. Section 54.259(a), Utilities Code, is amended to read as follows:

(a) If a certificated provider ~~[telecommunications utility]~~ holds a consent, franchise, or permit as determined to be the appropriate grants of authority by the municipality ~~[and holds a certificate if required by this title],~~ a public or private property owner may not:

- (1) prevent the provider ~~[utility]~~ from installing on the owner's property a telecommunications service facility a tenant requests;
- (2) interfere with the provider's ~~[utility's]~~ installation on the owner's property of a telecommunications service facility a tenant requests;
- (3) discriminate against such a provider ~~[utility]~~ regarding installation, terms, or compensation of a telecommunications service facility to a tenant on the owner's property;
- (4) demand or accept an unreasonable payment of any kind from a tenant or the provider ~~[utility]~~ for allowing the provider ~~[utility]~~ on or in the owner's property; or
- (5) discriminate in favor of or against a tenant in any manner, including rental charge discrimination, because of the provider ~~[utility]~~ from which the tenant receives a telecommunications service.

SECTION \_\_. Section 54.260(a), Utilities Code, is amended to read as follows:

(a) Notwithstanding Section 54.259, if a certificated provider [~~telecommunications utility~~] holds a municipal consent, franchise, or permit as determined to be the appropriate grant of authority by the municipality [~~and holds a certificate if required by this title~~], a public or private property owner may:

(1) impose a condition on the provider [~~utility~~] that is reasonably necessary to protect:

(A) the safety, security, appearance, and condition of the property;  
and

(B) the safety and convenience of other persons;

(2) impose a reasonable limitation on the time at which the provider [~~utility~~] may have access to the property to install a telecommunications service facility;

(3) impose a reasonable limitation on the number of such providers [~~utilities~~] that have access to the owner's property, if the owner can demonstrate a space constraint that requires the limitation;

(4) require the provider [~~utility~~] to agree to indemnify the owner for damage caused installing, operating, or removing a facility;

(5) require the tenant or the provider [~~utility~~] to bear the entire cost of installing, operating, or removing a facility; and

(6) require the provider [~~utility~~] to pay compensation that is reasonable and nondiscriminatory among such service providers [~~telecommunications utilities~~].

SECTION \_\_. Section 54.301, Utilities Code, is amended to read as follows:

Sec. 54.301. DEFINITIONS. In this subchapter:

(1) "Exiting provider [~~utility~~]" means a certificated provider of local exchange telephone service [~~telecommunications utility~~] that:

(A) [~~holds a certificate of operating authority or a service provider certificate of operating authority;~~

~~[(B)]~~ is the dominant carrier as to local exchange telephone [~~predominant provider of basic local telecommunications~~] service in a defined geographic area and provides those services using the provider's [~~utility's~~] own facilities; and

~~[(B)]~~ [(C)] ceases operations in all or part of the provider's [~~utility's~~] certificated service area under Section [~~54.253 or~~] 54.303.

(2) "Provider of last resort" means a certificated provider of local exchange telephone service [~~certificated telecommunications utility~~] that must offer local exchange telephone [~~basic local telecommunications~~] service throughout a defined geographic area.

(3) "Successor provider [~~utility~~]" means a service provider or a network provider [~~telecommunications utility that holds a certificate of convenience and necessity, certificate of operating authority, or service provider certificate of operating authority, and~~] that is or is designated to become the provider of last resort for the defined geographic area previously served by an exiting provider [~~utility~~].



SECTION \_\_. Sections 54.302(a) and (b), Utilities Code, are amended to read as follows:

(a) Notwithstanding any other provision of this title, if a certificated provider of local exchange telephone service [~~telecommunications utility~~] installs facilities to serve customers located in a defined geographic area to provide telecommunications services, including local exchange telephone [~~basic local telecommunications~~] service, before the previously designated provider of last resort [~~holder of the certificate of convenience and necessity~~] installs facilities to serve customers located in that defined geographic area, the previously designated provider of last resort [~~holder of the certificate of convenience and necessity~~] may petition the commission for an order relieving the previously designated provider [~~utility~~] of the provider's obligations [~~utility's designation~~] as the provider of last resort in that defined geographic area.

(b) The commission shall relieve the previously designated provider of last resort of the provider's obligations in that [~~holder of the certificate of convenience and necessity of the obligations of service as the provider of last resort for the~~] defined geographic area, and the commission shall designate the facilities-based certificated provider of local exchange telephone service [~~telecommunications utility~~] as the provider of last resort if the commission determines that:

(1) the previously designated provider of last resort [~~holder of the certificate of convenience and necessity~~] does not have facilities in place to provide [~~basic~~] local exchange telephone [~~telecommunications~~] service to all customers within that defined geographic area;

(2) a certificated provider of local exchange telephone service [~~another certificated telecommunications utility~~] has installed facilities adequate to provide that service throughout that area; and

(3) the public interest would be served by transferring the provider of last resort obligations for that area.

SECTION \_\_. Section 54.303, Utilities Code, is amended to read as follows:

Sec. 54.303. SUCCESSOR TELECOMMUNICATIONS PROVIDER [~~UTILITY~~] WHEN NO SUFFICIENT FACILITIES EXIST. (a) When the commission obtains notice [~~as required under Section 54.253 or otherwise~~] that a certificated provider of local exchange telephone service [~~a utility~~] intends to become an exiting provider [~~utility~~] and no other certificated provider of local exchange telephone service [~~telecommunications utility~~] has facilities sufficient to provide [~~basic~~] local exchange telephone [~~telecommunications~~] service in that defined geographic area, the commission shall open a contested case proceeding to determine:

(1) the identity of the successor provider [~~utility~~] under this section; and

(2) the amount of universal service funding under Subchapter G, Chapter 56, to be made available to the successor provider [~~utility~~].

(b) On designation of [~~as~~] the successor provider [~~utility~~] under this section, the commission, if applicable, shall provide to the successor provider [~~utility~~]:

(1) a reasonable time, in accordance with industry practices and not subject to otherwise applicable commission service quality rules or standards, to modify, construct, or obtain facilities necessary to serve the customers of the exiting provider [~~telecommunications utility~~]; and

(2) an exemption on a transitional basis from any obligation to unbundle the successor provider's [~~utility's~~] network elements or to provide service for resale within that defined geographic area for nine months or another reasonable period the commission may authorize as necessary to modify the successor provider's [~~utility's~~] network to provide that unbundling or resale.

(c) A customer within the defined geographic area to be served by the successor provider [~~utility~~] is considered to have applied for service from the successor provider [~~utility~~] on the effective date of that designation by the commission. Each right, privilege, and obligation of being a customer of the successor provider [~~utility~~] applies to that customer and the customer is subject to the successor provider's [~~utility's~~] applicable terms of service as specified in an applicable tariff or contract.

SECTION \_\_. Section 54.304, Utilities Code, is amended to read as follows:

Sec. 54.304. ABANDONMENT OR CESSATION BY FACILITIES-BASED PROVIDER; EMERGENCY RESTORATION. (a) The commission, on its own motion or on the petition of an interested party, may institute an expedited proceeding under this section if the commission finds that:

(1) a certificated provider of local exchange telephone service [~~holder of a certificate of operating authority or service provider certificate of operating authority is the predominant provider of basic local telecommunications service in a defined geographic area and the utility~~] provides that service using the provider's [~~utility's~~] own facilities;

(2) no other certificated provider [~~telecommunications utility~~] has facilities sufficient to provide [~~basic~~] local exchange telephone [~~telecommunications~~] service in that defined geographic area; and

(3) the certificated provider of local exchange telephone service [~~holder of the certificate of operating authority or service provider certificate of operating authority~~] has:

(A) ceased providing [~~basic~~] local exchange telephone [~~telecommunications~~] service to [~~the utility's~~] customers in that defined geographic area; or

(B) abandoned the operation of the provider's [~~utility's~~] facilities in the defined geographic area that are used to provide [~~basic~~] local exchange telephone [~~telecommunications~~] service.

(b) In a proceeding under this section, the commission may declare that an emergency exists and issue any order necessary to protect the health, safety, and welfare of affected customers [~~of the utility~~] and to expedite the restoration and continuation of [~~basic~~] local exchange telephone [~~telecommunications~~] service to those customers. An order issued by the commission under this subsection may include an order to:

(1) provide for a temporary arrangement for operation of the certificated provider's ~~[utility's]~~ facilities by an uncertificated entity that agrees to provide service;

(2) authorize one or more third parties to enter the premises of the abandoned facilities; or

(3) grant temporary waivers from quality of service requirements.

(c) The commission may designate a successor provider ~~[utility]~~ in accordance with Section 54.303 during a proceeding under this section.

SECTION \_\_. Section 54.305(a), Utilities Code, is amended to read as follows:

(a) The commission, on written notice that a certificated provider ~~[telecommunications utility]~~ has filed a petition in bankruptcy or is the subject of an involuntary petition in bankruptcy, may inform the appropriate court and parties of the commission's interest in obtaining notice of proceedings.

SECTION \_\_. Subchapter A, Chapter 55, Utilities Code, is amended by adding Section 55.0011 to read as follows:

Sec. 55.0011. EMERGENCY SERVICE. A certificated provider shall provide access to 911 service provided by a local authority or dual party relay service.

SECTION \_\_. Section 55.013, Utilities Code, is amended to read as follows:

Sec. 55.013. LIMITATIONS ON DISCONTINUANCE OF BASIC NETWORK ~~[LOCAL TELECOMMUNICATIONS]~~ SERVICE. (a) In this section, "basic network service" has the meaning assigned by Section 58.051.

(b) A provider of basic network ~~[local telecommunications]~~ service may not discontinue that service because of nonpayment by a residential customer of charges for interexchange telecommunications ~~[long distance]~~ service. Payment shall first be allocated to basic network ~~[local telecommunications]~~ service.

~~[(b) For purposes of allocating payment in this section, if the provider of basic local telecommunications service bundles its basic local telecommunications service with long distance service or any other service and provides a discount for the basic local telecommunications service because of that bundling, the rate of basic local telecommunications service shall be the rate the provider charges for stand-alone basic local telecommunications service.]~~

~~[(c) Notwithstanding Subsection (a), the commission shall adopt and implement rules, not later than January 1, 2000, to prevent customer abuse of the protections afforded by this section. The rules must include:~~

~~[(1) provisions requiring a provider of basic local telecommunications service to offer and implement toll blocking capability to limit a customer's ability to incur additional charges for long distance services after nonpayment for long distance services; and~~

~~[(2) provisions regarding fraudulent activity in response to which a provider may discontinue a residential customer's basic local telecommunications service.]~~

(c) ~~(d)~~ Notwithstanding any other provision of this title, the commission has all jurisdiction necessary to establish a maximum price that a ~~an incumbent~~ local exchange company may charge a ~~long distance service~~ provider of interexchange telecommunications service to initiate the toll blocking capability required to be offered under commission ~~the~~ rules ~~adopted under Subsection (e)~~. The maximum price established under this subsection shall be observed by all providers of basic network ~~local telecommunications~~ service in the ~~incumbent~~ local exchange company's certificated service area. ~~The~~ ~~Notwithstanding Sections 52.102 and 52.152, the~~ commission has all jurisdiction necessary to enforce this section.

~~(e) A provider of basic local exchange telecommunications service shall comply with the requirements of this section not later than March 1, 2000.~~

SECTION \_\_. Section 55.014(b), Utilities Code, is amended to read as follows:

(b) This section applies to a company electing under Chapter 58 or a certificated provider of local exchange telephone service that is not an incumbent local exchange company ~~company that holds a certificate of operating authority or service provider certificate of operating authority~~.

SECTION \_\_. Section 55.015, Utilities Code, is amended by amending Subsections (a), (c), and (d) and adding Subsections (b-1), (d-1), and (d-2) to read as follows:

(a) The commission shall adopt rules prohibiting a certificated provider of local exchange telephone service ~~telecommunications provider~~ from discontinuing basic network ~~local exchange telephone~~ service, as that term is defined by Section 58.051, to a consumer who receives lifeline service because of nonpayment by the consumer of charges for other services billed by the provider, including interexchange telecommunications ~~long distance~~ service.

(b-1) The commission shall adopt rules requiring certificated providers to implement procedures to ensure that all consumers are clearly informed both orally and in writing of the existence of the telephone lifeline service program when they request or initiate service or change service locations or providers. By June 1, 2006, the commission shall enter into a memorandum of understanding with the Health and Human Services Commission and, to the maximum extent feasible, housing authorities in the principal cities of each metropolitan statistical area, to improve enrollment rates in the telephone lifeline service program.

(c) A certificated provider of local exchange telephone service ~~telecommunications provider~~ may block a lifeline service participant's access to all interexchange telecommunications ~~long distance~~ service except toll-free numbers when the participant owes an outstanding amount for that service. The provider ~~telecommunications provider~~ shall remove the block without additional cost to the participant on payment of the outstanding amount.

(d) A certificated provider of local exchange telephone service ~~telecommunications provider~~ shall offer a consumer who applies for or receives lifeline service the option of blocking all toll calls or, if technically capable,

placing a limit on the amount of toll calls. The provider may not charge the consumer an administrative charge or other additional amount for the blocking service.

(d-1) A certificated provider of local exchange telephone service shall provide access to lifeline service to a customer whose income is not more than 150 percent of the applicable income level established by the federal poverty guidelines or in whose household resides a person who receives or has a child that receives:

(1) Medicaid;

(2) food stamps;

(3) Supplemental Security Income;

(4) federal public housing assistance;

(5) Low Income Home Energy Assistance Program (LIHEAP) assistance; or

(6) health insurance benefits through the Children's Health Insurance Program (CHIP).

(d-2) A certificated provider of local exchange telephone service shall provide consumers who apply for or receive lifeline service access to available vertical services or custom calling features, including caller ID, call waiting, and call blocking, at the same price as other consumers. Lifeline discounts shall only apply to that portion of the bill that is for basic network service.

SECTION \_\_. Section 55.021, Utilities Code, is amended to read as follows:

Sec. 55.021. EXTENDED AREA SERVICE. After notice and a hearing, the commission may order one or more incumbent local exchange companies [~~that are dominant carriers~~] to provide:

(1) mandatory extended area service in accordance with Section 55.022; or

(2) optional extended area service [~~in accordance with Section 55.023~~].

SECTION \_\_. Section 55.048, Utilities Code, is amended to read as follows:

Sec. 55.048. CHARGES. (a) The incumbent local exchange company may impose a monthly fee against each residential and business customer in the petitioning exchange [~~shall recover all costs incurred and all loss of revenue from an expansion of a toll free local calling area under this subchapter through a request other than a revenue requirement showing by imposing a monthly fee under Subsection (b) or (c), or both~~].

(b) [~~The company may impose a monthly fee against each residential and business customer in the petitioning exchange. The fee may not exceed \$3.50 a line for a residential customer and \$7 a line for a business customer unless the customer's toll free local calling area includes more than five exchanges. The company may impose an additional monthly fee of \$1.50 for each exchange in excess of five. This subsection applies regardless of the number of petitions required to obtain access to the exchanges. A company may impose a fee under this subsection only until the company's next general rate case.~~]

~~[(e)]~~ The company may impose a monthly fee against each of the company's local exchange service customers in this state. This fee is in addition to the company's local exchange rates.

~~[(d) The company may not recover regulatory case expenses under this subchapter by imposing a surcharge on the subscribers of the petitioning exchange.]~~

SECTION \_\_. Section 55.084(c), Utilities Code, is amended to read as follows:

(c) The information must state:

(1) the provider's name;

(2) ~~[that the operator service provider will provide rate information on a caller's request;~~

~~[(3)]~~ that a caller, on the caller's request, will be informed of the method of access to the local exchange carrier operator; and

(3) ~~[(4)]~~ that a complaint about the service may be made to the provider or to the commission at the designated telephone number.

SECTION \_\_. Section 55.085, Utilities Code, is amended to read as follows:

Sec. 55.085. CONNECTION ANNOUNCEMENT. Before connecting a call, the operator service provider shall~~[-~~

~~[(1)]~~ announce the provider's name~~[-and~~

~~[(2) at the caller's request, quote the rate and any other fee or surcharge that applies to the call and is charged by the provider].~~

SECTION \_\_. The heading to Section 55.087, Utilities Code, is amended to read as follows:

Sec. 55.087. ACCESS TO LOCAL EXCHANGE COMPANY ~~[AND OTHER UTILITIES REQUIRED].~~

SECTION \_\_. Section 55.087(a), Utilities Code, is amended to read as follows:

(a) The commission by rule shall require an operator service provider to include in its contract with each entity through which it provides operator service a provision that requires each telephone subscribed to its service to allow access to~~[-~~

~~[(1)]~~ the local exchange carrier operator serving the exchange from which the call is made~~[-and~~

~~[(2) other telecommunications utilities].~~

SECTION \_\_. Section 55.088(a), Utilities Code, is amended to read as follows:

(a) Any entity ~~[A dominant or nondominant telecommunications utility]~~ that provides operator service shall ensure that a caller has access to a live operator at the beginning of the ~~[a live or mechanized operator-assisted]~~ call through a method designed to be easily and clearly understandable and accessible to the caller.

SECTION \_\_. Section 55.089(a), Utilities Code, is amended to read as follows:

(a) If the commission determines that an operator service provider has violated ~~[or is about to violate]~~ this subchapter, the commission, after notice and evidentiary hearing, may take action to stop, correct, or prevent the violation.

SECTION \_\_. Section 55.173(b), Utilities Code, is amended to read as follows:

(b) This section does not apply to a provider who holds a certificate as a network provider or service provider ~~[of convenience and necessity]~~.

SECTION \_\_. Subchapter H, Chapter 55, Utilities Code, is amended by adding Section 55.1735 to read as follows:

Sec. 55.1735. CHARGE FOR PAY PHONE ACCESS LINE. The charge or surcharge a local exchange company imposes for an access line used to provide pay telephone service in an exchange may not exceed the amount of the charge or surcharge the company imposes for an access line used for regular business purposes in that exchange.

SECTION \_\_. Section 55.178(d), Utilities Code, is amended to read as follows:

(d) The commission has jurisdiction over a provider to the extent necessary to enforce this section regardless of whether a provider is a telecommunications provider ~~[utility]~~ regulated under this title.

SECTION \_\_. Sections 55.201(a) and (b), Utilities Code, are amended to read as follows:

(a) Each certificated provider of ~~[company that provides]~~ local exchange telephone service that provides service in overlapping certificated areas shall negotiate the terms of printed directory listings and directory assistance in those areas.

(b) On complaint by a certificated provider of local exchange service ~~[the incumbent local exchange company or the holder of a certificate of convenience and necessity, a certificate of operating authority, or a service provider certificate of operating authority]~~, the commission may:

(1) resolve a dispute between the parties; and

(2) issue an order setting the terms of the directory listings or directory assistance, if necessary.

SECTION \_\_. Section 55.203(c), Utilities Code, is amended to read as follows:

(c) The commission may not adopt a rule that dictates the format or content of a telephone directory or otherwise prescribes in relation to a directory a requirement that is in addition to or exceeds a requirement prescribed by this subchapter ~~[by rule may specify:~~

~~(1) the format of the listing; and~~

~~(2) criteria for inclusion of agencies, services, and officials].~~

SECTION \_\_. Section 55.252, Utilities Code, is amended to read as follows:

Sec. 55.252. 900 SERVICE USED BY PROBATIONERS OR PAROLEES. (a) This section applies only to a certificated provider ~~[telecommunications utility]~~ that transports or provides an intrastate 900 service that is:

(1) covered by a contract authorized by Chapter 76 or 508, Government Code; and

(2) used by a defendant under the supervision of a community supervision and corrections department or the pardons and paroles division of the Texas Department of Criminal Justice to:

(A) pay a fee or cost; or

(B) comply with telephone reporting requirements.

(b) A certificated provider [~~telecommunications utility~~] may adjust or authorize the adjustment of an end-user's bill for 900 service described by Subsection (a) only with the consent of the contracting community supervision and corrections department or the contracting pardons and paroles division of the Texas Department of Criminal Justice.

SECTION \_\_. Section 56.021, Utilities Code, is amended to read as follows:

Sec. 56.021. UNIVERSAL SERVICE FUND ESTABLISHED. The commission shall adopt and enforce rules requiring telecommunications providers [~~local exchange companies~~] to establish a universal service fund to:

(1) assist telecommunications providers in providing [~~basic~~] local exchange telephone [~~telecommunications~~] service at reasonable rates in high cost rural areas;

(2) reimburse the telecommunications carrier that provides the statewide telecommunications relay access service under Subchapter D;

(3) finance the specialized telecommunications assistance program established under Subchapter E;

(4) reimburse the department, the Department of Assistive and Rehabilitative Services [~~Texas Commission for the Deaf and Hard of Hearing~~], and the commission for costs incurred in implementing this chapter [~~and Chapter 57~~];

(5) reimburse a certificated provider of local exchange telephone service [~~telecommunications carrier~~] providing lifeline service under Section 55.015 [~~as provided by 47 C.F.R. Part 54, Subpart E, as amended~~];

(6) finance the implementation and administration of an integrated eligibility process created under Section 64.005 [~~17.007~~] for customer service discounts relating to local exchange telephone service [~~telecommunications services~~], including outreach expenses the commission determines are reasonable and necessary;

(7) reimburse a designated provider under Subchapter F; [~~and~~]

(8) reimburse a successor provider [~~utility~~] under Subchapter G; and

(9) finance the program established under Subchapter H.

SECTION \_\_. Sections 56.023(a), (b), (c), and (e), Utilities Code, are amended to read as follows:

(a) The commission shall:



(1) in a manner that assures reasonable rates for ~~[basic]~~ local exchange telephone [telecommunications] service, adopt eligibility criteria and review procedures, including a method for administrative review, the commission finds necessary to fund the universal service fund and make distributions from that fund;

(2) determine which local exchange companies [telecommunications providers] meet the eligibility criteria;

(3) determine the amount of and approve a procedure for reimbursement to certificated providers of local exchange telephone service [telecommunications providers] of revenue lost in providing lifeline service under Section 55.015 [tel-assistance service under Subchapter C];

(4) establish and collect fees from the universal service fund necessary to recover the costs the department and the commission incur in administering this chapter ~~[and Chapter 57]~~; and

(5) approve procedures for the collection and disbursement of the revenue of the universal service fund.

(b) The eligibility criteria must require that local exchange companies [a telecommunications provider, in compliance with the commission's quality of service requirements]:

(1) offer service to each consumer within the company's certificated area and to any permanent residential or business premises to which the company is designated to provide services under Subchapter F; and

(2) render continuous and adequate service within the company's certificated area and to any permanent residential or business premises to which the company is designated to provide services under Subchapter F.

(c) A local exchange company designated under Subchapter F to provide services to permanent residential or business premises within an uncertificated area and that complies with Subsection (b) shall receive universal service fund distributions to assist the provider in providing those services. In addition, the commission shall designate the provider as an eligible telecommunications carrier under 47 U.S.C. Section 214(e)(2), as amended, for those permanent residential or business premises.

(e) A successor provider [utility], as that term is defined by Section 54.301, that is or becomes an eligible telecommunications carrier under 47 U.S.C. Section 214(e)(2), as amended, is entitled to receive universal service fund distributions for costs in accordance with Subchapter G.

SECTION \_\_. Section 56.025, Utilities Code, is amended by amending Subsections (a) and (c) and adding Subsection (a-1) to read as follows:

(a) This section applies only to a rural incumbent local exchange company.

(a-1) In addition to the authority provided by Section 56.021, for each ~~[local exchange]~~ company ~~[that serves fewer than five million access lines]~~, the commission:

(1) may adopt a mechanism necessary to maintain reasonable rates for local exchange telephone service; and

(2) shall adopt rules to expand the universal service fund in the circumstances prescribed by this section.

(c) The commission shall implement a mechanism to replace the reasonably projected change in revenue caused by a Federal Communications Commission order, rule, or policy that changes:

(1) the federal universal service fund revenue of a [~~local exchange~~] company; or

(2) costs or revenue assigned to the intrastate jurisdiction.

SECTION \_\_. Section 56.026, Utilities Code, is amended by adding Subsection (c-1) to read as follows:

(c-1) An incumbent local exchange company governed under Chapter 58 is not entitled to receive disbursements from the universal service fund to compensate for reductions in access charges made after August 31, 2005.

SECTION \_\_. Section 56.028, Utilities Code, is amended to read as follows:

Sec. 56.028. UNIVERSAL SERVICE FUND REIMBURSEMENT FOR CERTAIN INTRALATA SERVICE. (a) On request of a rural [~~an~~] incumbent local exchange company that is not an electing company under Chapters 58 and 59, the commission shall provide reimbursement through the universal service fund for reduced rates for intraLATA interexchange high capacity (1.544 Mbps) service for:

(1) an educational institution as defined by Section 59.071;

(2) a library as defined by Section 59.071;

(3) a nonprofit telemedicine center, as defined by Section 59.071;

(4) a public or not-for-profit hospital; or

(5) a federally qualified health care center [~~entities described in Section 58.253(a)].~~

(b) The amount of reimbursement shall be the difference between the company's tariffed rate for that service as of January 1, 1998, and the lowest rate offered for that service by any local exchange company electing incentive regulation under Chapter 58.

SECTION \_\_. Subchapter B, Chapter 56, Utilities Code, is amended by adding Section 56.0285 to read as follows:

Sec. 56.0285. REIMBURSEMENT OF FEDERALLY QUALIFIED HEALTH CENTERS. (a) The health centers defined in Section 58.2535 are entitled to receive from the universal service fund the equivalent of a rebate equal to the difference between the company's tariffed rate for interexchange high capacity service (at or in excess of 1.544 Mbps) as of January 1, 1998, and the lowest rate offered for that service by any local exchange company electing incentive rate regulation under Chapter 58.

(b) This section shall govern to the extent there is a conflict with any other provision of the Utilities Code.

SECTION \_\_. Subchapter B, Chapter 56, Utilities Code, is amended by adding Section 56.029 to read as follows:

Sec. 56.029. TEXAS UNIVERSAL SERVICE FUND STUDY; ATTESTATION REQUIREMENT. (a) The commission shall contract with an independent person to conduct a review and evaluation of whether the universal service fund accomplishes the fund's purposes as prescribed by Section 56.021

and the commission's final orders issued in Docket No. 18515 and Docket No. 18516. The evaluation shall determine whether the fund's purposes have been sufficiently achieved, whether the fund should be abolished or phased out, whether the fund should be brought within the state's treasury, and whether those receiving said funds are expending the dollars for their intended purposes. The evaluation must include a forward-looking, comprehensive assessment of the appropriate use of the money in the fund and the manner in which that money is collected and disbursed. The commission shall pay for the review and evaluation from the universal service fund.

(b) The commission shall adopt a process under which, not later than January 1, 2006:

(1) the commission:

(A) issues a request for proposals that specifically states the maximum amount to be paid under the contract, which may not be more than a commercially reasonable amount;

(B) evaluates the received proposals; and

(C) enters into a fixed price, lump-sum contract with a person under this section; and

(2) the person with whom the commission contracts is ready to require and receive information under this section and begin the review and evaluation.

(c) Not later than January 1, 2006, the contractor shall require telecommunications providers receiving disbursements under the universal service fund to provide to the contractor the information that the contractor determines is necessary to discharge the contractor's duties under this section, including information necessary to review and evaluate how money is collected for the universal service fund and expended.

(d) Information provided under Subsection (c) is confidential and is not subject to disclosure under Chapter 552, Government Code. The provisions of this title relating to failure by a telecommunications provider to comply with a commission order apply to the failure by a telecommunications provider to comply with a requirement from the contractor to provide information under this section.

(e) The contractor may classify telecommunications providers as the contractor considers appropriate for efficiency and may permit providers to share the cost of developing information the contractor determines is necessary to discharge the contractor's responsibilities under this section.

(f) Not later than January 5, 2007, the contractor shall deliver to the legislature a report for the legislature's revision and approval on the results of the review and evaluation. The report must:

(1) include recommendations that are consistent with the policies provided by this title;

(2) include the contractor's assessment of the universal service fund, including:

(A) how the money in the fund should be collected;

(B) how the money in the fund should be disbursed and the purposes for which the money should be used by the telecommunications provider receiving the money; and

(C) any recommendations the contractor has in relation to accountability for use of the money, including the usefulness of the attestation required by Subsection (g); and

(3) include recommendations that ensure that a telecommunications provider's support from the universal service fund for a geographic area is consistent with Section 56.021 and the commission's final orders issued in Docket No. 18515 and Docket No. 18516.

(f-1) The evaluation shall determine whether the fund's purposes have been sufficiently achieved, whether the fund should be abolished or phased out, whether the fund should be brought within the state's treasury, and whether those receiving said funds are expending the dollars for their intended purposes.

(g) Not later than December 31, 2005, each telecommunications provider receiving universal service funds shall file with the commission an affidavit attesting that the money from the fund has been used in a manner that is consistent with the purposes provided by Section 56.021 and the commission's final orders issued in Docket No. 18515 and Docket No. 18516.

(h) In addition to the study required by this section, the commission shall compile information necessary to determine whether the current funding mechanism for the universal service fund will be adequate in the future to sustain the purposes for which the fund was created considering the development of new technologies that are not subject to the existing funding mechanism and the shift in jurisdictional control from this state to the federal government. Not later than January 5, 2007, the commission shall deliver to the legislature a report on this issue. If the commission determines that the existing funding mechanism is not adequate, the commission must include recommendations for alternative funding methods that will be adequate and are consistent with a policy of technology and competitive neutrality in the assessment of fees and other state-imposed economic burdens.

SECTION \_\_. Section 56.106(a), Utilities Code, is amended to read as follows:

(a) The commission shall set appropriate assessments for all telecommunications providers [~~utilities~~] to fund the telecommunications relay access service.

SECTION \_\_. Section 56.107, Utilities Code, is amended to read as follows:

Sec. 56.107. UNIVERSAL SERVICE FUND SURCHARGE. (a) A telecommunications provider [~~utility~~] may recover the provider's [~~utility's~~] universal service fund assessment for the telecommunications relay access service through a surcharge added to [~~the utility~~] customers' bills.

(b) The commission shall specify how each telecommunications provider [~~utility~~] is to determine the amount of the surcharge.

(c) If a telecommunications provider [~~utility~~] imposes the surcharge, the bill shall list the surcharge as the "universal service fund surcharge."

SECTION \_\_. Section 56.110(a), Utilities Code, is amended to read as follows:

(a) An advisory committee to assist the commission in administering this subchapter is composed of the following persons appointed by the commission:

(1) two persons with disabilities that impair the ability to effectively access the telephone network other than disabilities described by Subdivisions (2)-(7);

(2) one deaf person recommended by the Texas Deaf Caucus;

(3) one deaf person recommended by the Texas Association of the Deaf;

(4) one person with a hearing impairment recommended by Self-Help for the Hard of Hearing;

(5) one person with a hearing impairment recommended by the AARP [~~American Association of Retired Persons~~];

(6) one deaf and blind person recommended by the Texas Deaf/Blind Association;

(7) one person with a speech impairment and one person with a speech and hearing impairment recommended by the Coalition of Texans with Disabilities;

(8) two representatives of telecommunications providers [~~utilities~~], one representing a nonlocal exchange company [~~utility~~] and one representing a local exchange company, chosen from a list of candidates provided by the Texas Telephone Association;

(9) two persons, at least one of whom is deaf, with experience in providing relay services recommended by the Department of Assistive and Rehabilitative Services [~~Texas Commission for the Deaf and Hard of Hearing~~]; and

(10) two public members recommended by organizations representing consumers of telecommunications services.

SECTION \_\_. Section 56.155, Utilities Code, is amended to read as follows:

Sec. 56.155. RECOVERY OF SPECIALIZED TELECOMMUNICATIONS DEVICE ASSISTANCE PROGRAM SURCHARGE. (a) The commission shall allow a telecommunications provider [~~utility~~] to recover the universal service fund assessment related to the specialized telecommunications assistance program through a surcharge added to [~~the utility's~~] customers' bills.

(b) The commission shall specify how each telecommunications provider [~~utility~~] must determine the amount of the surcharge and by rule shall prohibit a telecommunications provider [~~utility~~] from recovering an aggregation of more than 12 months of assessments in a single surcharge. The rules must require a telecommunications provider [~~utility~~] to apply for approval of a surcharge before the 91st day after the date the period during which the aggregated surcharges were assessed closes.

(c) If a telecommunications provider [utility] chooses to impose the surcharge, the telecommunications provider [utility] shall include the surcharge in the "universal service fund surcharge" listing as provided by Section 56.107.

SECTION \_\_. Section 56.202(a), Utilities Code, is amended to read as follows:

(a) Notwithstanding Section 54.001, the commission may designate a local exchange company [~~telecommunications provider under this section~~] to provide voice-grade services to permanent residential or business premises that are not included within the certificated area of a local exchange company [~~holder of a certificate of convenience and necessity~~].

SECTION \_\_. Section 56.203, Utilities Code, is amended to read as follows:

Sec. 56.203. PETITION FOR SERVICE. Persons residing in permanent residential premises or owners of permanent residential or business premises that are not included within the certificated area of a certificated provider of local exchange telephone service [~~holder of a certificate of convenience and necessity~~] may petition the commission to designate a telecommunications provider to provide to those premises voice-grade services supported by state and federal universal service support mechanisms.

SECTION \_\_. Section 56.251, Utilities Code, is amended to read as follows:

Sec. 56.251. DEFINITION. In this subchapter, "successor provider [utility]" has the meaning assigned by Section 54.301.

SECTION \_\_. Section 56.252, Utilities Code, is amended to read as follows:

Sec. 56.252. TELECOMMUNICATIONS PROVIDERS [~~UTILITIES~~] ELIGIBLE TO RECEIVE FUNDING UNDER THIS SUBCHAPTER. A telecommunications provider [utility] may receive funding under this subchapter only if:

(1) the telecommunications provider [utility] is eligible to receive universal service funding under Section 56.023(b); and

(2) the telecommunications provider [utility] is designated as a successor provider [utility] under Section 54.303.

SECTION \_\_. Section 56.253, Utilities Code, is amended to read as follows:

Sec. 56.253. DETERMINATION OF SUCCESSOR PROVIDER'S [~~UTILITY'S~~] COSTS TO BE RECOVERED. (a) At the time the commission designates the successor provider [utility] under Section 54.303, the commission shall determine the extent to which the provider [utility] should recover the costs the provider [utility] will incur in accepting and establishing service to the affected service area.

(b) In making the determination under Subsection (a), the commission shall consider relevant information, including the costs of acquiring and restoring or upgrading the provider's [~~utility's~~] facilities in the geographic area as necessary to

make those facilities compatible with the facilities in the provider's ~~[utility's]~~ other certificated service areas and to comply with commission quality of service standards.

SECTION \_\_. Section 56.254, Utilities Code, is amended to read as follows:

Sec. 56.254. RECOVERY OF COSTS. The commission order designating the successor provider ~~[utility]~~ under Section 54.303 shall authorize the provider ~~[utility]~~ to recover the costs determined under Section 56.253. The costs may be amortized and recovered from the state universal service fund, together with interest at the prevailing commercial lending rate:

(1) not later than the first anniversary of the date of the order if the costs are not more than \$1 million;

(2) not later than the second anniversary of the date of the order if the costs are more than \$1 million but no more than \$2 million; and

(3) not later than the third anniversary of the date of the order if the costs are more than \$2 million.

SECTION \_\_. Chapter 56, Utilities Code, is amended by adding Subchapter H to read as follows:

#### SUBCHAPTER H. AUDIO NEWSPAPER PROGRAM

Sec. 56.301. AUDIO NEWSPAPER ASSISTANCE PROGRAM. The commission by rule shall establish a program to provide from the universal service fund financial assistance for a free telephone service for blind and visually impaired persons that offers the text of newspapers using synthetic speech. The commission may adopt rules to implement the program.

SECTION \_\_. The heading to Chapter 57, Utilities Code, is amended to read as follows:

#### CHAPTER 57. DEPLOYMENT INCENTIVES ~~[DISTANCE LEARNING AND OTHER ADVANCED SERVICES]~~

SECTION \_\_. The heading to Subchapter A, Chapter 57, Utilities Code, is amended to read as follows:

#### SUBCHAPTER A. BROADBAND DEPLOYMENT ~~[GENERAL PROVISIONS]~~

SECTION \_\_. Subchapter A, Chapter 57, Utilities Code, is amended by adding Section 57.002 to read as follows:

Sec. 57.002. STATEMENT OF STATE GOAL. (a) It is the goal of this state to facilitate and promote the deployment of an advanced broadband network infrastructure to spur economic development throughout this state, including rural areas of this state.

(b) This state should be among the leaders in achieving the goal described by Subsection (a). The primary means of achieving this goal is through encouraging private investment in this state's broadband network infrastructure by creating incentives for that investment and promoting the development of competition.

(c) The most effective way to bring the benefits of an advanced broadband network infrastructure to communities in this state, including rural communities, is through innovation and competition among all communications providers in

this state. Competition will provide residents of this state with a choice of providers and will drive technology deployment, innovation, service quality, and cost-based prices as competing firms try to satisfy customer needs.

SECTION \_\_. The heading to Chapter 58, Utilities Code, is amended to read as follows:

CHAPTER 58. INCENTIVE REGULATION FOR INCUMBENT LOCAL EXCHANGE COMPANIES

SECTION \_\_. Section 58.001, Utilities Code, is amended to read as follows:

Sec. 58.001. POLICY. It is the policy of this state to regulate the telecommunications industry in a technology-neutral manner through adherence to free market principles. [~~Considering the status of competition in the telecommunications industry, it is the policy of this state to:~~

~~(1) provide a framework for an orderly transition from the traditional regulation of return on invested capital to a fully competitive telecommunications marketplace in which all telecommunications providers compete on fair terms;~~

~~(2) preserve and enhance universal telecommunications service at affordable rates;~~

~~(3) upgrade the telecommunications infrastructure of this state;~~

~~(4) promote network interconnectivity; and~~

~~(5) promote diversity in the supply of telecommunications services and innovative products and services throughout the entire state, including urban and rural areas.]~~

SECTION \_\_. Section 58.002, Utilities Code, is amended to read as follows:

Sec. 58.002. ELECTION [DEFINITION]. (a) In this section, "good cause" includes only matters beyond the control of the company.

(b) An incumbent local exchange company may elect to be subject to this chapter by notifying the commission in writing of its election.

(c) The commission may allow an electing company to withdraw the company's election under this chapter:

(1) on application by the company; and

(2) only for good cause [~~In this chapter, "electing company" means an incumbent local exchange company that elects to be subject to incentive regulation and to make the corresponding infrastructure commitment under this chapter].~~

SECTION \_\_. Subchapter A, Chapter 58, Utilities Code, is amended by adding Section 58.005 to read as follows:

Sec. 58.005. RATES FOR BASIC NETWORK SERVICES; APPLICABILITY OF PROVISIONS OF SUBTITLE. (a) Notwithstanding any other provision of this title, an incumbent local exchange company may not raise the company's retail price for basic network service to a price that is above the price the company charged on January 1, 2005, for basic network service that included the same components before January 1, 2008.



(b) Except as provided by Subsection (a), on the date the incumbent local exchange company reduces the company's intrastate switched access rates on a combined originating and terminating basis to parity with interstate switched access rates, as required by Section 58.301(3), and certifies to the commission that the company has made that reduction, the company is subject only to the following provisions of this subtitle:

- (1) Sections 52.101-52.108;
- (2) Section 52.251(a);
- (3) Section 52.255;
- (4) Sections 54.001-54.005;
- (5) Sections 54.203-54.206;
- (6) Sections 54.251-54.254;
- (7) Sections 54.259 and 54.260;
- (8) Sections 54.301-54.304;
- (9) Sections 55.0011, 55.013, 55.014, and 55.015;
- (10) Section 55.1735;
- (11) Sections 55.201-55.203;
- (12) Section 55.252;
- (13) Sections 56.001 and 56.002;
- (14) Sections 56.021-56.024;
- (15) Section 56.026;
- (16) Section 56.029;
- (17) Sections 56.101-56.109;
- (18) Sections 56.151-56.155;
- (19) Subchapter G, Chapter 56;
- (20) Chapter 57;
- (21) Subchapter G of this chapter;
- (22) Sections 58.301 and 58.302; and
- (23) Chapters 60 and 64.

SECTION \_\_. Section 58.023, Utilities Code, is amended to read as follows:

Sec. 58.023. APPLICABILITY OF CHAPTER; SERVICE CLASSIFICATION. (a) This chapter applies only to an incumbent local exchange company that is subject to this chapter.

(b) The [On election, the] services provided by an incumbent local exchange [electing] company are classified into two categories:

- (1) basic network service [services] governed by Subchapter C; and
- (2) nonbasic network services governed by Subchapter E.

SECTION \_\_. Section 58.025, Utilities Code, is amended to read as follows:

Sec. 58.025. COMPLAINT OR HEARING. Except as otherwise specifically provided by this title, an incumbent local exchange company that is not regulated under Chapter 53 is not subject to a traditional rate of return [(a) An electing company is not, under any circumstances, subject to a] complaint, hearing, or determination regarding the reasonableness of the company's:

- (1) rates;

- (2) overall revenues;
- (3) return on invested capital; or
- (4) net income.

~~[(b) This section does not prohibit a complaint, hearing, or determination on an electing company's implementation and enforcement of a competitive safeguard required by Chapter 60.]~~

SECTION \_\_. Section 58.026, Utilities Code, is amended to read as follows:

Sec. 58.026. CONSUMER COMPLAINTS REGARDING TARIFFS. (a) This chapter does not restrict:

(1) a consumer's right to complain to the commission about the application of an ambiguous tariff; or

- (2) the commission's right to determine[~~+~~  
~~[(A)] the proper application of that tariff[; or~~  
~~[(B) the proper rate if that tariff does not apply].~~

(b) This chapter ~~[section]~~ does not permit the commission to:

- (1) lower a tariff rate ~~[except as specifically provided by this title];~~
- (2) change the commission's interpretation of a tariff; or
- (3) extend the application of a tariff to a new class of customers.

SECTION \_\_. Section 58.027, Utilities Code, is amended to read as follows:

Sec. 58.027. CONSUMER COMPLAINTS REGARDING SERVICES[~~; ENFORCEMENT OF STANDARDS~~]. This chapter does not restrict:

(1) a consumer's right to complain to the commission about quality of service; or

- (2) the commission's right to enforce a quality of service standard.

SECTION \_\_. Section 58.051, Utilities Code, is amended to read as follows:

Sec. 58.051. SERVICES INCLUDED. (a) ~~"Basic [Unless reclassified under Section 58.024, the following services are basic] network service" means [services:~~

~~[(1)] flat rate residential local exchange telephone service delivered by landline, but only if the service is ordered and received independent of:~~

- ~~(1) a nonbasic network service;~~
- ~~(2) a package of services that includes nonbasic network services or other services; or~~

~~(3) another flat rate residential local exchange telephone service delivered by landline.~~

~~(b) "Basic network service" includes only: [including primary directory listings and the receipt of a directory and any applicable mileage or zone charges;]~~

- ~~(1) [(2)] residential tone dialing service;~~
- ~~(2) [(3)] lifeline [and tel assistance] service;~~
- ~~(3) [(4)] service connection for basic network service [residential services];~~

(4) [(5)] direct inward dialing service for basic residential service  
[services];

(5) [(6) private pay telephone access service;

[(7)] call trap and trace service;

(6) [(8)] access for all residential [~~and business~~] end users to 911  
service provided by a local authority and access to dual party relay service; and

(7) at the election of the incumbent local exchange company,  
[(9)] mandatory residential extended area service arrangements;

[(10)] mandatory residential extended metropolitan service or other  
mandatory residential toll-free calling arrangements, mandatory expanded local  
calling service arrangements, or another service required under a tariff and  
applicable to a customer who subscribes to or may subscribe to basic network  
service]; and

[(11) residential call waiting service.

[(b) Electing companies shall offer each basic network service as a  
separately tariffed service in addition to any packages or other pricing flexibility  
offerings that include those basic network services].

(c) The commission may not:

(1) impose on an incumbent local exchange company a mandatory  
extended or expanded calling plan that was not in existence on September 1,  
2005; or

(2) require a company to create a stand-alone basic network service in  
any exchange that did not have that service on January 1, 2005.

(d) At the election of the affected incumbent local exchange company, the  
price for basic network service shall also include the fees and charges for any  
mandatory extended area service arrangements, mandatory expanded toll-free  
calling plans, and any other service included in the definition of basic network  
service.

(e) A non-permanent expanded toll-free local calling service surcharge  
established by the commission to recover the costs of mandatory expanded  
toll-free local calling service:

(1) is considered a part of basic network service;

(2) may not be aggregated under Subsection (d);

(3) is not subject to Section 58.005(a); and

(4) continues to be transitioned in accordance with commission orders  
and substantive rules.

SECTION \_\_. Section 58.061, Utilities Code, is amended to read as follows:

Sec. 58.061. EFFECT ON CERTAIN CHARGES. This subchapter does not affect a charge permitted under:

(1) ~~Section 55.024;~~

~~(2)~~ Subchapter C, Chapter 55; or

~~(2)~~ ~~(3)~~ Subchapter B, Chapter 56.

SECTION \_\_. Section 58.063, Utilities Code, is amended to read as follows:

Sec. 58.063. PRICING AND PACKAGING FLEXIBILITY. (a) Notwithstanding any other provision of this title [~~Section 58.052(b) or Subchapter F, Chapter 60~~], an electing company may exercise pricing flexibility for basic network services, including the packaging of basic network services with any other regulated or unregulated service or any service of an affiliate. Pricing flexibility includes all pricing arrangements included in the definition of "pricing flexibility" prescribed by Section 51.002 and includes packaging of any regulated service with any unregulated service or any service of an affiliate. [~~The company may exercise pricing flexibility in accordance with this section 10 days after providing an informational notice to the commission, to the office, and to any person who holds a certificate of operating authority in the electing company's certificated area or areas or who has an effective interconnection agreement with the electing company.~~]

(b) An electing company shall set the price of a package of services containing basic local telecommunications service [~~network services~~] and nonbasic network services at any level at or above the lesser of:

(1) the sum of the long run incremental costs of any basic local telecommunications service [~~network services~~] and nonbasic network services contained in the package; or

(2) the sum of the tariffed prices of any basic local telecommunications service [~~network services~~] contained in the package and the long run incremental costs of nonbasic network services contained in the package.

[~~(c) Except as provided by Section 58.003, an electing company may flexibly price a package that includes a basic network service in any manner provided by Section 51.002(7).~~]

SECTION \_\_. The heading to Subchapter E, Chapter 58, Utilities Code, is amended to read as follows:

#### SUBCHAPTER E. NONBASIC NETWORK SERVICES

SECTION \_\_. Section 58.151, Utilities Code, is amended to read as follows:

Sec. 58.151. SERVICES INCLUDED. The following services are classified as nonbasic network services:

(1) basic network service when ordered and received with another basic network service or with a nonbasic network service;

(2) flat rate business local exchange telephone service, including primary directory listings and the receipt of a directory, and any applicable mileage or zone charges[~~, except that the prices for this service shall be capped until September 1, 2005, at the prices in effect on September 1, 1999;~~];

(3) [(2)] business tone dialing service[~~, except that the prices for this service shall be capped until September 1, 2005, at the prices in effect on September 1, 1999;~~];

(4) [(3)] service connection for all business services[~~, except that the prices for this service shall be capped until September 1, 2005, at the prices in effect on September 1, 1999;~~];

(5) [(4)] direct inward dialing for basic business services[~~—except that the prices for this service shall be capped until September 1, 2005, at the prices in effect on September 1, 1999~~];

(6) [(5)] "1-plus" intraLATA message toll services;

(7) [(6)] 0+ and 0- operator services;

(8) [(7)] call waiting, call forwarding, and custom calling[~~—except that:~~

(A) residential call waiting service shall be classified as a basic network service; and

(B) for an electing company subject to Section 58.301, prices for residential call forwarding and other custom calling services shall be capped at the prices in effect on September 1, 1999, until the electing company implements the reduction in switched access rates described by Section 58.301(2)];

(9) [(8)] call return, caller identification, and call control options[~~—except that, for an electing company subject to Section 58.301, prices for residential call return, caller identification, and call control options shall be capped at the prices in effect on September 1, 1999, until the electing company implements the reduction in switched access rates described by Section 58.301(2)~~];

(10) [(9)] central office based PBX-type services;

(11) [(10)] billing and collection services, which include only [including] installment billing and late payment charges for retail customers of the billing provider [electing company];

(12) [(11)] integrated services digital network (ISDN) services[~~—except that prices for Basic Rate Interface (BRI) ISDN services, which comprise up to two 64 Kbps B-channels and one 16 Kbps D-channel, shall be capped until September 1, 2005, at the prices in effect on September 1, 1999~~];

(13) [(12)] new services;

(14) [(13)] directory assistance services, except that an electing company shall provide to a residential customer the first three directory assistance inquiries in a monthly billing cycle at no charge;

(15) [(14)] services described in the WATS tariff as the tariff existed on January 1, 1995;

(16) [(15)] 800 and foreign exchange services;

(17) [(16)] private line service;

(18) [(17)] special access service;

(19) [(18)] services from public pay telephones;

(20) [(19)] paging services and mobile services (IMTS);

(21) [(20)] 911 services provided to a local authority that are available from another provider;

(22) [(21)] speed dialing;

(23) [(22)] three-way calling; and

(24) [(23)] all other local exchange telephone services subject to the commission's jurisdiction that are not specifically included as components of [classified as] basic network service as defined by [services in] Section 58.051 or

~~as switched access services[, except that nothing in this section shall preclude a customer from subscribing to a local flat rate residential or business line for a computer modem or a facsimile machine].~~

SECTION \_\_. Section 58.152, Utilities Code, is amended to read as follows:

Sec. 58.152. PRICES. [(a)] An incumbent local exchange company [~~electing company~~] may set the retail price for any nonbasic network service at any level at or above long run incremental cost [~~the lesser of the:~~

~~(1) service's long run incremental cost in accordance with the imputation rules prescribed by or under Subchapter D, Chapter 60; or~~

~~(2) price for the service in effect on September 1, 1999.~~

~~[(b) Subject to Section 51.004, an electing company may use pricing flexibility for a nonbasic service. Pricing flexibility includes all pricing arrangements included in the definition of "pricing flexibility" prescribed by Section 51.002 and includes packages that include basic network services].~~

SECTION \_\_. Section 58.153, Utilities Code, is amended to read as follows:

Sec. 58.153. NEW SERVICES. [(a)] Subject to the pricing conditions prescribed by Section 58.152, a local exchange [58.152(a), an electing] company may introduce a new service at any time [~~10 days after providing an informational notice to the commission, to the office, and to any person who holds a certificate of operating authority in the electing company's certificated area or areas or who has an effective interconnection agreement with the electing company.~~

~~[(b) An electing company serving more than five million access lines in this state shall provide notice to any person who holds a certificate of operating authority in the electing company's certificated area or areas or who has an effective interconnection agreement with the electing company of any changes in the generally available prices and terms under which the electing company offers basic or nonbasic telecommunications services regulated by the commission at retail rates to subscribers that are not telecommunications providers. Changes requiring notice under this subsection include the introduction of any new nonbasic services, any new features or functions of basic or nonbasic services, promotional offerings of basic or nonbasic services, or the discontinuation of then current features or services. The electing company shall provide the notice:~~

~~(1) if the electing company is required to give notice to the commission, at the same time the company provides that notice; or~~

~~(2) if the electing company is not required to give notice to the commission, at least 45 days before the effective date of a price change or 90 days before the effective date of a change other than a price change, unless the commission determines that the notice should not be given.~~

~~[(c) An affected person, the office on behalf of residential or small commercial customers, or the commission may file a complaint at the commission challenging whether the pricing by an incumbent local exchange~~

~~company of a new service is in compliance with Section 58.152(a). The commission shall allow the company to continue to provide the service while the complaint is pending.~~

~~[(d) If a complaint is filed under Subsection (c), the electing company has the burden of proving that the company set the price for the new service in accordance with Section 58.152(a). If the complaint is finally resolved in favor of the complainant, the company:~~

~~[(1) shall, not later than the 10th day after the date the complaint is finally resolved, amend the price of the service as necessary to comply with the final resolution; or~~

~~[(2) may, at the company's option, discontinue the service.~~

~~[(e) The notice requirement prescribed by Subsection (b) expires September 1, 2003].~~

SECTION \_\_. Section 58.155, Utilities Code, is amended to read as follows:

Sec. 58.155. INTERCONNECTION. An incumbent local exchange company is subject to the interconnection obligations prescribed by Subchapter G, Chapter 60 ~~[Because interconnection to competitive providers and interconnection for commercial mobile service providers are subject to the requirements of Sections 251 and 252, Communications Act of 1934 (47 U.S.C. Sections 251 and 252), as amended, and Federal Communications Commission rules, including the commission's authority to arbitrate issues, interconnection is not addressed in this subchapter or Subchapter B].~~

SECTION \_\_. Section 58.253(a), Utilities Code, as amended by Chapters 959, 1220, 1255, and 1350, Acts of the 77th Legislature, Regular Session, 2001, is reenacted and amended to read as follows:

(a) On customer request, an electing company shall provide private network services to:

- (1) an educational institution;
- (2) a library as defined in Section 57.021 ~~[57.042(6)(A) and (B)]~~;
- (3) a nonprofit telemedicine center;
- (4) a public or not-for-profit hospital; or

~~(5) [a project funded by the telecommunications infrastructure fund under Subchapter C, Chapter 57, except for a telepharmacy system; or~~

~~[(6)] a legally constituted consortium or group of entities listed in this subsection.~~

SECTION \_\_. Subchapter G, Chapter 58, Utilities Code, is amended by adding Section 58.2535 to read as follows:

Sec. 58.2535. FEDERALLY QUALIFIED HEALTH CENTERS. (a) In addition to the entities to which an incumbent local exchange company is required to provide private network services under this subchapter, the company shall provide those services to a federally qualified health center, as defined by 42 U.S.C. Section 1396d(l)(2)(B) and to an organization that receives a grant under 42 U.S.C. Section 254b.

(b) For purposes of this subchapter, a reference to an entity described by Section 58.253(a) includes an entity described by Subsection (a).

SECTION \_\_. Section 58.301, Utilities Code, is amended to read as follows:

Sec. 58.301. SWITCHED ACCESS RATE REDUCTION. An incumbent local exchange company ~~[electing company with greater than five million access lines in this state]~~ shall reduce its switched access rates on a combined originating and terminating basis as follows:

(1) effective January 1, 2006, the ~~[electing]~~ company shall reduce intrastate switched access rates on a combined originating and terminating basis to an amount not to exceed four cents for each minute of use, except that a company may not, in any event, be required to reduce its intrastate switched access rates on a combined originating and terminating basis by more than two cents for each minute of use [in effect on September 1, 1999, by one cent a minute]; ~~[and]~~

(2) effective January 1, 2007, the company shall reduce intrastate switched access rates on a combined originating and terminating basis to an amount not to exceed 2.5 cents for each minute of use, except that a company may not, in any event, be required to reduce its intrastate switched access rates on a combined originating and terminating basis by more than four cents for each minute of use below the rate in effect on December 31, 2005; and

(3) effective January 1, 2008, the ~~[electing]~~ company shall reduce intrastate switched access rates on a combined originating and terminating basis to parity with interstate switched access rates ~~[by an additional two cents a minute on the earlier of:~~

~~[(A) July 1, 2000; or~~

~~[(B) the date the electing company, or its affiliate formed in compliance with 47 U.S.C. Section 272, as amended, actually begins providing interLATA services in this state in accordance with the authorization required by 47 U.S.C. Section 271, as amended].~~

SECTION \_\_. Section 58.302, Utilities Code, is amended to read as follows:

Sec. 58.302. SWITCHED ACCESS RATE CAP. On or after January 1, 2008, an incumbent local exchange ~~[(a) An electing]~~ company may not increase the per minute rates for switched access services on a combined originating and terminating basis above the interstate rates for switched access service ~~[lesser of:~~

~~(1) the rates for switched access services charged by that electing company on September 1, 1999, as may be further reduced on implementation of the universal service fund under Chapter 56; or~~

~~(2) the applicable rate described by Section 58.301 as may be further reduced on implementation of the universal service fund under Chapter 56.~~

~~[(b) Notwithstanding Subchapter F, Chapter 60, but subject to Section 60.001, an electing company may, on its own initiative, decrease a rate charged for switched access service to any amount above the long run incremental cost of the service].~~

SECTION \_\_. Section 59.002(1), Utilities Code, is amended to read as follows:



(1) "Electing company" means an incumbent local exchange company that elects to be subject to ~~[for an infrastructure commitment and corresponding regulation under]~~ this chapter.

SECTION \_\_. Subchapter A, Chapter 59, Utilities Code, is amended by adding Section 59.003 to read as follows:

Sec. 59.003. APPLICABILITY OF CHAPTER. This chapter applies only to an incumbent local exchange company that is subject to this chapter.

SECTION \_\_. Section 59.021(a), Utilities Code, is amended to read as follows:

(a) An incumbent local exchange company may elect to ~~[make an infrastructure commitment and to]~~ be subject to ~~[corresponding regulation under]~~ this chapter if the company:

- (1) serves less than five percent of the access lines in this state; and
- (2) has not elected incentive regulation under Chapter 58.

SECTION \_\_. Section 59.024(a), Utilities Code, is amended to read as follows:

(a) Except for the charges permitted under Subchapter C, Chapter 55, and Subchapter B, Chapter 56, ~~[and Section 55.024,]~~ an electing company may not, before the end of the company's election period under this chapter, increase a rate previously established for that company under this title unless the commission approves the proposed change as authorized under Subsection (c) or (d).

SECTION \_\_. Section 59.029(b), Utilities Code, is amended to read as follows:

(b) In computing the average under Subsection (a), the electing company shall exclude[~~:-~~

- ~~[(1)] extraordinary investments made during the five-year period[~~:-~~ and~~  
~~[(2)] investments required by Section 59.052].~~

SECTION \_\_. Section 59.030(a), Utilities Code, is amended to read as follows:

(a) An electing company may introduce a new service ~~[10 days after providing an informational notice to the commission, to the office, and to any person who holds a certificate of operating authority in the electing company's certificated area or areas or who has an effective interconnection agreement with the electing company].~~

SECTION \_\_. Section 59.031(a), Utilities Code, is amended to read as follows:

(a) Notwithstanding any other provision of this title ~~[Section 59.027(b) or Subchapter F, Chapter 60]~~, an electing company may exercise pricing flexibility in accordance with this section, including the packaging of any regulated service such as basic local telecommunications service with any other regulated or unregulated service or any service of an affiliate. ~~[The electing company may exercise pricing flexibility 10 days after providing an informational notice to the commission, to the office, and to any person who holds a certificate of operating authority in the electing company's certificated area or areas or who has an effective interconnection agreement with the electing company.]~~ Pricing

flexibility includes all pricing arrangements included in the definition of "pricing flexibility" prescribed by Section 51.002 [~~51.002(7)~~] and includes packaging of regulated services with unregulated services or any service of an affiliate.

SECTION \_\_. Section 59.055, Utilities Code, is amended to read as follows:

Sec. 59.055. IMPLEMENTATION COSTS; INCREASE IN RATES AND UNIVERSAL SERVICE FUNDS. The commission may not consider the cost of implementing the infrastructure goals prescribed by former Section 59.052, as enacted by Section 49, Chapter 231, Acts of the 74th Legislature, Regular Session, 1995, and as codified by Section 1, Chapter 166, Acts of the 75th Legislature, Regular Session, 1997, in determining whether an electing company is entitled to:

- (1) a rate increase under this chapter; or
- (2) increased universal service funds under Subchapter B, Chapter 56.

SECTION \_\_. Sections 59.071(1) and (2), Utilities Code, are amended to read as follows:

- (1) "Educational institution" includes:

(A) an accredited primary or secondary school;

(B) an institution of higher education as defined by Section 61.003,

Education Code;

(C) a private institution of higher education accredited by a recognized accrediting agency as defined by Section 61.003, Education Code;

(D) the Texas Education Agency and its successors and assigns;

(E) a regional education service center established and operated in accordance with Chapter 8, Education Code; or

(F) the Texas Higher Education Coordinating Board and its successors and assigns [~~has the meaning assigned by Section 57.021~~].

- (2) "Library" means:

(A) a public library or regional library system as defined by Section 441.122, Government Code; or

(B) a library operated by an institution of higher education or a school district [~~has the meaning assigned by Section 57.042~~].

SECTION \_\_. The heading to Chapter 60, Utilities Code, is amended to read as follows:

CHAPTER 60. FAIR COMPETITION AND COMPETITIVE SAFEGUARDS

SECTION \_\_. Section 60.001, Utilities Code, is amended to read as follows:

Sec. 60.001. FAIR COMPETITION. (a) A rate, term, condition, or practice of a provider may not be:

(1) unreasonably preferential, prejudicial, or discriminatory;

(2) improperly subsidized either directly or indirectly; or

(3) predatory or anticompetitive.

(b) This chapter may not be construed to require unbundling to an extent greater than is required by federal law.

(c) This title does not prohibit a volume discount, other discount, or pricing flexibility that is based on a reasonable business purpose. A price that is set at or above the long run incremental cost of a service is presumed not to be a predatory price.

(d) This title allows an offer that is based on a reasonable business purpose, including an offer made at any time to a selected customer or group of customers in response to a competitor's offer or a former customer's acceptance of a competitor's offer, if the price of the offer meets the requirements of this section.

(e) This title may not be construed as conferring jurisdiction on the commission to regulate video or data services in this state. ~~[To the extent necessary to ensure that competition in telecommunications is fair to each participant and to accelerate the improvement of telecommunications in this state, the commission shall ensure that the rates and rules of an incumbent local exchange company:~~

~~(1) are not unreasonably preferential, prejudicial, or discriminatory;~~  
~~and~~

~~(2) are applied equitably and consistently.]~~

SECTION \_\_. Subchapter A, Chapter 60, Utilities Code, is amended by adding Sections 60.0013 and 60.0016 to read as follows:

Sec. 60.0013. CODE OF CONDUCT. (a) The commission shall adopt and enforce a code of conduct to ensure integrity of business practices in carrier-to-carrier, marketing, and advertising practices. The code of conduct must apply to all providers on an equal and nondiscriminatory basis and may not address any matter that is contained in or relates to an agreement for interconnection.

(b) A provider shall comply with the code of conduct.

Sec. 60.0016. ARBITRATION OF COMPLAINTS. (a) In this section, "dispute resolution organization" means a private for-profit or nonprofit corporation, political subdivision, or other entity, or a combination of these, that offers alternative dispute resolution services to the public.

(b) A complaint that a provider has violated this subchapter shall be referred to binding arbitration at the mutual election of both parties to the dispute, but only if the election for arbitration occurs before a filing is made to the commission in relation to that dispute. If the parties elect arbitration, the dispute shall be expeditiously adjudicated by binding arbitration before a panel of three independent arbitrators. Each party shall select one member of the panel, and the two selected members shall select the third member. If the first two arbitrators cannot agree on the third member, the two arbitrators shall request a list of candidates from an independent dispute resolution organization, and the third member shall be elected in accordance with the published procedures of that organization.

(c) The arbitration shall be conducted in accordance with the rules of an independent dispute resolution organization unless the parties mutually agree to conduct the arbitration in a different manner.

(d) The panel shall issue the panel's final decision not later than the 180th day after the date arbitration is requested. The decision of the arbitration panel is final. A party may file an application with a district court in Travis County for confirmation of the decision. The award is entitled to confirmation unless the court determines the decision should be vacated or modified. The court shall conduct a review de novo based on the record developed before the arbitrators.

(e) The panel shall allocate between the parties the fees and expenses of the parties and panel in a manner consistent with the decision and relief granted.

SECTION \_\_. Section 60.003, Utilities Code, is amended to read as follows:

Sec. 60.003. COMMISSION AUTHORITY. (a) The commission has all necessary authority to ~~may~~:

(1) establish procedures and resolve disputes arising under this chapter and to provide, enforce, or request appropriate remedies, including injunctive relief ~~[with respect to a policy stated in this subchapter or Subchapters B-H]; and~~

(2) allow a provider serving fewer than one million access lines in this state to establish a service's long run incremental cost by adopting, at that provider's option, the cost studies of a larger provider for that service that have been accepted by the commission ~~[resolve a dispute that arises under a policy described by Subdivision (1)].~~

(b) Notwithstanding Section 15.023(b), the commission may impose an administrative penalty of not more than \$10,000 a day for each violation of this subchapter. The commission may impose the penalty for each day the violation continues. The administrative penalty is in addition to any other remedy provided by law. ~~[The commission shall adopt procedures for a proceeding under Subchapters B and C. A procedure may:~~

~~[(1) limit discovery; and~~

~~[(2) for purposes of cross examination align any party, other than the office, with another party that has a similar position.]~~

(c) The commission must resolve a complaint filed with the commission under this chapter not later than the 270th day after the date the complaint is filed. ~~[In adopting a procedure under this section and in resolving a dispute, the commission shall consider the action's effect on:~~

~~[(1) consumers;~~

~~[(2) competitors; and~~

~~[(3) the incumbent local exchange company.]~~

(d) An appeal from a commission order issued under this chapter, other than an order issued in relation to interconnection under Subchapter G, may be appealed directly to the court of appeals for the Third Court of Appeals District. ~~[The commission, by order or rule, may not implement a requirement that is contrary to a federal law or rule.]~~

SECTION \_\_. Subchapter A, Chapter 60, Utilities Code, is amended by adding Section 60.0035 to read as follows:

Sec. 60.0035. APPLICABILITY TO CERTAIN PROVIDERS. This chapter may not be construed to impose under state law any obligation described by 47 U.S.C. Section 251(c) on an entity that is not subject to that obligation under federal law.

SECTION \_\_. Section 60.082(b), Utilities Code, is amended to read as follows:

(b) The commission rules shall be consistent [may not be inconsistent] with the rules and regulations of the Federal Communications Commission regarding telecommunications number portability and may not impose any obligations beyond the obligations required by federal law.

SECTION \_\_. Section 60.121, Utilities Code, is amended to read as follows:

Sec. 60.121. DEFINITIONS [DEFINITION]. In this subchapter:

(1) "Interconnection" means the linking of two networks for the mutual exchange of traffic.

(2) "Interoperable" means operable using standards that ensure that network providers and service providers conduct their business in a manner that enables consumers to:

(A) communicate with each other efficiently; and

(B) exercise their choice of provider and service without unreasonable disruption and delay[~~,"interconnection" means, for calls that originate and terminate in this state, the termination of local intraexchange traffic of another local exchange company or holder of a service provider certificate of operating authority within the local calling area of the terminating local exchange company or certificate holder].~~

SECTION \_\_. Section 60.122, Utilities Code, is amended to read as follows:

Sec. 60.122. EXCLUSIVE JURISDICTION. (a) To the extent not preempted by federal law, the [The] commission has exclusive jurisdiction to determine interconnection rates and terms and conditions for interconnection in accordance with this title.

(b) The commission has all necessary authority to adopt rules and conduct proceedings to implement this subchapter.

(c) The commission has all necessary jurisdiction to resolve disputes regarding breach of interconnection obligations. The commission's jurisdiction under this subsection is not exclusive [for a holder of a certificate of convenience and necessity, a certificate of operating authority, or a service provider certificate of operating authority].

SECTION \_\_. Section 60.123, Utilities Code, is amended to read as follows:

Sec. 60.123. INAPPLICABILITY OF SUBCHAPTER. This subchapter does not apply to a rate for the existing termination of commercial mobile radio service (CMRS) [cellular] or interexchange traffic. This chapter may not be construed to impose an obligation on a provider if the provider is exempt from that requirement under federal law.

SECTION \_\_. Section 60.124, Utilities Code, is amended to read as follows:

Sec. 60.124. INTEROPERABLE NETWORKS REQUIRED. (a) The commission shall require each network provider and service [telecommunications] provider to maintain interoperable networks.

(b) A network provider or service provider is entitled to interconnect in a manner that is efficient for the mutual exchange of traffic, from a network and economic standpoint.

(c) The commission shall ~~may~~:

(1) adopt rules, including generic rules that are responsive to changes in federal law or a development in the ~~[local exchange]~~ market; and

(2) set policies consistent with federal law governing interconnection arrangements.

SECTION \_\_. Section 60.125, Utilities Code, is amended to read as follows:

Sec. 60.125. DETERMINATION OF INTERCONNECTION RATES. (a) Unless the parties have agreed on rates in an interconnection agreement under Subsection (b) and the agreement is approved by the commission under Subsection (c), the rates for traffic exchanged under an interconnection agreement shall be just, reasonable, and nondiscriminatory. The parties may agree to exchange traffic under an interconnection agreement on a bill and keep basis, but the commission may not require the parties to exchange traffic on that basis. This section does not preclude any right to interconnection under federal law at rates or on terms or conditions granted by federal law.

(b) Providers [Telecommunications providers] shall negotiate network interconnectivity[,-charges,] and terms and conditions of interconnectivity. The providers may negotiate network interconnectivity rates.

(c) ~~(b)~~ If interconnectivity[,-charges,] and terms and conditions or rates of interconnectivity are successfully negotiated, the commission shall approve the interconnection agreement if the commission finds the agreement is in the public interest and is nondiscriminatory [rates].

(d) The commission has all necessary authority to adopt rules and conduct proceedings as necessary to implement and enforce this section.

~~(e) If telecommunications providers do not enter into a mutually agreed compensation rate under this section, each provider shall reciprocally terminate the other provider's traffic at no charge for the first nine months after the date the first call is terminated between the providers.~~

~~(d) During the nine month period prescribed by Subsection (e), the commission shall complete a proceeding to establish reciprocal interconnection rates and terms. The commission shall establish reciprocal interconnection rates and terms based solely on the commission proceeding.~~

~~(e) In establishing the initial interconnection rate, the commission may not require cost studies from the new entrant.~~

~~(f) On or after the third anniversary of the date the first call is terminated between the providers, the commission, on receipt of a complaint, may require cost studies by a new entrant to establish interconnection rates.]~~

SECTION \_\_. Section 60.126, Utilities Code, is amended to read as follows:

Sec. 60.126. INTERCONNECTIVITY NEGOTIATIONS; DISPUTE RESOLUTION. A party negotiating an interconnection agreement under Section 60.125(b) may file a request for the commission to resolve a disputed issue not earlier than the 135th day or later than the 160th day after the date a party receives a request for negotiation. The commission shall [may] resolve the [a] dispute not later than the 270th day after the date the request for negotiation was received by a party [filed by a party to a negotiation under Section 60.125(a)].

SECTION \_\_. Section 60.127, Utilities Code, is amended to read as follows:

Sec. 60.127. ADOPTION OF APPROVED INTERCONNECTION RATES. A provider may adopt in its entirety any interconnection agreement reached by another provider and approved by the commission under this chapter. ~~[(a) An incumbent local exchange company may adopt the interconnection rates the commission approves for a larger incumbent local exchange company without additional cost justification.~~

~~[(b) If an incumbent local exchange company does not adopt the interconnection rates of a larger company or negotiates under Section 60.125(a), the company is governed by Sections 60.125(e) (f).~~

~~[(e) If the incumbent local exchange company adopts the interconnection rates of another incumbent local exchange company, the new entrant may adopt those rates as the new entrant's interconnection rates.~~

~~[(d) If the incumbent local exchange company elects to file its own tariff, the new entrant must also file its own interconnection tariff.]~~

SECTION \_\_. Subchapter G, Chapter 60, Utilities Code, is amended by adding Section 60.129 to read as follows:

Sec. 60.129. CONSUMER-ORIENTED STANDARDS. (a) The commission shall adopt rules applicable to all interconnecting entities that ensure the following services are efficient and secure for consumers:

- (1) E-911 systems;
- (2) number portability and other customer migration processes;
- (3) telephone directory listings and publication;
- (4) directory assistance; and
- (5) other consumer-friendly services.

(b) Rules adopted under Subsection (a) must provide for the payment of compensation to an incumbent local exchange company for loading or storing customer information, except that the rules may not provide for the payment of compensation for the preparation and transfer of files from a service order system to be used in the creation of 911 call routing data and 911 automatic location identification data. The rules may not require unbundling of a provider's network elements.

SECTION \_\_. The heading to Subchapter I, Chapter 60, Utilities Code, is amended to read as follows:

SUBCHAPTER I. NETWORK PROVIDER AND SERVICE PROVIDER  
~~[LOCAL EXCHANGE COMPANY]~~ REQUIREMENTS

SECTION \_\_. Section 60.161, Utilities Code, is amended to read as follows:

Sec. 60.161. NETWORK PROVIDER AND SERVICE PROVIDER  
~~[INCUMBENT LOCAL EXCHANGE COMPANY]~~ REQUIREMENTS. A network provider or service provider ~~[An incumbent local exchange company]~~ may not unreasonably:

(1) discriminate against another provider in providing interconnection, traffic exchange terms and conditions, or facility use, rates, terms, and conditions to exchange traffic between and among providers ~~[by refusing access to the local exchange];~~

(2) refuse or delay an interconnection to another provider;

(3) degrade the quality of access the company provides to another provider;

(4) impair the speed, quality, or efficiency of a line used by another provider;

(5) fail to fully disclose in a timely manner on request all available information necessary to design equipment that will meet the specifications of the local exchange network; ~~[or]~~

(6) refuse or delay access by a person to another provider; or

(7) fail to fully disclose information necessary to determine compliance with a requirement prescribed by this section.

SECTION \_\_. Section 60.164, Utilities Code, is amended to read as follows:

Sec. 60.164. PERMISSIBLE JOINT MARKETING. The ~~[Except as prescribed in Chapters 61, 62, and 63, the]~~ commission may not adopt any rule or order that would prohibit a local exchange company from jointly marketing or selling its products and services with the products and services of any of its affiliates in any manner permitted by federal law or applicable rules or orders of the Federal Communications Commission.

SECTION \_\_. Section 60.165, Utilities Code, is amended to read as follows:

Sec. 60.165. AFFILIATE RULE. The ~~[Except as prescribed in Chapters 61, 62, and 63, the]~~ commission may not adopt any rule or order that would prescribe for any local exchange company any affiliate rule, including any accounting rule, any cost allocation rule, or any structural separation rule, that is more burdensome than federal law or applicable rules or orders of the Federal Communications Commission. Notwithstanding any other provision in this title, the commission may not attribute or impute to a local exchange company a price discount offered by an affiliate of the local exchange company to the affiliate's customers. This section does not limit the authority of the commission to consider a complaint brought under Subchapter A, Chapter 52, Section 53.003, or this chapter.

SECTION \_\_. Section 64.001(b), Utilities Code, is amended to read as follows:



(b) The purpose of this chapter is to establish retail customer protection standards and confer on the commission authority to adopt and enforce rules to protect retail customers from fraudulent, unfair, misleading, deceptive, or anticompetitive practices. The commission has authority governing those matters only as expressly provided by this chapter.

SECTION \_\_. Sections 64.002(1), (2), and (4), Utilities Code, are amended to read as follows:

(1) "Billing agent" means any entity that submits charges to the billing provider ~~[utility]~~ on behalf of itself or any provider of a product or service.

(2) "Billing provider" ~~[utility]~~ means any service [telecommunications] provider or network provider, as defined by Section 51.002, that issues a bill directly to a customer for any telecommunications product or service.

(4) "Customer" means any person in whose name ~~[telephone]~~ service from a network provider or service provider is billed, including individuals, governmental units at all levels of government, corporate entities, and any other entity with legal capacity to be billed for telecommunications [telephone] service.

SECTION \_\_. Section 64.003, Utilities Code, is amended to read as follows:

Sec. 64.003. CUSTOMER AWARENESS. (a) The commission shall promote public awareness of changes in the telecommunications markets, provide customers with information necessary to make informed choices about available options, and ensure that customers have an adequate understanding of their rights.

(b) The commission shall compile a report on customer service at least once each year showing the comparative customer information ~~[from reports given to the commission it deems necessary].~~

(c) The commission shall adopt and enforce rules to require service providers and network providers ~~[a certified telecommunications utility]~~ to give clear, uniform, and understandable information to customers about rates, terms, services, and customer rights as directed by this chapter~~[, and other necessary information as determined by the commission].~~

(d) Customer awareness efforts by the commission shall be conducted in English and Spanish ~~[and any other language as necessary].~~

SECTION \_\_. Section 64.004, Utilities Code, is amended by amending Subsections (a), (b), and (d), and adding Subsections (f)-(h) to read as follows:

(a) All buyers of ~~[telecommunications]~~ services from network providers and service providers subject to this subtitle are entitled to:

(1) protection from fraudulent, unfair, misleading, deceptive, or anticompetitive practices, including protection from being billed for services that were not authorized or provided;

(2) choice of a ~~[telecommunications service]~~ provider and to have that choice honored;

(3) information in English and Spanish ~~[and any other language as the commission deems necessary]~~ concerning rates, key terms, and conditions;

(4) protection from discrimination on the basis of race, color, sex, nationality, religion, marital status, income level, or source of income and from unreasonable discrimination on the basis of geographic location;

(5) impartial and prompt resolution of disputes with a ~~[certificated telecommunications utility and disputes with a telecommunications service]~~ provider related to unauthorized charges and switching of service;

(6) privacy of customer consumption and credit information;

(7) accuracy of metering and billing;

(8) bills presented in a clear, readable format and easy-to-understand language;

(9) information in English and Spanish ~~[and any other language as the commission deems necessary]~~ concerning low-income assistance programs and deferred payment plans;

(10) all consumer protections and disclosures established by the Fair Credit Reporting Act (15 U.S.C. Section 1681 et seq.) and the Truth in Lending Act (15 U.S.C. Section 1601 et seq.); and

(11) apply for programs that assist ~~[that offer]~~ eligible low-income customers in receiving ~~[an]~~ affordable telecommunications services or provide ~~[rate package and]~~ bill payment assistance ~~[programs]~~ designed to reduce uncollectible accounts.

(b) The commission may adopt and enforce rules as necessary or appropriate to carry out this section, including rules ~~[for minimum service standards for a certificated telecommunications utility]~~ relating to customer deposits and the extension of credit, switching fees, termination of service, ~~[an]~~ affordable services ~~[rate package]~~, and bill payment assistance programs for low-income customers. The commission may waive language requirements for good cause.

(d) The commission shall coordinate its enforcement efforts regarding the prosecution of fraudulent, misleading, or deceptive ~~[, and anticompetitive]~~ business practices with the office of the attorney general in order to ensure consistent treatment of specific alleged violations.

(f) The commission shall adopt rules to provide automatic enrollment of eligible customers for lifeline telephone service available to low-income households. Each state agency, on the request of the commission, shall assist in the adoption and implementation of those rules.

(g) Notwithstanding any other provision of this title, the rules adopted under Subsection (b) shall provide for full and concurrent reimbursement to network providers and service providers for the costs of any programs provided under Subsection (a)(11) and for reimbursement to providers for the difference between any affordable rate package provided under Subsection (a)(11) and any rates otherwise applicable.

(h) If federal rules or requirements exist in relation to issues governed by this chapter, the commission's rules must be identical to those federal rules or requirements and may not be in any manner more burdensome or stringent on a provider of services than the federal rules or requirements.

SECTION \_\_. Subchapter A, Chapter 64, Utilities Code, is amended by adding Section 64.005 to read as follows:

Sec. 64.005. ELIGIBILITY PROCESS FOR CUSTOMER SERVICE DISCOUNTS. The commission by rule shall provide for an integrated eligibility process for customer service discounts.

SECTION \_\_. (a) Subchapter A, Chapter 64, Utilities Code, is amended by adding Section 64.006 to read as follows:

Sec. 64.006. NOTICE REGARDING ACCESS TO EMERGENCY SERVICES. (a) As used in this section:

(1) The term "VoIP service" means voice communications to residential or business customers over a broadband network using Internet Protocol.

(2) The term "VoIP provider" means an entity that offers VoIP service for a fee.

(3) The term "E-911" refers to the system for processing emergency calls as defined in Section 772.001, Health and Safety Code, as may be subsequently amended.

(b) A VoIP provider may not enter into a contract to provide VoIP service unless the entity provides clear and conspicuous notice to customers disclosing whether or not the service provides access to E-911.

(c) A VoIP provider which does not provide access to E-911 or which requires a customer to take steps to activate access to E-911 may not enter into a contract to provide VoIP service unless the VoIP provider provides clear and conspicuous notice of the following:

(1) the specific steps the customer must take to activate that service;  
and

(2) an explanation of all material differences between E-911 service and the provider's system for accessing emergency services.

(d) The notice required by Subsection (c) must:

(1) be a separate document; and

(2) conspicuously state that the customer acknowledges that the customer will not be able to use the service to access E-911, or that the customer must separately activate access to that service in order to receive it.

(e) At least annually, a VoIP provider shall send to each customer to whom it provides VoIP service a notice that includes the information required by Subsection (c). The entity shall provide the notice as a separate document.

(f) Except as specifically preempted by federal law, the commission has all jurisdiction necessary to enforce this section. In addition, a violation of this chapter is a false, misleading, or deceptive act or practice and is actionable by the attorney general under Subchapter E, Chapter 17, Business & Commerce Code.

(b) This section applies to a contract entered into or renewed on or after the effective date of this section. A contract entered into or renewed before that date is governed by the law in effect on the date the contract was entered into or renewed, and that law is continued in effect for that purpose.

(c) This section does not affect litigation pending on the effective date of this section.

SECTION \_\_. Section 64.101, Utilities Code, is amended to read as follows:

Sec. 64.101. POLICY. It is the policy of this state that all customers be protected from the unauthorized switching of a [~~telecommunications~~] service provider selected by the customer to provide service.

SECTION \_\_. Section 64.102, Utilities Code, is amended to read as follows:

Sec. 64.102. RULES RELATING TO CHOICE. The commission shall adopt and enforce rules that:

(1) ensure that customers are protected from deceptive practices employed in obtaining authorizations of service and in the verification of change orders, including negative option marketing, sweepstakes, and contests that cause customers to unknowingly change their telecommunications service provider;

(2) provide for clear, easily understandable identification, in each bill sent to a customer, of all [~~telecommunications~~] service providers submitting charges on the bill;

(3) ensure that every service provider submitting charges on the bill is clearly and easily identified on the bill along with its services, products, and charges;

(4) provide that unauthorized changes in service be remedied at no cost to the customer within a period established by the commission;

(5) require refunds or credits to the customer in the event of an unauthorized change; and

(6) provide for penalties for violations of commission rules adopted under this section, including fines and revocation of certificates or registrations[~~by this action denying the certificated telecommunications utility the right to provide service in this state, except that the commission may not revoke a certificate of convenience and necessity of a telecommunications utility except as provided by Section 54.008~~].

SECTION \_\_. Chapter 240, Local Government Code, is amended by adding Subchapter E to read as follows:

#### SUBCHAPTER E. COMMUNICATION FACILITIES

Sec. 240.081. DEFINITIONS. In this subchapter:

(1) "Communication facility structure" means:

(A) an antenna support structure for a mobile or land-based telecommunication facility, or a whip antenna, panel antenna, microwave dish, or receive-only satellite dish;

(B) a cell enhancer and related equipment for wireless transmission from a sender to one or more receivers for a mobile telephone, or a mobile radio system facility, commercial radio service, or other service or receiver; or

(C) a monopole tower, a steel lattice tower, or any other communication tower.

(2) "Residential subdivision" means a subdivision:

(A) for which a plat is recorded in the county real property records;

(B) in which the majority of the lots are subject to deed restrictions limiting the lots to residential use; and

(C) that includes at least five lots that are designated as homestead property.

Sec. 240.082. APPLICABILITY. (a) This subchapter applies only to real property that is located in the unincorporated area of a county with a population of 1.4 million or more and located within one-quarter mile of a residential subdivision.

(b) This subchapter does not apply to:

(1) a communication facility structure built to replace an existing communication facility structure if:

(A) the replacement communication facility structure is constructed within 300 feet of the existing communication facility structure;

(B) the replacement communication facility structure is the same size and constructed for the same purpose as the existing communication facility structure; and

(C) the existing communication facility structure is removed not later than the 14th day after the date the replacement communication facility structure begins operation; or

(2) a communication antenna, antenna facility, or antenna tower or support structure located in a residential area that is used by an amateur radio operator:

(A) exclusively for amateur radio communication or public safety services; and

(B) who is licensed by the Federal Communications Commission.

Sec. 240.083. AUTHORITY OF COUNTY TO REGULATE. (a) The commissioners court of a county subject to this subchapter may by order regulate the location of a communication facility structure.

(b) The regulations may include a requirement for a permit for the construction or expansion of the communication facility structure and may impose fees on regulated persons to recover the cost of administering the regulations.

Sec. 240.084. COUNTY PERMIT. (a) This section applies only to the issuance of a permit to construct or improve a communication facility structure under a regulation adopted under this subchapter.

(b) The commissioners court must, not later than the 45th day after the date the application for the permit is filed:

(1) grant or deny the permit application;

(2) provide written notice to the applicant stating the reason the commissioners court has not acted on the permit application; or

(3) enter into an agreement with the applicant establishing a date by which the commissioners court will grant or deny the permit application.

(c) If the commissioners court provides notice to the applicant under Subsection (b)(2), the commissioners court must grant or deny the permit application not later than the 30th day after the date the applicant received the notice.

(d) If the commissioners court fails to act on a permit application within the 30-day period prescribed by Subsection (c) or under the terms of an agreement under Subsection (b)(3), the commissioners court:

(1) may not collect any permit fees associated with the permit application; and

(2) shall refund to the applicant any permit fees associated with the application that have been previously collected.

Sec. 240.085. NOTICE BY SIGN. (a) Not later than the 60th day before the date a permit application is filed under Section 240.084, the applicant for a permit for a location not previously licensed or permitted shall prominently post an outdoor sign at the proposed location:

(1) stating that a communication facility structure is proposed for the location; and

(2) providing the name and business address of the applicant.

(b) The sign must be at least 24 by 36 inches in size and must be published in lettering at least two inches in size. The county in which the proposed communication facility structure is to be located may require the sign to be published in English and in a language other than English if it is likely that a substantial number of residents in the area speak a language other than English as their familiar language.

Sec. 240.086. VARIANCES. (a) A person who proposes to construct or increase the height of a communication facility structure in violation of a regulation adopted by order by a county subject to this subchapter may apply to the commissioners court for a variance from the regulation.

(b) The commissioners court shall hold a public hearing on the proposed variance. The commissioners court may authorize a variance from a regulation if the commissioners court finds that:

(1) a literal application or enforcement of the regulation would result in practical difficulty or unnecessary hardship; and

(2) granting the relief sought would:

(A) result in substantial justice;

(B) not be contrary to the public interest; and

(C) be in accordance with the spirit of the regulation and this subchapter.

(c) The commissioners court may impose any reasonable conditions on the variance that the commissioners court considers necessary to accomplish the purposes of this subchapter.

(d) Before the 10th day before the date the commissioners court holds a public hearing on the variance request, written notice of the public hearing shall be provided to each owner of property located within one-quarter mile of the proposed location of the communication facility structure. The notice must include:

(1) the date, time, and place of the public hearing;

(2) the proposed location, height, and use of the proposed communication facility structure; and

(3) the name and telephone number of a person interested persons may contact to receive information regarding the construction of the proposed communication facility structure.

Sec. 240.087. ADDITIONAL FILING REQUIREMENTS REGARDING CONSTRUCTION. Before the 90th day before the date construction begins, a person proposing to construct a communication facility structure in the unincorporated area of a county subject to this subchapter that is taller than 60 feet shall file with the county official designated by the commissioners court:

(1) a statement informing the county that the construction is proposed and providing the date on or after which the construction will begin;

(2) copies of any necessary permits from the Federal Communications Commission;

(3) any necessary engineered drawings that have been approved by the Federal Aviation Administration;

(4) the correct phone number and address of each entity involved in the construction; and

(5) a plat or map of the specific proposed location of the communication facility structure.

Sec. 240.088. OFFENSE. (a) A person commits an offense if the person violates an order adopted under this subchapter and the order defines the violation as an offense.

(b) An offense under this section is prosecuted in the same manner as an offense defined under state law.

(c) An offense under this section is a Class C misdemeanor.

Sec. 240.089. INJUNCTION. The county attorney or an attorney representing the county may file an action in a district court to enjoin a violation or threatened violation of an order adopted under this subchapter. The court may grant appropriate relief.

SECTION \_\_. (a) Section 37.02(a), Business & Commerce Code, is amended to read as follows:

(a) A telephone solicitor may not make a consumer telephone call to a consumer unless:

(1) the telephone solicitor identifies himself or herself by name and identifies the business on whose behalf the telephone solicitor is calling and the purpose of the call immediately after making contact with the consumer to whom the call is made;

(2) the telephone solicitor makes the call after 12 noon or before 9 p.m. on a Sunday or after 9 a.m. and before 9 p.m. on a weekday or a Saturday; and

(3) for those calls in which an automated dial announcing device is used, the device must disconnect the consumer's telephone line within the period provided by Section 55.126, Utilities Code, as that section existed on August 31, 2005, after termination of the call by either the telephone solicitor or the consumer.

(b) Section 46.011(a), Business & Commerce Code, is amended to read as follows:

(a) In this section, "telecommunications utility" has the meaning assigned by Section 51.002, Utilities Code, as that section existed on August 31, 2005.

(c) Section 246.001(6), Local Government Code, is amended to read as follows:

(6) "Telecommunications utility" has the meaning assigned by Section 51.002, Utilities Code, as that section existed on August 31, 2005.

(d) Section 1(10), Article 18.21, Code of Criminal Procedure, is amended to read as follows:

(10) "Trap and trace device" means a device or process that records an incoming electronic or other impulse that identifies the originating number or other dialing, routing, addressing, or signaling information reasonably likely to identify the source of a wire or electronic communication, if the information does not include the contents of the communication. The term does not include a device or telecommunications network used in providing:

(A) a caller identification service authorized by the Public Utility Commission of Texas under Subchapter E, Chapter 55, Utilities Code, as that subchapter existed on August 31, 2005;

(B) the services referenced in Section 55.102(b), Utilities Code, as that section existed on August 31, 2005; or

(C) a caller identification service provided by a commercial mobile radio service provider licensed by the Federal Communications Commission.

SECTION \_\_. (a) The Public Utility Commission of Texas shall conduct a study for presentation to the 80th Legislature on issues regarding the provision of wireless broadband communications services by municipalities, including wireless fidelity, or Wi-Fi, services.

(b) A municipality may not offer to the public, directly or indirectly, wireless broadband communications services, including wireless fidelity, or Wi-Fi, services, unless the municipality was providing the service on or before September 1, 2006, or unless the municipality has filed with the commission before June 15, 2006, a statement of intent to provide the services that meets the requirements of Subsection (c) of this section.

(c) A statement of intent described by Subsection (b) of this section must be presented to the commission for approval as a part of the study conducted under this section and must include information sufficient for the commission to determine that the municipality has a plan for providing the services and has the fiscal and managerial capacity to provide the intended services.

(d) The commission shall present the report and approved statements of intent to the lieutenant governor, the speaker of the house of representatives, and the presiding officer of each standing committee of the house of representatives and senate that has jurisdiction over matters related to communications services and municipal government. The report must be presented not later than September 1, 2006.

(e) The report may include discussion on any issue related to the provision of wireless broadband communications services by municipalities, including wireless fidelity, or Wi-Fi, services, that the commission considers important for



consideration by the legislature. The report must include the commission's recommendations for legislation and commentary on issues the commission considers important for the legislature's consideration.

SECTION \_\_. (a) The following provisions of the Utilities Code are repealed on the effective date of this Act:

- (1) Section 51.001(g);
- (2) Section 51.004;
- (3) Sections 51.006-51.008;
- (4) Section 51.010;
- (5) Section 52.001;
- (6) Sections 52.004 and 52.005;
- (7) Subchapter B, Chapter 52;
- (8) Sections 52.104-52.107;
- (9) Sections 52.109-52.112;
- (10) Sections 52.151-52.154;
- (11) Subchapter E, Chapter 52;
- (12) Sections 52.252-52.254;
- (13) Section 52.256(b);
- (14) Sections 54.003 and 54.004;
- (15) Sections 54.006 and 54.007;
- (16) Subchapters B-D, Chapter 54;
- (17) Section 54.2025;
- (18) Section 54.253;
- (19) Sections 54.255-54.258;
- (20) Section 54.261;
- (21) Section 55.001;
- (22) Sections 55.002-55.012;
- (23) Section 55.016;
- (24) Sections 55.024 and 55.025;
- (25) Sections 55.082 and 55.083;
- (26) Sections 55.088(b) and (c);
- (27) Sections 55.101(3) and (4);
- (28) Sections 55.102 and 55.103;
- (29) Sections 55.105-55.110;
- (30) Subchapter F, Chapter 55;
- (31) Section 55.172;
- (32) Sections 55.175-55.177;
- (33) Section 55.179;
- (34) Section 55.201(c);
- (35) Section 55.202;
- (36) Sections 55.203(d)-(g);
- (37) Section 55.251;
- (38) Subchapter K, Chapter 55;
- (39) Sections 56.026(a) and (d);
- (40) Section 56.204(b);
- (41) Section 57.001;

- (42) Subchapter D, Chapter 57;
  - (43) Sections 58.003-58.022;
  - (44) Section 58.024;
  - (45) Section 58.028;
  - (46) Sections 58.052-58.060;
  - (47) Subchapter F, Chapter 58;
  - (48) Section 59.023(b);
  - (49) Section 59.024(e);
  - (50) Sections 59.051-59.054;
  - (51) Section 59.076;
  - (52) Section 59.078(b);
  - (53) Section 60.002;
  - (54) Sections 60.004-60.006;
  - (55) Subchapters B-D, Chapter 60;
  - (56) Sections 60.083 and 60.084;
  - (57) Subchapter F, Chapter 60;
  - (58) Section 60.128;
  - (59) Subchapter H, Chapter 60;
  - (60) Sections 60.162 and 60.163;
  - (61) Chapter 61;
  - (62) Chapter 63;
  - (63) Sections 64.002(3), (5), and (6); and
  - (64) Subchapter B, Chapter 64.
- (b) Section 56.026(c), Utilities Code, is repealed September 1, 2007.
- (c) Subchapter C, Chapter 57, Utilities Code, is repealed.

SECTION \_\_. The repeal of Section 54.2025, Utilities Code, by this Act, shall not take effect until September 30, 2006.

Amendment No. 7 was withdrawn.

### **Amendment No. 8**

Representative Solomons offered the following amendment to **CSSB 408**:

Amend **CSSB 408** by striking all below the enacting clause and substituting the following:

SECTION 1. Section 12.005, Utilities Code, is amended to read as follows:

Sec. 12.005. APPLICATION OF SUNSET ACT. The Public Utility Commission of Texas is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter or by Chapter 39, the commission is abolished and this title expires September 1, 2011 [~~2005~~].

SECTION 2. Section 12.059, Utilities Code, is amended by adding Subsection (c) to read as follows:

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

SECTION 3. Section 12.102, Utilities Code, is amended to read as follows:

Sec. 12.102. DUTIES OF EMPLOYEES. The commission shall develop and implement policies that clearly separate ~~[define]~~ the policymaking ~~[respective]~~ responsibilities of the commission and the management responsibilities of the commission employees.

SECTION 4. Section 12.153, Utilities Code, is amended to read as follows:

Sec. 12.153. RELATIONSHIP WITH TRADE ASSOCIATION. A person may not serve as a commissioner or be a commission employee who is 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.), ~~[exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group 17, of the position classification salary schedule]~~ if the person is:

- (1) an officer, employee, or paid consultant of a trade association; or
- (2) the spouse of an officer, manager, or paid consultant of a trade association.

SECTION 5. Subchapter A, Chapter 14, Utilities Code, is amended by adding Section 14.0025 to read as follows:

Sec. 14.0025. 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, 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 6. Subchapter B, Chapter 14, Utilities Code, is amended by adding Section 14.059 to read as follows:

Sec. 14.059. TECHNOLOGY POLICY. The commission shall implement a policy requiring the commission to use appropriate technological solutions to improve the commission's ability to perform its functions. The policy must ensure that the public is able to interact with the commission on the Internet.

SECTION 7. Section 15.023, Utilities Code, is amended by amending Subsections (b) and (c) and adding Subsection (d) to read as follows:

(b) The penalty for a violation may be in an amount not to exceed \$25,000 [~~\$5,000~~]. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.

(c) The commission by rule shall establish a classification system for violations that includes a range [The amount] of [an] administrative penalties that may be assessed for each class of violation [penalty shall be] based on:

(1) the seriousness of the violation, including:

(A) the nature, circumstances, extent, and gravity of a prohibited act; and

(B) the hazard or potential hazard created to the health, safety, or economic welfare of the public;

(2) the economic harm to property or the environment caused by the violation;

(3) the history of previous violations;

(4) the amount necessary to deter future violations;

(5) efforts to correct the violation; and

(6) any other matter that justice may require.

(d) The classification system established under Subsection (c) shall provide that a penalty in an amount that exceeds \$5,000 may be assessed only if the violation is included in the highest class of violations in the classification system.

SECTION 8. Subsection (b), Section 15.051, Utilities Code, is amended to read as follows:

(b) The commission shall keep for a reasonable period information about each complaint filed with the commission that the commission has authority to resolve. The information shall include:

(1) the date the complaint is received;

(2) the name of the complainant;

(3) the subject matter of the complaint;

(4) a record 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) if the commission took no action on the complaint, an explanation of the reason the complaint was closed without action.

SECTION 9. Section 39.151, Utilities Code, is amended by amending Subsections (b) through (e), (g), and (h) and adding Subsections (d-1) and (g-1) to read as follows:

(b) "Independent organization" means an independent system operator or other person that is sufficiently independent of any producer or seller of electricity that its decisions will not be unduly influenced by any producer or seller. ~~[An entity will be deemed to be independent if it is governed by a board that has three representatives from each segment of the electric market, with the consumer segment being represented by one residential customer, one commercial customer, and one industrial retail customer.]~~

(c) The commission shall certify an independent organization or organizations to perform the functions prescribed by this section. The commission shall apply the provisions of this section and Sections 39.1511, 39.1512, and 39.1515 so as to avoid conflict with a ruling of a federal regulatory body.

(d) The commission shall adopt and enforce rules [An independent organization certified by the commission for a power region shall establish and enforce procedures, consistent with this title and the commission's rules,] relating to the reliability of the regional electrical network and accounting for the production and delivery of electricity among generators and all other market participants, or may delegate to an independent organization responsibilities for establishing or enforcing such rules. Any such rules adopted by an independent organization and any enforcement actions taken by the organization are[- The procedures shall be] subject to commission oversight and review. An independent organization certified by the commission is directly responsible and accountable to the commission. The commission has complete authority to oversee and investigate the organization's finances, budget, and operations as necessary to ensure the organization's accountability and to ensure that the organization adequately performs the organization's functions and duties. The organization shall fully cooperate with the commission in the commission's oversight and investigatory functions. The commission may take appropriate action against an organization that does not adequately perform the organization's functions or duties or does not comply with this section, including decertifying the organization or assessing an administrative penalty against the organization. The commission by rule shall adopt procedures governing decertification of an independent organization, selecting and certifying a successor organization, and transferring assets to the successor organization to ensure continuity of operations in the region. The commission may not implement, by order or by rule, a requirement that is contrary to an applicable federal law or rule.

(d-1) The commission may:

(1) require an independent organization to provide reports and information relating to the independent organization's performance of the functions prescribed by this section and relating to the organization's revenues, expenses, and other financial matters;

(2) prescribe a system of accounts for an independent organization;

(3) conduct audits of an independent organization's performance of the functions prescribed by this section or relating to its revenues, expenses, and other financial matters and may require an independent organization to conduct such an audit;

(4) inspect an independent organization's facilities, records, and accounts during reasonable hours and after reasonable notice to the independent organization;

(5) assess administrative penalties against an independent organization that violates this title or a rule or order adopted by the commission and, at the request of the commission, the attorney general may apply for a court order to require an independent organization to comply with commission rules and orders in the manner provided by Chapter 15; and

(6) resolve disputes between an affected person and an independent organization and adopt procedures for the efficient resolution of such disputes.

(e) The commission may authorize an independent organization that is certified under this section to charge a reasonable and competitively neutral rate to wholesale buyers and sellers to cover the independent organization's costs. The commission shall investigate the organization's cost efficiencies, salaries and benefits, and use of debt financing and may require the organization to provide any information needed to effectively evaluate the organization's budget and the reasonableness and neutrality of a rate or proposed rate or to evaluate the effectiveness or efficiency of the organization. The commission shall work with the organization to establish the detail of information, both current and historical, and the time frames the commission needs to effectively evaluate a rate or a rate request.

(g) To maintain certification as an independent organization under this section, an organization's ~~[If it amends its governance rules to provide that its governing body is composed as prescribed by this subsection, the existing independent system operator in ERCOT will meet the criteria provided by Subsection (a) with respect to ensuring access to the transmission systems for all buyers and sellers of electricity in the ERCOT region and ensuring the reliability of the regional electrical network. To comply with this subsection, the]~~ governing body must be composed of persons specified by this section and selected in accordance with formal bylaws or protocols of the organization. The bylaws or protocols must be approved by the commission and must reflect the input of the commission. The bylaws must specify the process by which appropriate stakeholders elect members and, for unaffiliated members, prescribe professional qualifications for selection as a member. The bylaws must require the use of a professional search firm to identify candidates for membership of unaffiliated members. The process must allow for commission input in identifying candidates. The governing body must be composed of:

(1) the chairman of the commission as an ex officio nonvoting member;  
(2) the counsellor as an ex officio voting member ~~representing residential and small commercial consumer interests;~~

(3) the chief executive officer ~~[director]~~ of the independent organization ~~[system operator]~~ as an ex officio voting member;

(4) six market participants elected by their respective market segments to serve one-year terms, with:

(A) one representing independent generators;

(B) one representing investor-owned utilities;

(C) one representing power marketers;

(D) one representing retail electric providers;

(E) one representing municipally owned utilities; and

(F) one representing electric cooperatives [four representatives of the power generation sector as voting members];

(5) one member representing industrial consumer interests and elected by the industrial consumer market segment to serve a one-year term [four representatives of the transmission and distribution sector as voting members];

(6) one member representing large commercial consumer interests selected in accordance with the bylaws to serve a one-year term [four representatives of the power sales sector as voting members]; and

(7) five members unaffiliated with any market segment and selected by the other members of the governing body to serve three-year terms [the following people as voting members, appointed by the commission:

[(A) one representative of residential customers;

[(B) one representative of commercial customers; and

[(C) one representative of industrial customers].

[The four representatives specified in each of Subdivisions (4), (5), and (6) shall be selected in a manner that ensures equitable representation for the various sectors of industry participants.]

(g-1) The presiding officer of the governing body must be one of the members described by Subsection (g)(7).

(h) The ERCOT independent system operator may meet the criteria relating to the other functions of an independent organization provided by Subsection (a) by adopting procedures and acquiring resources needed to carry out those functions, consistent with any rules or orders of the commission.

SECTION 10. Subchapter D, Chapter 39, Utilities Code, is amended by adding Sections 39.1511, 39.1512, and 39.1515 to read as follows:

Sec. 39.1511. PUBLIC MEETINGS OF THE GOVERNING BODY OF AN INDEPENDENT ORGANIZATION. (a) Meetings of the governing body of an independent organization certified under Section 39.151 and meetings of a subcommittee that includes a member of the governing body must be open to the public. The bylaws of the independent organization and the rules of the commission may provide for the governing body or subcommittee to enter into executive session closed to the public to address sensitive matters such as confidential personnel information, contracts, lawsuits, competitively sensitive information, or other information related to the security of the regional electrical network.

(b) The bylaws of the independent organization and rules of the commission must ensure that a person interested in the activities of the independent organization has an opportunity to obtain at least seven days' advance notice of meetings and the planned agendas of the meetings and an opportunity to comment on matters under discussion at the meetings. The bylaws and commission rules governing meetings of the governing body may provide for a shorter period of advance notice and for meetings by teleconference technology for governing body meetings to take action on urgent matters. The bylaws and rules must require actions taken on short notice or at teleconference meetings to be ratified at the governing body's next regular meeting. The notice requirements may be met by a timely electronic posting on the Internet.

Sec. 39.1512. DISCLOSURE OF INTEREST IN MATTER BEFORE INDEPENDENT ORGANIZATION'S GOVERNING BODY; PARTICIPATION IN DECISION. (a) If a matter comes before the governing body of an independent organization certified under Section 39.151 and a member has a direct interest in that matter or is employed by or has a substantial financial interest in a person who has a direct interest in that matter, that member shall publicly disclose the fact of that interest to the governing body at a public meeting of the body. The member shall recuse himself or herself from the governing body's deliberations and actions on the matter and may not vote on the matter or otherwise participate in a governing body decision on the matter.

(b) A disclosure made under Subsection (a) shall be entered in the minutes of the meeting at which the disclosure is made.

(c) The fact that a member is recused from a vote or decision by application of this section does not affect the existence of a quorum.

Sec. 39.1515. WHOLESALE ELECTRIC MARKET MONITOR. (a) An independent organization certified under Section 39.151 shall contract with an entity selected by the commission to act as the commission's wholesale electric market monitor to detect and prevent market manipulation strategies and recommend measures to enhance the efficiency of the wholesale market.

(b) The independent organization shall provide to the personnel of the market monitor:

(1) full access to the organization's main operations center and the organization's records that concern operations, settlement, and reliability; and

(2) other support and cooperation the commission determines is necessary for the market monitor to perform the market monitor's functions.

(c) The independent organization shall use money from the rate authorized by Section 39.151(e) to pay for the market monitor's activities.

(d) The commission is responsible for ensuring that the market monitor has the resources, expertise, and authority necessary to monitor the wholesale electric market effectively and shall adopt rules and perform oversight of the market monitor as necessary. The market monitor shall operate under the supervision and oversight of the commission. The commission shall retain all enforcement authority conferred under this title, and this section may not be construed to confer enforcement authority on the market monitor or to authorize the commission to delegate the commission's enforcement authority to the market monitor. The commission by rule shall define:

(1) the market monitor's monitoring responsibilities, including reporting obligations and limitations;

(2) the standards for funding the market monitor, including staffing requirements;

(3) qualifications for personnel of the market monitor; and

(4) ethical standards for the market monitor and the personnel of the market monitor.

(e) In adopting rules governing the standards for funding the market monitor, the commission shall consult with a subcommittee of the independent organization's governing body to receive information on how money is or should



be spent for monitoring functions. Rules governing ethical standards must include provisions designed to ensure that the personnel of the market monitor are professionally and financially independent from market participants. The commission shall develop and implement policies that clearly separate the policymaking responsibilities of the commission and the monitoring, analysis, and reporting responsibilities of the market monitor.

(f) The market monitor immediately shall report directly to the commission any potential market manipulations and any discovered or potential violations of commission rules or rules of the independent organization.

(g) The personnel of the market monitor may communicate with commission staff on any matter without restriction.

(h) The market monitor annually shall submit to the commission and the independent organization a report that identifies market design flaws and recommends methods to correct the flaws. The commission and the independent organization shall review the report and evaluate whether changes to rules of the commission or the independent organization should be made.

SECTION 11. Subsection (e), Section 39.903, Utilities Code, as amended by Chapters 1394, 1451, and 1466, Acts of the 77th Legislature, Regular Session, 2001, is reenacted and amended to read as follows:

(e) Money in the system benefit fund may be appropriated to provide funding solely for the following regulatory purposes, ~~and~~ in the following order of priority:

(1) programs to:

(A) assist low-income electric customers by providing the 10 percent reduced rate prescribed by Subsection (h); and

(B) provide one-time bill payment assistance to electric customers who are or who have in their households one or more seriously ill or disabled low-income persons and who have been threatened with disconnection for nonpayment;

(2) customer education programs, administrative expenses incurred by the commission in implementing and administering this chapter, and expenses incurred by the office under this chapter;

(3) programs to assist low-income electric customers by providing the targeted energy efficiency programs described by Subsection (f)(2);

(4) the school funding loss mechanism provided by Section 39.901;

(5) programs to assist low-income electric customers by providing the 20 percent reduced rate prescribed by Subsection (h); and

(6) reimbursement to the commission and the Health and Human Services Commission [~~Texas Department of Human Services~~] for expenses incurred in the implementation and administration of an integrated eligibility process created under Section 17.007 for customer service discounts relating to retail electric service, including outreach expenses the commission determines are reasonable and necessary.

SECTION 12. Section 39.903, Utilities Code, is amended by adding Subsection (j-1) to read as follows:

(j-1) The commission shall adopt rules governing the bill payment assistance program provided under Subsection (e)(1)(B). The rules must provide that a customer is eligible to receive the assistance only if the assistance is necessary to prevent the disconnection of service for nonpayment of bills and the electric customer is or has in the customer's household one or more seriously ill or disabled low-income persons whose health or safety may be injured by the disconnection. The commission may prescribe the documentation necessary to demonstrate eligibility for the assistance and may establish additional eligibility criteria. The Health and Human Services Commission, on request of the commission, shall assist in the adoption and implementation of these rules.

SECTION 13. (a) The Public Utility Commission of Texas shall conduct a comprehensive review of the reporting requirements relating to telecommunications providers that are prescribed by statute or commission rules.

(b) In conducting the review, the Public Utility Commission of Texas shall:

(1) solicit input and assistance from appropriate affected persons, as that term is defined by Section 11.003, Utilities Code; and

(2) consider:

(A) the manner in which information included in a report is used;

(B) whether information included in a report is duplicative of information included in a different report; and

(C) whether the requirements relating to a report the commission determines is necessary can be changed to make the reporting process more efficient.

(c) The Public Utility Commission of Texas shall conclude the review required by this section not later than September 30, 2006, and shall report to the legislature on the results of the review. The report must include:

(1) specific recommendations on which reports the commission determines are necessary and which are not necessary;

(2) for a report the commission determines is necessary, whether the requirements relating to the report can be changed to make the reporting process more efficient; and

(3) the actions the commission has taken or will take to amend commission rules to reflect the results of the review.

(d) If the Public Utility Commission of Texas determines that legislation is necessary or appropriate to eliminate or change reporting requirements prescribed by statute, the commission shall include those recommendations in the biennial report to the legislature required by Section 52.006, Utilities Code.

SECTION 14. Section 52.254, Utilities Code, is repealed.

SECTION 15. The change in law made by this Act relating to qualifications and eligibility to serve as a commissioner or to be employed with the Public Utility Commission of Texas applies only to a commissioner or employee appointed or employed after the effective date of this Act. A commissioner or employee of the Public Utility Commission of Texas who is serving or employed on the effective date of this Act is governed by the law as it existed immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

SECTION 16. The change in law made by this Act to Section 15.023, Utilities Code, applies only to a violation committed on or after the effective date of this Act. A violation committed before the effective date of this Act is governed by the law in effect when the violation was committed, and the former law is continued in effect for that purpose.

SECTION 17. An independent organization certified by the Public Utility Commission of Texas before September 1, 2005, shall modify the organization's governing body to comply with Subsection (g), Section 39.151, Utilities Code, as amended by this Act, not later than September 1, 2006. On or after September 1, 2006, the Public Utility Commission of Texas may decertify an independent organization whose governing body does not comply with Subsection (g), Section 39.151, Utilities Code, as amended by this Act.

SECTION 18. This Act takes effect September 1, 2005.

Representative P. King moved to table Amendment No. 8.

A record vote was requested.

The motion to table prevailed by (Record 744): 101 Yeas, 34 Nays, 4 Present, not voting.

Yeas — Allen, A.; Allen, R.; Alonzo; Anchia; Anderson; Baxter; Bohac; Bonnen; Branch; Brown, B.; Callegari; Campbell; Casteel; Castro; Chisum; Coleman; Cook, R.; Corte; Crabb; Davis, J.; Dawson; Delisi; Driver; Dunnam; Eissler; Elkins; Escobar; Farrar; Flores; Flynn; Frost; Gattis; Giddings; Gonzales; Gonzalez Toureilles; Goodman; Goolsby; Griggs; Grusendorf; Haggerty; Hardcastle; Harper-Brown; Hartnett; Hegar; Herrero; Hilderbran; Hill; Homer; Howard; Hughes; Hunter; Hupp; Jackson; Keel; Keffer, B.; Keffer, J.; King, P.; Kolkhorst; Krusee; Kuempel; Laubenberg; Leibowitz; Madden; Martinez Fischer; McCall; McClendon; Menendez; Merritt; Miller; Moreno, P.; Morrison; Mowery; Naishtat; Nixon(C); Noriega, M.; Olivo; Orr; Otto; Paxton; Peña; Puente; Quintanilla; Raymond; Riddle; Rodriguez; Rose; Smith, W.; Smithee; Solis; Strama; Straus; Swinford; Taylor; Truitt; Turner; Uresti; Van Arsdale; Villarreal; West; Woolley; Zedler.

Nays — Berman; Blake; Brown, F.; Burnam; Cook, B.; Crownover; Davis, Y.; Denny; Deshotel; Dukes; Dutton; Edwards; Geren; Guillen; Hamilton; Hamric; Hopson; Jones, D.; Jones, J.; King, T.; Laney; Luna; Martinez; Oliveira; Phillips; Pickett; Reyna; Ritter; Smith, T.; Solomons; Talton; Thompson; Veasey; Wong.

Present, not voting — Mr. Speaker; Eiland; Farabee; Hochberg.

Absent, Excused — Bailey; Gallego; Hodge; Isett; Pitts.

Absent — Chavez; Hope; McReynolds; Seaman; Vo.

#### STATEMENT OF VOTE

When Record No. 744 was taken, I was in the house but away from my desk. I would have voted no.

Hope

**Amendment No. 9**

Representative Turner offered the following amendment to **CSSB 408**:

Amend **CSSB 408** as follows:

(1) in SECTION 4 of the bill (page 6, lines 13-14), by striking "but not more than 15 percent"; and

(2) in SECTION 4 of the bill (page 6, line 26), by striking "five percent or more but not more than 15 percent of".

Amendment No. 9 was adopted.

**Amendment No. 10**

Representative Dutton offered the following amendment to **CSSB 408**:

Amend **CSSB 408** (House committee printing) in SECTION 4 of the bill, in added Subsection (b), Section 11.0042, Utilities Code (page 6, line 22), by striking "15" and substituting "10".

Representative P. King moved to table Amendment No. 10.

(Speaker in the chair)

A record vote was requested.

The motion to table prevailed by (Record 745): 101 Yeas, 31 Nays, 1 Present, not voting.

Yeas — Allen, R.; Anchia; Anderson; Baxter; Berman; Blake; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Callegari; Campbell; Casteel; Castro; Chisum; Cook, B.; Cook, R.; Corte; Crabb; Davis, J.; Dawson; Delisi; Denny; Driver; Eiland; Eissler; Elkins; Farabee; Flores; Flynn; Frost; Gattis; Giddings; Goolsby; Griggs; Grusendorf; Guillen; Haggerty; Hamilton; Hamric; Hardcastle; Hartnett; Hegar; Hilderbran; Hill; Hochberg; Homer; Hope; Hopson; Howard; Hunter; Hupp; Jackson; Jones, D.; Keel; Keffer, B.; Keffer, J.; King, P.; King, T.; Kolkhorst; Krusee; Kuempel; Laney; Laubenberg; Madden; McCall; McClendon; Merritt; Miller; Morrison; Mowery; Naishtat; Nixon; Oliveira; Orr; Otto; Paxton; Peña; Phillips; Pickett; Puente; Quintanilla; Raymond; Reyna; Riddle; Ritter; Rose; Smith, T.; Smith, W.; Strama; Straus; Swinford; Truitt; Turner; Van Arsdale; Villarreal; West; Wong; Woolley; Zedler.

Nays — Allen, A.; Alonzo; Burnam; Chavez; Coleman; Crownover; Davis, Y.; Deshotel; Dukes; Dunnam; Dutton; Edwards; Escobar; Farrar; Geren; Gonzales; Gonzalez Toureilles; Herrero; Jones, J.; Leibowitz; Martinez; Martinez Fischer; Menendez; Rodriguez; Solis; Solomons; Talton; Thompson; Uresti; Veasey; Vo.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Bailey; Gallego; Hodge; Isett; Pitts.

Absent — Goodman; Harper-Brown; Hughes; Luna; McReynolds; Moreno, P.; Noriega, M.; Olivo; Seaman; Smithee; Taylor.

**STATEMENT OF VOTE**

When Record No. 745 was taken, I was in the house but away from my desk. I would have voted yes.

Olivo

**Amendment No. 11**

Representative Solomons offered the following amendment to **CSSB 408**:

Amend **CSSB 408** as follows:

(1) On page 19, strike lines 24 through 27, on page 20, strike lines 1 through 4, and substitute the following:

"(b) The penalty for a violation may be in an amount not to exceed \$25,000 [~~\$5,000~~]. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty."

(2) On page 21, strike lines 5 through 10.

Amendment No. 11 was withdrawn.

**Amendment No. 12**

Representative Dutton offered the following amendment to **CSSB 408**:

Amend **CSSB 408** (House committee printing) in SECTION 40 of the bill as follows:

(1) In added Subsection (a), Section 65.002, Utilities Code (page 31, line 19), between "commission" and "as", insert "or a municipality".

(2) In added Subsection (b), Section 65.002, Utilities Code (page 31, line 20), between "commission" and "shall", insert "or a municipality".

(3) In added Subsection (c), Section 65.002, Utilities Code (page 32, line 10), between "commission" and "shall", insert "or a municipality".

(4) In added Subsection (d), Section 65.002, Utilities Code (page 32, line 21), between "commission" and "is", insert "or a municipality".

(5) In added Subsection (d), Section 65.002, Utilities Code (page 32, line 23), between "commission" and "upon", insert "or a municipality".

(6) In added Subsection (a), Section 65.004, Utilities Code (page 33, line 17), between "commission" and the comma, insert "or a municipality".

(7) In added Subsection (f), Section 65.004, Utilities Code (page 37, line 7), strike "Commission" and substitute "commission or a municipality".

(8) In added Subsection (h), Section 65.004, Utilities Code (page 37, line 20), between "commission" and the comma, insert "or a municipality".

Representative P. King moved to table Amendment No. 12.

(Gattis in the chair)

A record vote was requested.

The motion to table prevailed by (Record 746): 109 Yeas, 22 Nays, 2 Present, not voting.

Yeas — Allen, R.; Alonzo; Anchia; Anderson; Baxter; Blake; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Callegari; Campbell; Casteel; Castro; Coleman; Cook, B.; Cook, R.; Corte; Crabb; Davis, J.; Dawson; Delisi; Denny; Driver; Dukes; Dunnam; Eiland; Eissler; Elkins; Farabee; Farrar; Flores; Flynn; Frost; Gonzales; Gonzalez Tourelles; Goodman; Goolsby; Griggs; Grusendorf; Guillen; Haggerty; Hamilton; Hamric; Hardcastle; Hartnett; Hegar; Hilderbran; Hill; Hope; Howard; Hunter; Hupp; Jackson; Jones, D.; Keel; Keffer, B.; Keffer, J.; King, T.; Kolkhorst; Krusee; Kuempel; Laubenberg; Leibowitz; Luna; Madden; Martinez Fischer; McCall; McClendon; McReynolds; Menendez; Merritt; Miller; Morrison; Mowery; Nixon; Oliveira; Olivo; Orr; Otto; Paxton; Peña; Pickett; Puente; Quintanilla; Raymond; Reyna; Riddle; Ritter; Rose; Smith, T.; Smith, W.; Smithee; Solis; Strama; Straus; Swinford; Taylor; Truitt; Uresti; Van Arsdale; Veasey; Villarreal; Vo; West; Wong; Woolley; Zedler.

Nays — Allen, A.; Berman; Burnam; Chavez; Crownover; Davis, Y.; Deshotel; Dutton; Edwards; Escobar; Geren; Herrero; Hochberg; Hopson; Jones, J.; Martinez; Naishtat; Rodriguez; Solomons; Talton; Thompson; Turner.

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

Absent, Excused — Bailey; Gallego; Hodge; Isett; Pitts.

Absent — Chisum; Giddings; Harper-Brown; Homer; Hughes; King, P.; Laney; Moreno, P.; Noriega, M.; Phillips; Seaman.

(Speaker in the chair)

### **Amendment No. 13**

Representative Dutton offered the following amendment to **CSSB 408**:

Amend **CSSB 408** as follows:

- (1) Strike Sections 40, 41, 42, and 43 of the bill.
- (2) On page 61, line 11, insert "and" after the semicolon.
- (3) On page 61, line 12, strike "; and" and substitute a period.
- (4) On page 61, strike line 13.

Representative P. King moved to table Amendment No. 13.

A record vote was requested.

The motion to table prevailed by (Record 747): 125 Yeas, 10 Nays, 2 Present, not voting.

Yeas — Allen, A.; Allen, R.; Alonzo; Anchia; Anderson; Baxter; Blake; Bohac; Bonnen; Branch; Brown, F.; Callegari; Campbell; Casteel; Castro; Chisum; Coleman; Cook, B.; Cook, R.; Corte; Crabb; Davis, J.; Dawson; Delisi; Denny; Driver; Dukes; Dunnam; Dutton; Edwards; Eiland; Eissler; Elkins; Escobar; Farabee; Farrar; Flynn; Frost; Gattis; Giddings; Gonzales; Gonzalez Tourelles; Goodman; Goolsby; Griggs; Grusendorf; Guillen; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Hegar; Herrero; Hilderbran; Hill; Homer; Hope; Howard; Hughes; Hunter; Hupp; Jackson; Jones, D.; Keel; Keffer, B.; Keffer, J.; King, T.; Kolkhorst; Krusee; Kuempel; Laney; Laubenberg; Leibowitz; Luna; Madden; Martinez; Martinez Fischer; McCall;

McClendon; McReynolds; Menendez; Merritt; Miller; Morrison; Mowery; Naishtat; Nixon; Noriega, M.; Oliveira; Olivo; Orr; Otto; Paxton; Peña; Pickett; Puente; Quintanilla; Raymond; Reyna; Riddle; Ritter; Rodriguez; Rose; Seaman; Smith, T.; Smith, W.; Smithee; Solis; Strama; Straus; Swinford; Taylor; Truitt; Turner; Uresti; Van Arsdale; Veasey; Villarreal; Vo; West; Wong; Woolley; Zedler.

Nays — Berman; Burnam; Chavez; Crownover; Davis, Y.; Deshotel; Hopson; Jones, J.; Solomons; Talton.

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

Absent, Excused — Bailey; Gallego; Hodge; Isett; Pitts.

Absent — Brown, B.; Flores; Geren; King, P.; Moreno, P.; Phillips; Thompson.

### STATEMENT OF VOTE

When Record No. 747 was taken, I was in the house but away from my desk. I would have voted yes.

B. Brown

#### Amendment No. 14

Representative Solomons offered the following amendment to **CSSB 408**:

Amend **CSSB 408** by striking SECTION 40 (page 29, line 10 through page 44, line 11) and SECTION 41 (page 44, line 12 through page 45, line 4) from the bill and renumber accordingly.

Amendment No. 14 was withdrawn.

#### Amendment No. 15

Representative Y. Davis offered the following amendment to **CSSB 408**:

Amend **CSSB 408** on page 32, line 3, by striking "geographic areas" and substituting "municipality".

Amend **CSSB 408** on page 37, line 11, by striking "local area" and substituting "municipality".

Amend **CSSB 408**, on page 37, by striking the language beginning after the period on line 11 through line 14.

Amend **CSSB 408**, on page 37, by striking Subsection (i) on lines 25 through 27.

Representative P. King moved to table Amendment No. 15.

A record vote was requested.

The motion to table prevailed by (Record 748): 94 Yeas, 46 Nays, 1 Present, not voting.

Yeas — Allen, R.; Anderson; Baxter; Berman; Blake; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Callegari; Campbell; Casteel; Chisum; Cook, B.; Cook, R.; Corte; Crabb; Davis, J.; Dawson; Delisi; Denny; Driver; Dukes; Eissler; Elkins; Flynn; Gattis; Geren; Goodman; Goolsby; Griggs; Grusendorf;

Guillen; Haggerty; Hamric; Hardcastle; Harper-Brown; Hartnett; Hegar; Hilderbran; Hill; Hope; Howard; Hughes; Hunter; Hupp; Jackson; Keel; Keffer, B.; Keffer, J.; King, P.; King, T.; Kolkhorst; Krusee; Kuempel; Laubenberg; Madden; McCall; McClendon; Menendez; Miller; Morrison; Mowery; Nixon; Oliveira; Orr; Otto; Paxton; Peña; Phillips; Pickett; Puente; Quintanilla; Raymond; Reyna; Riddle; Rose; Seaman; Smith, T.; Smith, W.; Smithee; Straus; Swinford; Talton; Taylor; Truitt; Uresti; Van Arsdale; Vo; West; Wong; Woolley; Zedler.

Nays — Allen, A.; Alonzo; Anchia; Burnam; Castro; Chavez; Coleman; Crownover; Davis, Y.; Deshotel; Dunnam; Dutton; Edwards; Eiland; Escobar; Farabee; Farrar; Flores; Frost; Gonzales; Gonzalez Tourelles; Hamilton; Herrero; Hochberg; Homer; Hopson; Jones, D.; Jones, J.; Leibowitz; Luna; Martinez; Martinez Fischer; McReynolds; Merritt; Naishtat; Noriega, M.; Olivo; Ritter; Rodriguez; Solis; Solomons; Strama; Thompson; Turner; Veasey; Villarreal.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Bailey; Gallego; Hodge; Isett; Pitts.

Absent — Giddings; Laney; Moreno, P.

#### STATEMENTS OF VOTE

When Record No. 748 was taken, I was in the house but away from my desk. I would have voted no.

Giddings

I was shown voting no on Record No. 748. I intended to vote yes.

Strama

#### Amendment No. 16

Representative Dutton offered the following amendment to **CSSB 408**:

Amend **CSSB 408** (House committee printing) in SECTION 40 of the bill, as follows:

(1) Strike added Subsection (b), Section 65.003, Utilities Code (page 33, lines 4-12), and substitute the following:

(b) A cable service provider electing to terminate an existing municipal franchise shall be responsible for continuing to remit to the affected municipality any franchise fees otherwise due under the franchise being terminated until the date the term of the franchise was to expire.

(2) Strike Subsection (o), Section 65.004, Utilities Code (page 39, line 26 through page 40, line 3), and substitute the following:

(o) On written notice to the commission, a cable or video service provider shall pay to each municipality in which it provides service a fee equal to five percent of the provider's gross revenues. This subsection does not apply to a cable service provider required to pay a fee under Section 65.003(b) until the date the provider is no longer required to pay that fee.

(Puente in the chair)

Amendment No. 16 was adopted.

#### Amendment No. 17

Representative Dutton offered the following amendment to **CSSB 408**:



Amend **CSSB 408** (House committee printing) in SECTION 40 of the bill, in added Subdivision (3), Subsection (b), Section 65.004, Utilities Code (page 35, line 25), between "network" and the semicolon, by inserting ", provided that the cable or video service provider may credit that amount against any fee the provider is required to pay a municipality under this chapter".

Amendment No. 17 was adopted.

### **Amendment No. 18**

Representative Geren offered the following amendment to **CSSB 408**:

Amend **CSSB 408** in SECTION 40, (House Committee Report, page 37, lines 22-24), by striking, "until there are more than two providers offering service including direct-to-home satellite service in the affected area".

### **CSSB 408 - POINT OF ORDER**

Representative Y. Davis raised a point of order against further consideration of **CSSB 408** under Rule 8, Section 1 of the House Rules on the grounds that the caption does not give reasonable notice of the subject of the proposed measure.

(J. Keffer in the chair)

The chair overruled the point of order and submitted the following statement:

Representative Y. Davis raised a point of order against further consideration of **SB 408**, on the grounds that it violated Rule 8, Section 1, of the House Rules because the caption of the bill did not provide sufficient notice of penalties contained in the bill. In particular, Ms. Davis refers to administrative penalties that are stipulated in the bill as the substance of the violation.

Rule 8, Section 1 requires that the caption of a bill give reasonable notice of the subject of the bill. Under house precedent, it is well-established that the caption of the bill need not detail the elements of the bill. (78th R.S. H.J. 1676)

Ms. Davis cites as part of her authority the Texas Legislative Council Drafting Manual. The chair notes that while the manual is a useful and persuasive tool for the drafting of legislation, it has never been intended to be binding on the legislature or to supersede House Rules or precedent.

For these reasons, the point of order is respectfully overruled.

Representative P. King moved to table Amendment No. 18.

A record vote was requested.

The motion to table prevailed by (Record 749): 87 Yeas, 39 Nays, 3 Present, not voting.

Yeas — Allen, R.; Baxter; Berman; Blake; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Callegari; Campbell; Casteel; Cook, B.; Cook, R.; Corte; Crabb; Crownover; Davis, J.; Dawson; Delisi; Denny; Driver; Dukes; Eissler; Elkins; Flynn; Gattis; Giddings; Gonzalez Toureilles; Griggs; Grusendorf; Guillen; Hamric; Harper-Brown; Hartnett; Hegar; Hilderbran; Hill; Hochberg; Hope; Howard; Hughes; Hunter; Hupp; Jackson; Jones, D.; Keel; Keffer, B.; King, P.; King, T.; Kolkhorst; Krusee; Laubenberg; Luna; Madden; McCall; McClendon; Merritt; Miller; Morrison; Mowery; Nixon; Oliveira; Orr; Otto; Paxton; Peña;

Pickett; Quintanilla; Riddle; Ritter; Rose; Seaman; Smith, W.; Smithee; Solis; Straus; Swinford; Talton; Taylor; Thompson; Turner; Uresti; Van Arsdale; Villarreal; Vo; Zedler.

Nays — Allen, A.; Alonzo; Anchia; Burnam; Castro; Chavez; Davis, Y.; Deshotel; Dunnam; Dutton; Edwards; Escobar; Farabee; Farrar; Flores; Geren; Gonzales; Goodman; Goolsby; Hamilton; Hardcastle; Herrero; Homer; Hopson; Jones, J.; Laney; Leibowitz; Martinez; Martinez Fischer; McReynolds; Naishtat; Reyna; Rodriguez; Smith, T.; Solomons; Strama; Truitt; Veasey; Woolley.

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

Absent, Excused — Bailey; Gallego; Hodge; Isett; Pitts.

Absent — Anderson; Chisum; Coleman; Frost; Haggerty; Kuempel; Menendez; Moreno, P.; Noriega, M.; Olivo; Phillips; Puente; Raymond; West; Wong.

### STATEMENTS OF VOTE

When Record No. 749 was taken, my vote failed to register. I would have voted yes.

Anderson

I was shown voting yes on Record No. 749. I intended to vote no.

Bonnen

I was shown voting yes on Record No. 749. I intended to vote no.

Branch

When Record No. 749 was taken, I was in the house but away from my desk. I would have voted yes.

Haggerty

I was shown voting yes on Record No. 749. I intended to vote no.

Kolkhorst

### Amendment No. 19

Representative Farabee offered the following amendment to **CSSB 408**:

Amend **CSSB 408** in SECTION 40, (House Committee Report, page 39, lines 17-19) by striking, "The commission shall have jurisdiction to enforce and determine the lawfulness of any ordinance adopted by a municipality under this section."

Representative P. King moved to table Amendment No. 19.

A record vote was requested.

The motion to table prevailed by (Record 750): 91 Yeas, 35 Nays, 3 Present, not voting.

Yeas — Allen, R.; Alonzo; Anderson; Baxter; Berman; Blake; Bohac; Brown, B.; Brown, F.; Callegari; Campbell; Casteel; Cook, B.; Cook, R.; Corte; Crabb; Crownover; Davis, J.; Dawson; Delisi; Denny; Dukes; Eissler; Elkins; Escobar; Farrar; Flynn; Gattis; Giddings; Gonzalez Toureilles; Goolsby; Griggs; Grusendorf; Guillen; Haggerty; Hamilton; Hardcastle; Harper-Brown; Hartnett;

Hegar; Herrero; Hilderbran; Hope; Howard; Hughes; Hunter; Hupp; Jackson; Jones, D.; Keel; Keffer, B.; King, P.; King, T.; Kolkhorst; Krusee; Kuempel; Laubenberg; Leibowitz; Luna; Madden; Martinez; McCall; McClendon; Miller; Morrison; Nixon; Oliveira; Olivo; Orr; Otto; Paxton; Peña; Puente; Quintanilla; Riddle; Rose; Seaman; Smith, T.; Smith, W.; Smithee; Solis; Straus; Swinford; Talton; Taylor; Turner; Uresti; Van Arsdale; Villarreal; Woolley; Zedler.

Nays — Allen, A.; Anchia; Branch; Burnam; Castro; Chavez; Coleman; Deshotel; Dunnam; Farabee; Frost; Geren; Gonzales; Goodman; Hochberg; Homer; Hopson; Jones, J.; Laney; Martinez Fischer; McReynolds; Merritt; Naishtat; Pickett; Raymond; Reyna; Ritter; Rodriguez; Solomons; Strama; Thompson; Truitt; Veasey; Vo; Wong.

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

Absent, Excused — Bailey; Gallego; Hodge; Isett; Pitts.

Absent — Bonnen; Chisum; Davis, Y.; Driver; Dutton; Edwards; Flores; Hamric; Hill; Menendez; Moreno, P.; Mowery; Noriega, M.; Phillips; West.

### **Amendment No. 20**

Representative Turner offered the following amendment to **CSSB 408**:

Amend **CSSB 408** on page \_\_\_, after line \_\_\_, to add new section as follows and renumber the remaining sections:

SECTION \_\_\_. Utilities Code is amended to create a new section, 39.208. 39.208 Filing Terms of Service.

(a) Application. This section applies to all retail electric providers (REP) but only with respect to each product or service that they offer or provide to any residential customer as well as each product or services that they offer or provide to any commercial customer whose peak demand is 1,000 kilowatts or less. For the purpose of this section, an aggregation group is not considered a single customer.

(b) Effective Terms of Service. No later than 5 days prior to the effective date, a Retail Electric Provider must file each Terms of Service with the commission. No REP shall directly or indirectly demand, charge, or collect any rate or charge, or impose any classifications, practices, rules, or regulations different from those prescribed in the applicable effective Terms of Service filed with the commission. The Terms of Service shall include:

1. itemized prices or rates to be charged to a customer;
2. any required length of service;
3. all material terms and conditions, including, without limitation, exclusions, reservations, limitations, and conditions of the terms of services offered by the REP; and
4. all other items specified by the commission by rule.

A Retail Electric Provider may offer more than one version of Terms of Service to any particular customer class but only if each separate Terms of Service meets all of the requirements of this section. If a Retail Electric Provider

offers more than one Terms of Service for a particular customer class, then every similarly situated customer must have the right to choose the Terms of Service that they prefer.

(c) Availability of Terms of Service. Each REP shall make available to the public at each of its business offices, designated sales offices within Texas and posted with the commission, all of its Terms of Service currently on file with the commission, and its employees shall lend assistance to persons seeking information on its Terms of Service and afford inquirers an opportunity to examine any Terms of Service upon request. The REP also shall make the full text of each Terms of Service available on its website and shall provide copies of any portion of its Terms of Service at a reasonable cost. Any item filed confidentially with the commission shall not satisfy, in whole or in part, the requirements of this section. No portion of a Terms of Service filed under this section shall be considered confidential for any purpose.

(d) Notice. The commission shall require notice in the Texas Register for each Terms of Service filed by a Retail Electric Provider.

(e) Transition period. All Terms of Service to which this section applies which are in effect at any time on or after July 1, 2005, shall be filed with the commission no later than October 1, 2005.

(f) Withdrawal of a service. At least 45 days prior to discontinuing any service or rate, the REP must file a notice of discontinuance of the service or rate with the commission and shall send notice to all customers taking service under the applicable Terms of Service. If that Terms of Service has no current customers, the REP shall provide an affidavit to this effect with a notice of discontinuance of the Terms of Service.

(g) Expiration date. The requirements of this section shall expire on December 31, 2007.

### **CSSB 408 - POINT OF ORDER**

Representative Talton raised a point of order against further consideration of **CSSB 408** under Rule 4, Section 41 and Rule 4, Section 18(a) of the House Rules on the grounds that the complete committee substitute is not germane and the committee minutes are incorrect.

The point of order was withdrawn.

Representative P. King moved to table Amendment No. 20.

A record vote was requested.

The motion to table prevailed by (Record 751): 109 Yeas, 30 Nays, 1 Present, not voting.

Yeas — Allen, R.; Alonzo; Anchia; Anderson; Baxter; Berman; Blake; Bonnen; Branch; Brown, B.; Brown, F.; Callegari; Campbell; Casteel; Castro; Chisum; Coleman; Cook, B.; Cook, R.; Corte; Crabb; Crownover; Davis, J.; Dawson; Delisi; Denny; Deshotel; Driver; Dukes; Dunnam; Eissler; Elkins; Escobar; Farabee; Flynn; Frost; Gattis; Geren; Goodman; Goolsby; Griggs; Grusendorf; Guillen; Haggerty; Hamric; Hardcastle; Harper-Brown; Hartnett; Hegar; Hilderbran; Hill; Homer; Hope; Hopson; Howard; Hughes; Hunter; Hupp;

Jackson; Jones, D.; Keel; Keffer, B.; Keffer, J.(C); King, P.; King, T.; Krusee; Kuempel; Laney; Laubenberg; Madden; Martinez Fischer; McCall; McReynolds; Merritt; Miller; Moreno, P.; Morrison; Mowery; Nixon; Noriega, M.; Oliveira; Orr; Otto; Paxton; Peña; Phillips; Quintanilla; Raymond; Reyna; Riddle; Ritter; Rose; Seaman; Smith, T.; Smith, W.; Smithee; Strama; Straus; Swinford; Talton; Taylor; Thompson; Truitt; Van Arsdale; Villarreal; West; Wong; Woolley; Zedler.

Nays — Allen, A.; Bohac; Burnam; Chavez; Davis, Y.; Dutton; Edwards; Eiland; Farrar; Giddings; Gonzales; Gonzalez Toureilles; Hamilton; Herrero; Jones, J.; Kolkhorst; Leibowitz; Luna; Martinez; Menendez; Naishat; Olivo; Puente; Rodriguez; Solis; Solomons; Turner; Uresti; Veasey; Vo.

Present, not voting — Mr. Speaker.

Absent, Excused — Bailey; Gallego; Hodge; Isett; Pitts.

Absent — Flores; Hochberg; McClendon; Pickett.

### Amendment No. 21

Representative Gallego offered the following amendment to **CSSB 408**:

Amend **CSSB 408** by adding the following appropriately numbered section:  
Section: \_\_\_\_\_

Section 39.904, Utilities Code, is amended by amending Subsections (a), (b), (c), and (d) and adding Subsection (g) to read as follows:

(a) It is the goal of this state that before January 1, 2020, not less than 20 percent of electric energy consumed in this state must be generated by renewable energy technologies. The [intent of the] legislature intends that the goal be met incrementally so that [by January 1, 2009, an additional 2,000 megawatts of generating capacity from renewable energy technologies will have been installed in this state. The cumulative installed renewable capacity in this state shall total [1,280 megawatts by January 1, 2003, 1,730 megawatts by January 1, 2005,] 2,280 megawatts by January 1, 2007, [and] 2,880 megawatts by January 1, 2009, and 10,880 megawatts by January 1, 2015. Of the generating capacity from renewable energy technologies installed by January 1, 2015, the goal is for at least 500 megawatts to be generating capacity from distributed renewable energy technologies, and, of that 500 megawatts of distributed capacity, the goal is for at least 100 megawatts to be generating capacity installed on the customer's side of the meter.

(b) The commission shall establish a renewable energy credits trading program and a program for recognizing the credits representing generating capacity by distributed renewable technologies on either side of the meter. Any retail electric provider, municipally owned utility, or electric cooperative that does not satisfy the requirements of Subsection (a) by directly owning or purchasing capacity using renewable energy technologies shall purchase sufficient renewable energy credits to satisfy the requirements by holding renewable energy credits in lieu of capacity from renewable energy technologies.

(c) The [Not later than January 1, 2000, the] commission shall adopt rules necessary to administer and enforce this section. At a minimum, the rules shall:

(1) establish the minimum annual renewable energy technology and distributed renewable energy technology generating capacity requirement for each retail electric provider, municipally owned utility, and electric cooperative operating in this state in a manner reasonably calculated by the commission to produce, on a statewide basis, compliance with the requirement prescribed by Subsection (a); and

(2) specify reasonable performance standards that all renewable and distributed generating capacity additions must meet to count against the requirement prescribed by Subsection (a) and that:

(A) are designed and operated so as to maximize the energy output from the generating capacity additions in accordance with then-current industry standards; and

(B) encourage the development, construction, and operation of new renewable energy technology projects at those sites in this state that have the greatest economic potential for capture and development of this state's environmentally beneficial renewable resources.

(d) In this section: (1) "Distributed renewable energy technology" includes renewable energy technology:

(A) connected to the electric energy transmission system at the distribution level, such as photovoltaic generation, solar thermal electric generation, small wind-powered generation, generation using biomass, or geothermal generation technologies; and

(B) that offsets electric energy generation when operated at a facility connected to the distribution system, such as solar water heating systems or geothermal water heating systems.

(2) "Renewable [~~renewable~~]" energy technology" means any technology that exclusively relies on an energy source that is naturally regenerated over a short time and derived directly from the sun, indirectly from the sun, or from moving water or other natural movements and mechanisms of the environment. Renewable energy technologies include those that rely on energy derived directly from the sun, on wind, geothermal, hydroelectric, wave, or tidal energy, or on biomass or biomass-based waste products, including landfill gas. A renewable energy technology does not rely on energy resources derived from fossil fuels, waste products from fossil fuels, or waste products from inorganic sources.

(g) The commission and each appropriate independent organization certified under Section 39.151 and transmission group shall approve a plan to provide new transmission infrastructure necessary to support the goals established by Subsection (a). The commission may adopt rules as necessary to implement the plan. The plan must address:

(1) timely recovery of transmission infrastructure costs by transmission service providers before renewable energy technology generating capacity is installed;

(2) transmission and distribution infrastructure security;

- (3) reliability benefits; and
- (4) the priority of projects.

Amendment No. 21 was withdrawn.

**Amendment No. 22**

Representative Martinez Fischer offered the following amendment to **CSSB 408**:

Amend **CSSB 408** by adding the following section to the bill and renumbering existing sections accordingly:

SECTION \_\_\_\_\_. Section 39.151, Utilities Code, is amended by adding Subsection (n) to read as follows:

(n) If by rule the commission authorizes ERCOT to withhold information collected, assembled, or maintained by ERCOT from disclosure to a member of the public who makes a written request to inspect or copy the information, the commission shall require ERCOT, in the time and manner required of a governmental body by Subchapter G, Chapter 552, Government Code, to request a decision from the attorney general as to whether the information is confidential or may be withheld from public disclosure in accordance with an applicable state or federal law or a rule of the commission. On receipt by the attorney general of a request from ERCOT under this subsection, the attorney general shall proceed in the time and manner required by Subchapter G, Chapter 552, Government Code, in connection with a request for an attorney general decision under that subchapter.

Amendment No. 22 was withdrawn.

**Amendment No. 23**

Representative Martinez Fischer offered the following amendment to **CSSB 408**:

Amend **CSSB 408** by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS as appropriate:

SECTION \_\_\_\_\_. Section 32.001(b), Utilities Code, is amended to read as follows:

(b) The commission has exclusive appellate jurisdiction to review an order or ordinance of a municipality exercising exclusive original jurisdiction under this subtitle, included but not limited to Chapter 33.

Amendment No. 23 was adopted.

**Amendment No. 24**

Representative Turner offered the following amendment to **CSSB 408**:

Amend **CSSB 408** by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Chapter 39, Subchapter E, Utilities Code, is amended to read as follows:

Section 39.2025 DEFAULT SERVICE STUDY. (a) It is the policy of this state to ensure that all electric customers in ERCOT, including low-income customers and customers in rural and other high-cost areas, have access to electric energy service at reasonable rates.

(b) The Public Utility Commission of Texas shall conduct a study to determine methods or mechanisms to ensure that residential customers who are currently being served by an affiliated retail electric provider at the "price-to-beat" rate will continue to have default electric service available at reasonable rates. On September 1, 2005, the commission shall begin the review required by this subsection. The review must include the methods other competitive regions, including Ohio, Maine, Maryland, Massachusetts, and New Jersey, use to provide default services to residential customer classes at reasonable rates.

(c) The study required by Subsection (b) of this section must:

(1) evaluate:

(A) competitive procurement load auctions; and

(B) local governmental aggregation, including municipal "opt-out" mechanisms; and

(2) compare, regarding various mechanisms or methods considered:

(A) resulting prices for service at wholesale;

(B) resulting prices for service at retail;

(C) key features of each mechanism or method and key differences between the mechanisms or methods;

(D) the level of wholesale supplier competition under each mechanism or method, measured by factors such as:

(i) numbers of participants;

(ii) volumes bid; or

(iii) other relevant factors; and

(E) any other factors or variables the commission considers necessary to arrive at a conclusion and to make recommendations under this section.

(d) The Public Utility Commission of Texas shall conclude the study under this section not later than February 1, 2006, and shall determine at that time a mechanism by which residential customers served by an affiliated retail electric provider will be able to receive the lowest cost default electric service on and after January 1, 2007.

(e) The Public Utility Commission of Texas shall present a report of the study and the recommendations made as a result of the study to the Joint Electric Utility Restructuring Legislative Oversight Committee on or before March 1, 2006.

(f) The Joint Electric Utility Restructuring Legislative Oversight Committee shall hold hearings on the study and recommendations in each region of the state served by an affiliated retail electric provider and, following the hearings, shall make recommendations to the 80th Legislature on the best means to provide residential customers default electric service at the lowest cost.

Amendment No. 24 was adopted.



**Amendment No. 25**

Representative Turner offered the following amendment to **CSSB 408**:

Amend **CSSB 408** by adding the following appropriately numbered SECTIONS and renumbering subsequent SECTIONS accordingly:

SECTION \_\_\_\_\_. Subchapter E, Chapter 39, Utilities Code, is amended by adding Section 39.2025 to read as follows:

Sec. 39.2025. FUEL FACTOR ADJUSTMENTS. (a) An affiliated retail electric provider may request the commission to increase the provider's fuel factor originally established under Section 39.202(b) not more than twice a year. To obtain an increase under this subsection, the provider must demonstrate that the fuel factor does not adequately reflect significant changes in purchased energy costs incurred in serving the customers to whom the provider is required to offer the price to beat under Section 39.202.

(b) The commission may decrease a fuel factor originally established under Section 39.202(b) on the request of an affiliated retail electric provider, a regulatory authority, an affected customer, or the office of public utility counsel.

(c) An affiliated retail electric provider may recover only eligible fuel expenses through the fuel factor originally established under Section 39.202(b). This section does not authorize an affiliated retail electric provider to recover through that fuel factor generation costs that are otherwise recoverable through the provider's base rates.

SECTION \_\_\_\_\_. Section 39.202(l), Utilities Code, is repealed.

Amendment No. 25 was withdrawn.

**Amendment No. 26**

Representative Solomons offered the following amendment to **CSSB 408**:

Amend **CSSB 408** by adding a new SECTION to read as follows:

SECTION \_\_\_. Subchapter D, Chapter 39, Utilities Code, is amended by adding Section 39.1515 to read as follows:

Sec. 39.1515. WHOLESALE ELECTRIC MARKET MONITOR. (a) An independent organization certified under Section 39.151 shall contract with an entity selected by the commission to act as the commission's wholesale electric market monitor to detect and prevent market manipulation strategies and recommend measures to enhance the efficiency of the wholesale market.

(b) The independent organization shall provide to the personnel of the market monitor:

(1) full access to the organization's main operations center and the organization's records that concern operations, settlement, and reliability; and

(2) other support and cooperation the commission determines is necessary for the market monitor to perform the market monitor's functions.

(c) The independent organization shall use money from the rate authorized by Section 39.151(e) to pay for the market monitor's activities.

(d) The commission is responsible for ensuring that the market monitor has the resources, expertise, and authority necessary to monitor the wholesale electric market effectively and shall adopt rules and perform oversight of the market

monitor as necessary. The market monitor shall operate under the supervision and oversight of the commission. The commission shall retain all enforcement authority conferred under this title, and this section may not be construed to confer enforcement authority on the market monitor or to authorize the commission to delegate the commission's enforcement authority to the market monitor. The commission by rule shall define:

(1) the market monitor's monitoring responsibilities, including reporting obligations and limitations;

(2) the standards for funding the market monitor, including staffing requirements;

(3) qualifications for personnel of the market monitor; and

(4) ethical standards for the market monitor and the personnel of the market monitor.

(e) In adopting rules governing the standards for funding the market monitor, the commission shall consult with a subcommittee of the independent organization's governing body to receive information on how money is or should be spent for monitoring functions. Rules governing ethical standards must include provisions designed to ensure that the personnel of the market monitor are professionally and financially independent from market participants. The commission shall develop and implement policies that clearly separate the policymaking responsibilities of the commission and the monitoring, analysis, and reporting responsibilities of the market monitor.

(f) The market monitor immediately shall report directly to the commission any potential market manipulations and any discovered or potential violations of commission rules or rules of the independent organization.

(g) The personnel of the market monitor may communicate with commission staff on any matter without restriction.

(h) The market monitor annually shall submit to the commission and the independent organization a report that identifies market design flaws and recommends methods to correct the flaws. The commission and the independent organization shall review the report and evaluate whether changes to rules of the commission or the independent organization should be made.

Amendment No. 26 was withdrawn.

#### **Amendment No. 27**

Representatives Driver and Hill offered the following amendment to **CSSB 408**:

Amend Amendment No. \_\_ by \_\_ to **CSSB 408** by striking added Section 39.159, Utilities Code, and substituting the following:

Sec. 39.159. WHOLESALE MARKET DESIGN. The commission shall make improvements or changes to the ERCOT wholesale market design in a manner that is consistent with the overall policy of this state to reduce congestion costs in each ERCOT zone.

Amendment No. 27 was withdrawn.

**Amendment No. 28**

Representative Hunter offered the following amendment to **CSSB 408**:

Amend **CSSB 408** by adding the following appropriately numbered sections to the bill and by renumbering existing sections of the bill accordingly.

(1) SECTION \_\_. Section 36.053, Utilities Code, is amended by adding Subsection (d) to read as follows:

(d) If the commission issues a certificate of convenience and necessity or, acting under Section 39.203(e), orders an electric utility or a transmission and distribution utility to construct or enlarge transmission or transmission-related facilities to facilitate meeting the goal for generating capacity from renewable energy technologies under Section 39.904(a), the commission shall find that the facilities are used and useful to the utility in providing service for purposes of this section and are prudent and includable in the rate base, regardless of the extent of the utility's actual use of the facilities.

SECTION \_\_. Subsection (e), Section 39.203, Utilities Code, is amended to read as follows:

(e) The commission may require an electric utility or a transmission and distribution utility to construct or enlarge facilities to ensure safe and reliable service for the state's electric markets and to reduce transmission constraints within ERCOT in a cost-effective manner where the constraints are such that they are not being resolved through Chapter 37 or the ERCOT transmission planning process. The commission shall require an electric utility or a transmission and distribution utility to construct or enlarge transmission or transmission-related facilities for the purpose of meeting the goal for generating capacity from renewable energy technologies under Section 39.904(a). In any proceeding brought under Chapter 37, an electric utility or transmission and distribution utility ordered to construct or enlarge facilities under this subchapter need not prove that the construction ordered is necessary for the service, accommodation, convenience, or safety of the public and need not address the factors listed in Sections 37.056(c)(1)-(3) and (4)(E). Notwithstanding any other law, including Section 37.057, in any proceeding brought under Chapter 37 by an electric utility or a transmission and distribution utility related to an application for a certificate of public convenience and necessity to construct or enlarge transmission or transmission-related facilities under this subsection, the commission shall issue a final order before the 181st day after the date the application is filed with the commission. If the commission does not issue a final order before that date, the application is approved.

SECTION \_\_. Section 39.904, Utilities Code, is amended by amending Subsection (a) and adding Subsections (g) through (m) to read as follows:

(a) It is the intent of the legislature that by January 1, 2017 [~~2009~~], an additional 7,000 [~~2,000~~] megawatts of generating capacity from renewable energy technologies will have been installed in this state. The cumulative installed renewable capacity in this state shall total 7,880 [~~4,280~~] megawatts by January 1, 2017, and the commission shall establish a target of 10,000 megawatts of installed renewable capacity by January 1, 2025. The cumulative installed renewable capacity in this state shall total 2,280 megawatts by January 1, 2007,

3,272 megawatts by January 1, 2009, 4,264 megawatts by January 1, 2011, 5,256 megawatts by January 1, 2013, and 5,880 megawatts by January 1, 2015, and 7880 megawatts by January 1, 2017. Of the renewable energy technology generating capacity installed to meet the goal of this subsection after September 1, 2005, the commission shall establish a target of having at least 500 megawatts of capacity from a renewable energy technology other than a source using wind energy [2003, 1,730 megawatts by January 1, 2005, 2,280 megawatts by January 1, 2007, and 2,880 megawatts by January 1, 2009].

(g) The commission, after consultation with each appropriate independent organization, electric reliability council, or regional transmission organization:

(1) shall designate competitive renewable energy zones throughout this state in areas in which renewable energy resources and suitable land areas are sufficient to develop generating capacity from renewable energy technologies;

(2) shall develop a plan to construct transmission capacity necessary to deliver to electric customers, in a manner that is most beneficial and cost-effective to the customers, the electric output from renewable energy technologies in the competitive renewable energy zones; and

(3) shall consider the amount of existing generation resources and level of financial commitment toward future generation resources by generators for each competitive renewable energy zone in determining whether to designate an area as a competitive renewable energy zone and whether to grant a certificate of convenience and necessity.

(h) In considering an application for a certificate of public convenience and necessity for a transmission project intended to serve a competitive renewable energy zone, the commission is not required to consider the factors provided by Sections 37.056(c)(1) and (2).

(i) Transmission service to a competitive renewable energy zone must be provided in a manner consistent with Subchapter A, Chapter 35.

(j) The commission, after consultation with each appropriate independent organization, electric reliability council, or regional transmission organization, shall file a report with the legislature not later than December 31 of each even-numbered year. The report must include:

(1) an evaluation of the commission's implementation of competitive renewable energy zones;

(2) the estimated cost of transmission service improvements needed for each competitive renewable energy zone; and

(3) an evaluation of the effects that additional renewable generation has on system reliability and on the cost of alternatives to mitigate the effects.

(k) The commission and the independent organization certified for ERCOT shall study the need for increased transmission and generation capacity throughout this state and report to the legislature the results of the study and any recommendations for legislation. The report must be filed with the legislature not later than December 31 of each even-numbered year and may be filed as a part of the report required by Subsection (j).

(l) The commission may adopt rules requiring renewable energy facilities to have reactive power control capabilities or any other feasible technology designed to reduce the facilities' effects on system reliability.

(m) Notwithstanding any other provision of law, the commission shall have the authority to cap the price of renewable energy credits and may suspend the goal contained in Subsection (a) if such suspension is necessary to protect the reliability and operation of the grid.

Amendment No. 28 was withdrawn.

**Amendment No. 29**

Representative Thompson offered the following amendment to **CSSB 408**:

Amend **CSSB 408** by adding a new section, numbered appropriately, to read as follows:

SECTION \_\_. Subchapter C, Chapter 57, Utilities Code, is repealed.

Amendment No. 29 was adopted.

**Amendment No. 30**

Representative Naishtat offered the following amendment to **CSSB 408**:

Amend **CSSB 408** by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS as appropriate:

SECTION \_\_\_\_. Section 56.021, Utilities Code, is amended to read as follows:

Sec. 56.021. UNIVERSAL SERVICE FUND ESTABLISHED. The commission shall adopt and enforce rules requiring local exchange companies to establish a universal service fund to:

(1) assist telecommunications providers in providing basic local telecommunications service at reasonable rates in high cost rural areas;

(2) reimburse the telecommunications carrier that provides the statewide telecommunications relay access service under Subchapter D;

(3) finance the specialized telecommunications assistance program established under Subchapter E;

(4) reimburse the department, the Texas Commission for the Deaf and Hard of Hearing, and the commission for costs incurred in implementing this chapter and Chapter 57;

(5) reimburse a telecommunications carrier providing lifeline service as provided by 47 C.F.R. Part 54, Subpart E, as amended;

(6) finance the implementation and administration of an integrated eligibility process created under Section 17.007 for customer service discounts relating to telecommunications services, including outreach expenses the commission determines are reasonable and necessary;

(7) reimburse a designated provider under Subchapter F; ~~and~~

(8) reimburse a successor utility under Subchapter G; and

(9) finance the program established under Subchapter H.

SECTION \_\_\_\_. Chapter 56, Utilities Code, is amended by adding Subchapter H to read as follows:

SUBCHAPTER H. AUDIO NEWSPAPER PROGRAM

Sec. 56.301. AUDIO NEWSPAPER ASSISTANCE PROGRAM. The commission by rule shall establish a program to provide from the universal service fund financial assistance for a free telephone service for blind and visually impaired persons that offers the text of newspapers using synthetic speech. The commission may adopt rules to implement the program.

Amendment No. 30 was adopted.

**Amendment No. 31**

Representative Farabee offered the following amendment to **CSSB 408**:

Amend **CSSB 408** by adding the following appropriately numbered SECTION:

SECTION \_\_. Subchapter E, Chapter 36, Utilities Code, is amended by adding Section 36.209 to read as follows:

Sec. 36.209. RESEARCH AND DEVELOPMENT COST RECOVERY. (a) The commission by rule shall adopt a mechanism for an electric utility to recover research and development costs incurred regarding technologies and business practices related to:

(1) producing, transmitting, distributing, storing, metering, and using electricity;

(2) mitigating risks in competitive energy markets;

(3) minimizing environmental impacts of production and delivery of electricity; and

(4) developing uniform commercial standards for the energy industry.

(b) The rules must be designed to encourage electric utilities to take advantage of research and development resources in this state, including state institutions, to:

(1) contribute to economic development and the production of employment opportunities; and

(2) provide this state and state residents with:

(A) the benefits of advanced technologies, systems, and processes;

(B) increased efficiency and reliability in electricity production, delivery, and use;

(C) reduced costs for providing electricity; and

(D) reduced environmental impacts from electricity production and delivery.

Amendment No. 31 was adopted.

**Amendment No. 32**

Representative Flores offered the following amendment to **CSSB 408**:

Amend **CSSB 408** by inserting the following appropriately numbered new SECTION in the bill and renumbering the subsequent SECTIONS accordingly:

"SECTION . Before implementing a new wholesale transmission and distribution market design, the Public Utility Commission of Texas shall provide to the Senate Committee on business and Commerce and the House Committee on Regulated Industries a report that contains:

(1) an executive summary and detailed description of the changes in the wholesale transmission and distribution market that the commission has ordered, including the effect the new market design is anticipated to have on local congestions costs:

(2) a list of entities, associations and groups that have submitted comments to the commission on the new market design, classified by whether the comments indicated support for or opposition to the new market design:

(3) a comparison of the new market design to any similar market design adopted in any other state:

(4) a time line for the implementation of the new market design, including estimated costs of implementation;

(5) the estimated increases in wholesale and retail electricity prices that will be caused in each county in this state by the new market design, projected over the first five years after the date the new design will be implemented; and

(6) the names, business addresses, and the telephone number of the Texas Nodal Team and any other quasi-official working group that recommends to the commission the adoption of the new market design."

Amendment No. 32 was withdrawn.

### **Amendment No. 33**

Representative Hunter offered the following amendment to **CSSB 408**:

Amend **CSSB 408** (house committee printing) as follows:

(1) Insert the following appropriately numbered SECTION to read as follows and renumber subsequent SECTIONS accordingly:

SECTION 16. Subchapter A, Chapter 62, Utilities Code, is amended by adding Section 62.003 to read as follows:

Sec. 62.003. REQUIREMENTS RELATING TO AUDIO AND VIDEO PROGRAMMING. (a) This section applies only to a provider of advanced services or local exchange telephone service that has more than 500,000 access lines in service in this state and that delivers audio or video programming to its subscribers.

(b) Notwithstanding any other provision of this title, a provider of advanced services or local exchange telephone service shall provide subscribers access to the signals of the local broadcast television and radio stations licensed by the Federal Communications Commission to serve those subscribers over the air.

(c) To facilitate access by subscribers of a provider of advanced services or local exchange telephone service to the signals of local broadcast stations, a station either shall be granted mandatory carriage or may request retransmission consent with the provider.

(d) This title does not require a provider of advanced services or local exchange telephone service to provide a television or radio station valuable consideration in exchange for carriage.

(e) A provider of advanced services or local exchange telephone service shall transmit without degradation the signals a local broadcast station delivers to the provider. The transmission quality offered a broadcast station may not be lower than the quality made available to another broadcast station or video or audio programming source.

(f) A provider of advanced services or local exchange telephone service that delivers audio or video programming to its subscribers may not:

(1) discriminate among programming providers regarding transmission of their signals;

(2) delete, change, or alter a copyright identification transmitted as part of their signals; or

(3) deliver substantially similar programming from a broadcast station or other programmer outside a subscriber's broadcast coverage area.

(g) A provider of advanced services or local exchange telephone service that delivers audio or video programming to its subscribers shall include all programming providers in a subscriber programming guide that lists program schedules.

(2) Strike Subdivision (7), SECTION 43 of the bill (page 46, line 16), and substitute the following:

(7) Subchapters B-F, Chapter 62.

Amendment No. 33 was withdrawn.

(Speaker in the chair)

### **Amendment No. 34**

Representative J. Keffer offered the following amendment to **CSSB 408**:

Amend **CSSB 408** by adding the following new appropriately numbered sections and renumbering remaining sections appropriately:

SECTION \_\_\_\_\_. Sections 39.353(a), (c), and (d), Utilities Code, are amended to read as follows:

(a) A person may not provide aggregation services in the state unless the person is registered with the commission as an aggregator. The commission shall register a municipality under this section pursuing citizen aggregation upon filing by a municipality of a resolution creating the municipal aggregation program passed by the governing body of the municipality.

(c) A person registering under this section shall comply with all customer protection provisions, all disclosure requirements, and all marketing guidelines established by the commission and by this title. A municipality pursuing citizen aggregation is free to negotiate customer protection provisions that exceed those imposed by the commission or by this title.

(d) The commission shall establish terms and conditions it determines necessary to regulate the reliability and integrity of aggregators, other than municipal citizen aggregators, in the state [by June 1, 2000].

SECTION \_\_\_\_\_. Chapter 39, Utilities Code, is amended by adding a new Section 39.3536 to read as follows:



(a) In order to register with the commission under Section 39.353 that a municipality is pursuing citizen aggregation, the governing body of a municipality shall adopt an ordinance or resolution providing for automatic enrollment of citizens of the political subdivision in aggregation services. Upon registration with the commission under Section 39.353, the commission shall require the municipality to send to each citizen by mail a 60 day written notice that citizens served by an affiliated retail electric provider will be automatically enrolled unless a citizen expressly requests to not be enrolled.

(b) Upon registration of a municipality by the commission under Section 39.353, a municipality may require an affiliated retail electric provider and the transmission and distribution utility to provide to the municipality any information the municipality considers necessary to solicit or administer an aggregation program under this section, including the name, address, electric service identifier, and monthly usage of each residential customer who resides in the municipality. The consent of a customer may not be required as a condition of providing information to a municipality under this subsection. The municipality may provide to a third party or an aggregator information received under this subsection, but only for the purpose of bidding on, implementing, and administering the aggregation program.

(c) This section is not intended to abrogate an electric service contract between a citizen of any municipality and a competitive retail electric provider. Residential customers who have previously switched from the affiliated retail electric provider may opt-in to the aggregation program upon expiration of their existing contract.

(d) Any savings attributable to the aggregation program shall be directed to citizen participants except that the political subdivision may recover its actual administrative costs.

(e) The authority granted to municipalities under this section applies only to municipalities with populations of 125,000 or less.

#### **Amendment No. 34 - Point of Order**

Representative McCall raised a point of order against further consideration of Amendment No. 34 under Rule 11, Sections 2 and 3 of the House Rules and Article III, Section 30 of the Texas Constitution on the grounds that the amendment is not germane to the bill.

The point of order was withdrawn.

Representative McCall moved to table Amendment No. 34.

A record vote was requested.

The motion to table prevailed by (Record 752): 103 Yeas, 19 Nays, 1 Present, not voting.

Yeas — Allen, R.; Alonzo; Anchia; Anderson; Baxter; Berman; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Callegari; Casteel; Chisum; Coleman; Corte; Crabb; Crownover; Davis, J.; Dawson; Delisi; Denny; Deshotel; Dukes; Dunnam; Dutton; Eiland; Eissler; Elkins; Escobar; Farabee; Farrar; Flores; Flynn; Frost; Gattis; Geren; Goodman; Goolsby; Griggs; Grusendorf; Guillen; Hamric;

Harper-Brown; Hartnett; Hegar; Herrero; Hilderbran; Hochberg; Homer; Howard; Hughes; Hunter; Hupp; Keel; Keffer, B.; King, T.; Krusee; Kuempel; Laney; Laubenberg; Leibowitz; Madden; Martinez; Martinez Fischer; McCall; McClendon; McReynolds; Menendez; Merritt; Miller; Mowery; Nixon; Noriega, M.; Oliveira; Olivo; Orr; Otto; Paxton; Peña; Pickett; Quintanilla; Raymond; Reyna; Riddle; Rodriguez; Rose; Seaman; Smith, W.; Solis; Strama; Straus; Talton; Taylor; Thompson; Truitt; Turner; Uresti; Van Arsdale; Villarreal; Vo; Wong; Zedler.

Nays — Burnam; Campbell; Cook, R.; Davis, Y.; Driver; Hamilton; Hardcastle; Hill; Hope; Hopson; Jackson; Keffer, J.; Kolkhorst; Moreno, P.; Naishtat; Ritter; Smith, T.; Solomons; Swinford.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Bailey; Gallego; Hodge; Isett; Pitts.

Absent — Allen, A.; Blake; Castro; Chavez; Cook, B.; Edwards; Giddings; Gonzales; Gonzalez Toureilles; Haggerty; Jones, D.; Jones, J.; King, P.; Luna; Morrison; Phillips; Puente; Smithee; Veasey; West; Woolley.

#### STATEMENTS OF VOTE

When Record No. 752 was taken, I was in the house but away from my desk. I would have voted yes.

Blake

I was shown voting yes on Record No. 752. I intended to vote no.

Bonnen

When Record No. 752 was taken, I was in the house but away from my desk. I would have voted yes.

B. Cook

I was shown voting no on Record No. 752. I intended to vote yes.

Driver

When Record No. 752 was taken, I was in the house but away from my desk. I would have voted yes.

Gonzales

When Record No. 752 was taken, I was temporarily out of the house chamber. I would have voted yes.

Haggerty

When Record No. 752 was taken, I was in the house but away from my desk. I would have voted yes.

D. Jones

When Record No. 752 was taken, I was in the house but away from my desk. I would have voted yes.

Puente

When Record No. 752 was taken, I was in the house but away from my desk. I would have voted yes.

Veasey

When Record No. 752 was taken, I was in the house but away from my desk. I would have voted yes.

West

### **Amendment No. 35**

Representative Crabb offered the following amendment to **CSSB 408**:

Amend **CSSB 408** on page \_\_, line \_\_, to add a new section as follows and renumber the remaining sections:

SECTION \_\_\_\_\_. Section 39.107(g), Utilities Code, is struck to read as follows:

~~(g) Metered electric service sold to residential customers on a prepaid basis may not be sold at a price that is higher than the price charged by the provider of last resort.~~

Amendment No. 35 was adopted.

### **CSSB 408 - POINT OF ORDER**

Representative Dutton raised a point of order against further consideration of **CSSB 408** under Rule 4, Section 32(c)(3) of the House Rules on the grounds that the committee report does not indicate whether or not any rulemaking authority is expressly delegated to a state officer, department, agency, or institution.

The point of order was withdrawn.

### **CSSB 408 - POINT OF ORDER**

Representative Talton raised a point of order against further consideration of **CSSB 408** on the grounds that **CSSB 408** should have been returned to the Committee on Calendars when a previous point of order was sustained against the bill.

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

Mr. Talton raised a point of order against further consideration of **CSSB 408** on the grounds that the bill should have been returned to the Calendars Committee rather than to the Regulated Industries Committee for further consideration. Mr. Talton bases his argument on a journal entry for May 18, 2005.

The chair overruled the point of order for two reasons.

First, the May 18 journal entry to which Mr. Talton refers today does not state on what grounds the point of order was sustained. The chair acknowledged on May 18th that several grounds for Mr. Talton's point of order were raised, but the chair ruled only on the sufficiency and accuracy of the bill analysis and not as to the germaneness of the committee substitute. Therefore, the chair believes that the correct procedures were followed in returning the bill to the Regulated Industries Committee to correct the misleading and incorrect information that was contained in the bill analysis.

Second, Mr. Talton admits that he raised several grounds for the point of order, including the insufficiency of the bill analysis. Those grounds were submitted to the chair in writing and the chair was persuaded by Mr. Talton's analysis in sustaining his point of order against **CSSB 408**. Mr. Talton also acknowledges that the journal is incorrect in listing only one of those grounds. The chair believes that Mr. Talton's written argument, along with acknowledgement that he raised his point of order on several grounds, are prima facie evidence that the journal entry was incorrect and incomplete.

Therefore, the point of order is respectfully overruled.

Consistent with house practice, the chair instructs the journal clerk to correct this entry and the house parliamentarian to provide a written ruling to the journal clerk detailing the basis for its ruling.

**CSSB 408**, as amended, was passed to third reading. (In accordance with House Rule 5, Section 51(b), every member present must have favored passage of the measure, but any member may register their position with the journal clerk. Members registering votes are as follows: Berman recorded voting no.)

#### **CSSB 408 - STATEMENT BY REPRESENTATIVE EILAND**

I represent Cox Cable in a breach of contract litigation. I voted "Present, not voting" on a couple of amendments for that reason.

#### **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. 48).

#### **CSSB 409 ON SECOND READING (P. King - House Sponsor)**

**CSSB 409**, A bill to be entitled An Act relating to the continuation and functions of the Office of Public Utility Counsel.

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

Representative Solomons offered the following amendment to **CSSB 409**:

Amend **CSSB 409** on page 4, between lines 21 and 22, add a new Section 13.007 to read as follows:

Sec. 13.007. COMPLAINTS. (a) The office shall maintain a system to promptly and efficiently act on complaints filed with the office that the office has the authority to resolve. The office shall maintain information about parties to the complaint, the subject matter of the complaint, a summary of the results of the review or investigation of the complaint, and its disposition.

(b) The office shall make information available describing its procedures for complaint investigation and resolution.

(c) The office shall periodically notify the complaint parties of the status of the complaint until final disposition.

Amendment No. 1 was adopted.

**Amendment No. 2**

Representative Hilderbran offered the following amendment to **CSSB 409**:

Amend **CSHB 409** by adding the following appropriately numbered sections and renumbering subsequent sections accordingly:

SECTION \_\_. Section 5.273(a), Water Code, is amended to read as follows:

(a) The counsel shall represent the public interest and be a party to all proceedings before the commission, other than a proceeding under Chapter 13.

SECTION \_\_. Subchapter B, Chapter 13, Water Code, is amended by adding Section 13.017 to read as follows:

Sec. 13.017. OFFICE OF PUBLIC UTILITY COUNSEL. (a) In this section, "counselor" and "office" have the meanings assigned by Section 11.003, Utilities Code.

(b) The office shall represent the interests of residential and small commercial consumers under this chapter.

(c) The office:

(1) shall assess the effect of utility rate changes and other regulatory actions on residential consumers in this state;

(2) shall advocate in the office's own name a position determined by the counselor to be most advantageous to a substantial number of residential consumers;

(3) may appear or intervene, as a party or otherwise, as a matter of right on behalf of:

(A) residential consumers, as a class, in any proceeding before the commission, including an alternative dispute resolution proceeding; and

(B) small commercial consumers, as a class, in any proceeding in which the counselor determines that small commercial consumers are in need of representation, including an alternative dispute resolution proceeding;

(4) may initiate or intervene as a matter of right or otherwise appear in a judicial proceeding;

(A) that involves an action taken by an administrative agency in a proceeding, including an alternative dispute resolution proceeding, in which the counselor is authorized to appear; or

(B) in which the counselor determines that residential consumers or small commercial consumers are in need of representation;

(5) is entitled to the same access as a party, other than commission staff, to records gathered by the commission under Section 13.133;

(6) is entitled to discovery of any nonprivileged matter that is relevant to the subject matter of a proceeding or petition before the commission;

(7) may represent an individual residential or small commercial consumer with respect to the consumer's disputed complaint concerning retail services that is unresolved before the commission; and

(8) may recommend legislation to the legislature that the office determines would positively affect the interests of residential and small commercial consumers.

(d) This section does not limit the authority of the commission to represent residential or small commercial consumers.

(e) The appearance of the counselor in a proceeding does not preclude the appearance of other parties on behalf of residential or small commercial consumers. The counselor may not be grouped with any other party.

SECTION \_\_. (a) Not later than January 1, 2006, the following are transferred from the Office of Public Interest Counsel to the Office of Public Utility Counsel:

(1) the powers, duties, functions, programs, and activities of the Office of Public Interest Counsel relating to water and sewer services regulated under Chapter 13, Water Code;

(2) all obligations and contracts of the Office of Public Interest Counsel that are related to a power, duty, function, program, or activity transferred under this subsection; and

(3) all property and records in the custody of the Office of Public Interest Counsel that are related to a power, duty, function, program, or activity transferred under this subsection and all funds appropriated by the legislature for that power, duty, function, program, or activity.

(b) A rule or form adopted by the Office of Public Interest Counsel that relates to a power, duty, function, program, or activity transferred under Subsection (a) of this section is a rule or form of the Office of Public Utility Counsel and remains in effect until altered by the Office of Public Utility Counsel.

(c) A reference in law to the Office of Public Interest Counsel that relates to a power, duty, function, program, or activity transferred under Subsection (a) of this section means the Office of Public Utility Counsel.

Amendment No. 2 was withdrawn.

**CSSB 409**, as amended, was passed to third reading. (In accordance with House Rule 5, Section 51(b), every member present must have favored passage of the measure, but any member may register their position with the journal clerk. No members registered their position on this measure.)

(Pitts now present)

### **CSSB 743 ON SECOND READING**

**(P. King - House Sponsor)**

**CSSB 743**, A bill to be entitled An Act relating to independent organizations in ERCOT and their regulation and certification by the Public Utility Commission of Texas; providing an administrative penalty.

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

Representative Hunter offered the following amendment to **CSSB 743**:

Amend **CSSB 743** (House committee printing) by adding the following sections, numbered appropriately, and renumbering the sections of the bill accordingly:

SECTION \_\_. Section 36.053, Utilities Code, is amended by adding Subsection (d) to read as follows:

(d) If the commission issues a certificate of convenience and necessity or, acting under Section 39.203(e), orders an electric utility or a transmission and distribution utility to construct or enlarge transmission or transmission-related facilities to facilitate meeting the goal for generating capacity from renewable energy technologies under Section 39.904(a), the commission shall find that the facilities are used and useful to the utility in providing service for purposes of this section and are prudent and includable in the rate base, regardless of the extent of the utility's actual use of the facilities.

SECTION \_\_. Subsection (e), Section 39.203, Utilities Code, is amended to read as follows:

(e) The commission may require an electric utility or a transmission and distribution utility to construct or enlarge facilities to ensure safe and reliable service for the state's electric markets and to reduce transmission constraints within ERCOT in a cost-effective manner where the constraints are such that they are not being resolved through Chapter 37 or the ERCOT transmission planning process. The commission shall require an electric utility or a transmission and distribution utility to construct or enlarge transmission or transmission-related facilities for the purpose of meeting the goal for generating capacity from renewable energy technologies under Section 39.904(a). In any proceeding brought under Chapter 37, an electric utility or transmission and distribution utility ordered to construct or enlarge facilities under this subchapter need not prove that the construction ordered is necessary for the service, accommodation, convenience, or safety of the public and need not address the factors listed in Sections 37.056(c)(1)-(3) and (4)(E). Notwithstanding any other law, including Section 37.057, in any proceeding brought under Chapter 37 by an electric utility or a transmission and distribution utility related to an application for a certificate of public convenience and necessity to construct or enlarge transmission or transmission-related facilities under this subsection, the commission shall issue a final order before the 181st day after the date the application is filed with the commission. If the commission does not issue a final order before that date, the application is approved.

SECTION \_\_. Section 39.904, Utilities Code, is amended by amending Subsection (a) and adding Subsections (a-1) and (g)-(n) to read as follows:

(a) It is the intent of the legislature that by January 1, 2015 [~~2009~~], an additional 5,000 [~~2,000~~] megawatts of generating capacity from renewable energy technologies will have been installed in this state. The cumulative installed renewable capacity in this state shall total 5,880 [~~1,280~~] megawatts by January 1, 2015. The cumulative installed renewable capacity in this state shall total 2,280 megawatts by January 1, 2007, 3,272 megawatts by January 1, 2009, 4,264 megawatts by January 1, 2011, 5,256 megawatts by January 1, 2013, and 5,880 megawatts by January 1, 2015 [~~2003, 1,730 megawatts by January 1, 2005, 2,280 megawatts by January 1, 2007, and 2,880 megawatts by January 1, 2009~~].

(a-1) The commission shall establish a target of 10,000 megawatts of installed renewable capacity by January 1, 2025. The commission shall also establish a target of 500 megawatts of generating capacity from non-wind renewable technologies or emerging ultra-clean distributed generation

technologies including generation from industrial waste heat and fuel cells, installed in this state after September 1, 2005. Non-renewable ultra-clean distributed generation projects as defined in this section, shall not exceed 200 megawatts of the 500 megawatt target and individual projects shall not exceed 10 megawatts capacity.

(g) The commission, after consultation with each appropriate independent organization, electric reliability council, or regional transmission organization:

(1) shall designate competitive renewable energy zones throughout this state in areas in which renewable energy resources and suitable land areas are sufficient to develop generating capacity from renewable energy technologies;

(2) shall develop a plan to construct transmission capacity necessary to deliver to electric customers, in a manner that is most beneficial and cost-effective to the customers, the electric output from renewable energy technologies in the competitive renewable energy zones; and

(3) shall consider the level of financial commitment by generators for each competitive renewable energy zone in determining whether to designate an area as a competitive renewable energy zone and whether to grant a certificate of convenience and necessity.

(h) In considering an application for a certificate of convenience and necessity for a transmission project intended to serve a competitive renewable energy zone, the commission is not required to consider the factors provided by Sections 37.056(c)(1) and (2).

(i) Transmission service to a competitive renewable energy zone must be provided in a manner consistent with Subchapter A, Chapter 35.

(j) The commission, after consultation with each appropriate independent organization, electric reliability council, or regional transmission organization, shall file a report with the legislature not later than December 31 of each even-numbered year. The report must include:

(1) an evaluation of the commission's implementation of competitive renewable energy zones;

(2) the estimated cost of transmission service improvements needed for each competitive renewable energy zone; and

(3) an evaluation of the effects that additional renewable generation has on system reliability and on the cost of alternatives to mitigate the effects.

(k) The commission and the independent organization certified for ERCOT shall study the need for increased transmission and generation capacity throughout this state and report to the legislature the results of the study and any recommendations for legislation. The report must be filed with the legislature not later than December 31 of each even-numbered year and may be filed as a part of the report required by Subsection (j).

(l) The commission may adopt rules requiring renewable power facilities to have reactive power control capabilities or any other feasible technology designed to reduce the facilities' effects on system reliability.



(m) Notwithstanding any other provision of law, the commission shall ensure that all renewable capacity installed in this state and all renewable energy credits awarded, produced, procured, or sold in this state are counted toward the goal in Subsection (a).

(n) Notwithstanding any other provision of law, the commission may cap the price of renewable energy credits and may suspend the goal contained in Subsection (a) if that suspension is necessary to protect the reliability and operation of the grid.

SECTION \_\_. (a) The Public Utility Commission of Texas, in cooperation with the appropriate independent organizations certified under Section 39.151, Utilities Code, electric reliability councils, and regional transmission organizations, shall study cost-effective options for meeting this state's long-term transmission system needs to accommodate renewable energy requirements and targets under section 39.904, Utilities Code, as amended by this Act, and any additional electric generation capacity or other infrastructure necessary to meet the state's projected growth in demand for electric energy for the period ending January 1, 2005. This study is not intended to delay commission action in meeting near-term renewable energy needs of the state.

(b) The commission shall present to the legislature not later than December 31, 2006, a report of the results of the study and detailed recommendations regarding the most cost-effective measures to meet reliably this state's electricity requirements. The report may be included in the report required by Section 39.904(j) or (k), Utilities Code, as added by this Act.

(J. Keffer in the chair)

Amendment No. 1 was adopted.

## **Amendment No. 2**

Representative Swinford offered the following amendment to **CSSB 743**:

Amend **CSSB 743** by adding the following appropriately numbered SECTIONS to read as follows:

SECTION \_\_. Section 36.053, Utilities Code, is amended by adding Subsection (d) to read as follows:

(d) If the commission issues a certificate of convenience and necessity or, acting under Section 39.203(e), orders an electric utility or a transmission and distribution utility to construct or enlarge transmission or transmission-related facilities to facilitate meeting the goal for generating capacity from renewable energy technologies under Section 39.904(a), the commission shall find that the facilities are used and useful to the utility in providing service for purposes of this section and are prudent and includable in the rate base, regardless of the extent of the utility's actual use of the facilities.

SECTION \_\_. Section 39.203(e), Utilities Code, is amended to read as follows:

(e) The commission may require an electric utility or a transmission and distribution utility to construct or enlarge facilities to ensure safe and reliable service for the state's electric markets and to reduce transmission constraints

within ERCOT in a cost-effective manner where the constraints are such that they are not being resolved through Chapter 37 or the ERCOT transmission planning process. The commission shall require an electric utility or a transmission and distribution utility to construct or enlarge transmission or transmission-related facilities for the purpose of meeting the goal for generating capacity from renewable energy technologies under Section 39.904(a). In any proceeding brought under Chapter 37, an electric utility or transmission and distribution utility ordered to construct or enlarge facilities under this subchapter need not prove that the construction ordered is necessary for the service, accommodation, convenience, or safety of the public and need not address the factors listed in Sections 37.056(c)(1)-(3) and (4)(E). Notwithstanding any other law, including Section 37.057, in any proceeding brought under Chapter 37 by an electric utility or a transmission and distribution utility related to an application for a certificate of public convenience and necessity to construct or enlarge transmission or transmission-related facilities under this subsection, the commission shall issue a final order before the 181st day after the date the application is filed with the commission. If the commission does not issue a final order before that date, the application is approved.

SECTION \_\_\_\_ . Section 39.904, Utilities Code, is amended by amending Subsection (a) and adding Subsections (g)-(m) to read as follows:

(a) It is the intent of the legislature that by January 1, 2017 [~~2009~~], an additional 7,000 [~~2,000~~] megawatts of generating capacity from renewable energy technologies will have been installed in this state. The cumulative installed renewable capacity in this state shall total 7,880 [~~4,280~~] megawatts by January 1, 2017, and the commission shall establish a target of 10,000 megawatts of installed renewable capacity by January 1, 2025. The cumulative installed renewable capacity in this state shall total 3,113 megawatts by January 1, 2007, 3,946 megawatts by January 1, 2009, 4,779 megawatts by January 1, 2011, 5,612 megawatts by January 1, 2013, 6,445 megawatts by January 1, 2015, and 7,880 megawatts by January 1, 2017. Of the renewable energy technology generating capacity installed to meet the goal of this subsection after September 1, 2005, the commission shall establish a target of having at least 500 megawatts of that capacity from a renewable energy technology other than a source using wind energy [~~2003, 1,730 megawatts by January 1, 2005, 2,280 megawatts by January 1, 2007, and 2,880 megawatts by January 1, 2009~~].

(g) The commission, after consultation with each appropriate independent organization, electric reliability council, or regional transmission organization:

(1) shall designate competitive renewable energy zones throughout this state in areas in which renewable energy resources and suitable land areas are sufficient to develop generating capacity from renewable energy technologies;

(2) shall develop a plan to construct transmission capacity necessary to deliver to electric customers, in a manner that is most beneficial and cost-effective to the customers, the electric output from renewable energy technologies in the competitive renewable energy zones;

(3) shall consider the level of financial commitment by generators for each competitive renewable energy zone in determining whether to designate an area as a competitive renewable energy zone and whether to grant a certificate of convenience and necessity.

(h) In considering an application for a certificate of public convenience and necessity for a transmission project intended to serve a competitive renewable energy zone, the commission is not required to consider the factors provided by Sections 37.056(c)(1) and (2).

(i) Transmission service to a competitive renewable energy zone must be provided in a manner consistent with Subchapter A, Chapter 35.

(j) The commission, after consultation with the comptroller, the Texas Commission on Environmental Quality, the State Energy Conservation Office, the Office of Rural Community Affairs, and each appropriate independent organization, electric reliability council, or regional transmission organization, shall file a report with the legislature not later than December 31 of each even-numbered year. The report must include:

(1) an evaluation of the commission's implementation of competitive renewable energy zones;

(2) the estimated cost of transmission service improvements needed for each competitive renewable energy zone; and

(3) an evaluation of the effects that additional renewable generation has on system reliability and on the cost of alternatives to mitigate the effects;

(4) an assessment of the net impact of renewable energy generation on statewide fuel use, fuel cost savings, and wholesale energy costs;

(5) an evaluation of the impact that historical and additional renewable generation has on air quality, water resources, environmental impact mitigation costs, and how renewable energy use by electric customers may qualify for any credits stemming from emission reductions; and

(6) an assessment of the economic development and tax revenue impacts of historical and additional renewable energy generation.

(k) The commission and the independent organization certified for ERCOT shall study the need for increased transmission and generation capacity throughout this state and report to the legislature the results of the study and any recommendations for legislation. The report must be filed with the legislature not later than December 31 of each even-numbered year and may be filed as a part of the report required by Subsection (j).

(l) The commission may adopt rules requiring renewable power facilities to have reactive power control capabilities or any other feasible technology designed to reduce the facilities' effects on system reliability.

(m) Notwithstanding any other provision of law, the commission may cap the price of renewable energy credits and may suspend the goal contained in Subsection (a) if that suspension is necessary to protect the reliability and operation of the grid.

A record vote was requested.

Amendment No. 2 was adopted by (Record 753): 101 Yeas, 37 Nays, 3 Present, not voting.

Yeas — Allen, A.; Allen, R.; Alonzo; Anchia; Anderson; Baxter; Berman; Blake; Bohac; Brown, B.; Brown, F.; Burnam; Campbell; Casteel; Castro; Chavez; Chisum; Coleman; Cook, B.; Cook, R.; Corte; Davis, Y.; Delisi; Deshotel; Dukes; Dunnam; Dutton; Edwards; Eiland; Eissler; Escobar; Farabee; Farrar; Flores; Flynn; Frost; Giddings; Gonzales; Gonzalez Tourelles; Goodman; Griggs; Guillen; Haggerty; Hamilton; Hardcastle; Herrero; Hilderbran; Hochberg; Homer; Hope; Hopson; Hughes; Hunter; Hupp; Jackson; Jones, D.; Jones, J.; Keel; Kolkhorst; Laney; Leibowitz; Luna; Madden; Martinez; Martinez Fischer; McCall; McClendon; McReynolds; Menendez; Miller; Moreno, P.; Morrison; Naishtat; Noriega, M.; Oliveira; Olivo; Orr; Otto; Peña; Phillips; Pickett; Pitts; Puente; Raymond; Riddle; Ritter; Rodriguez; Seaman; Smith, T.; Smithee; Solis; Strama; Straus; Swinford; Truitt; Turner; Uresti; Veasey; Villarreal; Vo; Wong.

Nays — Bonnen; Callegari; Crabb; Davis, J.; Dawson; Denny; Driver; Elkins; Gattis; Geren; Grusendorf; Hamric; Harper-Brown; Hartnett; Hegar; Hill; Howard; Keffer, B.; King, P.; King, T.; Krusee; Kuempel; Laubenberg; Merritt; Mowery; Nixon; Paxton; Quintanilla; Reyna; Smith, W.; Talton; Taylor; Thompson; Van Arsdale; West; Woolley; Zedler.

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

Absent, Excused — Bailey; Gallego; Hodge; Isett.

Absent — Crownover; Goolsby; Rose; Solomons.

#### STATEMENTS OF VOTE

I was shown voting yes on Record No. 753. I intended to vote no.

B. Brown

I was shown voting no on Record No. 753. I intended to vote yes.

Gattis

When Record No. 753 was taken, I was in the house but away from my desk. I would have voted yes.

Goolsby

When Record No. 753 was taken, I was in the house but away from my desk. I would have voted yes.

Rose

#### Amendment No. 3

Representative Hopson offered the following amendment to **CSSB 743**:

Amend **CSSB 743** (House committee printing) by adding the following appropriately numbered SECTION to read as follows and renumbering subsequent SECTIONS accordingly:

SECTION \_\_\_\_ (a) The Public Utility Commission of Texas, as part of the commission's continuing analysis of reserve margins and capacity needs for the ERCOT system, shall consider creating and may establish a new alternative market mechanism to allow a potential interruptible industrial load that is greater

than one megawatt and that is not participating in the ERCOT market as a load acting as a resource to provide the benefits of interruptible load to the system and to be compensated for that service.

(b) The legislature finds that businesses in this state that are able to participate in an alternative interruptible service compete in interstate and global markets and that the opportunity for the businesses to be compensated for their interruptible loads is essential to the businesses' ability to remain competitive and to provide significant benefits to the economy of this state. The Public Utility Commission of Texas shall consider these economic benefits in analyzing the potential of interruptible service.

(c) Not later than January 1, 2006, the Public Utility Commission of Texas shall report any actions taken regarding interruptible service and the results of its analysis of interruptible service to the governor, the lieutenant governor, the speaker of the house of representatives, and the presiding officer of each legislative committee with jurisdiction over electric services.

Amendment No. 3 was adopted.

#### **Amendment No. 4**

On behalf of Representative Flores, Representative R. Cook offered the following amendment to **CSSB 743**:

Amend **CSSB 743** by inserting the following appropriately numbered new SECTION in the bill and renumbering the subsequent SECTIONS accordingly:

"SECTION \_\_\_\_\_ . Before implementing a new wholesale transmission and distribution market design, the Public Utility Commission of Texas shall provide to the Senate Committee on business and Commerce and the House Committee on Regulated Industries a report that contains:

(1) an executive summary and detailed description of the changes in the wholesale transmission and distribution market that the commission has ordered, including the effect the new market design is anticipated to have on local congestions costs:

(2) a list of entities, associations and groups that have submitted comments to the commission on the new market design, classified by whether the comments indicated support for or opposition to the new market design;

(3) a comparison of the new market design to any similar market design adopted in any other state;

(4) a time line for the implementation of the new market design, including estimated costs of implementation;

(5) the estimated increases in wholesale and retail electricity prices that will be caused in each county in this state by the new market design, projected over the first five years after the date the new design will be implemented; and

(6) the names, business addresses, and the telephone number of the Texas Nodal Team and any other quasi-official working group that recommends to the commission the adoption of the new market design."

**Amendment No. 5**

Representative R. Cook offered the following amendment to Amendment No. 4 :

Amend Amendment No. 4 by adding the following section, appropriately numbered:

SECTION \_\_\_\_, (a) It is the policy of this state to ensure that all electric customers in ERCOT, including low-income customers and customers in rural and other high-cost areas, have access to electric energy service at reasonable rates.

(b) The Public Utility Commission of Texas shall conduct a study to determine methods or mechanisms to ensure that residential customers who are currently being served by an affiliated retail electric provider at the "price-to-beat" rate will continue to have default electric service available at reasonable rates. On September 1, 2005, the commission shall begin the review required by this subsection. The review must include the methods other competitive regions, including Ohio, Maine, Maryland, Massachusetts, and New Jersey, use to provide default services to residential customer classes at reasonable rates.

(c) The study required by Subsection (b) of this section must

(1) evaluate:

(A) extending or modifying the "price-to-beat;"

(B) local governmental aggregation, including municipal "opt-out" mechanisms; and

(C) competitive procurement load auctions; and

(2) compare, regarding various mechanisms or methods considered:

(A) resulting prices for service at wholesale;

(B) resulting prices for service at retail;

(C) key features of each mechanism or method and key differences between the mechanisms or methods;

(D) the level of wholesale supplier competition under each mechanism or method, measured by factors such as:

(i) numbers of participants;

(ii) volumes bid; or

(iii) other relevant factors; and

(E) any other factors or variables the commission considers necessary to arrive at a conclusion and to make recommendations under this section.

(d) The Public Utility Commission of Texas shall conclude the study under this section not later than February 1, 2006, and shall determine at that time a mechanism by which residential customers served by an affiliated retail electric provider will be able to receive the lowest cost default electric service on and after January 1, 2007.

(e) The Public Utility Commission of Texas shall present a report of the study and the recommendations made as a result of the study to the joint electric utility restructuring legislative oversight committee on or before March 1, 2006.

(f) The joint electric utility restructuring legislative oversight committee shall hold hearings on the study and recommendations in each region of the state served by an affiliated retail electric provider and following the hearings shall make recommendations to the 80th Legislature on the best means to provide residential customers default electric service at the lowest cost.

Amendment No. 5 was adopted.

Amendment No. 4, as amended, was adopted.

#### **Amendment No. 6**

Representative Martinez Fischer offered the following amendment to **CSSB 743**:

Amend **CSSB 743** by adding the following appropriately numbered section:  
SECTION \_\_\_\_\_. Subchapter D, Chapter 39, Utilities Code, is amended by adding Section 39.1519 to read as follows:

Sec. 39.1519. ERCOT ACCOUNTABILITY TASK FORCE. (a) The ERCOT accountability task force consists of:

(1) a former commissioner of the commission who resides in this state, or a current or former chairman of the Federal Energy Regulatory Commission who resides in this state, appointed by the governor, who serves as the presiding officer of the task force;

(2) the comptroller;

(3) a representative of the attorney general, if the attorney general chooses to designate a representative; and

(4) representatives of:

(A) the comptroller's office;

(B) the Department of Public Safety of the State of Texas;

(C) the commission;

(D) the office; and

(E) the office of the state auditor.

(b) The task force shall oversee the implementation of best management practices for the independent organization certified under Section 39.151 for ERCOT. The task force may contract with independent fraud investigators or other experts as the task force determines is appropriate. ERCOT shall pay the costs of task force contractors under this subsection.

(c) The task force shall present a report to the governor, the lieutenant governor, the speaker of the house of representatives, and the presiding officer of each legislative standing committee with jurisdiction over electric services not later than January 1, 2007.

(d) This section expires September 1, 2007.

Amendment No. 6 was adopted.

#### **Amendment No. 7**

Representative Martinez Fischer offered the following amendment to **CSSB 743**:

Amend **CSSB 743** as follows:

(1) In the introductory language to Section 1 of the bill (House Committee printing, page 1, line 8), strike "and (n)" and substitute "(n), (o), and (p)".

(2) In Section 1 of the bill, following proposed Subsection (n), Section 39.151, Utilities Code (House Committee printing, page 6, between lines 11 and 12), insert:

(o) An independent organization certified under this section is subject to Chapter 552, Government Code, as if it were a governmental body under that chapter.

(p) Information is excepted from the requirements of Section 552.021, Government Code, if the information is collected, assembled, or maintained by or for the independent organization:

(1) as part of the duty of the organization to support wholesale and retail electric markets and the information is competitively sensitive information of a third party that provides electric service within the transmission system managed by the independent organization that if disclosed, would give advantage to competitors or prospective competitors of the third party;

(2) for the purpose of maintaining the reliability of an electric transmission system that if disclosed, could provide information about security measures of the independent organization or information about the transmission system or a related control or communication system that could aid acts of terrorism or other criminal activity against the independent organization or the electric transmission system; or

(3) in relation to the development or construction of a system used by the independent organization to maintain the security and reliability of the transmission grid or in support of market systems or processes of the independent organization.

Amendment No. 7 was adopted.

A record vote was requested.

**CSSB 743**, as amended, was passed to third reading by (Record 754): 118 Yeas, 1 Nays, 2 Present, not voting.

Yeas — Allen, A.; Allen, R.; Anchia; Baxter; Berman; Blake; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Burnam; Casteel; Castro; Chisum; Coleman; Cook, B.; Cook, R.; Corte; Crabb; Davis, J.; Delisi; Denny; Deshotel; Driver; Dukes; Dunnam; Dutton; Edwards; Eissler; Elkins; Escobar; Farabee; Farrar; Flynn; Frost; Gattis; Geren; Giddings; Gonzales; Gonzalez Toureilles; Goodman; Griggs; Grusendorf; Guillen; Hamilton; Hamric; Hardcastle; Harper-Brown; Herrero; Hilderbran; Hill; Hochberg; Homer; Hope; Hopson; Howard; Hughes; Hunter; Hupp; Jackson; Jones, D.; Jones, J.; Keel; Keffer, B.; King, P.; King, T.; Kolkhorst; Krusee; Kuempel; Laney; Leibowitz; Madden; Martinez; Martinez Fischer; McClendon; McReynolds; Menendez; Merritt; Moreno, P.; Morrison; Naishtat; Nixon; Noriega, M.; Oliveira; Olivo; Orr; Otto; Paxton; Peña; Puente; Quintanilla; Raymond; Reyna; Riddle; Ritter; Rodriguez; Rose; Seaman; Smith, W.; Solis; Solomons; Strama; Straus; Swinford; Talton; Taylor; Thompson; Turner; Uresti; Van Arsdale; Veasey; Villarreal; Vo; West; Wong; Woolley; Zedler.



Nays — Hartnett.

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

Absent, Excused — Bailey; Gallego; Hodge; Isett.

Absent — Alonzo; Anderson; Callegari; Campbell; Chavez; Crownover; Davis, Y.; Dawson; Eiland; Flores; Goolsby; Haggerty; Hegar; Laubenberg; Luna; McCall; Miller; Mowery; Phillips; Pickett; Pitts; Smith, T.; Smithee; Truitt.

### STATEMENTS OF VOTE

When Record No. 754 was taken, I was in the house but away from my desk. I would have voted yes.

Chavez

When Record No. 754 was taken, I was in the house but away from my desk. I would have voted yes.

McCall

When Record No. 754 was taken, I was in the house but away from my desk. I would have voted yes.

Miller

When Record No. 754 was taken, I was in the house but away from my desk. I would have voted yes.

T. Smith

### CSSB 743 - VOTE RECONSIDERED

Representative Goolsby moved to reconsider the vote by which **CSSB 743**, as amended, was passed to third reading.

The motion to reconsider prevailed.

A record vote was requested.

**CSSB 743**, as amended, was passed to third reading by (Record 755): 130 Yeas, 11 Nays, 3 Present, not voting.

Yeas — Allen, A.; Allen, R.; Alonzo; Anchia; Anderson; Baxter; Berman; Blake; Bohac; Branch; Brown, B.; Brown, F.; Burnam; Callegari; Campbell; Casteel; Castro; Chavez; Chisum; Coleman; Cook, B.; Cook, R.; Corte; Crabb; Crownover; Davis, J.; Davis, Y.; Dawson; Delisi; Deshotel; Driver; Dukes; Dunnam; Dutton; Edwards; Eiland; Eissler; Elkins; Escobar; Farabee; Farrar; Flores; Flynn; Frost; Gattis; Giddings; Gonzales; Gonzalez Toureilles; Goodman; Griggs; Grusendorf; Guillen; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hegar; Herrero; Hill; Hochberg; Homer; Hope; Hopson; Howard; Hughes; Hunter; Hupp; Jackson; Jones, D.; Jones, J.; Keel; Keffer, B.; King, P.; King, T.; Kolkhorst; Krusee; Kuempel; Laney; Leibowitz; Luna; Madden; Martinez; Martinez Fischer; McCall; McClendon; Menendez; Miller; Moreno, P.; Morrison; Mowery; Naishtat; Nixon; Noriega, M.; Oliveira; Olivo; Orr; Peña; Phillips; Pickett; Pitts; Puente; Quintanilla; Raymond; Riddle; Ritter; Rodriguez;

Rose; Seaman; Smith, T.; Smith, W.; Smithee; Solis; Solomons; Strama; Straus; Swinford; Talton; Taylor; Thompson; Truitt; Turner; Uresti; Van Arsdale; Veasey; Villarreal; Vo; West; Wong; Woolley.

Nays — Bonnen; Denny; Geren; Goolsby; Hartnett; Hilderbran; Laubenberg; Otto; Paxton; Reyna; Zedler.

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

Absent, Excused — Bailey; Gallego; Hodge; Isett.

Absent — Merritt.

### STATEMENT OF VOTE

I was shown voting yes on Record No. 755. I intended to vote no.

Crabb

### CSSB 1863 ON SECOND READING

(Pitts - House Sponsor)

**CSSB 1863**, A bill to be entitled An Act relating to certain fiscal matters affecting governmental entities.

Representative Pitts moved to postpone consideration of **CSSB 1863** until 10 p.m. today.

The motion prevailed.

### SB 1830 ON SECOND READING

(Luna - House Sponsor)

**SB 1830**, A bill to be entitled An Act relating to the continuation of the quality assurance fee applicable to intermediate care facilities for persons with mental retardation.

(Krusee in the chair)

### Amendment No. 1

Representatives Gattis and Luna offered the following amendment to **SB 1830**:

Amend **SB 1830** (House Committee Printing) by adding the following appropriately numbered section:

SECTION \_\_. Subchapter B, Chapter 531, Government Code, is amended by adding Sections 531.078 through 531.082 to read as follows:

Sec. 531.078. QUALITY ASSURANCE FEES ON CERTAIN WAIVER PROGRAM SERVICES. (a) In this section, "gross receipts" means money received as compensation for services under an intermediate care facilities for the mentally retarded waiver program such as a home and community services waiver or a community living assistance and support services waiver. The term does not include a charitable contribution, revenues received for services or goods other than waivers, or any money received from consumers or their families as reimbursement for services or goods not normally covered by the waivers.

(b) The executive commissioner by rule shall modify the quality assurance fee program under Subchapter H, Chapter 252, Health and Safety Code, by providing for a quality assurance fee program that imposes a quality assurance fee on persons providing services under a home and community services waiver or a community living assistance and support services waiver.

(c) The executive commissioner shall establish the fee at an amount that will produce annual revenues of not more than six percent of the gross receipts of a person from services the person provides under the waiver.

(d) The executive commissioner shall adopt rules governing:

(1) the reporting required to compute and collect the fee and the manner and times of collecting the fee; and

(2) the administration of the fee, including the imposition of penalties for a violation of the rules.

(e) Fees collected under this section shall be deposited in the waiver program quality assurance fee account.

Sec. 531.079. WAIVER PROGRAM QUALITY ASSURANCE FEE ACCOUNT. (a) The waiver program quality assurance fee account is a dedicated account in the general revenue fund. The account is exempt from the application of Section 403.095. Interest earned on money in the account shall be credited to the account.

(b) The account consists of fees collected under Section 531.078 and interest earned on money in the account.

(c) Subject to legislative appropriation and state and federal law, money in the account may be appropriated only to the Department of Aging and Disability Services to increase reimbursement rates paid under the home and community services waiver program or the community living assistance and support services waiver program or to offset allowable expenses under the state Medicaid program.

Sec. 531.080. REIMBURSEMENT OF WAIVER PROGRAMS. Subject to legislative appropriation and state and federal law, the Department of Aging and Disability Services shall use money from the waiver program quality assurance fee account, together with any federal money available to match money from the account, to increase reimbursement rates paid under the home and community services waiver program or the community living assistance and support services waiver program.

Sec. 531.081. INVALIDITY; FEDERAL FUNDS. If any portion of Sections 531.078-531.080 is held invalid by a final order of a court that is not subject to appeal, or if the commission determines that the imposition of the quality assurance fee and the expenditure of the money collected as provided by those sections will not entitle this state to receive additional federal money under the Medicaid program, the commission shall:

(1) stop collection of the quality assurance fee; and

(2) not later than the 30th day after the date the collection of the quality assurance fee is stopped, return any money collected under Section 531.078, but not spent under Section 531.080, to the persons who paid the fees in proportion to the total amount paid by those persons.

Sec. 531.082. EXPIRATION OF QUALITY ASSURANCE FEE ON WAIVER PROGRAMS. If Subchapter H, Chapter 252, Health and Safety Code, expires, this section and Sections 531.078-531.081 expire on the same date.

Amendment No. 1 was adopted.

**SB 1830**, as amended, was passed to third reading. (In accordance with House Rule 5, Section 51(b), every member present must have favored passage of the measure, but any member may register their position with the journal clerk. Members registering votes are as follows: Harper-Brown recorded voting no.)

**SB 1691 ON SECOND READING**  
**(Eiland - House Sponsor)**

**SB 1691**, A bill to be entitled An Act relating to certain retired school employees and the powers and duties of the Teacher Retirement System of Texas; providing a penalty.

**SB 1691 - POINT OF ORDER**

Representative Y. Davis raised a point of order against further consideration of **SB 1691** under Rule 4, Section 32(c) of the House Rules on the grounds that the bill analysis is inaccurate.

**COMMITTEE GRANTED PERMISSION TO MEET**

Representative J. Keffer requested permission for the Committee on Ways and Means to meet while the house is in session at 9 p.m. today, in 3W.9, for a formal meeting, to consider **SB 1370**.

Permission to meet was granted.

**COMMITTEE MEETING ANNOUNCEMENT**

The following committee meeting was announced:

Ways and Means, 9 p.m. today, 3W.9, for a formal meeting, to consider **SB 1370**.

**SB 1691 - (consideration continued)**

(Speaker in the chair)

The point of order was withdrawn.

(Krusee in the chair)

Representative Eiland moved to postpone consideration of **SB 1691** until 10:30 p.m. today.

The motion prevailed.

**SB 1150 ON SECOND READING**  
**(P. King - House Sponsor)**

**SB 1150**, A bill to be entitled An Act relating to parental consent for the performance of an abortion; providing penalties.

**SB 1150 - LAID ON THE TABLE SUBJECT TO CALL**

Representative P. King moved to lay **SB 1150** on the table subject to call.

The motion prevailed.

**SB 1378 ON SECOND READING  
(Woolley - House Sponsor)**

**SB 1378**, A bill to be entitled An Act relating to the certification of certain nonprofit hospitals and hospital systems for limited liability.

**Amendment No. 1**

Representative Thompson offered the following amendment to **SB 1378**:

Amend **SB 1378** on page 1, line 17, between "system" and ";" to read as follows:

", exclusive of unreimbursed amounts for Medicaid, Medicare, or amounts not covered by reimbursement from a health insurance plan, preferred provider plan, exclusive provider plan, employee benefits plan, or health maintenance organization plan".

Amendment No. 1 was withdrawn.

**SB 1378** was passed to third reading. (In accordance with House Rule 5, Section 51(b), every member present must have favored passage of the measure, but any member may register their position with the journal clerk. No members registered their position on this measure.)

**CSSB 1176 ON SECOND READING  
(Eiland - House Sponsor)**

**CSSB 1176**, A bill to be entitled An Act relating to systems and programs administered by the Employees Retirement System of Texas.

**Amendment No. 1**

Representative Crownover offered the following amendment to **CSSB 1176**:

Amend **CSSB 1176** (House Committee Printing) by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Section 1551.002, Insurance Code, is amended to read as follows:

Sec. 1551.002. PURPOSES. The purposes of this chapter are to:

(1) provide uniformity and individual choice and control in life, accident, and health benefit coverages for all state officers and employees and their dependents;

(2) enable the state to attract and retain competent and able employees by providing employees and their dependents with life, accident, and health benefit coverages at least equal to those commonly provided in private industry;

(3) foster, promote, and encourage employment by and service to the state as a career profession for individuals of high standards of competence and ability;

(4) recognize and protect the state's investment in each permanent employee by promoting and preserving economic security and good health among employees and their dependents;

(5) foster and develop high standards of employer-employee relationships between the state and its employees;

(6) recognize the long and faithful service and dedication of state officers and employees and encourage them to remain in state service until eligible for retirement by providing health benefits for them and their dependents; and

(7) recognize the service to the state by employees and retired employees of community supervision and corrections departments by extending to them and their dependents the same life, accident, and health benefit coverages as those provided under this chapter to state employees, retired state employees, and their dependents.

SECTION \_\_\_\_\_. Section 1551.011, Insurance Code, is amended to read as follows:

Sec. 1551.011. EXEMPTION FROM EXECUTION. All benefit payments, state contributions, contributions of employees and annuitants, and optional benefit payments, any rights, benefits, or payments accruing to a person under this chapter, and all money in a fund created by this chapter:

(1) are exempt from execution, attachment, garnishment, or any other process; and

(2) may not be assigned, except:

(A) for direct payment that a participant may assign to a provider of health care services; and

(B) as specifically provided by this chapter.

SECTION \_\_\_\_\_. Section 1551.055, Insurance Code, is amended to read as follows:

Sec. 1551.055. GENERAL POWERS OF BOARD OF TRUSTEES REGARDING COVERAGE PLANS. The board of trustees may:

(1) prepare specifications for a coverage provided under this chapter;

(2) prescribe the time and conditions under which an employee, annuitant, or dependent is eligible for a coverage provided under this chapter;

(3) determine the methods and procedures of claims administration;

(4) determine the amount of payroll deductions and reductions applicable to employees and annuitants and establish procedures to implement those deductions and reductions;

(5) establish procedures for the board of trustees to decide contested cases arising from a coverage provided under this chapter;

(6) study, on an ongoing basis, the operation of all coverages provided under this chapter, including gross and net costs, administration costs, benefits, utilization of benefits, and claims administration;

(7) administer the employees life, accident, and health insurance and benefits fund;

(8) provide the beginning and ending dates of coverages of participants under all benefit plans;

(9) develop basic group coverage plans applicable to all individuals eligible to participate in the group benefits program under Sections 1551.101 and 1551.102;

(10) provide for optional group coverage plans in addition to the basic group coverage plans;

(11) provide, as the board of trustees determines is appropriate, either additional statewide optional coverage plans or individual agency coverage plans;

(12) develop health benefit plans that permit access to high-quality, cost-effective health care;

(13) design, implement, and monitor health benefit plan features intended to discourage excessive utilization, promote efficiency, and contain costs;

(14) develop and refine, on an ongoing basis, a health benefit strategy consistent with evolving benefit delivery systems;

(15) develop a funding strategy that efficiently uses employer contributions to achieve the purposes of this chapter and that is reasonable and ensures participants a fair choice among health benefit plans as provided by Section 1551.302; ~~and~~

(16) appoint an advisory committee for the group benefits program under the terms provided by Section 815.509, Government Code; and

(17) design, implement, and monitor, as a benefit under the group benefits program, the health savings account program established and operated under Subchapter J.

SECTION \_\_\_\_\_. Section 1551.201, Insurance Code, is amended by adding Subsection (d) to read as follows:

(d) The board of trustees must give individuals participating in the group benefits program the option of choosing a high deductible health plan to be used in conjunction with a health savings account established under Subchapter J. For purposes of this subsection, "high deductible health plan" has the meaning assigned by Section 1551.451.

SECTION \_\_\_\_\_. Section 1551.301, Insurance Code, is amended to read as follows:

Sec. 1551.301. FUNDING OF BASIC COVERAGE. The board of trustees shall use the amount appropriated for employer contributions in the manner provided by this subchapter to fund, as applicable, the basic coverage or participation in the health savings account program under Subchapter J.

SECTION \_\_\_\_\_. Section 1551.303, Insurance Code, is amended to read as follows:

Sec. 1551.303. FUNDING OF OPTIONAL COVERAGES. The board of trustees may allocate any employer contributions remaining after the basic coverage or participation in the health savings account program under Subchapter J has been funded to fund optional coverages in any manner the board determines is appropriate.

SECTION \_\_\_\_\_. Section 1551.305, Insurance Code, is amended to read as follows:

Sec. 1551.305. COST OF BASIC COVERAGE AND CERTAIN OTHER BENEFITS EXCEEDING EMPLOYER CONTRIBUTIONS. If the cost of the basic coverage for an individual eligible to participate in the group benefits program under Section 1551.101 or 1551.102 or the cost of participation in the health savings account program under Subchapter J exceeds the amount of employer contributions allocated to fund the basic coverage or participation in the health savings account program, the state shall deduct from or reduce the monthly compensation of the participant or deduct from the retirement benefits of the participant, as applicable, an amount sufficient to pay the cost of the basic coverage or participation in the health savings account program.

SECTION \_\_\_\_\_. Section 1551.306, Insurance Code, is amended to read as follows:

Sec. 1551.306. PAYMENT OF CERTAIN EXCESS COST [~~OVER BASIC COVERAGE CONTRIBUTION~~]. (a) The board of trustees shall apply the amount of any employer contribution for optional coverages to the excess of:

(1) the cost of the basic and optional coverages for which an individual eligible to participate in the group benefits program under Section 1551.101 or 1551.102 applies over the basic coverage contribution; or

(2) the cost of participation in the health savings account program under Subchapter J and optional coverages that a participant selects over the amount of the state contribution under Section 1551.461.

(b) Except as provided by Section 1551.309, if a participant applies for basic and optional coverages or participation in the health savings account program under Subchapter J and optional coverages for which the cost exceeds the employer contributions for those coverages or participation under this chapter, the participant shall authorize in a form and manner satisfactory to the board of trustees a deduction from the participant's monthly compensation or monthly annuity equal to the difference between:

(1) the cost of basic and optional coverages, or, as applicable, participation in the health savings account program under Subchapter J and optional coverages, for which the participant applies; and

(2) the employer contributions for basic and optional coverages, or, as applicable, participation in the health savings account program under Subchapter J and optional coverages.

SECTION \_\_\_\_\_. Section 1551.310, Insurance Code, is amended to read as follows:

Sec. 1551.310. STATE CONTRIBUTION REQUIRED. The state shall contribute to the cost of each participant's group coverages or participation in the health savings account program under Subchapter J, including dependents' group coverages and dependents' participation in the health savings account program under Subchapter J, the amounts appropriated for the coverages or participation in the General Appropriations Act.

SECTION \_\_\_\_\_. Section 1551.311(a), Insurance Code, is amended to read as follows:



(a) Not later than November 1 preceding each regular session of the legislature, the board of trustees shall certify to the Legislative Budget Board and the budget division of the governor's office for information and review the amount necessary to pay the contributions of the state to the board for participation in the health savings account program under Subchapter J or for the coverages provided under this chapter during the following biennium.

SECTION \_\_\_\_\_. Section 1551.314, Insurance Code, is amended to read as follows:

Sec. 1551.314. CERTAIN STATE CONTRIBUTIONS PROHIBITED. A state contribution may not be made for participation in the health savings account program under Subchapter J or for coverages under this chapter selected by an individual who receives a state contribution, other than as a spouse, dependent, or beneficiary, for coverages under a group benefits program provided by an institution of higher education, as defined by Section 61.003, Education Code.

SECTION \_\_\_\_\_. Section 1551.315(a), Insurance Code, is amended to read as follows:

(a) The governing board of each state agency participating in the group benefits program shall pay to the board of trustees an amount equal to the amount appropriated by the legislature for each employee's individual group coverages or participation in the health savings account program under Subchapter J or dependents' group coverages or participation in the health savings account program under Subchapter J for the agency's employees who are, and annuitants who were, compensated from funds not appropriated in the General Appropriations Act, as applicable.

SECTION \_\_\_\_\_. Section 1551.318(a), Insurance Code, is amended to read as follows:

(a) The board of trustees shall certify to the governing board of each state agency participating in the group benefits program that provides contributions for its employees' group coverages or participation in the health savings account program under Subchapter J and dependents' group coverages or participation in the health savings account program under Subchapter J from operating budgets provided from sources other than the General Appropriations Act the proportionate amounts required to pay its contributions.

SECTION \_\_\_\_\_. Section 1551.319(a), Insurance Code, is amended to read as follows:

(a) A full-time employee receives the benefits of a full state contribution for coverage under this chapter or participation in the health savings account program under Subchapter J.

SECTION \_\_\_\_\_. Section 1551.401(d), Insurance Code, is amended to read as follows:

(d) The fund is available:

(1) without fiscal year limitation for all payments for any coverages and benefits provided for under this chapter, including the health savings account program under Subchapter J; and

(2) for payment of expenses of administering this chapter within the limitations that may be specified annually by the legislature.

SECTION \_\_\_\_\_. Chapter 1551, Insurance Code, is amended by adding Subchapter J to read as follows:

SUBCHAPTER J. STATE HEALTH SAVINGS ACCOUNT PROGRAM

Sec. 1551.451. DEFINITIONS. In this subchapter:

(1) "High deductible health plan" means a health benefit plan that complies with Section 223(c), Internal Revenue Code of 1986, and its subsequent amendments, and other federal law.

(2) "Participant" means an individual who is:

(A) eligible to participate in the group benefits program; and

(B) enrolled in the program established under this subchapter.

(3) "Program" means the state health savings account program established under this subchapter and includes a health savings account and a high deductible health plan.

(4) "Qualified medical expense" means an expense paid by a participant for medical care, as defined by Section 213(d), Internal Revenue Code of 1986, and its subsequent amendments, for the participant or the participant's dependents as defined by Section 152, Internal Revenue Code of 1986, and its subsequent amendments.

Sec. 1551.452. ESTABLISHMENT OF STATE HEALTH SAVINGS ACCOUNT PROGRAM. (a) The state health savings account program is established for the benefit of individuals eligible to participate in the group benefits program and those individuals' eligible dependents.

(b) After final rules, plans, and procedures are adopted by the board of trustees and qualified by the Internal Revenue Service under Section 1551.453, the board of trustees shall:

(1) administer, or solicit bids for the administration of, health savings accounts under this subchapter;

(2) fund or purchase at least one high deductible health plan in accordance with Sections 1551.208-1551.216; and

(3) provide information to individuals eligible to participate in the group benefits program regarding the option to participate in and operation of health savings accounts and high deductible health plans established under this subchapter.

(c) The board of trustees shall adopt rules, plans, and procedures as necessary to administer this subchapter.

Sec. 1551.453. QUALIFICATION OF HEALTH SAVINGS ACCOUNTS. The board of trustees shall request in writing a ruling or opinion from the Internal Revenue Service as to whether the program established under this subchapter and the rules adopted under this subchapter qualify the health savings accounts established under this subchapter for federal tax treatment as health savings accounts under Section 223(e), Internal Revenue Code of 1986, and its subsequent amendments, and any other appropriate federal tax exemptions. Based on the response of the Internal Revenue Service, the board of trustees shall:

(1) modify the rules, plans, and procedures adopted under Section 1551.452 as necessary to ensure the qualification of health savings accounts established under this subchapter for appropriate federal tax exemptions; and

(2) certify the information regarding federal tax qualifications to the comptroller.

Sec. 1551.454. ACCOUNT ADMINISTRATOR. (a) The account administrator of a health savings account established under this subchapter must be a person:

(1) qualified to serve as trustee under Section 223(d)(1)(B), Internal Revenue Code of 1986, and its subsequent amendments, and the rules adopted under that section; and

(2) experienced in administering health savings accounts or other similar trust accounts.

(b) The account administrator is the fiduciary of a participant who has a health savings account established under this subchapter.

(c) Section 1551.056(b) does not apply to the account administrator.

Sec. 1551.455. REQUIRED PARTICIPATION. Each state agency, including an institution of higher education, shall make participation in the program as provided by this subchapter available to employees and inform employees of an employee's option to participate in the program.

Sec. 1551.456. PROVISION OF COVERAGE. The program shall provide, through a high deductible health plan, health benefit plan coverage to a participant and, as provided by this chapter, to that participant's dependents.

Sec. 1551.457. HIGH DEDUCTIBLE HEALTH PLANS. The program must include a high deductible health plan.

Sec. 1551.458. PARTICIPATION IN PROGRAM. (a) Each individual eligible to participate in the group benefits program may participate in the program if the participant is an eligible individual under Section 223(c)(1), Internal Revenue Code of 1986, and its subsequent amendments. A participant in the program waives basic plan coverage and must be enrolled in a high deductible health plan.

(b) Participation in the program qualifies a participant to receive a contribution to a health savings account under Section 1551.461. An individual who elects not to participate in the program is not eligible to receive a contribution under Section 1551.461.

(c) An individual who elects to participate in the program is subject to Subchapter H in the same manner as an individual who participates in a group coverage plan offered under the group benefits program.

(d) Under this section, the board of trustees has exclusive authority to determine an individual's eligibility to participate in the program and shall adopt rules, plans, and procedures regarding eligibility to participate in the program.

Sec. 1551.459. COVERAGE FOR DEPENDENTS; REQUIRED CONTRIBUTIONS. (a) Subject to Subsection (d), a participant is entitled to obtain for the participant's dependents coverage in the high deductible health plan selected by the participant in the manner determined by the board of trustees.

(b) The participant shall make any required additional contribution payments for the dependent coverage in the manner prescribed by the board of trustees.

(c) Amounts contributed by a participant under this section may be:

(1) used to pay the cost of coverage in the high deductible health plan not paid by the state under Section 1551.461(b)(1); or

(2) contributed to the health savings account provided to the participant.

(d) A participant's dependent who is covered by a high deductible health plan selected by the participant:

(1) is subject to Subchapter H in the same manner as a dependent who is covered by a group coverage plan offered under the group benefits program; and

(2) must be a dependent for purposes of:

(A) Section 152, Internal Revenue Code of 1986, and its subsequent amendments; and

(B) Section 1551.004.

Sec. 1551.460. IDENTIFICATION CARDS FOR PARTICIPANTS. (a) The board of trustees or the account administrator, as applicable, shall issue to each participant an identification card.

(b) The board of trustees or the account administrator, as applicable, shall issue a duplicate identification card to each participant's dependent for whom qualified medical expenses may be paid out of a health savings account established under the program.

Sec. 1551.461. STATE CONTRIBUTION. (a) For each participant, the state shall annually contribute:

(1) to a high deductible health plan in which the participant is enrolled, the same percentage of the cost of coverage under the high deductible health plan as the state annually contributes for a full-time or part-time employee covered by the basic coverage plan; and

(2) to the participant's health savings account, an amount determined by the board of trustees under Section 1551.462.

(b) For each participant's dependent covered by a high deductible health plan under Section 1551.459, the state shall annually contribute:

(1) to a high deductible health plan in which the dependent is enrolled, the same percentage of the cost of coverage under the high deductible health plan as the state annually contributes for dependent coverage in the basic coverage plan; and

(2) to the participant's health savings account, as allowed under federal law, the amount determined by the board of trustees under Section 1551.462.

(c) For a calendar year, the amount of state contributions under Subsections (a)(2) and (b)(2), in the aggregate, may not exceed the sum of the monthly limitations imposed by federal law for health savings accounts.

Sec. 1551.462. DETERMINATION OF STATE CONTRIBUTION TO HEALTH SAVINGS ACCOUNT. (a) The board of trustees by rule shall determine the amount of the state contribution to:

(1) a participant's health savings account under Section 1551.461(a)(2);  
and

(2) a participant's health savings account under Section 1551.461(b)(2).

(b) Subject to Section 1551.461(c), the amount of the state contribution under Section 1551.461(a)(2) must be an amount equal to or greater than 50 percent of the difference between the cost of coverage for a full-time or part-time employee covered by the basic coverage plan and a participant covered under the high deductible health plan.

(c) Subject to Section 1551.461(c), the amount of the state contribution under Section 1551.461(b)(2) must be an amount equal to or greater than 50 percent of the difference between the cost of dependent coverage under the basic coverage plan and dependent coverage under the high deductible health plan.

(d) The board of trustees shall establish state contributions under Subsection (a) in amounts that encourage participation in the program while, at the same time, maximize the use of state resources.

Sec. 1551.463. PARTICIPANT CONTRIBUTIONS. (a) Each participant, in accordance with Section 1551.305, shall contribute any amount required to cover the selected participation in the high deductible health plan that exceeds the state contribution amount under Section 1551.461.

(b) A participant may contribute any amount allowed under federal law to the participant's health savings account. A participant may make a contribution under this section in addition to receiving the state contribution under Section 1551.461.

(c) A participant shall make contributions under this section in the manner prescribed by the board of trustees.

Sec. 1551.464. COORDINATION WITH CAFETERIA PLAN. (a) The board of trustees has exclusive authority to determine the eligibility of a participant in the program established under this subchapter to participate in any medical flexible savings account that is part of a cafeteria plan offered under this chapter.

(b) The board of trustees shall adopt rules, plans, and procedures regarding:  
(1) the eligibility of a participant in the program established under this subchapter to participate in any medical flexible savings account that is part of a cafeteria plan offered under this chapter; and

(2) the coordination of benefits provided under this subchapter and any medical flexible savings account that is part of a cafeteria plan offered under this chapter.

(c) The rules adopted by the board of trustees under Subsection (b) must prohibit a participant in the program established under this chapter from participating in any medical flexible savings account that would disqualify the participant's health savings account from favorable tax treatment under federal law.

Sec. 1551.465. CONFIDENTIALITY OF RECORDS. To the extent allowed under federal law and subject to Section 1551.063, the board of trustees or the program administrator, as applicable, may disclose to a carrier information in an individual's records that the board of trustees determines is necessary to administer the program.

Sec. 1551.466. ASSISTANCE. In implementing and administering this subchapter, the board of trustees may obtain the assistance of any state agency the board of trustees considers appropriate.

SECTION \_\_\_\_\_. (a) During the initial implementation of Subchapter J, Chapter 1551, Insurance Code, as added by this Act, and notwithstanding other requirements set forth in Chapter 1551, Insurance Code, an advisory council shall be created for the purpose of overseeing the design of the state health savings account program consisting of seven members, including a nonvoting ex officio member, being the executive director of the Employees Retirement System of Texas.

(b) The governor of Texas shall designate a chair to the advisory council in conjunction with appointing three members: a representative from the public sector, a representative from the private sector, and an actuary, preferably having experience in the area of health savings accounts; the lieutenant governor of Texas shall appoint two members from the Texas Senate; and the speaker of the Texas House of Representatives shall appoint two members from the Texas House of Representatives.

SECTION \_\_\_\_\_. The Employees Retirement System of Texas shall develop the health savings account program to be implemented under Subchapter J, Chapter 1551, Insurance Code, as added by this Act, beginning September 1, 2005, and shall develop enrollment requirements for the program during 2005-2006, with coverage beginning, subject to the Internal Revenue Service qualifying the health savings account program under Section 1551.453, Insurance Code, as added by this Act, September 1, 2006.

SECTION \_\_\_\_\_. Not later than July 31, 2006, and subject to the Internal Revenue Service qualifying the health savings account program under Section 1551.453, Insurance Code, as added by this Act, the Employees Retirement System of Texas shall provide written information to individuals eligible to participate in the state health savings account program under Subchapter J, Chapter 1551, Insurance Code, as added by this Act, that provides a general description of the requirements for such a program as adopted under Subchapter J, Chapter 1551, Insurance Code, as amended by this Act.

SECTION \_\_\_\_\_. During the initial implementation of Subchapter J, Chapter 1551, Insurance Code, as added by this Act, and notwithstanding any bidding requirements or other requirements set forth in Chapter 1551, Insurance Code, as that chapter existed before amendment by this Act, the Employees Retirement System of Texas may amend any agreement in effect on September 1, 2006, that it has entered into as necessary to comply with Subchapter J, Chapter 1551, Insurance Code, as amended by this Act.

SECTION \_\_\_\_\_. The Employees Retirement System of Texas shall develop and implement the health savings account program under Subchapter J, Chapter 1551, Insurance Code, as amended by this Act, in a manner that is as revenue neutral as is possible.

Amendment No. 1 was adopted.

#### **COMMITTEE GRANTED PERMISSION TO MEET**

Representative Woolley requested permission for the Committee on Calendars to meet while the house is in session at 9:30 p.m. today, in 3W.9, for a formal meeting, to consider the calendar.

Permission to meet was granted.

#### **COMMITTEE MEETING ANNOUNCEMENT**

The following committee meeting was announced:

Calendars, 9:30 p.m. today, 3W.9, for a formal meeting, to consider the calendar.

#### **PROVIDING FOR A CONGRATULATORY AND MEMORIAL CALENDAR**

Representative Edwards moved to set a congratulatory and memorial calendar for 10 a.m. Wednesday, May 25.

The motion prevailed.

#### **CSSB 1176 - (consideration continued)**

**CSSB 1176**, as amended, was passed to third reading. (In accordance with House Rule 5, Section 51(b), every member present must have favored passage of the measure, but any member may register their position with the journal clerk. No members registered their position on this measure.)

#### **CSSB 1879 ON SECOND READING (Puente - House Sponsor)**

**CSSB 1879**, A bill to be entitled An Act relating to the creation of special districts for improvements in certain counties, including authority to acquire, construct, and improve water, wastewater, and drainage improvements; providing authority to impose a tax and issue bonds.

#### **CSSB 1879 - POINT OF ORDER**

Representative Burnam raised a point of order against further consideration of **CSSB 1879** under Rule 4, Section 20 of the House Rules on the grounds that a sworn statement was not prescribed by the committee coordinator.

(Hegar in the chair)

The point of order was withdrawn.

Representative Puente moved to postpone consideration of **CSSB 1879** until 10 a.m. tomorrow.

The motion prevailed.

**SB 11 ON SECOND READING**  
**(Delisi - House Sponsor)**

**SB 11**, A bill to be entitled An Act relating to security in public schools.

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

Representative Corte offered the following committee amendment to **SB 11**:

Amend **SB 11** (on page 1, lines 10 and 11 of Engrossed version), by striking "as recommended by the United States Department of Homeland Security" and replacing with "as defined by the Texas School Safety Center in conjunction with the state office of homeland security".

Amendment No. 1 was adopted.

**Amendment No. 2 (Committee Amendment No. 2)**

Representative Corte offered the following committee amendment to **SB 11**:

Amend **SB 11** in SECTION 1 of the bill as follows:

(1) In added Section 37.108(a)(3), Education Code (engrossed version, page 1, line 18), strike "and".

(2) In added Section 37.108(a), Education Code (engrossed version, page 1, line 20), strike the period and substitute:

; and

(5) a system for providing immediate notification through a variety of communication methods to the parents or guardians of affected district students in the event of an emergency.

Amendment No. 2 was adopted.

**SB 11**, as amended, was passed to third reading. (In accordance with House Rule 5, Section 51(b), every member present must have favored passage of the measure, but any member may register their position with the journal clerk. Members registering votes are as follows: Kolkhorst, Leibowitz, Merritt, and Phillips recorded voting no.)

**CSSB 1458 ON SECOND READING**  
**(Corte - House Sponsor)**

**CSSB 1458**, A bill to be entitled An Act relating to the adoption of a uniform commercial building code for use in municipalities in the state.

**CSSB 1458** was passed to third reading. (In accordance with House Rule 5, Section 51(b), every member present must have favored passage of the measure, but any member may register their position with the journal clerk. Members registering votes are as follows: Herrero recorded voting no.)

**SB 872 ON SECOND READING**  
**(Delisi - House Sponsor)**

**SB 872**, A bill to be entitled An Act relating to a study regarding the impact of niche hospitals on other general hospitals and to certain reports and disclosure requirements regarding niche hospitals.



**Amendment No. 1**

Representative Thompson offered the following amendment to **SB 872**:

Amend **SB 872** as follows:

(1) on page 2, following line 9, insert new Subsections (d)(1) through (3) to read as follows and renumber Subsection (1) as Subsection (4):

"(1) "Academic medical center" means an accredited medical school or accredited academic hospital that provides substantial academic or clinical teaching services in a field or fields of medical specialties, together with affiliated hospitals.

"(2) "Affiliated hospital" means a medical hospital that is affiliated in a business arrangement with an academic medical center, the medical staff of which is composed of a majority of physicians on the faculty of the academic medical center, and a majority of the patient admissions of which come from that faculty.

"(3) "Diagnostic imaging services" means magnetic resonance imaging, nuclear medicine, angiography, computed tomography, positron emission tomography, ultrasound, and any hybrid technologies combining any of these imaging modalities."

(2) on page 2, following line 14, add a new Subsection (d)(5) through (9) to read as follows and renumber Subsection (d)(2) as (d)(10):

"(5) "Health care provider" means any person licensed as a health professional or authorized to practice in health care under Subtitles B and C, Title 3.

"(6) "Immediate family member" means the spouse, child, child's spouse, grandchild, grandchild's spouse, parent, parent-in-law, or sibling of a health care provider who is an individual."

"(7) "Investment interest" means an equity or debt security issued by a person, including shares of stock in a corporation, units or other interests in a partnership, bonds, debentures, notes, or other equity interests or debt instruments. The term includes the rental or time sharing of imaging equipment in which the referring physician receives some portion of the billing revenue. The term does not include an interest in real property resulting in a landlord tenant relationship between a health care provider and another person in which the equity interest is held, unless the rent:

(A) is determined, in whole or in part, by the business volume or profitability of the tenant; or

(B) exceeds fair market value.

"(8) "Investor" means a person who directly or indirectly holds a legal, beneficial ownership, or investment interest, including an interest held through an immediate family member, trust, or another person related to the investor within the meaning of 42 C.F.R. Section 413.17.

"(9) "Licensing authority" means the department, board, office, or other agency of the state that regulates a health care provider that is subject to this chapter."

(3) on page 3, following line 8, add new Subsections (11) through (12) as follows:

(11) "Patient" means a person who receives a physical examination, evaluation, diagnosis, or treatment by a health care provider.

(12) "Referral" means a request by a health care provider for, or ordering of, diagnostic imaging services for a patient. The term includes the performance of a diagnostic imaging service for a patient by a health care provider or another person that exceeds a total charge or financial cost to the patient's payor equal to or greater than \$100 for each procedure.

(4) on page 3, following line 8, insert new SECTION 2 to read as follows and renumber subsequent sections:

SECTION 2. Subtitle A, Title 3, Occupations Code, is amended to read by adding Chapter 112 to read as follows:

"CHAPTER 112. REPORTING AND DISCLOSURE  
OF HEALTH CARE PROVIDER REFERRALS

Sec. 112.001. REPORTING AND DISCLOSURE OF REFERRALS. (a) A health care provider who refers a patient for the provision of diagnostic imaging services to a person in which the health care provider is an investor or has an investment interest shall provide the licensing authority with a quarterly report containing the total number of all referrals to any imaging facility and all claims data for those referrals required by the Center for Health Statistics of the Department of State Health Services.

(b) A person providing diagnostic imaging services that performs services for a referring health care provider that has an investment interest in the person shall report to the Center for Health Statistics of the Department of State Health Services the identity of the referring health care provider, the exact nature of the investment interest, and the total number of all patients receiving diagnostic imaging services that were referred by the provider, together with additional claims data required by the center.

(c) A health care provider making a referral for diagnostic imaging services as described by this section must:

(1) disclose the provider's investment interest to the provider's patients in writing;

(2) advise the provider's patients that the patient may choose to have another person provide the diagnostic imaging services; and

(3) obtain and record the patient's written consent after the disclosure and prior to the provision of the diagnostic imaging services.

(d) A report required by this section must be made to the appropriate licensing agency and the Center for Health Statistics of the Department of State Health Services on a form provided to each health care provider by the center.

(e) Access to the information collected under this section must be made available to the public.

(f) A health care provider shall pay to the Center for Health Statistics of the Department of State Health Services a fee in the amount of \$500 with the initial disclosure made to the center and each year that the health care provider provides a report to the center. All fees collected under this section must be maintained in a

segregated account outside the state treasury by the Center for Health Statistics of the Department of State Health Services to be used in the collection and analysis of the data collected under this chapter.

(g) The executive commissioner of the Health and Human Services Commission on behalf of the Center for Health Statistics of the Department of State Health Services shall adopt rules specifying the procedures and forms health care providers must use to comply with this section. A health care provider that violates rules adopted by the executive commissioner is subject to a civil penalty of not more than \$1,000 for each violation. The center shall bring an action to impose and collect penalties under this section. All penalties collected under this section must be maintained in a segregated account outside the state treasury by the Center for Health Statistics of the Department of State Health Services to be used in the enforcement of this chapter.

Sec. 112.003. ALLOWED REFERRALS. Section 112.002 does not apply to:

(1) the referral by a health care provider on the faculty of an academic medical center to the academic medical center or an affiliated hospital; or

(2) a referral by a health care provider if the health care provider's investment interest is in registered securities purchased on a national exchange and issued by a publicly held corporation:

(A) the shares of which are traded on a national exchange; and

(B) the total assets of which at the end of the corporation's most recent fiscal quarter exceeded \$200 million.

Sec. 112.004. DISCIPLINARY ACTION. A failure to report or disclose in accordance with this chapter by a health care provider is grounds for disciplinary action to be taken by the licensing authority that regulates the health care provider."

Amendment No. 1 was withdrawn.

### **Amendment No. 2**

Representative Y. Davis offered the following amendment to **SB 872**:

Amend **SB 872** (House committee printing) as follows:

(1) On page 5, line 3, strike "and".

(2) On page 5, line 6, strike the period and substitute "; and".

(3) On page 5, between lines 6 and 7, insert the following:

(7) the number of deaths by infections each niche hospital has in a year".

### **Amendment No. 3**

Representative McReynolds offered the following amendment to Amendment No. 2:

Amend Amendment No. 2 by Davis to **SB 872** on page 1, line 6, between "each" and "niche" by inserting "hospital including a".

Amendment No. 3 was adopted.

Amendment No. 2, as amended, was adopted.

**SB 872**, as amended, was passed to third reading. (In accordance with House Rule 5, Section 51(b), every member present must have favored passage of the measure, but any member may register their position with the journal clerk. Members registering votes are as follows: Howard, Hunter, and Phillips recorded voting no.)

**CSSB 563 ON SECOND READING**  
**(Delisi - House Sponsor)**

**CSSB 563**, A bill to be entitled An Act relating to the prevention of Medicaid fraud; providing penalties.

**Amendment No. 1**

Representative Delisi offered the following amendment to **CSSB 563**:

Amend **CSSB 563** in SECTION 2 of the bill, in added Section 36.0011(b), Human Resources Code (House Committee Printing, page 2, line 3), by striking "the person's specific intent to defraud" and substituting "the person's specific intent to commit an unlawful act under Section 36.002".

Amendment No. 1 was adopted.

**Amendment No. 2**

Representative Delisi offered the following amendment to **CSSB 563**:

Amend **CSSB 563** (house committee printing) by adding the following appropriately numbered section to read as follows and renumbering subsequent sections accordingly:

SECTION \_\_\_\_\_. (a) Section 531.1063, Government Code, is amended by amending Subsection (g) and adding Subsections (h) and (i) to read as follows:

(g) The commission shall implement ~~[may extend]~~ the program statewide as provided by Subsection (h) ~~[to additional counties]~~ if the commission determines that statewide implementation ~~[expansion]~~ would be cost-effective.

(h) The commission shall adopt a plan to implement the program statewide in phases and shall terminate the statewide implementation at any stage of the process if the commission determines that statewide implementation would not be cost-effective. The plan must include for each phase:

(1) a description of the policies and procedures to be tested concerning the handling of lost, forgotten, or stolen cards carrying a fingerprint image or situations in which a fingerprint match cannot be confirmed;

(2) a determination of whether the commission will require children or persons who are elderly or disabled to participate in the phase and the reason or reasons for including children or persons who are elderly or disabled in the phase;  
and

(3) a description of the manner and location in which the fingerprint images will be initially collected.

(i) In developing the plan required by Subsection (h), the commission shall seek comments from recipients, providers, and other stakeholders in the state Medicaid program.

(b) The Health and Human Services Commission, before implementing a phase of the Medicaid fraud reduction pilot program required by Section 531.1063, Government Code, as amended by this section, that requires mandatory participation by Medicaid recipients or health care providers, shall submit a report regarding the phase to the governor, lieutenant governor, speaker of the house of representatives, and presiding officer of each standing committee of the senate and house of representatives having jurisdiction over the state Medicaid program. The report must include a description of each component of the plan for that phase, as required by Subsection (h), Section 531.1063, Government Code, as added by this section.

(c) In addition to the report required by Subsection (c), Section 2.23, Chapter 198, Acts of the 78th Legislature, Regular Session, 2003, the Health and Human Services Commission shall report, not later than December 1, 2006, on the status and progress of the Medicaid fraud reduction pilot program required by Section 531.1063, Government Code, as amended by this section, to the governor, lieutenant governor, speaker of the house of representatives, and presiding officer of each standing committee of the senate and house of representatives having jurisdiction over the state Medicaid program. The report must include:

- (1) a continued evaluation of the benefits of the program;
- (2) an evaluation of the strengths and weaknesses of the policies and procedures tested in each phase required by Subsection (h), Section 531.1063, Government Code, as added by this section;
- (3) information concerning the cost-effectiveness of the program;
- (4) if the program has been implemented statewide, any significant problems encountered; and
- (5) if the Health and Human Services Commission requires participation by children or persons who are elderly or disabled, the reason or reasons for including children or persons who are elderly or disabled in the program.

(d) If before implementing any provision of this section 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.

Amendment No. 2 was adopted.

### **CSSB 563 - STATEMENT OF LEGISLATIVE INTENT**

REPRESENTATIVE KUEMPEL: Representative Delisi, I just wanted to ask you a couple of questions. Currently, in the analysis section of the bill analysis for **SB 563**, it states that **SB 563** "clarifies the unlawful acts provision of the statute and clarifies that the cap on exemplary damages in Chapter 41, Civil Practices and Remedies Code, does not apply to action under the Texas Medicaid Fraud Prevention Act provision," and Section 19(a) of 563 states that the act applies only to conduct "that occurs on or after the effective date of this act." Can you verify that is your intent, to legislate actual change rather than clarify it?

REPRESENTATIVE DELISI: Representative Kuempel, **SB 563** changes the law rather than clarifies it.

KUEMPEL: Thank you. Can you also verify that it is your intent that the changes in the law to **SB 563** apply to conduct that occurs after the effective date of **SB 563**, and that any other conduct that occurs before the effective date of **SB 563** is governed by the law in effect at the time the conduct occurred, as stated in Section 19(a) of **SB 563**?

DELISI: Representative Kuempel, this bill is not retroactive. It is not the intent of this legislation that any conduct that occurred before the effective date of this bill is governed by the law in effect at the time the conduct occurred.

KUEMPEL: Thank you.

### REMARKS ORDERED PRINTED

Representative Kuempel moved to print remarks between Representative Delisi and Representative Kuempel.

The motion prevailed.

**CSSB 563**, as amended, was passed to third reading. (In accordance with House Rule 5, Section 51(b), every member present must have favored passage of the measure, but any member may register their position with the journal clerk. No members registered their position on this measure.)

### CSSB 1605 ON SECOND READING (Luna - House Sponsor)

**CSSB 1605**, A bill to be entitled An Act relating to the creation and re-creation of funds and accounts in the state treasury, the dedication and rededication of revenue, and the exemption of unappropriated money from use for general governmental purposes.

#### Amendment No. 1

Representative Luna offered the following amendment to **CSSB 1605**:

Amend **CSSB 1605** (House committee printing) as follows:

- (1) In Section 5 of the bill (page 3, lines 13-17), strike:  
all funds created or re-created by **HB 2** or similar legislation;  
(2) all funds created or re-created by **HB 3** or similar legislation; and  
(3)

(2) In Section 11 of the bill (the "Separate Funds in the Treasury" section), add the following appropriately numbered subdivisions and renumber the existing subdivisions of that section accordingly:

- all funds created or re-created by **HB 2** or similar legislation;
- all funds created or re-created by **HB 3** or similar legislation;

Amendment No. 1 was adopted.

#### Amendment No. 2

Representative Luna offered the following amendment to **CSSB 1605**:

Amend **CSSB 1605** in Subdivision (7), Section 6, of the bill, between "0009" and the semicolon (page 4, line 12, House committee printing), by inserting "except for dedications or rededications of revenue made by **HB 3051** or similar legislation".

Amendment No. 2 was adopted.

### **Amendment No. 3**

Representative Luna offered the following amendment to **CSSB 1605**:

Amend **CSSB 1605** by adding a new section, numbered appropriately, to read as follows and by renumbering the other sections of the bill accordingly:

SECTION \_\_\_\_ . SCHOLARSHIP FUND FOR ARCHITECTURAL EXAMINATION. Sections 2 and 8 of this Act do not apply to the scholarship fund for architectural examination created or re-created by **SB 1279** or similar legislation creating or re-creating the fund and do not apply to dedications or rededications of revenue related to that fund made by that legislation.

Amendment No. 3 was adopted.

### **Amendment No. 4**

Representative Puente offered the following amendment to **CSSB 1605**:

Amend **CSSB 1605** as follows:

On Page 3, Section 6, between lines 3 and 4, insert:

(6) all accounts created or re-created by **SB 3** or similar legislation;

Amendment No. 4 was adopted.

### **Amendment No. 5**

Representative Bonnen offered the following amendment to **CSSB 1605**:

Amend **CSSB 1605** in Section 4 of the bill (the "Accounts in General Revenue Fund" section) by adding the following appropriately numbered subdivision and by renumbering the other subdivisions in Section 4 accordingly:

( ) the convenience switch recovery account created by **HB 2793** or similar legislation;

Amendment No. 5 was adopted.

### **Amendment No. 6**

Representative Delisi offered the following amendment to **CSSB 1605**:

Amend **CSSB 1605** (House Committee printing) in Section 4 of the bill (the "ACCOUNTS IN GENERAL REVENUE FUND" section), by inserting the following appropriately numbered subdivisions:

( ) the renewing our communities account created by **HB 2479** or similar legislation;

( ) the childhood immunization account created by **HB 2100**, **HB 2101**, or similar legislation;

Amendment No. 6 was adopted.

**Amendment No. 7**

Representative Solomons offered the following amendment to **CSSB 1605**:

Amend **CSSB 1605**, SECTION 6. by inserting a new (4) as follows and renumber:

"(4) all dedications or rededications of revenue made by **HB 7** or similar legislation:"

Amendment No. 7 was adopted.

**CSSB 1605**, as amended, was passed to third reading. (In accordance with House Rule 5, Section 51(b), every member present must have favored passage of the measure, but any member may register their position with the journal clerk. No members registered their position on this measure.)

**COMMITTEE GRANTED PERMISSION TO MEET**

Representative Edwards requested permission for the Committee on Rules and Resolutions to meet while the house is in session at 11 p.m. today, in 3W.9, for a formal meeting, to consider the calendar.

Permission to meet was granted.

**COMMITTEE MEETING ANNOUNCEMENT**

The following committee meeting was announced:

Rules and Resolutions, 11 p.m. today, 3W.9, for a formal meeting, to consider the calendar.

(Speaker in the chair)

**POSTPONED BUSINESS**

The following bills were laid before the house as postponed business:

**CSSB 1863 ON SECOND READING  
(Pitts - House Sponsor)**

**CSSB 1863**, A bill to be entitled An Act relating to certain fiscal matters affecting governmental entities.

**CSSB 1863** was read second time earlier today and was postponed until this time.

**CSSB 1863 - POINT OF ORDER**

Representative Thompson raised a point of order against further consideration of **CSSB 1863** under Rule 4, Section 41 of the House Rules on the grounds that the committee substitute is not germane.

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

Representative Thompson raised a point of order against further consideration of **CSSB 1863** on the grounds that the substitute was not germane to the Senate engrossed version of the bill. (Rule 4, Section 41) Ms. Thompson argues that a provision that was added in House committee which provided that tamper-evident packaging for the return of unused drugs was not required to be in



the manufacturer's original packaging unless required by federal law was not germane because it did not generate revenue. (SECTION 7.07 of the bill, amending Section 562.1085(f), Occupations Code).

The chair has reviewed the provision that Ms. Thompson referenced in her point of order and has determined that it is part of a larger provision that was amended, specifically, SECTION 7.07 of the bill, amending Section 562.1085(a), Occupations Code, and adding Subsection (f). Read together, these provisions allow a pharmacist who practices in a health care facility to return to a pharmacy certain unused drugs at a cost savings to the state. A pharmacist who does so does not have to return the drugs in the manufacturer's original packaging. (Subsection (f)).

Because the provisions generate revenue, the point of order is respectfully overruled.

### **Amendment No. 1**

Representatives Chisum and Pitts offered the following amendment to **CSSB 1863**:

Amend **CSSB 1863** (House Committee Printing) as follows:

- (1) Strike ARTICLE 5 (page 19, line 18 through page 26, line 23).
- (2) Strike SECTION 8.04 (page 44, lines 13-14).
- (3) Strike ARTICLE 10 (page 48, line 20 through page 51, line 16).
- (4) Strike SECTIONS 11.23, 11.24, 11.25, 11.26, and 11.27 (page 64, line 11, through page 67, line 2).
- (5) Strike SECTION 11.29 (page 67, line 19 through page 68, line 4).
- (6) Strike SECTION 11.34 (page 69, lines 19-26).
- (7) Strike SECTION 11.36 (page 70, line 9 through page 71, line 18).
- (8) Strike SECTION 11.49 (page 80, lines 14-21) and substitute:  
SECTION 11.49. The following sections of the Tax Code are repealed:
  - (1) Section 151.103(d);
  - (2) Section 151.202(c);
  - (3) Section 321.203(1), as added by Chapter 1310, Acts of the 78th Legislature, Regular Session, 2003; and
  - (4) Section 323.203(1).

(McCall in the chair)

Amendment No. 1 was adopted.

### **Amendment No. 2**

Representative Puente offered the following amendment to **CSSB 1863**:

Amend Floor Amendment No. \_\_ by Madden to **CSSB 1863** (House Committee printing) as follows:

- (1) In the unnumbered SECTION of the amendment that adds Subsection (a), Section 493.0101, Government Code (page 1, line 6), strike "shall" and substitute "may".
- (2) In the unnumbered SECTION of the amendment that adds Subsection (a), Section 493.0101, Government Code (page 1, line 8), strike "initial".

(3) In the unnumbered SECTION of the amendment that adds Subsection (d), Section 493.0101, Government Code (page 1, line 21), strike "shall" and substitute "may".

(4) In the unnumbered SECTION of the amendment that adds Subsection (d), Section 493.0101, Government Code (page 1, lines 22 and 23), strike "in every correctional facility" and substitute "in a number of facilities as considered appropriate by the department".

(5) In the unnumbered SECTION of the amendment that adds Subsection (e), Section 493.0101, Government Code (page 2, line 4), between "verified" and the period, insert "by the Texas Water Development Board".

Amendment No. 2 was withdrawn.

### **Amendment No. 3**

Representative T. King offered the following amendment to **CSSB 1863**:

Amend **CSSB 1863** as follows:

On page 1, line 12, strike "\$1,000" and substitute "\$370"

### **Amendment No. 4**

Representative Chisum offered the following amendment to Amendment No. 3:

Amend the Tracy King Amendment as follows:

Amend **CSSB 1863** as follows:

On page 1, line 12, strike "\$1,000" and substitute "\$500"

Representative T. King moved to table Amendment No. 4.

The motion to table was lost.

Amendment No. 4 was adopted. (Herrero recorded voting no.)

Amendment No. 3, as amended, was adopted. (Herrero recorded voting no.)

### **Amendment No. 5**

Representative Krusee offered the following amendment to **CSSB 1863**:

Amend **CSSB 1863** (house committee printing) as follows:

(1) In the recital to SECTION 4.16 of the bill (page 17, line 26, strike "Subsection (c-1)" and substitute "Subsections (c-1) and (d-1)".

(2) In SECTION 4.16 of the bill (page 18, between lines 9 and 10), after added Section 162.227(c-1), Tax Code, insert the following:

(d-1) A license holder may take a credit on a return for the period in which the purchase occurred, and a person who does not hold a license may file a refund claim with the comptroller, if the license holder or person paid tax on diesel fuel and the diesel fuel is used in this state by auxiliary power units or power take-off equipment on any motor vehicle. If the quantity of that diesel fuel can be accurately measured while the motor vehicle is stationary by any metering or other measuring device or method designed to measure the fuel separately from fuel used to propel the motor vehicle, the comptroller may approve and adopt the use of the device as a basis for determining the quantity of diesel fuel consumed

in those operations for a tax credit or tax refund. If there is no separate metering device or other approved measuring method, the license holder may take the credit and the person who does not hold a license may claim the refund on a percentage of the diesel fuel consumed by each motor vehicle equipped with an auxiliary power unit or power take-off equipment. The comptroller shall determine the percentage of the credit or refund. The climate-control air conditioning or heating system of a motor vehicle that has a primary purpose of providing for the convenience or comfort of the operator or passengers is not a power take-off system, and a credit or refund may not be allowed for the tax paid on any portion of the diesel fuel that is used for that purpose. A credit or refund may not be allowed for the diesel fuel tax paid on that portion of the diesel fuel that is used for idling.

Amendment No. 5 was adopted.

### **Amendment No. 6**

Representative Wong offered the following amendment to **CSSB 1863**:

Amend **CSSB 1863** as follows:

(1) In the recital to SECTION 4.16 (page 17, line 26), strike "Subsection (c-1)" and substitute "Subsections (c-1) and (c-2)".

(2) At the end of SECTION 4.16 (page 18, between lines 9 and 10), insert the following:

(c-2) A person who does not hold a license under this subchapter may file a refund claim with the comptroller if the person paid tax on kerosene and used or consumed the kerosene in this state in manufacturing or as a component part of a product that is not a motor fuel.

Amendment No. 6 was adopted.

### **Amendment No. 7**

Representative B. Brown offered the following amendment to **CSSB 1863**:

Amend **CSSB 1863**, in SECTION 5A.03 of the bill, proposed Section 152.0412, Tax Code (committee printing, on page 21, between lines 4 and 5), by inserting the following:

(d-1) A county tax assessor-collector shall examine each certified appraisal submitted to the assessor-collector under Subsection (d) for the purpose of determining the truth and accuracy of the information in the appraisal. If the tax assessor-collector or the comptroller believes that any information in a certified appraisal is incorrect or untrue, or if the certified appraisal does not conform to any applicable rule adopted by the comptroller under this chapter, the tax assessor or the comptroller shall require the purchaser of the vehicle described on the certified appraisal, the licensed adjuster, or the motor vehicle dealer, as applicable, to:

(1) provide additional information or evidence to substantiate the information in the appraisal; or

(2) conform the appraisal to the applicable rule of the comptroller.

(Speaker in the chair)

Amendment No. 7 was adopted.

#### **Amendment No. 8**

Representative Seaman offered the following amendment to **CSSB 1863**:

Amend **CSSB 1863** in SECTION 5C.01 of the bill, in amended SECTION 156.001, Tax Code (House Committee Printing, page 25, line 27), by striking "unfurnished".

Amendment No. 8 was withdrawn.

#### **Amendment No. 9**

Representatives Casteel, McClendon, Morrison, and Seaman offered the following amendment to **CSSB 1863**:

Amend **CSSB 1863** as follows:

(1) On page 26, strike line 18 and substitute the following:

SECTION 5C.05. Section 156.101, Tax Code, is reenacted and amended to read as follows:

Sec. 156.101. TAX NOT IMPOSED ON [~~EXCEPTION—~~] PERMANENT RESIDENT. This chapter does not impose a tax on a person who has the right to use or possess a room in a hotel for at least 30 consecutive days, so long as there is no interruption of payment for that [~~the~~] period.

SECTION 5C.06. In the event of a conflict between the reenactment and amendment of Section 156.101, Tax Code, under Section 5C.05 of this Act, and another Act passed by the 79th Legislature, Regular Session, 2005, that affects Section 156.101, Tax Code, and that becomes law, this section and Section 5C.05 of this Act prevail and control regardless of the relative dates of enactment.

(2) On page 26, line 19, strike "5C.06." and substitute "5C.07."

Amendment No. 9 was withdrawn.

#### **Amendment No. 10**

Representative Gattis offered the following amendment to **CSSB 1863**:

Amend **CSSB 1863** (House Committee Report) as follows:

(1) In SECTION 8.02 of Article 8 of the bill, in proposed Subsection (c), Section 531.079, Government Code (page 43, line 7), strike "commission" and substitute "Department of Aging and Disability Services".

(2) In SECTION 8.02 of ARTICLE 8 of the bill, in proposed Section 531.080, Government Code (page 43, line 12), strike "commission" and substitute "Department of Aging and Disability Services".

Amendment No. 10 was adopted.

#### **Amendment No. 11**

Representative Menendez offered the following amendment to **CSSB 1863**:

Amend **CSSB 1863** as follows:

Strike Section 11.23; Section 11.24; Section 11.25; Section 11.26; and Section 11.27, beginning on page 64 through page 66, and striking (3) in Section 11.49 on page 80, and renumber all sections accordingly.

Amendment No. 11 was withdrawn.

### **Amendment No. 12**

Representative Chisum offered the following amendment to **CSSB 1863**:

Amend **CSSB 1863** (house committee report) by striking SECTION 11.50 of the bill (page 80, line 22 through page 81, line 2), and substituting the following:

SECTION 11.50. The changes in law made by this article to Section 201.102, Tax Code, apply to a refund claim or a determination under Chapter 111, Tax Code, for which the comptroller has not issued a final order or decision on or before the effective date of this article without regard to whether the taxes that are the subject of the refund claim or determination are due before, on, or after the effective date of this article.

Amendment No. 12 was withdrawn.

### **Amendment No. 13**

Representative Hopson offered the following amendment to **CSSB 1863**:

Amend **CSSB 1863** (House Committee Printing) as follows:

(1) In SECTION 12.02 of ARTICLE 12 of the bill, in proposed Subsection (b), Section 161.653, Health and Safety Code (page 84, lines 7 and 8), strike "including a common carrier or commercial delivery service.".

(2) In SECTION 12.02 of ARTICLE 12 of the bill, at the end of proposed Subsection (b), Section 161.653, Health and Safety Code (page 84, line 12), insert the following "This subsection does not apply to a common carrier or commercial delivery service that in the ordinary course of business does not use bills of lading or other shipping documents to identify the contents of packages transported by the carrier or commercial delivery service."

(3) In SECTION 12.02 of ARTICLE 12 of the bill, in proposed Subsection (a), Section 161.656, Health and Safety Code (page 85, line 22), between "may not" and "make any", insert ", with the specific purpose of intentionally assisting in the violation of this subchapter.".

(4) In SECTION 12.02 of ARTICLE 12 of the bill, in proposed Subsection (a), Section 161.656, Health and Safety Code (page 85, line 23), strike "unless" and substitute ". A person who is a common carrier or commercial delivery service and who receives a list maintained under Section 161.655 may make deliveries in this state on behalf of a person who is identified in the list if".

(5) In SECTION 12.02 of ARTICLE 12 of the bill, strike proposed Subdivision (3), Subsection (b), Section 161.656, Health and Safety Code (page 86, line 24 through page 87, line 4), and substitute the following:

(3) is not subject to criminal penalties for a violation of this subchapter unless the person intentionally violates this subchapter for the specific purpose of assisting a person engaged in the business of manufacturing, distributing, or selling cigarettes or tobacco products to violate this subchapter; and

Amendment No. 13 was adopted.

**Amendment No. 14**

Representative Madden offered the following amendment to **CSSB 1863**:

Amend **CSSB 1863** by adding the following Article \_\_\_\_. and renumbering the following Articles accordingly.

**ARTICLE \_\_\_\_.** WATER CONSERVATION SYSTEMS FOR CORRECTIONAL FACILITIES

SECTION \_\_\_\_\_. Chapter 493, Government Code, is amended by adding Section 493.0101 to read as follows:

Sec.493.0101. WATER CONSERVATION SYSTEMS FOR CORRECTIONAL FACILITIES. (a) The department shall contract with a performance contractor to hire a private vendor, at no initial cost to the state, to install electronic water conservation systems on prison toilets, sinks, and showers.

(b) A performance contractor contracting with the department under this section shall:

(1) demonstrate that the electronic water conservation systems used will yield the greatest amount of annual water consumption and maintenance cost savings available.

(c) A contract between the department and a performance contractor under this section must include a provision that will ensure a budget-neutral or positive fiscal impact to the state.

(d) The department shall contract for the installation of the conservation systems in every correctional facility. In designating the order of installation in a correctional facility under this subsection, the department shall consider:

(1) the facility where the greatest amount of savings can be achieved;

(2) the age of the facility; and

(3) the potential operational and security concerns of the facility.

(e) A performance contractor that contracts with the department under this section may not receive any remuneration under the contract until cost savings to the state have been verified.

(f) Not later than December 31, 2006, the department shall submit a progress report to the lieutenant governor, speaker of the house of representatives, and the Legislative Budget Board. The report must include an evaluation of the initial installation of the water conservation systems, effectiveness of the technology used, and the amount of cost savings to the state. The department may request assistance from the State Auditor and the Legislative Budget Board with the preparation of the report and the calculation of savings.

SECTION \_\_\_\_\_. (a) Not later than October 1, 2005, the Texas Department of Criminal Justice shall submit a request for proposals from performance contractors to provide water conservation systems under Section 493.0101, Government Code, as added by this Act.

(b) The installation of the water conservation systems described by Subsection (a) of this section shall begin not later than February 1, 2006, and shall be completed by January 1, 2011.

**Amendment No. 15**

Representative Puente offered the following amendment to Amendment No. 14:

Amend Floor Amendment No. 14 by Madden to **CSSB 1863** (House committee printing) as follows:

(1) In the unnumbered SECTION of the amendment that adds Subsection (a), Section 493.0101, Government Code (page 1, line 6), strike "shall" and substitute "may".

(2) In the unnumbered SECTION of the amendment that adds Subsection (b), Section 493.0101, Government Code (page 1, lines 11-16), strike added Subsection (b) and substitute the following:

(b) A performance contractor contracting with the department under this section shall:

(1) ensure that the installation work described by Subsection (a) is performed by a person licensed as a plumber under Chapter 1301, Occupations Code, who complies with all plumbing codes described by that chapter; and

(2) demonstrate that the electronic water conservation systems used will yield annual water consumption and maintenance cost savings.

(3) In the unnumbered SECTION of the amendment that adds Subsection (d), Section 493.0101, Government Code (page 1, line 21), strike "shall" and substitute "may".

(4) In the unnumbered SECTION of the amendment that adds Subsection (d), Section 493.0101, Government Code (page 1, lines 22 and 23), strike "in every correctional facility" and substitute "in a number of facilities as considered appropriate by the department".

(5) In the unnumbered SECTION of the amendment that adds Subsection (e), Section 493.0101, Government Code (page 2, line 4), between "verified" and the period, insert "by the Texas Water Development Board".

Representative Madden moved to table Amendment No. 15.

(Campbell in the chair)

A record vote was requested.

The motion to table prevailed by (Record 756): 75 Yeas, 67 Nays, 2 Present, not voting.

Yeas — Allen, R.; Anderson; Baxter; Berman; Bonnen; Branch; Brown, B.; Brown, F.; Callegari; Casteel; Corte; Crabb; Crownover; Davis, J.; Dawson; Delisi; Denny; Deshotel; Driver; Eissler; Flynn; Goodman; Goolsby; Griggs; Grusendorf; Haggerty; Hamric; Harper-Brown; Hartnett; Hilderbran; Hill; Hochberg; Hopson; Howard; Hughes; Hunter; Hupp; Jackson; Jones, D.; Keel; King, P.; Krusee; Kuempel; Laubenberg; Madden; McCall; McReynolds; Miller; Morrison; Mowery; Nixon; Noriega, M.; Oliveira; Orr; Otto; Peña; Pitts; Quintanilla; Reyna; Riddle; Seaman; Smith, T.; Smith, W.; Smithee; Solomons; Straus; Swinford; Talton; Taylor; Truitt; Villarreal; West; Wong; Woolley; Zedler.

Nays — Allen, A.; Alonzo; Anchia; Blake; Bohac; Burnam; Castro; Chavez; Chisum; Coleman; Cook, B.; Cook, R.; Davis, Y.; Dukes; Dunnam; Dutton; Edwards; Eiland; Elkins; Escobar; Farabee; Farrar; Flores; Frost; Gattis; Geren; Giddings; Gonzales; Gonzalez Tourelles; Guillen; Hamilton; Hardcastle; Hegar; Herrero; Homer; Hope; Jones, J.; Keffer, B.; Keffer, J.; King, T.; Kolkhorst; Laney; Leibowitz; Luna; Martinez; Martinez Fischer; McClendon; Menendez; Merritt; Naishtat; Olivo; Paxton; Phillips; Pickett; Puente; Raymond; Ritter; Rodriguez; Rose; Solis; Strama; Thompson; Turner; Uresti; Van Arsdale; Veasey; Vo.

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

Absent, Excused — Bailey; Gallego; Hodge; Isett.

Absent — Moreno, P.

### **Amendment No. 16**

Representative Puente offered the following amendment to Amendment No. 14:

Amend Floor Amendment No. 14 by Madden to **CSSB 1863** (House committee printing) as follows:

(2) In the unnumbered SECTION of the amendment that adds Subsection (b), Section 493.0101, Government Code (page 1, lines 11-16), strike added Subsection (b) and substitute the following:

(b) A performance contractor contracting with the department under this section shall:

(1) ensure that the installation work described by Subsection (a) is performed by a person licensed as a plumber under Chapter 1301, Occupations Code, who complies with all plumbing codes described by that chapter; and

(2) demonstrate that the electronic water conservation systems used will yield annual water consumption and maintenance cost savings.

(4) In the unnumbered SECTION of the amendment that adds Subsection (d), Section 493.0101, Government Code (page 1, lines 22 and 23), strike "in every correctional facility" and substitute "in a number of facilities as considered appropriate by the department".

(5) In the unnumbered SECTION of the amendment that adds Subsection (e), Section 493.0101, Government Code (page 2, line 4), between "verified" and the period, insert "by the Texas Water Development Board".

(Keel in the chair)

Amendment No. 16 was adopted.

Amendment No. 14, as amended, was adopted.

### **Amendment No. 17**

Representative Chisum offered the following amendment to **CSSB 1863**:

Amend **CSSB 1863** (House Committee Report) by adding a new appropriately numbered ARTICLE to read as follows and renumbering subsequent ARTICLES accordingly:



ARTICLE \_\_. CONTESTED CASES INVOLVING THE COLLECTION,  
ADMINISTRATION, AND ENFORCEMENT OF CERTAIN TAXES AND  
FEES

SECTION \_\_.01. Subchapter A, Chapter 111, Tax Code, is amended by adding Section 111.00455 to read to as follows:

Sec. 111.00455. CONTESTED CASES PERFORMED BY TAX DIVISION OF STATE OFFICE OF ADMINISTRATIVE HEARINGS; FEES. (a) The tax division of the State Office of Administrative Hearings shall perform any contested case hearing as provided by Section 2003.0491, Government Code, in relation to the collection, administration, and enforcement of:

(1) a tax imposed under this title; and

(2) any other tax or fee that the comptroller is required to collect under a law not included in this title.

(b) A reference in law to the comptroller that relates to the performance of a contested case hearing described by Subsection (a) means the tax division of the State Office of Administrative Hearings.

(c) The tax division of the State Office of Administrative Hearings shall charge a fee of \$25 from the person bringing the contested case. The State Office of Administrative Hearings shall deposit the revenue generated by this fee into the general revenue fund.

(d) The State Office of Administrative Hearings may not charge a fee to a government body or to a government official appearing in a representative capacity.

(e) The State Office of Administrative Hearings may not charge a fee to an individual if the individual files a sufficient affidavit attesting to the fact that the individual is unable to pay the fee. The affidavit must contain sufficiently complete factual information regarding the individual's income, assets, and debts to demonstrate to the satisfaction of the State Office of Administrative Hearings that the individual is unable to pay the fee established under Subsection (c).

SECTION \_\_.02. Subchapter C, Chapter 2003, Government Code, is amended by adding Section 2003.0491 to read as follows:

Sec. 2003.0491. TAX DIVISION. (a) The office shall establish a tax division to conduct hearings relating to contested cases involving the collection, administration, and enforcement of taxes and fees as prescribed by Section 111.00455, Tax Code.

(b) Only an administrative law judge in the tax division may conduct a hearing on behalf of the comptroller.

(c) To be eligible to preside at a hearing, an administrative law judge must:

(1) have been licensed to practice law in this state for at least 10 years;

(2) have at least five years of experience in state tax laws; and

(3) have substantial knowledge of tax law and substantial experience in tax cases in making the record suitable for judicial review.

(d) The office and the comptroller shall jointly adopt rules providing for certification to the comptroller of an issue that involves an ultimate finding of compliance with or satisfaction of a statutory standard the determination of which is committed to the discretion or judgment of the comptroller by law. The rules

must address, at a minimum, the issues that are appropriate for certification and the procedure to be used in certifying the issue. Each agency shall publish the jointly adopted rules.

(e) Notwithstanding Section 2001.058, the comptroller may change a finding of fact or conclusion of law made by the administrative law judge or vacate or modify an order issued by the administrative law judge only if the comptroller:

(1) determines that the administrative law judge:

(A) did not properly apply or interpret applicable law; or

(B) issued a finding of fact that is not supported by a preponderance of the evidence; or

(2) determines that a comptroller policy or a prior administrative decision on which the administrative law judge relied is incorrect or should be changed.

(f) The comptroller shall state in writing the specific reason and legal basis for its determination under Subsection (e).

(g) An administrative law judge, on the judge's own motion or on motion of a party and after notice and an opportunity for a hearing, may impose appropriate sanctions as provided by Subsection (h) against a party or its representative for:

(1) filing a motion or pleading that is groundless and brought:

(A) in bad faith;

(B) for the purpose of harassment; or

(C) for any other improper purpose, such as to cause unnecessary delay or needless increase in the cost of the proceeding;

(2) abuse of the discovery process in seeking, making, or resisting discovery; or

(3) failure to obey an order of the administrative law judge or the comptroller.

(h) A sanction imposed under Subsection (g) may include, as appropriate and justified, issuance of an order:

(1) disallowing further discovery of any kind or of a particular kind by the offending party;

(2) holding that designated facts be deemed admitted for purposes of the proceeding;

(3) refusing to allow the offending party to support or oppose a designated claim or defense or prohibiting the party from introducing designated matters in evidence;

(4) disallowing in whole or in part requests for relief by the offending party and excluding evidence in support of such requests; and

(5) striking pleadings or testimony, or both, in whole or in part, or staying further proceedings until the order is obeyed.

(i) Hearings conducted for the comptroller by the office shall be held in hearing rooms provided by the comptroller. The comptroller shall also provide the tax division access to its computer systems, databases, library resources, and all records.

(j) The office shall charge the comptroller a fixed annual fee rather than an hourly rate for services rendered by the tax division to the comptroller. The amount of the fee may not be less than the amount appropriated to the comptroller in the General Appropriations Act for payment to the tax division to conduct comptroller hearings. The amount of the fee shall be based on the costs of conducting the hearings, the costs of travel expenses and telephone charges directly related to the hearings, docketing costs, and other applicable administrative costs of the office, including the administrative costs of the tax division. The office and the comptroller shall negotiate the amount of the fixed fee biennially, subject to the approval of the governor, to coincide with the comptroller's legislative appropriations request.

(k) Judicial review of a final decision of the tax division is by trial de novo in district court.

(l) A finding of fact or conclusion of law made by an administrative law judge conducting a hearing under this section must be:

(1) independent and impartial; and

(2) based on state law and the evidence presented at the hearing.

(m) An administrative law judge conducting a hearing under this section may not directly or indirectly communicate in connection with an issue of fact or law with a party or its representative, except on notice and opportunity for each party to participate. The comptroller may not attempt to influence the findings of fact or the administrative law judge's application of the law except by proper evidence and legal argument.

(n) Appearances in hearings conducted for the comptroller by the office may be by:

(1) the taxpayer;

(2) an attorney licensed to practice law in this state;

(3) a certified public accountant; or

(4) an enrolled agent authorized to practice before the Internal Revenue

Service.

(o) The office may allow an attorney or accountant authorized to practice or licensed in any other jurisdiction of the United States to appear and represent a taxpayer in hearings before the office for a particular matter. In addition, the office may adopt rules allowing a taxpayer to be represented by an officer, employee, or member of the taxpaying entity. The comptroller is represented by an authorized representative in all hearings conducted for the comptroller by the office.

SECTION \_\_\_\_ .03. (a) A task force is established to administer the transfer of contested case hearings from the comptroller to the State Office of Administrative Hearings. The task force is composed of:

(1) the governor or the governor's designee;

(2) the lieutenant governor or the lieutenant governor's designee;

(3) the speaker of the house of representatives or the speaker's designee;

(4) the comptroller or the comptroller's designee;

(5) a designee of the Legislative Budget Board; and

(6) the chief administrative law judge of the State Office of Administrative Hearings or the judge's designee.

(b) The governor or the governor's designee is the presiding officer of the task force.

(c) The task force shall:

(1) determine the equipment, electronic information and databases, including any electronic files, appropriations, contracts, rights, money, leases, facilities, and other items that will be transferred under this article and the schedule for the transfers; and

(2) mediate and resolve disputes between the respective agencies relating to a transfer.

(d) After the transfers have been completed, the task force shall prepare a written report detailing the specifics of the transfers and shall submit the report to the governor and the legislature.

(e) In determining a transfer under this article, the task force shall ensure that the transfer does not adversely affect a proceeding before the comptroller or the rights of the parties to the proceeding.

SECTION \_\_\_\_.04. (a) On January 1, 2006, the following are transferred to the tax division of the State Office of Administrative Hearings:

(1) all hearings described by Section 2003.0491(a), Government Code, as added by this article; and

(2) subject to the proceeding section of this article, all equipment, data, facilities, and other items of the comptroller's administrative hearings division.

(b) Before January 1, 2006, the hearings shall continue to be held by the comptroller under the law related to the conduct of those hearings by the comptroller that existed on August 31, 2005, and that law is continued in effect only for this purpose.

SECTION \_\_\_\_.05. The changes in law made by this article that relate to the procedures governing a hearing before the tax division of the State Office of Administrative Hearings apply only to a case that is filed on or after January 1, 2006. Procedures relating to a case filed before January 1, 2006, shall continue to be used in a hearing as those provisions existed on August 31, 2005, and are continued in effect only for this purpose.

SECTION \_\_\_\_.06. This article takes effect September 1, 2005.

Amendment No. 17 was adopted. (Casteel, Homer, and Keel recorded voting no.)

### **Amendment No. 18**

Representative Krusee offered the following amendment to **CSSB 1863**:

Amend **CSSB 1863** (House committee printing) by adding the following appropriately numbered Article to the bill and renumbering subsequent Articles and Sections of the bill as appropriate:

ARTICLE \_\_\_\_. PROCEEDS FROM THE SALE OF CERTAIN STATE  
PERSONAL AND REAL PROPERTY

SECTION \_\_\_\_.01. Section 2175.134, Government Code, is amended by adding Subsection (b) and amending Subsection (c) to read as follows:

(b) Proceeds from the sale of surplus or salvage property originally purchased with money from the state highway fund shall be deposited to the credit of the state highway fund. The portion of sale proceeds equal to the cost of advertising the sale and the cost of selling the surplus or salvage property, including the cost of auctioneer services, shall be deposited to the credit of the general revenue fund if the costs were not paid from the state highway fund. The fee collected under Section 2175.131 shall be deposited to the credit of the general revenue fund.

~~(c) Proceeds from the sale of surplus and salvage property of the State Aircraft Pooling Board shall be deposited to the credit of the state highway fund [board].~~

SECTION \_\_.02. Section 2175.191, Government Code, is amended by adding Subsection (b) and amending Subsection (c) to read as follows:

(b) Proceeds from the sale of surplus or salvage property originally purchased with money from the state highway fund shall be deposited to the credit of the state highway fund. The portion of sale proceeds equal to the cost of advertising the sale and the cost of selling the surplus or salvage property, including the cost of auctioneer services, shall be deposited to the credit of the general revenue fund if the costs were not paid from the state highway fund. The fee collected under Section 2175.188 shall be deposited to the credit of the general revenue fund.

~~(c) Proceeds from the sale of surplus and salvage property of the State Aircraft Pooling Board shall be deposited to the credit of the state highway fund [board].~~

SECTION \_\_.03. Subsection (c), Section 31.1573, Natural Resources Code, is amended to read as follows:

(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, except as provided by Subdivision (2) or (3) [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 state highway fund, if the real property was originally purchased in whole or in part with money from the state highway fund [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.

SECTION \_\_.04. This article takes effect September 1, 2007.

Amendment No. 18 was adopted.

### **Amendment No. 19**

Representative Thompson offered the following amendment to **CSSB 1863**:

Amend **CSSB 1863** by adding Sections \_\_ and \_\_ to read as follows:

SECTION \_\_. Subsection (a), Section 61.001, Government Code, is amended to read as follows:

"(a) Each grand juror or petit juror in a civil or criminal case in a district court, criminal district court, county court, county court at law, or justice court is entitled to receive as reimbursement for travel and other expenses an amount: (1) not less than \$6 for the first day or fraction of the first day served as a juror; and (2) not less than \$40 [not more than \$50] for each day or fraction of each day served as a juror after the first day."

SECTION \_\_. Chapter 61, Government Code, is amended by adding Section 61.0015 to read as follows:

"Sec. 61.0015. REIMBURSEMENT TO COUNTY. (a) The state shall reimburse a county \$34 a day for the reimbursement paid to a grand juror or petit juror under Section 61.001 for each day or fraction of each day served as a juror after the first day.

(b) The commissioners court of a county entitled to reimbursement under this section may file a claim for reimbursement with the comptroller.

(c) The comptroller shall pay claims for reimbursement under this section quarterly to the county treasury of each county that filed a claim from money collected under Article 102.0045, Code of Criminal Procedure, and deposited in the judicial fund.

(d) If sufficient money described by Subsection (c) is not available to satisfy the claims for reimbursement filed by the counties under this section, the comptroller shall apportion the available money among the counties by reducing the amount payable to each county on an equal percentage basis.

(e) If a payment on a county's claim for reimbursement is reduced under Subsection (d), or if a county fails to file the claim for reimbursement in a timely manner, the comptroller shall:

(1) pay the balance owed to the county when sufficient money described by Subsection (c) is available; or

(2) carry forward the balance owed to the county and pay the balance to the county when the next payment is required."

SECTION \_\_. Section 62.0141, Government Code, is amended to read as follows:

"Sec. 62.0141. FAILURE TO ANSWER JURY SUMMONS. In addition to any criminal penalty prescribed by law, a person summoned for jury service who does not comply with the summons as required by law or who knowingly provides false information in a request for an exemption or to be excused from jury service is subject to a contempt action punishable by a fine of not less than \$100 nor more than \$1,000."

SECTION \_\_. Subchapter A, Chapter 62, Government Code, is amended by adding Section 62.0142 to read as follows:

"Sec. 62.0142. POSTPONEMENT OF JURY SERVICE. (a) A person summoned for jury service may request a postponement of the person's initial appearance for jury service. The person may request the postponement by contacting the clerk of the court in person, in writing, or by telephone before the date on which the person is summoned to appear.

(b) On receipt of a request under Subsection (a), the clerk of the court shall grant the person a postponement if:

(1) the person has not been granted a postponement in that county during the one-year period preceding the date on which the person is summoned to appear; and

(2) the person and the clerk determine a substitute date on which the person will appear for jury service that is not later than six months after the date on which the person was originally summoned to appear.

(c) A person who receives a postponement under Subsection (b) may request a subsequent postponement in the manner described by Subsection (a). The clerk of the court may approve the subsequent postponement only because of an extreme emergency that could not have been anticipated, such as a death in the person's family, sudden serious illness suffered by the person, or a natural disaster or national emergency in which the person is personally involved. Before the clerk may grant the subsequent postponement, the person and the clerk must determine a substitute date on which the person will appear for jury service that is not later than six months after the date on which the person was to appear after the postponement under Subsection (b)."

SECTION \_\_. Subchapter A, Chapter 102, Code of Criminal Procedure, is amended by adding Article 102.0045 to read as follows:

"Art. 102.0045. FEE FOR JURY REIMBURSEMENT TO COUNTIES.

(a) A person convicted of any offense, other than an offense relating to a pedestrian or the parking of a motor vehicle, shall pay as a court cost, in addition to all other costs, a fee of \$4 to be used to reimburse counties for the cost of juror services as provided by Section 61.0015, Government Code.

(b) The clerk of the court shall remit the fees collected under this article to the comptroller in the manner provided by Subchapter B, Chapter 133, Local Government Code. The comptroller shall deposit the fees in the judicial fund."

SECTION \_\_. Section 102.021, Government Code, is amended to read as follows:

"Sec. 102.021. COURT COSTS ON CONVICTION. A person convicted of an offense shall pay, in addition to all other costs:

(1) court costs on conviction of a felony (Sec. 133.102, Local Government Code)...\$133;

(2) court costs on conviction of a Class A or Class B misdemeanor (Sec. 133.102, Local Government Code)...\$83;

(3) court costs 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 (Sec. 133.102, Local Government Code)...\$40;

(4) court costs on certain convictions in statutory county courts (Sec. 51.702, Government Code)...\$15;

(5) court costs on certain convictions in certain county courts (Sec. 51.703, Government Code)...\$15;

(6) a time payment fee if convicted of a felony or misdemeanor for paying 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, courts costs, or restitution (Sec. 133.103, Local Government Code)...\$25;

- (7) a fee for services of prosecutor (Art. 102.008, Code of Criminal Procedure)...\$25;
- (8) fees for services of peace officer:
- (A) issuing a written notice to appear in court for certain violations (Art. 102.011, Code of Criminal Procedure)...\$5;
  - (B) executing or processing an issued arrest warrant or capias (Art. 102.011, Code of Criminal Procedure)...\$50;
  - (C) summoning a witness (Art. 102.011, Code of Criminal Procedure)...\$5;
  - (D) serving a writ not otherwise listed (Art. 102.011, Code of Criminal Procedure)...\$35;
  - (E) taking and approving a bond and, if necessary, returning the bond to courthouse (Art. 102.011, Code of Criminal Procedure)...\$10;
  - (F) commitment or release (Art. 102.011, Code of Criminal Procedure)...\$5;
  - (G) summoning a jury (Art. 102.011, Code of Criminal Procedure)...\$5;
  - (H) attendance of a prisoner in habeas corpus case if prisoner has been remanded to custody or held to bail (Art. 102.011, Code of Criminal Procedure)...\$8 each day;
  - (I) mileage for certain services performed (Art. 102.011, Code of Criminal Procedure)...\$0.29 per mile; and
  - (J) services of a sheriff or constable who serves process and attends examining trial in certain cases (Art. 102.011, Code of Criminal Procedure)...not to exceed \$5;
- (9) services of a peace officer in conveying a witness outside the county (Art. 102.011, Code of Criminal Procedure)...\$10 per day or part of a day, plus actual necessary travel expenses;
- (10) overtime of peace officer for time spent testifying in the trial or traveling to or from testifying in the trial (Art. 102.011, Code of Criminal Procedure)...actual cost;
- (11) court costs on an offense relating to rules of the road, when offense occurs within a school crossing zone (Art. 102.014, Code of Criminal Procedure)...\$25;
- (12) court costs on an offense of passing a school bus (Art. 102.014, Code of Criminal Procedure)...\$25;
- (13) court costs on an offense of truancy or contributing to truancy (Art. 102.014, Code of Criminal Procedure)...\$20;
- (14) cost for visual recording of intoxication arrest before conviction (Art. 102.018, Code of Criminal Procedure)...\$15;
- (15) cost of certain evaluations (Art. 102.018, Code of Criminal Procedure)...actual cost;
- (16) additional costs attendant to certain intoxication convictions under Chapter 49, Penal Code, for emergency medical services, trauma facilities, and trauma care systems (Art. 102.0185, Code of Criminal Procedure)...\$100;



(17) cost for DNA testing for certain felonies (Art. 102.020, Code of Criminal Procedure)...\$250;

(18) court cost on an offense of public lewdness or indecent exposure (Art. 102.020, Code of Criminal Procedure)...\$50;

(19) court cost on conviction of a misdemeanor under Subtitle C, Title 7, Transportation Code (Sec. 542.403, Transportation Code)...\$3;

(20) cost for impoundment of vehicle (Sec. 601.263, Transportation Code)...\$15 per day; ~~and~~

(21) a civil and criminal enforcement cost on conviction of an offense of, or related to, the nonpayment of a toll in certain counties (Sec. 284.2031, Transportation Code)...\$1; and

(22) court cost on conviction of any offense, other than a conviction of an offense relating to a pedestrian or the parking of a motor vehicle (Art. 102.0045, Code of Criminal Procedure)...\$4."

SECTION \_\_\_\_\_. Section 133.033, Local Government Code, is amended to read as follow:

"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; and

(8) the fee imposed under Article 102.0045, Code of Criminal Procedure."

### **Amendment No. 20**

Representative Hartnett offered the following amendment to Amendment No. 19:

Amend Floor Amendment No. 19 by Thompson to **CSSB 1863** as follows:

(1) In proposed Article 102.0045(a), Code of Criminal Procedure (page 4, line 8), strike "\$4" and substitute "\$2".

(2) In proposed Section 102.021(22), Government Code, (page 8, line 3), strike "\$4" and substitute "\$2".

Amendment No. 20 was adopted.

Amendment No. 19, as amended, was adopted. (Keel recorded voting no.)

**Amendment No. 21**

Representative Krusee offered the following amendment to **CSSB 1863**:

Amend **CSSB 1863** by adding the following appropriately numbered ARTICLE to the bill and renumbering subsequent ARTICLES of the bill accordingly:

ARTICLE \_\_\_\_\_. COST PARTICIPATION IN TOLL FACILITIES BY THE  
TEXAS DEPARTMENT OF TRANSPORTATION

SECTION \_\_\_\_\_.01. Subsection (h), Section 222.103, Transportation Code, is amended to read as follows:

(h) Money granted by the department each fiscal year under this section may not exceed \$1.5 billion [~~\$800 million~~]. This limitation does not apply to money required to be repaid.

Amendment No. 21 was adopted. (Herrero, Keel, and Leibowitz recorded voting no.)

**Amendment No. 22**

Representative Chavez offered the following amendment to **CSSB 1863**:

Amend **CSSB 1863** by adding the following appropriately numbered ARTICLE and renumbering subsequent ARTICLES of the bill accordingly:

ARTICLE \_\_\_\_\_. AUTHORIZATION OF CERTAIN NONPROFIT  
ORGANIZATIONS TO CONDUCT BINGO

SECTION 19.01. Section 2001.002(11), Occupations Code, is amended to read as follows:

(11) "Fraternal organization" means:

(A) a nonprofit organization organized to perform and engaged primarily in performing charitable, benevolent, patriotic, employment-related, or educational functions that meet the other requirements of this chapter; ~~[or]~~

(B) a nonprofit National Historical District Association representing the owners and lessees of a majority of the real property located in a National Historical District designated for not less than five years by the National Register of Historic Places, Heritage Conservation and Recreation Service of the United States Department of the Interior, if the association's net proceeds are used for restoration, construction, maintenance, and security in the district. The term "fraternal organization" does not include an organization whose members are predominantly veterans or dependents of veterans of the armed services of the United States; or

(C) a nonprofit organization that:

(i) is organized under tribal law by a federally recognized Indian tribe that is not subject to the Indian Gaming Regulatory Act (18 U.S.C. Section 1166 et seq. and 25 U.S.C. Section 2701 et seq.) and that exercises tribal authority over a reservation, as defined by 25 U.S.C. Section 1300g, that is located in a county on the international border with Mexico; and

(ii) is organized to perform and is engaged primarily in performing charitable, benevolent, patriotic, employment-related, or educational functions.

SECTION 19.02. Subchapter C, Chapter 2001, Occupations Code, is amended by adding Section 2001.1015 to read as follows:

Sec. 2001.1015. CERTAIN TRIBAL ORGANIZATIONS EXEMPT FROM REGULATORY JURISDICTION AND LICENSE REQUIREMENTS. (a) A nonprofit organization in existence for at least 180 days that qualifies as a fraternal organization under Section 2001.002(11)(C) may conduct bingo on the reservation of the Indian tribe under whose tribal law the organization is organized on adoption by the tribe of rules governing the conduct of bingo by the organization that conform to the substantive provisions of this chapter and of Sections 47(b) and (c), Article III, Texas Constitution.

(b) In accordance with Section 107(b), Ysleta del Sur Pueblo and Alabama and Coushatta Indian Tribes of Texas Restoration Act (25 U.S.C. Section 1300g-6), an organization described by Subsection (a) may conduct bingo activities in accordance with the tribe's rules adopted under Subsection (a) without submitting to the regulatory jurisdiction, including licensing requirements, of this state.

(c) A nonprofit organization described by Subsection (b) may not conduct bingo under this section unless the organization transfers to the state on a monthly basis an amount equal to five percent of the gross receipts from bingo in a manner determined by the comptroller.

Amendment No. 22 was adopted.

#### **Amendment No. 23**

Representative T. King offered the following amendment to **CSSB 1863**:

Amend **CSSB 1863** by adding the following appropriately numbered Section and renumbering other sections accordingly:

SECTION . Amend Subchapter C, Chapter 2001, Occupations Code, by adding Section 2001.1015(d) as follows:

Section 2001.1015(d). In a similar manner authorized for the other two federally recognized Indian tribes under this Section, the Kickapoo Traditional Tribe of Texas may conduct Class II bingo as defined by federal law on adoption by the Tribe of rules governing the conduct of such games at not more than one location owned in fee by the Tribe and not more than 150 miles from Eagle Pass, Texas. The Tribe shall transfer to the State on a monthly basis an amount equal to five percent of the gross receipts from such games in a manner determined by the Comptroller.

Amendment No. 23 was adopted.

#### **Amendment No. 24**

Representative Thompson offered the following amendment to **CSSB 1863**:

Amend **CSSB 1863** on page 6, following line 10, by inserting a new Article 4 to read as follows and renumbering subsequent articles:

Article 4. Add a new Section 151.0101(a)(\_\_), Tax Code, as follows:

"( ) all membership dues and fees, membership initiation fees, products, equipment, service fees, green fees, clothing, food, meals, and beverages sold by a private club that has an alcohol beverage permit under Chapter 32, Alcohol Beverage Code;

(Speaker in the chair)

A record vote was requested.

Amendment No. 24 failed of adoption by (Record 757): 37 Yeas, 96 Nays, 1 Present, not voting.

Yeas — Alonzo; Anchia; Blake; Burnam; Castro; Coleman; Davis, Y.; Dukes; Dunnam; Dutton; Eiland; Farrar; Flores; Frost; Gonzales; Gonzalez Tourelles; Goodman; Herrero; Hochberg; Howard; Jones, J.; Laney; Leibowitz; Martinez Fischer; McClendon; Naishtat; Noriega, M.; Olivo; Quintanilla; Raymond; Ritter; Rodriguez; Smith, T.; Strama; Thompson; Veasey; Vo.

Nays — Allen, A.; Allen, R.; Anderson; Berman; Bonnen; Branch; Brown, B.; Brown, F.; Callegari; Campbell; Casteel; Chisum; Cook, B.; Cook, R.; Corte; Crabb; Crownover; Davis, J.; Dawson; Delisi; Denny; Deshotel; Driver; Eissler; Elkins; Escobar; Flynn; Gattis; Geren; Giddings; Goolsby; Griggs; Grusendorf; Guillen; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Hegar; Hilderbran; Hill; Homer; Hope; Hopson; Hughes; Hunter; Hupp; Jackson; Jones, D.; Keel; Keffer, B.; Keffer, J.; King, P.; King, T.; Kolkhorst; Krusee; Kuempel; Laubenberg; Luna; Madden; Martinez; McCall; McReynolds; Merritt; Miller; Morrison; Mowery; Nixon; Oliveira; Orr; Otto; Paxton; Peña; Phillips; Puente; Riddle; Rose; Seaman; Smith, W.; Smithee; Solis; Solomons; Straus; Swinford; Talton; Taylor; Truitt; Uresti; Van Arsdale; Villarreal; West; Wong; Woolley; Zedler.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Bailey; Gallego; Hodge; Isett.

Absent — Baxter; Bohac; Chavez; Edwards; Farabee; Menendez; Moreno, P.; Pickett; Pitts; Reyna; Turner.

#### STATEMENTS OF VOTE

I was shown voting no on Record No. 757. I intended to vote yes.

A. Allen

When Record No. 757 was taken, I was in the house but away from my desk. I would have voted no.

Bohac

I was shown voting no on Record No. 757. I intended to vote yes.

Villarreal

#### Amendment No. 25

Representative Hopson offered the following amendment to **CSSB 1863**:

Amend **CSSB 1863** by adding a new appropriately numbered section \_\_ and renumbering subsequent sections accordingly.

SECTION 531.070 (h), Government Code, is amended to read as follows:

(h) Subject to Subsection (i), the commission shall negotiate with manufacturers and labelers, and may negotiate with ~~[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.

Amendment No. 25 was adopted.

### **Amendment No. 26**

Representative Swinford offered the following amendment to **CSSB 1863**:

Amend **CSSB 1863**, engrossed version, on page 105, between lines 13 and 14, by inserting a new Article 21 to read as follows:

#### ARTICLE 21. CONTRIBUTIONS TO THE UNEMPLOYMENT COMPENSATION FUND

SECTION 21.01 Section 204.007, Labor Code, is amended to read as follows:

a) This section applies to an employer identified by the commission as classified in the manual as:

(1) Number 115114, crop preparation services for market; or

(2) Number 115111, cotton ginning.

(3) Number 111219, other vegetable (except potato) and melon farming.

(b) An employer subject to this section shall pay a contribution at the lowest of the following rates:

(1) five and four-tenths percent;

(2) the general tax rate applicable to that employer, with the deficit tax rate and replenishment tax rate; or

(3) any other tax rate applicable to that employer under this subtitle.

Amendment No. 26 was withdrawn.

### **Amendment No. 27**

Representative Phillips offered the following amendment to **CSSB 1863**:

Amend **CSSB 1863** by adding the following appropriately numbered article to the bill and renumbering the remaining articles appropriately:

#### ARTICLE \_\_. MARKETING AND SALE OF CERTAIN LICENSE PLATES

SECTION \_\_.01. Section 504.851, Transportation Code, is amended by amending Subsections (a), (b), (c), (e), (f), (g), and (h) and adding Subsections (g-1) and (k) to read as follows:

(a) The ~~[commission may authorize the]~~ department shall ~~[to]~~ enter into a contract with the private vendor whose proposal is most advantageous to the state, as determined from competitive sealed proposals that satisfy the requirements of this section, for the marketing and sale of:

(1) personalized ~~[prestige]~~ license plates authorized by Section 504.101; or

(2) with the agreement of the private vendor, other specialty ~~[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 reasonable 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) ~~The [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 souvenir license plates, specialty ~~[specialized]~~ license plates, or souvenir or specialty license plates that are personalized 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 reasonable 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 specialty ~~[the specialized]~~ license plates are issued;

(2) any additional fee prescribed by this subchapter for the issuance of specialty ~~[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.

(e) The portion of a [A] contract with a private vendor regarding the marketing and sale of personalized license plates ~~[under Subsection (a)(1)]~~ is payable only from amounts derived from the collection of the fee established under Subsection (b). The portion of a [A] contract with a private vendor regarding the marketing and sale of souvenir license plates, specialty license

plates, or souvenir or specialty license plates that are personalized under Section 504.102 ~~under Subsection (a)(2)~~ is payable only from amounts derived from the collection of the fee established under Subsection (c).

(f) The department may approve ~~create~~ new design and color combinations for personalized ~~prestige~~ license plates that are marketed and ~~or~~ sold by a private vendor under a contract entered into with the private vendor ~~under Subsection (a)(1)~~. Each approved license plate design and color combination remains the property of the department.

(g) The department may approve ~~create~~ new design and color combinations for specialty ~~specialized~~ license plates authorized by this chapter, including specialty ~~specialized~~ license plates that may be personalized, that are marketed and ~~or~~ sold by a private vendor under a contract entered into with the private vendor ~~under Subsection (a)(2)~~. Each approved license plate design and color combination remains the property of the department. Except as otherwise provided by this chapter, this ~~This~~ subsection does not authorize:

(1) the department to approve a design or color combination for a specialty ~~specialized~~ license plate that is inconsistent with the design or color combination specified for the license plate by this section of this chapter ~~subchapter~~ that authorizes the issuance of the specialty ~~specialized~~ license plate; or

(2) the private vendor to market and ~~or~~ sell a specialty ~~specialized~~ license plate with a design or color combination that is inconsistent with the design or color combination specified by that section.

(g-1) The department may not:

(1) publish a proposed design or color combination for a specialty license plate for public comment in the Texas Register or otherwise, except on the department's website for a period not to exceed 10 days; or

(2) restrict the background color, color combinations, or color alphanumeric license plate numbers of a specialty license plate, except as determined by the Department of Public Safety as necessary for law enforcement purposes.

(h) Subject to the limitations provided by Subsections (g) and (g-1) ~~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 that is marketed and sold by a private vendor under contract at any time if the department determines that the cancellation or discontinuation is in the best interest of this state or the motoring public.

(k) The department shall certify to the comptroller the estimate, with a detailed explanation of the basis on which the estimate is calculated, of all reasonable costs to the department associated with the evaluation of competitive sealed proposals received by the department under this section and associated with the implementation and enforcement of a contract entered into under this section, including direct, indirect, and administrative costs for the issuance or renewal of personalized license plates or specialty license plates.

SECTION \_\_.02. Subchapter J, Chapter 504, Transportation Code, is amended by adding Section 504.852 to read as follows:

Sec. 504.852. CONTRACT LIMITATIONS. (a) In a contract under Section 504.851, the department may not:

(1) require a private vendor to meet a minimum sales volume or pay a security or other deposit in an amount greater than \$100,000 to secure the performance of the vendor;

(2) unreasonably disapprove or limit any aspect of a private vendor's marketing and sales plan;

(3) unreasonably interfere with the selection, assignment, or management by the private vendor of the private vendor's employees, agents, or subcontractors; or

(4) require a private vendor to market and sell souvenir license plates, specialty license plates, or souvenir or specialty license plates personalized under Section 504.102.

(b) If a private vendor contracts to market and sell souvenir license plates, specialty license plates, or souvenir or specialty license plates personalized under Section 504.102, the initial term of the contract shall be for at least five years from the effective date of the contract. The contract shall contain, at the option of either the department or the private vendor, a second term at least equal in length to the initial term of the contract.

(c) Notwithstanding Subsection (b), a private vendor may not market and sell souvenir license plates, specialty license plates, or souvenir or specialty license plates personalized under Section 504.102 that compete directly for sales with another specialty license plate issued under this chapter unless the department and the sponsoring agency or organization of the other license plate approve.

SECTION \_\_.03. A contract awarded by the Texas Department of Transportation to a private vendor under the provisions of Section 504.851, Transportation Code, is not valid to the extent that the contract does not comply with the changes in law made by this Article.

SECTION \_\_.04. 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, 2005.

### **Amendment No. 28**

Representative West offered the following amendment to Amendment No. 27:

Amend the Phillips amendment to **CSSB 1863** by adding the appropriately numbered section and renumbering the subsequent sections accordingly:

SECTION \_\_. Subsection (b) of Section 504.650, Transportation Code, is amended to read as follows:

(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]~~ oil-field



~~cleanup 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.]~~

Amendment No. 28 was withdrawn.

Amendment No. 27 was adopted.

### **Amendment No. 29**

Representative Swinford offered the following amendment to **CSSB 1863**:

Amend **CSSB 1863** (House committee printing) by adding a new section numbered appropriately to read as follows:

SECTION \_\_. Sections 151.3162 (d) and (e), Tax Code, are amended to read as follows:

(d) the exemption provided by Subsection (b) takes effect January 1, 2008. Until that date, a person is entitled to an exemption ~~[a credit or refund]~~ of a portion of the taxes paid under this chapter on an item that after January 1, 2008, will be exempted from the taxes imposed by this chapter under Subsection (b). The amount of the exemption ~~[credit or refund]~~ is determined as follows:

(1) for an item for which the taxable event occurs on or after October 1, 2001, and before January 1, 2004, the taxpayer is entitled to an exemption ~~[a refund or credit]~~ in an amount equal to 33 percent of the tax paid on the item;

(2) for an item for which the taxable event occurs on or after January 1, 2004, and before January 1, 2006, the taxpayer is entitled to an exemption ~~[a refund or credit]~~ in an amount equal to 50 percent of the tax paid on the item; and

(3) for an item for which the taxable event occurs on or after January 1, 2006, and before January 1, 2008, the taxpayer is entitled to an exemption ~~[a refund or credit]~~ in an amount equal to 75 percent of the tax paid on the item.

(e) A taxpayer entitled to a credit or refund under Subsection (d), as that subsection existed on September 30, 2005, may elect to receive either a credit or a refund. A taxpayer who elects to receive a credit must claim the credit on the return for a period that ends not later than the first anniversary of the date on which the taxable event occurred. A taxpayer who elects to receive a refund must apply to the comptroller for the refund before or during the calendar year following the year in which the tax on the item was paid.

(Grusendorf in the chair)

### **Amendment No. 30**

Representative Villarreal offered the following amendment to Amendment No. 29:

Amend the Swinford amendment to **SB 1863** by adding new SECTION to read as follows:

SECTION \_\_. Amend section 152.047 of the Tax Code to read as follows:

Sec. 152.047. COLLECTION OF TAX ON SELLER-FINANCED SALE.

(a) Except as inconsistent with this chapter and rules adopted under this chapter, the seller of a motor vehicle shall report and pay the tax imposed on a seller-financed sale to the comptroller on the seller's receipts from seller-financed

sales in the same manner as the sales tax is reported and paid by a retailer under Sections 151.401, 151.402, 151.405, 151.406, 151.409, 151.423, 151.424, and 151.425.

(b) If a note, mortgage, account receivable, or other document evidencing the purchaser's indebtedness to the seller of a vehicle sold subject to a seller-financed sale does to bear interest, it will be conclusively presumed that the total consideration for the sale is principal.

(c) If a note, mortgage, account receivable, or other document evidencing the purchaser's indebtedness to the seller of a vehicle sold subject to a seller-financed sale bears interest, it is conclusively presumed that interest accrues and is paid by the purchaser on a straight line basis.

(d) The seller shall add the tax imposed on a seller-financed sale to the sales price of the vehicle sold, and when added, the tax is:

- (1) a part of the sales price;
- (2) a debt owed to the seller by the purchaser; and
- (3) recoverable at law in the same manner as the sales price.

(e) Regardless of the accounting method used by the seller, the seller shall collect and pay the tax imposed on a seller-financed sale to the comptroller as the seller receives the proceeds of the sale.

(f) If the seller fails to apply, not later than the 60th day after the date the motor vehicle is delivered to the purchaser, for registration and a Texas certificate of title for a motor vehicle sold in a seller-financed sale in accordance with Section 152.069, the seller is liable for all unpaid tax on the total consideration, and the tax is due and must be sent to the comptroller with the first report after the expiration of the prescribed period.

(g) If a seller factors, assigns, or otherwise transfers the right to receive payments, all unpaid tax is due on the total consideration not reported at the time the agreement is factored, assigned, or otherwise transferred. The seller shall report and submit the tax in the report period in which the right to receive the payment is factored, assigned, or otherwise transferred. The seller may not take a deduction in the amount of tax due if a transfer at a discount is made.

(h) Subject to Subsection (i), a person to whom a seller assigns the right to receive payments under subsection (g) is entitled to a credit or reimbursement for tax paid on the portion of an account determined to be worthless and actually charged off for federal income tax purposes.

(i) An assignee is entitled to a credit or reimbursement provided by Subsection (h) only if:

(1) the seller:

(A) was a motor vehicle dealer who held a dealer license issued under Chapter 503, Transportation Code, at the time the motor vehicle was sold; and

(B) remitted the tax for which the credit or reimbursement is sought; and

(2) the assignee provides records showing:

(A) the total consideration the purchaser contracted to pay;

(B) the unpaid portion of the total consideration assigned to the assignee;

(C) the portion of the total consideration paid by the purchaser;

(D) the tax remitted by the seller;

(E) the number of the permit issued to the seller under Section 152.065;

(F) if required by the comptroller, a copy of the tax receipt issued by a county tax assessor-collector under Section 152.064 or other evidence of the tax paid; and

(G) a copy of a document or documents evidencing the purchaser's indebtedness to the seller and the assignment of the seller's right to receive payments to the assignee.

(j) ~~(h)~~ The comptroller may proceed against the purchaser in a seller-financed sale for the amount of any tax not paid by the purchaser.

(k) ~~(i)~~ The comptroller shall adopt rules and promulgate forms necessary to implement this section.

Amendment No. 30 was withdrawn.

Amendment No. 29 was adopted.

### **Amendment No. 31**

Representative Delisi offered the following amendment to **CSSB 1863**:

Amend **CSSB 1863** by adding to the bill an appropriately numbered article to read as follows and by renumbering the other articles of the bill accordingly:

ARTICLE \_\_\_\_ . RENEWING OUR COMMUNITIES; MENTORING INITIATIVE

SECTION \_\_\_\_ .01. Subtitle I, Title 4, Government Code, is amended by adding Chapter 535 to read as follows:

CHAPTER 535. RENEWING OUR COMMUNITIES ACCOUNT

Sec. 535.001. DEFINITIONS. In this chapter:

(1) "Account" means the renewing our communities account.

(2) "Community-based organization" means a nonprofit corporation or association that is located in close proximity to the population the organization serves.

(3) "Faith-based organization" means a nonprofit corporation or association that:

(A) is operated through a religious or denominational organization, including an organization that is operated for religious, educational, or charitable purposes and that is operated, supervised, or controlled, wholly or partly, by or in connection with a religious organization; or

(B) clearly demonstrates through the organization's mission statement, policies, or practices that the organization is guided or motivated by religion.

Sec. 535.002. CONSTRUCTION. This chapter may not be construed to:

(1) exempt a faith- or community-based organization from any applicable state or federal law; or

(2) be an endorsement or sponsorship by this state of the religious character, expression, beliefs, doctrines, or practices of a faith-based organization.

Sec. 535.003. APPLICABILITY OF CERTAIN FEDERAL LAW. A power authorized or duty imposed under this chapter must be performed in a manner that is consistent with 42 U.S.C. Section 604a.

Sec. 535.004. RENEWING OUR COMMUNITIES ACCOUNT. (a) The renewing our communities account is an account in the general revenue fund that may be appropriated only to the commission for the purposes and activities authorized by this chapter and for reasonable administrative expenses under this chapter.

(b) The account consists of:

(1) all money appropriated for the purposes of this chapter;

(2) any gifts, grants, or donations received for the purposes of this chapter; and

(3) interest earned on money in the account.

(c) The account is exempt from the application of Section 403.095.

(d) The purposes of the account are to:

(1) increase the capacity of and strengthen faith- and community-based organizations to provide charitable services to persons in this state who are in need of those services;

(2) assist local governmental entities in establishing local offices for faith- and community-based initiatives;

(3) foster better partnerships between state government and faith- and community-based organizations to provide charitable services to persons in this state; and

(4) leverage state and local resources to acquire federal or private grant funds to provide charitable services in this state.

Sec. 535.005. POWERS AND DUTIES REGARDING ACCOUNT. (a) The commission shall:

(1) develop and implement a competitive process for awarding grants from the account that is consistent with state law and includes objective selection criteria;

(2) oversee the delivery of training and other assistance activities under this chapter;

(3) develop criteria limiting awards of grants under Subsection (b)(1) to small and medium-sized faith- and community-based organizations that provide charitable services to persons in this state;

(4) establish general state priorities for the account; and

(5) establish and monitor performance and outcome measures for persons to whom grants are awarded under this chapter.

(b) The commission may:

(1) award grants from the account to faith- and community-based organizations that provide charitable services to persons in this state for capacity-building purposes;

(2) directly, or through agreements with one or more entities that serve faith- and community-based organizations that provide charitable services to persons in this state:

(A) assist faith- and community-based organizations with:

(i) writing or managing grants through workshops or other forms of guidance;

(ii) obtaining legal assistance related to forming a corporation or obtaining an exemption from taxation under the Internal Revenue Code; and

(iii) obtaining information about or referrals to entities that provide expertise in accounting, legal, or tax issues, program development matters, or other organizational topics;

(B) provide information or assistance to faith- and community-based organizations related to building the organizations' capacity for providing services;

(C) facilitate the formation of networks, the coordination of services, and the sharing of resources among faith- and community-based organizations;

(D) in cooperation with existing efforts, if possible, conduct needs assessments to identify gaps in services in a community that present a need for developing or expanding services;

(E) work with faith- and community-based organizations to identify the organizations' needs for improvements in their internal capacity for providing services; and

(F) provide faith- and community-based organizations with information on and assistance in identifying or using best practices for delivering charitable services to persons, families, and communities and in replicating charitable services programs that have demonstrated effectiveness;

(3) award grants from the account to local governmental entities to provide seed money for local offices for faith- and community-based initiatives;

(4) assist a local governmental entity in creating a better partnership between government and faith- and community-based organizations to provide charitable services to persons in this state;

(5) use the account to provide matching money for federal or private grant programs that further the purposes of the account as described by Section 535.004(d); and

(6) contract with the governor's office of faith-based and community initiatives to administer programs or perform duties or activities under this chapter.

Sec. 535.006. FAITH- AND COMMUNITY-BASED INITIATIVES ADVISORY COMMITTEE. (a) The executive commissioner shall appoint faith and community leaders in this state to serve on the faith- and community-based initiatives advisory committee. The advisory committee members must be representative of the religious and cultural diversity of this state.

(b) The advisory committee shall make recommendations to the executive commissioner regarding the executive commissioner's powers and duties with respect to the account as described by Section 535.005.

(c) Except as otherwise provided by this subsection, the advisory committee shall meet at least twice each calendar year. The advisory committee is not required to meet if the remaining amount appropriated from the account to the commission for the state fiscal biennium is insufficient for the performance of any duties or activities under this chapter.

(d) Chapter 2110 does not apply to the advisory committee.

(e) The advisory committee is subject to Chapter 551.

SECTION \_\_.02. Chapter 401, Government Code, is amended by adding Subchapter G to read as follows:

SUBCHAPTER G. TEXAS MENTORING INITIATIVE

Sec. 401.151. ESTABLISHMENT AND PURPOSE OF TEXAS MENTORING INITIATIVE. (a) The office of the governor shall establish the Texas mentoring initiative to fund activities that:

(1) create or expand mentoring opportunities in this state;

(2) promote responsible fatherhood and healthy marriages; and

(3) increase the capacity of faith- and community-based organizations,

as defined by Section 535.001, to provide mentoring and other charitable services to persons in this state.

(b) The office of the governor shall administer the Texas mentoring initiative subject to the availability of funds appropriated for that purpose.

Sec. 401.152. GRANTS. The office of the governor shall provide grants through the Texas mentoring initiative to support:

(1) activities described in Section 401.151; and

(2) the renewing our communities account under Chapter 535.

(Speaker in the chair)

Amendment No. 31 was adopted. (Y. Davis and Thompson recorded voting no.)

**Amendment No. 23 - Vote Reconsidered**

Representative Howard moved to reconsider the vote by which Amendment No. 23 was adopted.

The motion to reconsider prevailed.

Representative Howard moved to table Amendment No. 23.

A record vote was requested.

The motion to table prevailed by (Record 758): 87 Yeas, 41 Nays, 2 Present, not voting.

Yeas — Allen, R.; Anchia; Anderson; Berman; Blake; Bohac; Bonnen; Brown, B.; Brown, F.; Callegari; Campbell; Chisum; Coleman; Cook, B.; Cook, R.; Corte; Crabb; Crossover; Davis, Y.; Dawson; Delisi; Denny; Driver; Eissler; Elkins; Farabee; Flynn; Gattis; Goodman; Goolsby; Griggs; Grusendorf; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Hegar; Herrero; Hilderbran; Hill; Homer; Hopson; Howard; Hughes; Hunter; Jackson; Jones, D.; Jones, J.; Keffer, B.; King, P.; Kolkhorst; Krusee; Laubenberg; Luna; Madden; Martinez Fischer; McCall; McReynolds; Miller; Mowery; Nixon; Orr; Otto;

Paxton; Phillips; Pitts; Reyna; Riddle; Ritter; Rodriguez; Rose; Seaman; Smith, T.; Smith, W.; Smithee; Strama; Straus; Swinford; Talton; Taylor; Thompson; Van Arsdale; Veasey; West; Woolley; Zedler.

Nays — Allen, A.; Alonzo; Casteel; Castro; Chavez; Deshotel; Dukes; Dunnam; Dutton; Edwards; Escobar; Farrar; Flores; Frost; Geren; Giddings; Gonzales; Gonzalez Toureilles; Guillen; Hochberg; Hupp; Keel; King, T.; Kuempel; Laney; Leibowitz; Martinez; McClendon; Merritt; Morrison; Naishtat; Oliveira; Olivo; Peña; Pickett; Puente; Quintanilla; Solis; Turner; Uresti; Vo.

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

Absent, Excused — Bailey; Gallego; Hodge; Isett.

Absent — Baxter; Branch; Burnam; Davis, J.; Eiland; Haggerty; Keffer, J.; Menendez; Moreno, P.; Noriega, M.; Raymond; Solomons; Truitt; Villarreal; Wong.

### STATEMENTS OF VOTE

When Record No. 758 was taken, my vote failed to register. I would have voted yes.

Baxter

I was shown voting present, not voting on Record No. 758. I intended to vote yes.

Hope

I was shown voting no on Record No. 758. I intended to vote yes.

Merritt

When Record No. 758 was taken, my vote failed to register. I would have voted no.

Raymond

When Record No. 758 was taken, I was in the house but away from my desk. I would have voted yes.

Truitt

When Record No. 758 was taken, I was in the house but away from my desk. I would have voted yes.

Wong

### COMMITTEE GRANTED PERMISSION TO MEET

Representative Reyna requested permission for the Committee on Local and Consent Calendars to meet while the house is in session, 12:45 a.m. today, May 23, in 3W.9, for a formal meeting, to consider the calendar.

Permission to meet was granted.

### COMMITTEE MEETING ANNOUNCEMENT

The following committee meeting was announced:

Local and Consent Calendars, 12:45 a.m. today, May 23, 3W.9, for a formal meeting, to consider the calendar.

**CSSB 1863 - (consideration continued)**

**Amendment No. 32**

Representative Hamric offered the following amendment to **CSSB 1863**:

Amend **CSSB 1863** (house committee printing) by adding the following appropriately numbered ARTICLE to read as follows and renumbering subsequent ARTICLES accordingly:

ARTICLE \_\_. NONSETTLING MANUFACTURER FEES

SECTION \_\_.01. Chapter 161, Health and Safety Code, is amended by adding Subchapter U to read as follows:

SUBCHAPTER U. FEE ON CIGARETTES AND CIGARETTE TOBACCO PRODUCTS  
MANUFACTURED BY CERTAIN COMPANIES

Sec. 161.601. PURPOSE. The purpose of this subchapter is to:

(1) prevent nonsettling manufacturers from undermining this state's policy of discouraging underage smoking by offering cigarettes and cigarette tobacco products at prices that are substantially below the prices of cigarettes and cigarette tobacco products of other manufacturers;

(2) protect the tobacco settlement agreement and funding, which has been reduced because of the growth of sales of nonsettling manufacturer cigarettes and cigarette tobacco products, for programs that are funded wholly or partly by payments to this state under the tobacco settlement agreement and recoup for this state settlement payment revenue lost because of sales of nonsettling manufacturer cigarettes and cigarette tobacco products;

(3) provide funding to enforce and administer this subchapter and any legislation relating to nonsettling manufacturers; and

(4) provide funding for any other purpose the legislature determines.

Sec. 161.602. DEFINITIONS. In this subchapter:

(1) "Brand family" means each style of cigarettes or cigarette tobacco products sold under the same trademark and differentiated from one another by means of additional modifiers, including "menthol," "lights," "kings," and "100s." The term includes any style of cigarettes or cigarette tobacco products that have a brand name, trademark, logo, symbol, motto, selling message, recognizable pattern of colors, or other indication of product identification that is identical to, similar to, or identifiable with a previously known brand of cigarettes or cigarette tobacco products.

(2) "Cigarette" means any product that contains nicotine and is intended to be burned or heated under ordinary conditions of use. The term includes:

(A) a roll of tobacco wrapped in paper or another substance that does not contain tobacco;



(B) tobacco, in any form, that is functional in a product that, because of the product's appearance, the type of tobacco used in the filler, or the product's packaging and labeling, is likely to be offered to or purchased by a consumer as a cigarette; or

(C) a roll of tobacco wrapped in any substance containing tobacco that, because of the product's appearance, the type of tobacco used in the filler, or the product's packaging and labeling, is likely to be offered to or purchased by a consumer as a cigarette.

(3) "Cigarette tobacco product" means roll-your-own tobacco or tobacco that, because of the tobacco's appearance, type, packaging, or labeling, is suitable for use in making cigarettes and is likely to be offered to or purchased by a consumer for that purpose.

(4) "Manufacturer" means a person that manufactures, fabricates, or assembles cigarettes for sale or distribution. For purposes of this subchapter, the term includes a person that is the first importer into the United States of cigarettes and cigarette tobacco products manufactured outside the United States.

(5) "Master settlement agreement" means the settlement agreement and related documents entered into in 1998 by 46 states and leading United States tobacco manufacturers.

(6) "Nonsettling manufacturer" means a manufacturer of cigarettes that did not sign the tobacco settlement agreement.

(7) "Nonsettling manufacturer cigarette tobacco products" means cigarette tobacco products manufactured, fabricated, assembled, or imported by a nonsettling manufacturer.

(8) "Nonsettling manufacturer cigarettes" means cigarettes manufactured, fabricated, assembled, or imported by a nonsettling manufacturer.

(9) "Settling states" and "subsequent participating manufacturer" have the meanings assigned those terms in the master settlement agreement.

(10) "Tobacco settlement agreement" means the Agreement Regarding Disposition of Settlement Proceeds filed on July 24, 1998, in the United States District Court, Eastern District of Texas, in the case styled *The State of Texas v. The American Tobacco Co., et al.*, No. 5-96CV-91. The term includes the subsequent Clarification of Agreement Regarding Disposition of Settlement Proceeds filed on July 24, 1998, in that litigation.

Sec. 161.603. FEE IMPOSED. (a) A fee is imposed on the sale, use, consumption, or distribution in this state of:

(1) nonsettling manufacturer cigarettes if a stamp is required to be affixed to a package of those cigarettes under Chapter 154, Tax Code;

(2) nonsettling manufacturer cigarettes that are sold, purchased, or distributed in this state but that are not required to have a stamp affixed to a package of those cigarettes under Chapter 154, Tax Code; and

(3) nonsettling manufacturer cigarette tobacco products that are subject to the tax imposed by Section 155.0211, Tax Code.

(b) The fee imposed by this section does not apply to cigarettes or cigarette tobacco products that are included in computing payments due to be made by a settling manufacturer under the tobacco settlement agreement.

(c) The fee imposed by this subchapter is in addition to any other privilege, license, fee, or tax required or imposed by state law.

(d) Except as otherwise provided by this subchapter, the fee imposed by this subchapter is imposed, collected, paid, administered, and enforced in the same manner, taking into account that the fee is imposed on nonsettling manufacturers, as the taxes imposed by Chapters 154 and 155, Tax Code, as appropriate.

(e) The fee imposed by this section does not apply to a subsequent participating manufacturer until the date on which the National Association of Attorneys General provides notice to the attorney general of this state that the settling states have offered subsequent participating manufacturers a qualifying credit against their payments under the master settlement agreement. An offered credit shall be considered a qualifying credit if, in each year, it makes available to each subsequent participating manufacturer, other than any subsequent participating manufacturer that has an agreement described by Subsection (f) as of September 1, 2005, a credit against its payment obligations under the master settlement agreement that is equal to or greater than the product of the total number of individual cigarettes sold by that subsequent participating manufacturer in this state during the applicable year multiplied by at least 73.2 percent of the per-cigarette fee provided for in this section, and does not condition that credit on the subsequent participating manufacturer forfeiting wholly or partly other benefits or credits provided for in the master settlement agreement, except for a reduction in that subsequent participating manufacturer's "grandfather share" under the master settlement agreement as follows:

(1) the market share that is not subject to the subsequent participating manufacturer's payment obligations under Article IX(i) of the master settlement agreement shall be calculated by subtracting from either 125 percent of the subsequent participating manufacturer's 1997 volume or 100 percent of its 1998 volume, depending on which volume the subsequent participating manufacturer uses for purposes of master settlement agreement calculations, the lesser of:

(A) that volume multiplied by the percentage of the subsequent participating manufacturer's sales in the 50 states of the United States, the District of Columbia, and Puerto Rico that were made at retail in this state in 2004; or

(B) that volume multiplied by the percentage of the subsequent participating manufacturer's sales in the 50 states of the United States, the District of Columbia, and Puerto Rico that were made at retail in this state in 1998 or 125 percent of the percentage of that subsequent participating manufacturer's nationwide sales made at retail in this state in 1997, depending on which volume the subsequent participating manufacturer uses for purposes of master settlement agreement calculations; and

(2) the effect of the proposed grandfather share reduction on the subsequent participating manufacturer's master settlement agreement payments shall be phased in according to the following schedule:

(A) one percent of the reduction shall be reflected in the payment due under the master settlement agreement on April 15, 2006; and

(B) in each subsequent April 15 payment, the following additional percentages of the reduction shall be reflected:

- (i) two percent;
- (ii) three percent;
- (iii) five percent;
- (iv) seven percent;
- (v) eight percent;
- (vi) nine percent;
- (vii) 10 percent;
- (viii) 12 percent;
- (ix) 13 percent;
- (x) 14 percent; and
- (xi) 16 percent.

(f) Subsection (e) does not apply to any subsequent participating manufacturer that as of September 1, 2005, had an agreement with the settling states, pursuant to which agreement the subsequent participating manufacturer has agreed to a different credit against its payment obligations under the master settlement agreement based on its cigarette sales in this state.

Sec. 161.604. RATE OF FEE. (a) Except as provided by Subsection (b), the fee is imposed at the rate of two cents for:

- (1) each nonsettling manufacturer cigarette; and
- (2) each 0.09 ounce of nonsettling manufacturer cigarette tobacco

product.

(b) On January 1 of each year, the comptroller shall increase the rate of the tax prescribed by Subsection (a) by the greater of:

- (1) three percent; or
- (2) the percentage increase in the most recent annual revised Consumer

Price Index for all Urban Consumers, as published by the Federal Bureau of Labor Statistics of the United States Department of Labor.

Sec. 161.605. DISTRIBUTOR'S REPORT. (a) A distributor required to file a report under Section 154.210 or 155.111, Tax Code, shall, in addition to the information required by those sections, include in that required report, as appropriate:

(1) the number and denominations of stamps affixed to individual packages of nonsettling manufacturer cigarettes during the preceding month;

(2) the number of individual packages of nonsettling manufacturer cigarettes sold or purchased in this state or otherwise distributed in this state for sale in the United States; and

(3) any other information the comptroller considers necessary or appropriate to determine the amount of the fee imposed by this subchapter or to enforce this subchapter.

(b) The information required by Subsections (a)(1) and (2) must be itemized for each place of business and by manufacturer and brand family.

(c) The requirement to report information under this section shall be enforced in the same manner as the requirement to deliver to or file with the comptroller a report required under Section 154.210 or 155.111, Tax Code, as appropriate.

Sec. 161.606. NOTICE AND PAYMENT OF FEE. (a) Each month, not later than the 10th day after the date the comptroller receives the information required by Section 161.605, the comptroller shall:

(1) compute the amount of the fee imposed by this subchapter that each nonsettling manufacturer owes for that reporting period based on that information and any other information available to the comptroller; and

(2) mail to each nonsettling manufacturer a notice of the amount of fee the manufacturer owes.

(b) Not later than the 15th day of the month after the month in which the comptroller mails a nonsettling manufacturer a notice under Subsection (a), the nonsettling manufacturer shall send to the comptroller the amount of the fee due according to the notice.

Sec. 161.607. CERTIFICATION TO ATTORNEY GENERAL. (a) Not later than the first day of each month, a nonsettling manufacturer who is required to pay the fee imposed by this subchapter shall certify to the attorney general that the manufacturer is in compliance with this subchapter and has paid in full the fee imposed by this subchapter.

(b) The attorney general shall develop, maintain, and publish on the attorney general's Internet website a directory listing of all nonsettling manufacturers that have provided current, accurate, and complete certifications.

(c) The attorney general shall provide the list described by Subsection (b) to any person on request.

Sec. 161.608. PREPAYMENT BEFORE OFFERING NONSETTLING MANUFACTURER CIGARETTES OR CIGARETTE TOBACCO PRODUCTS FOR SALE OR DISTRIBUTION IN THIS STATE. (a) If cigarettes or cigarette tobacco products of a nonsettling manufacturer are not offered for sale or distribution in this state on September 1, 2005, the nonsettling manufacturer may not offer those cigarettes or cigarette tobacco products for sale or distribution in this state after that date unless the manufacturer first prepays the fee imposed by this subchapter for sales of cigarettes and cigarette tobacco products that will occur in the first calendar month in which they are sold or distributed in this state.

(b) The amount a nonsettling manufacturer is required to prepay under this section is equal to the greater of:

(1) the rate prescribed by Section 161.604 in effect on that date multiplied by:

(A) the number of cigarettes the comptroller reasonably projects that the nonsettling manufacturer will sell or distribute in this state during that calendar month; and

(B) each 0.09 ounce of nonsettling manufacturer cigarette tobacco products the comptroller reasonably projects that the nonsettling manufacturer will sell or distribute in this state during that calendar month; or

(2) \$50,000.

(c) The fee imposed by this section does not apply to cigarettes or cigarette tobacco products that are included in computing payments due to be made by a settling manufacturer under the tobacco settlement agreement.

(d) The comptroller may require a nonsettling manufacturer to provide any information reasonably necessary to determine the prepayment amount.

(e) The comptroller shall establish procedures to:

(1) reimburse a nonsettling manufacturer if the actual sales or distributions in the first calendar month are less than the projected sales or distributions; and

(2) require additional payments if the actual sales or distributions in the first calendar month are greater than the projected sales or distributions.

(f) A nonsettling manufacturer shall pay the fee imposed by this subchapter in the manner provided by Section 161.606 beginning in the second calendar month in which the manufacturer offers the cigarettes or cigarette tobacco products for sale or distribution in this state.

Sec. 161.609. REPORT TO ATTORNEY GENERAL BEFORE OFFERING NONSETTLING MANUFACTURER CIGARETTES OR CIGARETTE TOBACCO PRODUCTS FOR SALE OR DISTRIBUTION IN THIS STATE. (a) In addition to prepaying the fee required by Section 161.608, a nonsettling manufacturer described by Section 161.608(a) shall, before the date the cigarettes or cigarette tobacco products are offered for sale or distribution in this state, provide to the attorney general on a form prescribed by the attorney general:

(1) the nonsettling manufacturer's complete name, address, and telephone number;

(2) the date that the nonsettling manufacturer will begin offering cigarettes or cigarette tobacco products for sale or distribution in this state;

(3) the names of the brand families of the cigarettes or cigarette tobacco products that the nonsettling manufacturer will offer for sale or distribution in this state;

(4) a statement that the nonsettling manufacturer intends to comply with this subchapter; and

(5) the name, address, telephone number, and signature of an officer of the nonsettling manufacturer attesting to all of the included information.

(b) The attorney general shall make the information provided under this section available to the comptroller.

Sec. 161.610. PENALTIES FOR NONCOMPLIANCE. (a) Cigarettes and cigarette tobacco products of a nonsettling manufacturer that has not complied with this subchapter, including full payment of the fee imposed by this subchapter, shall be treated as cigarettes for which the tax assessed by Chapter 154 or 155, Tax Code, as appropriate, has not been paid, and the manufacturer is subject to all penalties imposed by those chapters for violations of those chapters.

(b) The comptroller shall provide to a nonsettling manufacturer a notice of noncompliance with this subchapter if the manufacturer:

(1) does not pay in full the fee imposed by this subchapter; or

(2) is not included on the list described by Section 161.607(b).

(c) On receipt of the notice of noncompliance, the nonsettling manufacturer may not:

(1) pay the tax imposed by Chapter 154 or 155, Tax Code, as appropriate;

(2) affix to a package of cigarettes the stamp required by Section 154.041, Tax Code; or

(3) otherwise purchase, sell, or distribute cigarettes in this state.

Sec. 161.611. APPLICATION OF SUBCHAPTER. This subchapter applies without regard to Section 154.022, Tax Code, or any other law that might be read to create an exemption for interstate sales.

SECTION \_\_.02. (a) Not later than September 30, 2005, a nonsettling manufacturer, as that term is defined by Section 161.602, Health and Safety Code, as added by this article, that is offering cigarettes or cigarette tobacco products for sale or distribution in this state on September 1, 2005, shall provide to the attorney general on a form prescribed by the attorney general:

(1) the nonsettling manufacturer's complete name, address, and telephone number;

(2) the date that the nonsettling manufacturer began offering cigarettes or cigarette tobacco products for sale or distribution in this state;

(3) the names of the brand families of the cigarettes or cigarette tobacco products that the nonsettling manufacturer offers for sale or distribution in this state;

(4) a statement that the nonsettling manufacturer intends to comply with Subchapter U, Chapter 161, Health and Safety Code, as added by this article; and

(5) the name, address, telephone number, and signature of an officer of the nonsettling manufacturer attesting to all of the included information.

(b) The attorney general shall make the information provided under Subsection (a) of this section available to the comptroller.

SECTION \_\_.03. This article takes effect September 1, 2005.

(P. King in the chair)

Representative Hardcastle moved to table Amendment No. 32.

A record vote was requested.

The motion to table was lost by (Record 759): 51 Yeas, 85 Nays, 2 Present, not voting.

Yeas — Allen, R.; Anchia; Anderson; Baxter; Bonnen; Brown, B.; Campbell; Cook, R.; Corte; Davis, Y.; Dawson; Deshotel; Driver; Elkins; Frost; Gonzales; Gonzalez Toureilles; Goolsby; Haggerty; Hardcastle; Harper-Brown; Hartnett; Hegar; Hilderbran; Hill; Hochberg; Homer; Hope; Hughes; Jackson; Jones, D.; Jones, J.; Keel; King, T.; Krusee; Laney; Laubenberg; Luna; Merritt; Miller; Naishtat; Peña; Puente; Ritter; Seaman; Smith, T.; Smithee; Talton; Taylor; Thompson; Truitt.

Nays — Allen, A.; Alonzo; Berman; Blake; Bohac; Branch; Brown, F.; Burnam; Callegari; Casteel; Castro; Chavez; Chisum; Coleman; Cook, B.; Crabb; Crownover; Davis, J.; Delisi; Denny; Dukes; Dunnam; Dutton; Edwards; Eissler; Escobar; Farabee; Farrar; Flores; Flynn; Gattis; Geren; Giddings; Goodman;

Griggs; Grusendorf; Guillen; Hamilton; Hamric; Herrero; Hopson; Howard; Hunter; Hupp; Keffer, B.; Keffer, J.; Kolkhorst; Leibowitz; Madden; Martinez; Martinez Fischer; McCall; McClendon; McReynolds; Menendez; Mowery; Nixon; Noriega, M.; Oliveira; Olivo; Orr; Otto; Paxton; Pickett; Pitts; Quintanilla; Raymond; Reyna; Riddle; Rodriguez; Rose; Smith, W.; Solis; Strama; Straus; Swinford; Turner; Uresti; Van Arsdale; Veasey; Vo; West; Wong; Woolley; Zedler.

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

Absent, Excused — Bailey; Gallego; Hodge; Isett.

Absent — Eiland; Kuempel; Moreno, P.; Morrison; Phillips; Solomons; Villarreal.

Amendment No. 32 was adopted.

### **Amendment No. 33**

Representative Coleman offered the following amendment to **CSSB 1863**:

Amend **CSSB 1863** (House committee printing) as follows:

(1) Strike SECTION 6.01 of the bill (page 26, line 26, through page 27, line 11).

(2) Insert the following SECTIONS in ARTICLE 6 of the bill, appropriately numbered, and renumber subsequent SECTIONS accordingly:

SECTION \_\_\_\_\_. Subdivision (4), Section 62.002, Health and Safety Code, is amended to read as follows:

(4) "Net [~~Gross~~] family income" means the [~~total~~] amount of income established 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 [~~without consideration of any reduction for offsets that may be available to the family under any other~~] program.

SECTION \_\_\_\_\_. Subsection (b), Section 62.101, 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 net [~~gross~~] 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 \_\_\_\_\_. 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 \_\_\_\_\_. Subsection (b), Section 62.153, Health and Safety Code, is amended to read as follows:

(b) ~~Cost-sharing~~ ~~[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 plan.

SECTION \_\_\_\_\_. Subsections (a) and (d), Section 62.154, 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 and ~~and~~ ~~[The child health plan]~~ 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.

(d) The waiting period required by Subsection (a) must:

(1) extend for a period of 90 days after ~~[-~~

~~(1) the last date on [first day of the month in] which the applicant 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 ~~[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].~~

SECTION \_\_\_\_\_. Subsection (d), Section 62.153, Health and Safety Code, is repealed.

(3) Add the following appropriately numbered ARTICLE to the bill and renumber subsequent ARTICLES of the bill accordingly:

#### ARTICLE \_\_\_\_\_. TAX ON TOBACCO PRODUCTS

SECTION \_\_\_\_\_.01. Subsection (b), Section 154.021, Tax Code, is amended to read as follows:

(b) The tax rates are:

(1) \$25.06 ~~[\$20.50]~~ per thousand on cigarettes weighing three pounds or less per thousand; and

(2) the rate provided by Subdivision (1) plus \$2.10 per thousand on cigarettes weighing more than three pounds per thousand.

SECTION \_\_\_\_\_.02. Section 154.603, Tax Code, is amended to read as follows:



Sec. 154.603. DISPOSITION OF REVENUE. (a) After the deductions for the purposes provided by Section 154.602 [~~of this code~~], the revenue remaining of the first \$2 of tax received per 1,000 cigarettes for cigarettes weighing three pounds or less per thousand and the first \$4.10 per 1,000 cigarettes of the tax received for cigarettes weighing more than three pounds per thousand is allocated:

- (1) 18.75 percent to the foundation school fund; and
- (2) 81.25 percent to the general revenue fund.

(b) The revenue remaining after the deductions for the purposes provided by Section 154.602 [~~of this code~~] and allocation under Subsection (a) shall be deposited as follows:

(1) the next \$4.56 of tax received per 1,000 cigarettes for cigarettes weighing three pounds or less per thousand and the next \$4.56 per 1,000 cigarettes of the tax received for cigarettes weighing more than three pounds per thousand shall be deposited to the credit of the health and human services account in the general revenue fund and may be appropriated only to the Health and Human Services Commission or a health and human services agency, as that term is defined by Section 531.001, Government Code, for the child health plan program under Chapter 62, Health and Safety Code; and

(2) the remaining revenue shall be deposited to the credit of [~~of this section is allocated to~~] the general revenue fund.

SECTION \_\_.03. Subsection (b), Section 155.021, Tax Code, is amended to read as follows:

(b) The tax rates are:

(1) 1.22 cents [~~one cent~~] per 10 or fraction of 10 on cigars weighing three pounds or less per thousand;

(2) \$9.58 [~~\$7.50~~] per thousand on cigars that:

(A) weigh more than three pounds per thousand; and

(B) sell at factory list price, exclusive of any trade discount, special discount, or deal, for 3.3 cents or less each;

(3) \$14.06 [~~\$11~~] per thousand on cigars that:

(A) weigh more than three pounds per thousand;

(B) sell at factory list price, exclusive of any trade discount, special discount, or deal, for more than 3.3 cents each; and

(C) contain no substantial amount of nontobacco ingredients; and

(4) \$19.17 [~~\$15~~] per thousand on cigars that:

(A) weigh more than three pounds per thousand;

(B) sell at factory list price, exclusive of any trade discount, special discount, or deal, for more than 3.3 cents each; and

(C) contain a substantial amount of nontobacco ingredients.

SECTION \_\_.04. Subsection (b), Section 155.0211, Tax Code, is amended to read as follows:

(b) The tax rate for tobacco products other than cigars is 45.003 [~~35.213~~] percent of the manufacturer's list price, exclusive of any trade discount, special discount, or deal.

SECTION \_\_.05. Section 155.241, Tax Code, is amended to read as follows:

Sec. 155.241. ALLOCATION OF TAX. (a) Revenue collected under this chapter at the following rates shall be deposited to the credit of the health and human services account in the general revenue fund and may be appropriated only to the Health and Human Services Commission or a health and human services agency, as that term is defined by Section 531.001, Government Code, for the child health plan program under Chapter 62, Health and Safety Code:

(1) the revenue from the first .22 cents per 10 or fraction of 10 on cigars weighing three pounds or less per thousand;

(2) the revenue from the first \$2.08 per thousand on cigars that:

(A) weigh more than three pounds per thousand; and

(B) sell at factory list price, exclusive of any trade discount, special discount, or deal, for 3.3 cents or less each;

(3) the revenue from the first \$3.06 per thousand on cigars that:

(A) weigh more than three pounds per thousand;

(B) sell at factory list price, exclusive of any trade discount, special discount, or deal, for more than 3.3 cents each; and

(C) contain no substantial amount of nontobacco ingredients;

(4) the revenue from the first \$4.17 per thousand on cigars that:

(A) weigh more than three pounds per thousand;

(B) sell at factory list price, exclusive of any trade discount, special discount, or deal, for more than 3.3 cents each; and

(C) contain a substantial amount of nontobacco ingredients; and

(5) the revenue from the tax on tobacco products other than cigars imposed at the rate of 9.79 percent of the manufacturer's list price, exclusive of any trade discount, special discount, or deal.

(b) The revenue remaining after the allocation under Subsection (a) shall be deposited to the credit of the general revenue fund.

SECTION \_\_.06. This article takes effect September 1, 2005.

Representative Hupp moved to table Amendment No. 33.

(Speaker in the chair)

A record vote was requested.

The motion to table prevailed by (Record 760): 76 Yeas, 58 Nays, 1 Present, not voting.

Yeas — Anderson; Berman; Blake; Bohac; Branch; Brown, B.; Brown, F.; Callegari; Campbell; Casteel; Chisum; Cook, B.; Crabb; Davis, J.; Dawson; Delisi; Denny; Driver; Edwards; Eissler; Elkins; Flynn; Gattis; Geren; Goodman; Goolsby; Griggs; Grusendorf; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Hegar; Hill; Hope; Howard; Hughes; Hunter; Hupp; Jackson; Keffer, B.; Keffer, J.; King, P.; Kolkhorst; Kuempel; Laubenberg; Madden; McCall; Merritt; Miller; Morrison; Mowery; Nixon; Oliveira; Orr; Otto; Paxton; Phillips; Pitts; Reyna; Riddle; Seaman; Smith, T.; Smith, W.; Smithee; Solomons; Straus; Swinford; Talton; Taylor; Van Arsdale; West; Wong; Woolley; Zedler.

Nays — Allen, A.; Allen, R.; Alonzo; Anchia; Bonnen; Burnam; Castro; Chavez; Coleman; Cook, R.; Davis, Y.; Deshotel; Dukes; Dunnam; Dutton; Eiland; Escobar; Farabee; Farrar; Flores; Frost; Gonzales; Gonzalez Toureilles;

Guillen; Herrero; Hochberg; Homer; Hopson; Jones, D.; Jones, J.; Keel; Laney; Leibowitz; Luna; Martinez; Martinez Fischer; McClendon; McReynolds; Menendez; Naishtat; Noriega, M.; Olivo; Peña; Pickett; Puente; Quintanilla; Raymond; Ritter; Rodriguez; Rose; Solis; Strama; Thompson; Turner; Uresti; Veasey; Villarreal; Vo.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Bailey; Gallego; Hodge; Isett.

Absent — Baxter; Corte; Crownover; Giddings; Haggerty; Hilderbran; King, T.; Krusee; Moreno, P.; Truitt.

### STATEMENTS OF VOTE

I was shown voting yes on Record No. 760. I intended to vote no.

B. Brown

When Record No. 760 was taken, I was in the house but away from my desk. I would have voted yes.

Corte

When Record No. 760 was taken, I was in the house but away from my desk. I would have voted yes.

Crownover

When Record No. 760 was taken, I was temporarily out of the house chamber. I would have voted no.

Giddings

When Record No. 760 was taken, I was in the house but away from my desk. I would have voted yes.

Hilderbran

### CSSB 1863 - AMENDMENTS LIMITED

Representative Chisum moved to limit amendments to **CSSB 1863** to those pending on the Speaker's desk.

The motion was seconded.

The motion to limit amendments prevailed.

### FIVE DAY POSTING RULE SUSPENDED

Representative Corte moved to suspend the five day posting rule to allow the Committee on Defense Affairs and State-Federal Relations to meet at 9 a.m. today, May 23, in E1.004.

The motion prevailed.

### COMMITTEE MEETING ANNOUNCEMENTS

The following committee meetings were announced:

Defense Affairs and State-Federal Relations, 9 a.m. today, May 23, E1.004, for a public hearing.

Local and Consent Calendars is cancelled.

**PROVIDING FOR ADJOURNMENT**

Representative Crabb moved that, at the conclusion of the reading of bills and resolutions on first reading and referral to committees, the house adjourn until 10 a.m. today, May 23, in memory of Tommie Grace La Motta.

The motion prevailed.

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

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

(Kolkhorst in the chair)

**ADJOURNMENT**

In accordance with a previous motion, the house, at 1:15 a.m., adjourned until 10 a.m. today, May 23.

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**ADDENDUM**

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**REFERRED TO COMMITTEES**

The following bills and joint resolutions were today laid before the house, read first time, and referred to committees, and the following resolutions were today laid before the house and referred to committees. If indicated, the chair today corrected the referral of the following measures:

**List No. 1**

**SB 774** to Defense Affairs and State-Federal Relations.

**SB 1404** to Redistricting.

**SB 1511** to Energy Resources.

**SB 1512** to Natural Resources.

**SCR 40** to Rules and Resolutions.

**SJR 12** to County Affairs.

**SIGNED BY THE SPEAKER**

The following bills and resolutions were today signed in the presence of the house by the speaker:

**House List No. 48**

**HB 26, HB 202, HB 214, HB 304, HB 380, HB 479, HB 492, HB 550, HB 705, HB 773, HB 877, HB 976, HB 1036, HB 1165, HB 1239, HB 1316, HB 1331, HB 1528, HB 3265, HCR 174, HCR 175, HCR 176, HCR 177, HCR 178, HCR 179, HCR 180, HCR 181, HCR 182, HCR 183, HCR 184, HCR 197, HCR 198, HCR 199, HCR 200, HCR 206**

**MESSAGES FROM THE SENATE**

The following messages from the senate were today received by the house:

**Message No. 1**

MESSAGE FROM THE SENATE  
SENATE CHAMBER  
Austin, Texas  
Sunday, May 22, 2005

The Honorable Speaker of the House  
House Chamber  
Austin, Texas

Mr. Speaker:

I am directed by the senate to inform the house that the senate has taken the following action:

THE SENATE HAS PASSED THE FOLLOWING MEASURES:

**HB 585** Cortez SPONSOR: Wentworth  
Relating to the requirements for the incorporation of a municipality in the extraterritorial jurisdiction of certain existing municipalities.  
(COMMITTEE SUBSTITUTE/AMENDED)

**HB 812** Flynn SPONSOR: Deuell  
Relating to the creation of the Sunrise Municipal Utility District of Hunt County; providing authority to impose a tax and issue bonds; granting the power of eminent domain.

**HB 1141** Flynn SPONSOR: Deuell  
Relating to the conversion of the Verandah Fresh Water Supply District of Hunt County to a municipal utility district; providing authority to impose a tax and issue bonds; granting the power of eminent domain.

**HB 1262** Farabee SPONSOR: Seliger  
Relating to the collection and dissemination by the Department of Public Safety of information relating to certain threats against detention officers.

**HB 1271** Bohac SPONSOR: Janek  
Relating to the voter registration of certain persons disqualified from jury service.

**HB 1358** Flores SPONSOR: Armbrister  
Relating to the jurisdiction of the Texas Commission on Environmental Quality over certain water supply or sewer service corporations.  
(AMENDED)

- HB 1382** Jones, Jesse SPONSOR: Ellis  
Relating to notice of cancellation of a voter's registration.
- HB 1587** West, George "Buddy" SPONSOR: Seliger  
Relating to liability and validation issues of the Downtown Midland Management District.
- HB 1599** Callegari SPONSOR: Lindsay  
Relating to certain conservation and reclamation districts' use of money received under a contract with a municipality.  
(COMMITTEE SUBSTITUTE)
- HB 1630** McReynolds SPONSOR: West  
Relating to an excused absence from a public institution of higher education for a person called to active military service.  
(COMMITTEE SUBSTITUTE)
- HB 1644** Callegari SPONSOR: Lindsay  
Relating to the authority of a water control and improvement district or a municipal utility district to enter into a contract to convey property to another water district or water supply corporation and the authority of a conservation and reclamation district to acquire a certificate of convenience and necessity or to acquire a facility or a right to use a facility.  
(AMENDED)
- HB 1747** Keffer, Jim SPONSOR: Staples  
Relating to the creation of and funding for the Texas Entrepreneurship Network.  
(COMMITTEE SUBSTITUTE)
- HB 1835** Talton SPONSOR: Armbrister  
Relating to the apportionment of municipal infrastructure costs in regard to certain property development projects.  
(COMMITTEE SUBSTITUTE/AMENDED)
- HB 1901** Smith, Wayne SPONSOR: Williams  
Relating to the maximum reservation for certain individual projects of a portion of the state ceiling for private activity bonds.
- HB 2025** Hilderbran SPONSOR: Fraser  
Relating to the transfer of jurisdiction over the National Museum of the Pacific War and other historical sites from the Parks and Wildlife Department to the Texas Historical Commission.
- HB 2037** Allen, Ray SPONSOR: Seliger  
Relating to the seizure and disposition of property for the offense of hunting or fishing without landowner consent.
- HB 2039** Nixon SPONSOR: Wentworth  
Relating to the adjudication of claims arising under written contracts with local governmental entities.  
(COMMITTEE SUBSTITUTE/AMENDED)
- HB 2048** Uresti SPONSOR: Ellis  
Relating to certain online services and transactions involving state agencies.  
(COMMITTEE SUBSTITUTE/AMENDED)

- HB 2079** Keffer, Jim SPONSOR: Estes  
Relating to the creation, administration, powers, duties, functions, operations, and financing of the Stephens Regional Special Utility District.
- HB 2174** Phillips SPONSOR: Estes  
Relating to the terms of court of the 15th, 59th, and 336th District Courts.
- HB 2266** Baxter SPONSOR: Deuell  
Relating to the authority of municipalities to enact a requirement that establishes the sales price for certain housing units or residential lots.  
(COMMITTEE SUBSTITUTE/AMENDED)
- HB 2322** Anchia SPONSOR: Ellis  
Relating to the electronic administration of state funds used for voter registration.
- HB 2336** Corte SPONSOR: Van de Putte  
Relating to reimbursement of certain expenses for members of the Texas Military Facilities Commission.
- HB 2374** McClendon SPONSOR: Madla  
Relating to the retirement system for firefighters and police officers in certain municipalities.
- HB 2410** Bonnen SPONSOR: Jackson  
Relating to the membership and terms of the board of directors of the Texas Environmental Education Partnership Fund.
- HB 2451** Moreno, Joe E. SPONSOR: Gallegos  
Relating to the sale, service, and delivery of alcoholic beverages; providing penalties.
- HB 2465** Denny SPONSOR: Fraser  
Relating to a public hearing conducted by the secretary of state in regard to the question of approval of a voting system or voting system equipment for use in elections.  
(AMENDED)
- HB 2481** Bonnen SPONSOR: Harris  
Relating to air contaminant emissions reductions, including the continuation and provisions of the Texas emissions reduction plan and the use of money currently dedicated to the Texas emissions reduction plan fund.  
(COMMITTEE SUBSTITUTE/AMENDED)
- HB 2587** Hilderbran SPONSOR: Duncan  
Relating to the Schleicher County Hospital District.  
(COMMITTEE SUBSTITUTE)
- HB 2614** Eiland SPONSOR: Lucio  
Relating to the applicability of certain insurance laws to Lloyd's plans and reciprocal and interinsurance exchanges.  
(COMMITTEE SUBSTITUTE)
- HB 2685** Gallego SPONSOR: Madla  
Relating to the acceptance of gratuities by certain employees of the Parks and Wildlife Department.

**HB 2702** Krusee SPONSOR: Staples  
Relating to the construction, acquisition, financing, maintenance, management, operation, ownership, and control of transportation facilities and the progress, improvement, policing, and safety of transportation in this state; providing a penalty.

(COMMITTEE SUBSTITUTE/AMENDED)

**HB 2760** Taylor SPONSOR: Averitt  
Relating to regulation of rates for personal automobile and fire and allied lines insurance policies issued by a county mutual insurance company.

(COMMITTEE SUBSTITUTE)

**HB 2902** Hilderbran SPONSOR: Fraser  
Relating to the maintenance and preservation of historic courthouses and records.

(COMMITTEE SUBSTITUTE/AMENDED)

**HB 3486** Hardcastle SPONSOR: Estes  
Relating to the Nocona Hospital District.

**HB 3517** Coleman SPONSOR: Ellis  
Relating to the creation of the Harris County Improvement District No. 7; providing authority to impose a tax and issue bonds.

**HB 3547** Brown, Betty SPONSOR: Deuell  
Relating to the creation of an additional county court at law in Kaufman County.

(COMMITTEE SUBSTITUTE)

**HJR 6** Chisum SPONSOR: Staples  
Proposing a constitutional amendment providing that marriage in this state consists only of the union of one man and one woman.

**SB 774** Van de Putte  
Relating to tuition and fee exemption and course credit in connection with military service or military training.

**SB 1404** Wentworth  
Relating to the reapportionment of congressional districts and the creation, function, and duties of the Texas Congressional Redistricting Commission.

**SB 1511** Averitt  
Relating to liability for damages caused by a leak from or a malfunction or the improper operation or modification of a liquefied petroleum gas system or related equipment.

**SB 1512** Averitt  
Relating to the use and management of surface water resources and regional water planning.

**SJR 12** Janek  
Proposing a constitutional amendment to abolish the office of county treasurer of Fort Bend County.

THE SENATE HAS CONCURRED IN HOUSE AMENDMENTS TO THE FOLLOWING MEASURES:



**SB 1354**

(29 Yeas, 1 Nay)

THE SENATE HAS REFUSED TO CONCUR IN HOUSE AMENDMENTS TO THE FOLLOWING MEASURES AND REQUESTS THE APPOINTMENT OF A CONFERENCE COMMITTEE TO ADJUST THE DIFFERENCES BETWEEN THE TWO HOUSES:

**SB 334**

Senate Conferees: Duncan - Chair/Armbrister/Eltife/Fraser/Hinojosa

**SB 368**

Senate Conferees: Duncan - Chair/Averitt/Ellis/Ogden/Whitmire

THE SENATE HAS GRANTED THE REQUEST OF THE HOUSE FOR THE APPOINTMENT OF A CONFERENCE COMMITTEE ON THE FOLLOWING MEASURES:

**HB 7**

Senate Conferees: Staples - Chair/Duncan/Fraser/Madla/Nelson

Respectfully,

Patsy Spaw

Secretary of the Senate

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**APPENDIX**

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**STANDING COMMITTEE REPORTS**

Favorable reports have been filed by committees as follows:

**May 20**Appropriations - **SB 1605, SB 1863**Business and Industry - **SB 876, SB 1056, SB 1768**County Affairs - **SB 1510**Criminal Jurisprudence - **SB 251, SB 304, SB 309, SB 440**Culture, Recreation, and Tourism - **SB 1142, SB 1455**Defense Affairs and State-Federal Relations - **SB 1105, SB 1714, SB 1735**Economic Development - **SB 1096, SB 1304**Energy Resources - **SB 1166****SB 1740**  
Environmental Regulation - **SB 739, SB 1290, SB 1413, SB 1707, SB 1710,**Financial Institutions - **SB 757, SB 1112, SB 1143**Government Reform - **SB 1139**

Higher Education - **SB 31, SB 132, SB 302, SB 448, SB 730, SB 927, SB 1037, SB 1227, SB 1452, SB 1809, SB 1844, SB 1852, SB 1883, SCR 17, SCR 19, SCR 27**

Human Services - **HCR 193, SB 627, SB 1582, SB 1869**

Insurance - **SB 506, SB 698, SB 805, SB 809, SB 826**

Judiciary - **SB 103, SB 438, SB 978, SB 1410**

Juvenile Justice and Family Issues - **SB 393, SB 952, SB 1151, SB 1153, SB 1307**

Land and Resource Management - **SB 471, SB 1498**

Law Enforcement - **SB 66, SB 107, SB 314, SB 578, SB 689, SB 696, SB 732, SB 866, SB 1071, SB 1303, SB 1461, SB 1551**

Natural Resources - **SB 268, SB 331, SB 1064, SB 1772, SB 1795, SB 1798, SB 1811, SB 1840, SB 1872, SB 1876, SB 1878, SB 1888, SB 1889, SB 1894, SJR 3**

Pensions and Investments - **SB 51, SB 179, SB 1176**

Public Education - **SB 42, SB 124, SB 126, SB 851, SB 959, SB 1393, SB 1446**

Public Health - **SB 330, SB 610, SB 621, SB 691, SB 747, SB 815, SB 1001, SB 1069, SB 1113, SB 1183, SB 1238, SB 1329, SB 1581, SB 1685**

Regulated Industries - **SB 533**

State Affairs - **SB 1150**

Transportation - **SB 125, SB 369, SB 642, SB 921**

Urban Affairs - **SB 723, SB 1645**

Ways and Means - **SB 282**

### **May 21**

Business and Industry - **SB 444, SB 674**

Corrections - **SB 769, SJR 20**

Economic Development - **SB 831, SB 1229, SB 1304**

Environmental Regulation - **SB 785**

Law Enforcement - **SB 107, SB 578, SB 1263**

Natural Resources - **SB 3**

Public Education - **SB 117, SB 188, SB 189, SB 190, SB 221, SB 256, SB 386, SB 387, SB 426, SB 483, SB 493, SB 658, SB 776, SB 799, SB 961, SB 962, SB 963, SB 1393, SB 1395, SB 1532, SB 1583, SB 1693**

Public Health - **SB 1035, SB 1328, SB 1379**

Transportation - **SB 1375, SB 1548**

## Urban Affairs - SB 1061

**ENGROSSED**

May 20 - HB 925, HB 2445, HB 2815, HB 3482, HB 3488, HB 3498, HB 3502, HB 3530, HB 3531, HB 3534, HB 3535, HB 3539, HB 3546, HB 3548, HB 3549, HB 3554, HB 3556, HB 3557, HB 3566, HB 3568, HB 3569, HB 3574, HB 3576, HB 3578, HB 3579, HB 3580, HB 3582, HB 3583, HB 3584, HB 3589

**ENROLLED**

May 20 - HB 132, HB 150, HB 233, HB 525, HB 526, HB 571, HB 633, HB 639, HB 769, HB 805, HB 808, HB 941, HB 950, HB 952, HB 961, HB 962, HB 1136, HB 1304, HB 1455, HB 1471, HB 1540, HB 1646, HB 1735, HB 1745, HB 1814, HB 1893, HB 1924, HB 1937, HB 2179, HB 2196, HB 2340, HB 2457, HB 2584, HB 2930, HB 3475

May 21 - HB 26, HB 202, HB 214, HB 304, HB 380, HB 479, HB 492, HB 550, HB 705, HB 773, HB 877, HB 976, HB 1036, HB 1165, HB 1239, HB 1316, HB 1331, HB 3265, HCR 174, HCR 175, HCR 176, HCR 177, HCR 178, HCR 179, HCR 180, HCR 181, HCR 182, HCR 183, HCR 184, HCR 197, HCR 198, HCR 199, HCR 200, HCR 206

**SENT TO THE GOVERNOR**

May 20 - HB 132, HB 150, HB 233, HB 525, HB 526, HB 571, HB 633, HB 639, HB 758, HB 769, HB 805, HB 808, HB 941, HB 950, HB 952, HB 961, HB 962, HB 1058, HB 1136, HB 1163, HB 1304, HB 1350, HB 1455, HB 1471, HB 1540, HB 1573, HB 1646, HB 1735, HB 1745, HB 1814, HB 1893, HB 1924, HB 1937, HB 2179, HB 2196, HB 2340, HB 2457, HB 2511, HB 2584, HB 2645, HB 2659, HB 2930, HB 3475

**SIGNED BY THE GOVERNOR**

May 20 - HB 503, HB 532, HB 564, HB 1025, HCR 36, HCR 59, HCR 102, HCR 145, HCR 156, HCR 161, HCR 162, HCR 165, HCR 170

