

# HOUSE JOURNAL

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SEVENTY-NINTH LEGISLATURE, REGULAR SESSION

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## PROCEEDINGS

SEVENTY-FIFTH DAY — MONDAY, MAY 23, 2005

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

The roll of the house was called and a quorum was announced present (Record 761).

Present — Mr. Speaker; Allen, A.; Allen, R.; Alonzo; Anchia; Anderson; Bailey; Baxter; Berman; Blake; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Burnam; Callegari; Campbell; Casteel; Chavez; Chisum; Coleman; Cook, B.; Cook, R.; Corte; Crabb; Crownover; Davis, J.; Davis, Y.; Dawson; Delisi; Denny; Deshotel; Dukes; Dunnam; Dutton; Edwards; Eiland; Eissler; Elkins; Escobar; Farabee; Farrar; Flores; Flynn; Frost; Gallego; Gattis; Geren; Giddings; Gonzales; Gonzalez Toureilles; Goodman; Goolsby; Griggs; Grusendorf; Guillen; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Hegar; Herrero; Hill; Hochberg; Homer; Hope; Hopson; Howard; Hughes; Hunter; Hupp; Isett; Jackson; Jones, J.; Keel; Keffer, B.; Keffer, J.; King, P.; King, T.; Kolkhorst; Kuempel; Laney; Laubenberg; Leibowitz; Luna; Madden; Martinez; Martinez Fischer; McCall; McClendon; McReynolds; Menendez; Merritt; Miller; Moreno, P.; Morrison; Mowery; Naishtat; Nixon; Noriega, M.; Oliveira; Orr; Otto; Peña; Phillips; Pickett; Pitts; 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 — Hodge.

Absent — Castro; Driver; Hilderbran; Jones, D.; Krusee; Olivo; Paxton.

The invocation was offered by Emeritus Zacharias, pastor, Northpark Presbyterian Church, Dallas, as follows:

Almighty God, our Father, humbly we come into your presence. We are thankful that we live in a free country. We are grateful that we have a government of the people, by the people, and for the people. We are thankful for the privilege of being legislators in this great state. Make us mindful of our responsibility that comes with this privilege.

As our time is drawing to a close, let us work diligently to complete the needed and important legislation. We pray for your guidance and your wisdom that we will make decisions that will strengthen our state and provide a future for our state and its people. Let us work together with unity and purpose so that when the legislature adjourns it may be said of each legislator, "Well done, good and faithful servant." Hear our prayer, O Lord. Amen.

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

### **LEAVE OF ABSENCE GRANTED**

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

Hodge on motion of Hochberg.

### **REGULAR ORDER OF BUSINESS SUSPENDED**

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

### **CAPITOL PHYSICIAN**

The speaker recognized Representative Woolley who presented Dr. Laura Ann Longo of Houston as the "Doctor for the Day."

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

### **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. 49 and Senate List No. 26).

(Krusee and Hilderbran now present)

(Krusee in the chair)

### **HCR 211 - ADOPTED (by Jackson)**

Representative Jackson moved to suspend all necessary rules to take up and consider at this time **HCR 211**.

The motion prevailed.

The following resolution was laid before the house:

**HCR 211**, Congratulating Addison police officer Brad Freis on his selection to carry the torch for the 2005 Special Olympics World Winter Games in Japan.

**HCR 211** was read and was adopted.

(Castro now present)

### **INTRODUCTION OF GUESTS**

The chair recognized Representative Jackson who introduced Brad Freis and his family.

### **HR 1485 - READ (by Hilderbran)**

The chair laid out and had read the following previously adopted resolution:

**HR 1485**, Honoring Harley Steele of San Antonio for her perseverance in her efforts to attend the presidential inauguration in Washington, D.C., in January 2005.

### INTRODUCTION OF GUEST

The chair recognized Representative Hilderbran who introduced Harley Steele.

### HR 1745 - ADOPTED (by Hill)

Representative Edwards moved to suspend all necessary rules to take up and consider at this time **HR 1745**.

The motion prevailed.

The following resolution was laid before the house:

**HR 1745**, Honoring Eamon Kennedy of Arapaho Elementary School in Richardson for being selected the Adapted Physical Education Teacher of the Year by the Texas Association for Health, Physical Education, Recreation, and Dance.

**HR 1745** was adopted.

### HR 1940 - ADOPTED (by Gallego)

Representative Gallego moved to suspend all necessary rules to take up and consider at this time **HR 1940**.

The motion prevailed.

The following resolution was laid before the house:

**HR 1940**, In memory of Jo Ellen Allbright Vick of Alpine.

(Isett in the chair)

**HR 1940** was read and was unanimously adopted by a rising vote.

On motion of Representative Castro, the names of all the members of the house were added to **HR 1940** as signers thereof.

(D. Jones now present)

### INTRODUCTION OF GUESTS

The chair recognized Representative Gallego who introduced the family of Jo Ellen Allbright Vick.

### HR 1848 - ADOPTED (by Guillen)

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

The motion prevailed.

The following resolution was laid before the house:

**HR 1848**, Honoring Leonel "Muy" Garza of Freer as the founder of the Muy Grande Day contest on its 40th anniversary.

**HR 1848** was read and was adopted.

On motion of Representative Raymond, the names of all the members of the house were added to **HR 1848** as signers thereof.

### INTRODUCTION OF GUESTS

The chair recognized Representative Guillen who introduced Leonel "Muy" Garza and his family.

(Driver now present)

### UNFINISHED BUSINESS

The following bill was laid before the house as unfinished 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 on May 22 and 33 amendments were offered and disposed of before that day's adjournment.

#### **Amendment No. 34**

Representative Hartnett offered the following amendment to **CSSB 1863**:

Amend Amend **CSSB 1863** (House Committee Printing) by adding the following appropriately numbered SECTIONS to ARTICLE 11 of the bill and renumbering subsequent SECTIONS of that article accordingly:

SECTION \_\_\_\_\_. Subchapter H, Chapter 74, Property Code, is amended by adding Section 74.7085 to read as follows:

Sec. 74.7085. HEARING. (a) If, after an examination of records under Section 74.702, the comptroller determines that a person holds unclaimed property that should have been delivered to the comptroller as provided by this chapter, the person may petition the comptroller for a hearing on that determination and on the imposition of any interest or penalty resulting from that determination.

(b) A person must file a petition for a hearing with the comptroller under this section not later than the 30th day after the date the determination is made. If a petition for a hearing is not filed before the expiration of the period provided by this subsection, the determination is final on the expiration of that period.

(c) At the time a person files a petition for a hearing under Subsection (b), the person must pay to the comptroller a hearing fee in the amount of \$50, which shall be used by the comptroller for the purpose of administering hearings under this section.

SECTION \_\_\_\_\_. Subchapter A, Chapter 74, Property Code, is amended by adding Section 74.002 to read as follows:

Sec. 74.002. SINGLE BUSINESS ENTERPRISE DOCTRINE INAPPLICABLE. The single business enterprise doctrine does not apply to this chapter.

SECTION \_\_. The change in law made by Section 74.7085, Property Code, as added by this article, applies only to a determination by the comptroller made on or after the effective date of this Act. A determination by the comptroller made before the effective date of this Act is governed by the law in effect on the date the determination was made, and the former law is continued in effect for that purpose.

SECTION \_\_\_\_. Section 74.002, Property Code, as added by this article, is intended only to clarify existing law with respect to Chapter 74, Property Code.

Amendment No. 34 was adopted.

### **Amendment No. 35**

Representative Grusendorf offered the following amendment to **CSSB 1863**:

Amend **CSSB 1863** by adding a new, appropriately numbered ARTICLE to read as follows:

#### ARTICLE \_\_.

#### TRANSFER OF DRIVER EDUCATION PROGRAMS FROM THE TEXAS EDUCATION AGENCY TO THE

#### TEXAS DEPARTMENT OF LICENSING AND REGULATION

SECTION \_\_.01. Section 1001.001, Education Code, is amended by amending Subdivisions (2), (3), (4), and (5) and adding Subdivision (13-a) to read as follows:

(2) "Approved driving safety course" means a driving safety course approved by the department [~~commissioner~~].

(3) "Commission" [~~"Commissioner"~~] means the Texas Commission of Licensing and Regulation [~~commissioner of education~~].

(4) "Course provider" means an enterprise that:  
(A) maintains a place of business or solicits business in this state;  
(B) is operated by an individual, association, partnership, or corporation; and

(C) has received an approval for a driving safety course from the department [~~commissioner~~] or has been designated by a person who has received that approval to conduct business and represent the person in this state.

(5) "Department" means the Texas Department of Licensing and Regulation [~~Public Safety~~].

(13-a) "Executive director" means the executive director of the department.

SECTION \_\_.02. Section 1001.002(c), Education Code, is amended to read as follows:

(c) A driver education course is exempt from this chapter, other than Section 1001.055, if the course is:

(1) conducted by a vocational driver training school operated to train or prepare a person for a field of endeavor in a business, trade, technical, or industrial occupation;

(2) conducted by a school or training program that offers only instruction of purely avocational or recreational subjects as determined by the department ~~[commissioner]~~;

(3) sponsored by an employer to train its own employees without charging tuition;

(4) sponsored by a recognized trade, business, or professional organization with a closed membership to instruct the members of the organization; or

(5) conducted by a school regulated and approved under another law of this state.

SECTION \_\_.03. Sections 1001.003 and 1001.004, Education Code, are amended to read as follows:

Sec. 1001.003. LEGISLATIVE INTENT REGARDING SMALL BUSINESSES. It is the intent of the legislature that commission ~~[agency]~~ rules that affect driver training schools that qualify as small businesses be adopted and administered so as to have the least possible adverse economic effect on the schools.

Sec. 1001.004. COST OF ADMINISTERING CHAPTER. The cost of administering this chapter shall be included in the state budget allowance for the department ~~[agency]~~.

SECTION \_\_.04. Sections 1001.051 and 1001.052, Education Code, are amended to read as follows:

Sec. 1001.051. JURISDICTION OVER SCHOOLS. The department ~~[agency]~~ has jurisdiction over and control of driver training schools regulated under this chapter.

Sec. 1001.052. RULES. The commission ~~[agency]~~ shall adopt ~~[and administer]~~ comprehensive rules governing driving safety courses, including rules to ensure the integrity of approved driving safety courses and enhance program quality.

SECTION \_\_.05. The heading to Section 1001.053, Education Code, is amended to read as follows:

Sec. 1001.053. POWERS AND DUTIES OF DEPARTMENT ~~[COMMISSIONER]~~.

SECTION \_\_.06. Section 1001.053(a), Education Code, is amended to read as follows:

(a) The department ~~[commissioner]~~ shall:

(1) administer ~~[the policies of]~~ this chapter;

(2) enforce minimum standards for driver training schools under this chapter; and

(3) ~~[adopt and]~~ enforce rules adopted by the commission necessary to administer this chapter; ~~and~~

~~[(4) visit a driver training school or course provider and reexamine the school or course provider for compliance with this chapter].~~

SECTION \_\_.07. The heading to Section 1001.054, Education Code, is amended to read as follows:

Sec. 1001.054. RULES RESTRICTING ADVERTISING ~~[OR~~

[COMPETITIVE BIDDING].

SECTION \_\_.08. Section 1001.054(c), Education Code, is amended to read as follows:

(c) The commission [~~commissioner~~] by rule may restrict advertising by a branch location of a driver training school so that the location adequately identifies the primary location of the school in a solicitation.

SECTION \_\_.09. Section 1001.055, Education Code, is amended to read as follows:

Sec. 1001.055. DRIVER EDUCATION CERTIFICATES. (a) The department [~~agency~~] shall print and supply to each licensed or exempt driver education school driver education certificates to be used for certifying completion of an approved driver education course to satisfy the requirements of Section 521.204(a)(2), Transportation Code. The certificates must be numbered serially.

(b) The commission [~~agency~~] by rule shall provide for the design and distribution of the certificates in a manner that, to the greatest extent possible, prevents the unauthorized reproduction or misuse of the certificates.

(c) The department [~~agency~~] may charge a fee of not more than \$4 for each certificate.

SECTION \_\_.10. Sections 1001.056(b), (c), (d), (e), (f) and (g), Education Code, are amended and Subsections (b-1), (c-1) and (h) are added to read as follows:

(b) The department [~~agency~~] shall provide [~~print and supply to~~] each licensed course provider with course completion certificate numbers to enable the provider to print and issue department-approved uniform certificates of course completion.

(b-1) Certificate numbering under Subsection (b) [~~The certificates~~] must be serial [~~numbered serially~~].

(c) The commission [~~agency~~] by rule shall provide for the design and distribution of the certificates in a manner that, to the greatest extent possible, prevents the unauthorized production or misuse of the certificates.

(c-1) A course provider shall provide for the printing and issuance of original and duplicate certificates in a manner that, to the greatest extent possible, prevents the unauthorized production or the misuse of the certificates.

(d) A certificate under this section must:

(1) be in a form required by the department [~~agency~~]; and  
(2) include an identifying number by which the department [~~agency~~], a court, or the Department of Public Safety [~~department~~] may verify its authenticity with the course provider.

(e) The department [~~agency~~] may charge a fee of not more than \$4 for each course completion certificate number. A course provider that supplies a certificate for an operator shall collect from the [~~charge an~~] operator a fee equal to the amount of the fee paid to the department [~~agency~~] for the [~~a~~] certificate number.

(f) A course provider license entitles a course provider to purchase certificate numbers [~~certificates~~] for only one approved driving safety course.

(g) A course provider [The agency] shall issue a duplicate certificate by United States mail or through a commercial delivery service [certificates]. The commission [commissioner] by rule shall determine the amount of the fee collected by the course provider for issuance of a duplicate certificate under this subsection.

(h) If a duplicate certificate issued by a course provider contains information that is different from the original certificate, the course provider shall include on the duplicate certificate, in addition to the new information, the applicable information from the original certificate with the notation "changed to" indicating how the original information was changed.

SECTION \_\_.11. Section 1001.057, Education Code, is amended to read as follows:

Sec. 1001.057. ELECTRONIC TRANSMISSION OF DRIVING SAFETY COURSE INFORMATION. The department [agency] shall investigate options to develop and implement procedures to electronically transmit information relating to driving safety courses to municipal and justice courts.

SECTION \_\_.12. Subchapter B, Chapter 1001, Education Code, is amended by adding Section 1001.058 to read as follows:

Sec. 1001.058. DESIGNATION OF PERSON TO ADMINISTER CHAPTER. The executive director may designate a person knowledgeable in the administration of regulating driver training schools to administer this chapter for the department.

SECTION \_\_.13. Sections 1001.101 and 1001.102, Education Code, are amended to read as follows:

Sec. 1001.101. DRIVER EDUCATION COURSE CURRICULUM AND TEXTBOOKS. The commission [commissioner] by rule shall establish the curriculum and designate the textbooks to be used in a driver education course.

Sec. 1001.102. ALCOHOL AWARENESS INFORMATION. (a) The commission [agency] by rule shall require that information relating to alcohol awareness and the effect of alcohol on the effective operation of a motor vehicle be included in the curriculum of any driver education course or driving safety course.

(b) In developing rules under this section, the commission [agency] shall consult with the Department of Public Safety [department].

SECTION \_\_.14. Sections 1001.103(b), (d), and (e), Education Code, are amended to read as follows:

(b) The department [agency] shall develop standards for a separate school certification and approve curricula for drug and alcohol driving awareness programs that include one or more courses. Except as provided by commission [agency] rule, a program must be offered in the same manner as a driving safety course.

(d) In accordance with Section 461.013(b), Health and Safety Code, the department [agency] and the Texas Commission on Alcohol and Drug Abuse shall enter into a memorandum of understanding for the interagency approval of the required curricula.



(e) ~~The commission [Notwithstanding Section 1001.056, Subchapter D, and Sections 1001.213 and 1001.303, the commissioner]~~ may establish fees in connection with the programs under this section. The fees must be in amounts reasonable and necessary to administer the department's [agency's] duties under this section.

SECTION \_\_.15. Sections 1001.104 and 1001.105, Education Code, are amended to read as follows:

Sec. 1001.104. HOSPITAL AND REHABILITATION FACILITIES. (a) The department [agency] shall enter into a memorandum of understanding with the Texas Department of Aging and Disability Services [Rehabilitation Commission] and the Department of Public Safety [department] for the interagency development of curricula and licensing criteria for hospital and rehabilitation facilities that teach driver education.

(b) The department [agency] shall administer comprehensive rules governing driver education courses adopted by mutual agreement among the commission [agency], the Texas Department of Aging and Disability Services [Rehabilitation Commission], and the Department of Public Safety [department].

Sec. 1001.105. TEXAS DEPARTMENT OF INSURANCE. The commission [agency] shall enter into a memorandum of understanding with the Texas Department of Insurance for the interagency development of a curriculum for driving safety courses.

SECTION \_\_.16. Sections 1001.106(b), (c), and (d), Education Code, are amended to read as follows:

(b) The commission [commissioner] by rule shall provide minimum standards of curriculum relating to operation of vehicles at railroad and highway grade crossings.

(c) Subchapter F, Chapter 51, Occupations Code, Section 51.353, Occupations Code, and Section [Sections 1001.454,] 1001.456 of this code[and 1001.553] do not apply to a violation of this section or a rule adopted under this section.

(d) Section 51.352, Occupations Code, and Sections [1001.455(a)(6),] 1001.501[, 1001.551, 1001.552,] and 1001.554 of this code do not apply to a violation of this section.

SECTION \_\_.17. Section 1001.107, Education Code, is amended to read as follows:

Sec. 1001.107. INFORMATION RELATING TO LITTER PREVENTION. (a) The commission [commissioner] by rule shall require that information relating to litter prevention be included in the curriculum of each driver education and driving safety course.

(b) In developing rules under this section, the commission [commissioner] shall consult the Department of Public Safety [department].

SECTION \_\_.18. Sections 1001.108(a) and (c), Education Code, are amended to read as follows:

(a) The commission [commissioner] by rule shall require that information relating to anatomical gifts be included in the curriculum of each driver education course and driving safety course.

(c) In developing rules under this section, the commission [~~commissioner~~] shall consult with the Department of Public Safety [~~department~~] and the [~~Texas~~] Department of State Health Services.

SECTION \_\_.19. Section 1001.151, Education Code, is amended to read as follows:

Sec. 1001.151. APPLICATION, LICENSE, AND REGISTRATION FEES.

(a) The commission [~~commissioner~~] shall establish [~~collect~~] application, license, and registration fees. The fees must be in amounts sufficient to cover administrative costs and are nonrefundable. The department shall collect the application, license, and registration fees.

(b) The commission shall establish a fee for:

(1) an initial driver education school license and [~~is \$1,000 plus \$850~~] for each branch location; [-]

(2) [~~(c) The fee for~~] an initial driving safety school license; [~~is an appropriate amount established by the commissioner not to exceed \$200.~~]

(3) [~~(d) The fee for~~] an initial course provider license [~~is an appropriate amount established by the commissioner not to exceed \$2,000~~], except that the commission [~~agency~~] may waive the fee if revenue received from the course provider is sufficient to cover the cost of licensing the course provider; [-]

(4) the [~~(e) The~~] annual renewal [~~fee~~] for a course provider, driving safety school, driver education school, or branch location [~~is an appropriate amount established by the commissioner not to exceed \$200~~], except that the commission [~~agency~~] may waive the fee if revenue generated by the issuance of [~~uniform certificates~~] of course completion certificate numbers and driver education certificates is sufficient to cover the cost of administering this chapter and Article 45.0511, Code of Criminal Procedure; [-]

(5) [~~(f) The fee for~~] a change of address of:-

[(1) a driver education school; [~~is \$180; and~~

[(2) a driving safety school; or course provider; [~~is \$50.~~

(6) [~~(g) The fee for~~] a change of name of:

(A) [(1) a driver education school or course provider or an owner of a driver education school or course provider [~~is \$100~~]; or [~~and~~

(B) [(2) a driving safety school or owner of a driving safety school; [~~is \$50.~~

(7) [~~(h) The application fee for~~] each additional driver education or driving safety course at a driver training school; [~~is \$25.~~

(8) an [(i) The] application of a [~~fee for~~:

[(1) ~~each~~] director; [~~is \$30; and~~

[(2) ~~each~~] assistant director; or administrative staff member; and [~~is \$15.~~

(9) an [(j) Each] application for approval of a driving safety course that has not been evaluated by the department [~~commissioner must be accompanied by a nonrefundable fee of \$9,000~~];

(10) an application for approval to teach an approved driving safety course by an alternative method.

(c) ~~(4)~~ An application for an original driver education or driving safety instructor license must be accompanied by a processing fee ~~[of \$50]~~ and an annual license fee ~~[of \$25]~~, except that the department ~~[commissioner]~~ may not collect the processing fee from an applicant for a driver education instructor license who is currently teaching a driver education course in a public school in this state.

(d) ~~(4)~~ The commission ~~[commissioner]~~ shall establish the amount of the fee for a duplicate license.

SECTION \_\_.20. Section 1001.153, Education Code, is amended to read as follows:

Sec. 1001.153. COMPLAINT INVESTIGATION FEE. (a) The commission ~~[commissioner]~~ shall establish the amount of the fee to investigate a driver training school or course provider to resolve a complaint against the school or course provider.

(b) The fee may be charged only if:

(1) the complaint could not have been resolved solely by telephone or in writing;

(2) a representative of the department ~~[agency]~~ visited the school or course provider as a part of the complaint resolution process; and

(3) the school or course provider was found to be at fault.

SECTION \_\_.21. Section 1001.202(b), Education Code, is amended to read as follows:

(b) A driving safety school may use multiple classroom locations to teach a driving safety course if each location:

(1) is approved by the parent school and the department ~~[agency]~~;

(2) has the same name as the parent school; and

(3) has the same ownership as the parent school.

SECTION \_\_.22. Sections 1001.203, 1001.204, 1001.205, and 1001.206, Education Code, are amended to read as follows:

Sec. 1001.203. APPLICATION. To operate or do business in this state, a driver training school must apply to the department ~~[commissioner]~~ for the appropriate license. The application must:

(1) be in writing;

(2) be in the form prescribed by the department ~~[commissioner]~~;

(3) include all required information; and

(4) be verified.

Sec. 1001.204. REQUIREMENTS FOR DRIVER EDUCATION SCHOOL LICENSE. The department ~~[commissioner]~~ shall approve an application for a driver education school license if, on investigation of the premises of the school, it is determined that the school:

(1) has courses, curricula, and instruction of a

quality, content, and length that reasonably and adequately achieve the stated objective for which the courses, curricula, and instruction are offered;

(2) has adequate space, equipment, instructional material, and instructors to provide training of good quality in the classroom and behind the wheel;

(3) has directors, instructors, and administrators who have adequate educational qualifications and experience;

(4) provides to each student before enrollment:

(A) a copy of:

(i) the refund policy;

(ii) the schedule of tuition, fees, and other charges; and

(iii) the regulations relating to absence, grading policy, and rules of operation and conduct; and

(B) the department's name, mailing address, ~~and~~ telephone number, and Internet website address ~~[of the~~ agency] for the purpose of directing complaints to the department agency;

(5) maintains adequate records as prescribed by the department commissioner to show attendance and progress or grades and enforces satisfactory standards relating to attendance, progress, and conduct;

(6) on completion of training, issues each student a certificate indicating the course name and satisfactory completion;

(7) complies with all county, municipal, state, and federal regulations, including fire, building, and sanitation codes and assumed name registration;

(8) is financially sound and capable of fulfilling its commitments for training;

(9) has administrators, directors, owners, and instructors who are of good reputation and character;

(10) maintains and publishes as part of its student enrollment contract the proper policy for the refund of the unused portion of tuition, fees, and other charges if a student fails to take the course or withdraws or is discontinued from the school at any time before completion;

(11) does not use erroneous or misleading advertising, either by actual statement, omission, or intimation, as determined by the department commissioner;

(12) does not use a name similar to the name of another existing school or tax-supported educational institution in this state, unless specifically approved in writing by the executive director commissioner;

(13) submits to the department agency for approval the applicable course hour lengths and curriculum content for each course offered by the school;

(14) does not owe an administrative penalty for a violation of ~~under~~ this chapter; and

(15) meets any additional criteria required by the department agency.

Sec. 1001.205. REQUIREMENTS FOR DRIVING SAFETY SCHOOL LICENSE. The department [~~commissioner~~] shall approve an application for a driving safety school license if on investigation the department [~~agency~~] determines that the school:

(1) has driving safety courses, curricula, and instruction of a quality, content, and length that reasonably and adequately achieve the stated objective for which the course, curricula, and instruction are developed by the course provider;

(2) has adequate space, equipment, instructional material, and instructors to provide training of good quality;

(3) has instructors and administrators who have adequate educational qualifications and experience;

(4) maintains adequate records as prescribed by the department [~~commissioner~~] to show attendance and progress or grades and enforces satisfactory standards relating to attendance, progress, and conduct;

(5) complies with all county, municipal, state, and federal laws, including fire, building, and sanitation codes and assumed name registration;

(6) has administrators, owners, and instructors who are of good reputation and character;

(7) does not use erroneous or misleading advertising, either by actual statement, omission, or intimation, as determined by the department [~~commissioner~~];

(8) does not use a name similar to the name of another existing school or tax-supported educational establishment in this state, unless specifically approved in writing by the executive director [~~commissioner~~];

(9) maintains and uses the approved contract and policies developed by the course provider;

(10) does not owe an administrative penalty for a violation of [~~under~~] this chapter;

(11) will not provide a driving safety course to a person for less than \$32 [~~\$25~~]; and

(12) meets additional criteria required by the department [~~commissioner~~].

Sec. 1001.206. REQUIREMENTS FOR COURSE PROVIDER LICENSE. The department [~~commissioner~~] shall approve an application for a course provider license if on investigation the department [~~agency~~] determines that:

(1) the course provider has an approved course that at least one licensed driving safety school is willing to offer;

(2) the course provider has adequate educational qualifications and experience;

(3) the course provider will:

(A) develop and provide to each driving safety school that offers the approved course a copy of:

(i) the refund policy; and

(ii) the regulations relating to absence, grading policy, and rules of operation and conduct; and

(B) provide to the driving safety school the department's name, mailing address, ~~and~~ telephone number, and Internet website address ~~[of the agency]~~ for the purpose of directing complaints to the department ~~[agency]~~;

(4) a copy of the information provided to each driving safety school under Subdivision (3) will be provided to each student by the school before enrollment;

(5) not later than the 15th working day after the date the person successfully completes the course, the course provider will mail a uniform certificate of course completion to the person indicating the course name and successful completion;

(6) the course provider maintains adequate records as prescribed by the department ~~[commissioner]~~ to show attendance and progress or grades and enforces satisfactory standards relating to attendance, progress, and conduct;

(7) the course provider complies with all county, municipal, state, and federal laws, including assumed name registration and other applicable requirements;

(8) the course provider is financially sound and capable of fulfilling its commitments for training;

(9) the course provider is of good reputation and character;

(10) the course provider maintains and publishes as a part of its student enrollment contract the proper policy for the refund of the unused portion of tuition, fees, and other charges if a student fails to take the course or withdraws or is discontinued from the school at any time before completion;

(11) the course provider does not use erroneous or misleading advertising, either by actual statement, omission, or intimation, as determined by the department ~~[commissioner]~~;

(12) the course provider does not use a name similar to the name of another existing school or tax-supported educational institution in this state, unless specifically approved in writing by the executive director ~~[commissioner]~~;

(13) the course provider does not owe an administrative penalty for a violation of ~~[under]~~ this chapter; and

(14) the course provider meets additional criteria required by the department ~~[commissioner]~~.

SECTION     .23. Sections 1001.207(a) and (b), Education Code, are amended to read as follows:

(a) Before a driver education school may be issued a license, the school must file a corporate surety bond with the department ~~[commissioner]~~ in the amount of:

(1) \$10,000 for the primary location of the school;  
and

(2) \$5,000 for each branch location.

(b) A bond issued under Subsection (a) must be:

(1) issued in a form approved by the department ~~[commissioner]~~;

(2) issued by a company authorized to do business in this state;

(3) payable to the state to be used only for payment of a refund due to a student or potential student;

(4) conditioned on the compliance of the school and its officers, agents, and employees with this chapter and rules adopted under this chapter; and

(5) issued for a period corresponding to the term of the license.

SECTION \_\_\_\_.24. Section 1001.209(b), Education Code, is amended to read as follows:

Section 1001.209(b), Education Code, is amended to read as follows:

(b) A bond issued under Subsection (a) must be:

(1) issued by a company authorized to do business in this state;

(2) payable to the state to be used:

(A) for payment of a refund due a student of the course provider's approved course;

(B) to cover the payment of unpaid fees or penalties assessed by the department [~~agency~~]; or

(C) to recover any [~~the~~] cost associated with providing [~~of uniform certificates of~~] course completion certificate numbers, including the cancellation of certificate numbers [~~the agency demands be returned or any cost associated with the certificates~~];

(3) conditioned on the compliance of the course provider and its officers, agents, and employees with this chapter and rules adopted under this chapter; and

(4) issued for a period corresponding to the term of the license.

SECTION \_\_\_\_.25. Section 1001.210, Education Code, is amended to read as follows:

Sec. 1001.210. ALTERNATE FORM OF SECURITY. Instead of the bond required by Section 1001.207 or 1001.209, a driver education school or course provider may provide another form of security that is:

(1) [~~(A)~~] approved by the department [~~commissioner~~]; and

(2) [~~(B)~~] in the amount required for a comparable bond under Section 1001.207 or 1001.209.

SECTION \_\_\_\_.26. Sections 1001.211(a) and (b), Education Code, are amended to read as follows:

(a) The department [~~commissioner~~] shall issue a license to an applicant for a license under this subchapter if:

(1) the application is submitted in accordance with this subchapter; and

(2) the applicant meets the requirements of this chapter.

(b) A license must be in a form determined by the department [~~commissioner~~] and must show in a clear and conspicuous manner:

- (1) the date of issuance, effective date, and term of the license;
- (2) the name and address of the driver training school or course provider;
- (3) the authority for and conditions of approval;
- (4) the executive director's [~~commissioner's~~] signature; and
- (5) any other fair and reasonable representation that is consistent with this chapter and that the department [~~commissioner~~] considers necessary.

SECTION \_\_.27. Section 1001.212, Education Code, is amended to read as follows:

Sec. 1001.212. NOTICE OF DENIAL OF LICENSE. The department [~~commissioner~~] shall provide a person whose application for a license under this subchapter is denied a written statement of the reasons for the denial.

SECTION \_\_.28. Sections 1001.213(c) and (d), Education Code, are amended to read as follows:

(c) The commission may establish [~~Instead of the~~] fees [~~required by Section 1001.151, the fee~~] for a new driver education school or course provider license under Subsection (b) and [~~is \$500, plus \$200~~] for each branch location that are different from the amounts established under Section 1001.151[-] if:

- (1) the new owner is substantially similar to the previous owner; and
- (2) there is no significant change in the management or control of the driver education school or course provider.

(d) The department [~~commissioner~~] is not required to reinspect a school or a branch location after a change of ownership.

SECTION \_\_.29. Section 1001.214, Education Code, is amended to read as follows:

Sec. 1001.214. DUPLICATE LICENSE. A duplicate license may be issued to a driver training school or course provider if:

- (1) the original license is lost or destroyed; and
- (2) an affidavit of that fact is filed with the department [~~agency~~].

SECTION \_\_.30. Sections 1001.251, 1001.252, and 1001.253, Education Code, are amended to read as follows:

Sec. 1001.251. LICENSE REQUIRED FOR INSTRUCTOR. (a) A person may not teach or provide driver education, either as an individual or in a driver education school, or conduct any phase of driver education, unless the person holds a driver education instructor license issued by the department [~~agency~~].

(b) A person may not teach or provide driving safety training, either as an individual or in a driving safety school, or conduct any phase of driving safety education, unless the person holds a driving safety instructor license issued by the department [~~agency~~]. This subsection does not apply to an instructor of a driving safety course that does not provide a uniform certificate of course completion to its graduates.



Sec. 1001.252. SIGNATURE AND SEAL ON LICENSE REQUIRED. A license under this subchapter must be signed by the executive director [~~commissioner~~].

Sec. 1001.253. DRIVER EDUCATION INSTRUCTOR TRAINING. (a) The department [~~commissioner~~] shall establish standards for certification of professional and paraprofessional personnel who conduct driver education programs in driver education schools.

(b) A driver education instructor license authorizing a person to teach or provide behind-the-wheel training may not be issued unless the person has successfully completed six semester hours of driver and traffic safety education or a program of study in driver education approved by the department [~~commissioner~~] from an approved driver education school.

(c) A person who holds a driver education instructor license authorizing behind-the-wheel training may not be approved to [~~assist a classroom instructor~~] provide instruction in the classroom phase of driver education, under the certification of a classroom instructor, unless the person has successfully completed the three additional semester hours of training required for a classroom instructor or a program of study in driver education approved by the department [~~commissioner~~].

(d) Except as provided by Section 1001.254, a driver education instructor license authorizing a person to teach or provide classroom training may not be issued unless the person:

(1) has completed nine semester hours of driver and traffic safety education or a program of study in driver education approved by the department [~~commissioner~~] from an approved driver education school; and

(2) holds a teaching certificate and any additional certification required to teach driver education.

(e) A driver education instructor who has completed the educational requirements prescribed by Subsection (d)(1) may not teach instructor training classes unless the instructor has successfully completed a supervising instructor development program consisting of at least six additional semester hours or a program of study in driver education approved by the department [~~commissioner~~] that includes administering driver education programs and supervising and administering traffic safety education, except that the supervising teacher may allow driver education teachers and teaching assistants to provide training in areas appropriate for their level of certification or licensure.

(f) A driver education school may submit for department [~~agency~~] approval a curriculum for an instructor development program for driver education instructors. The program must:

(1) be taught by a person who has completed a supervising instructor development program under Subsection (e); and

(2) satisfy the requirements of this section for the particular program or type of training to be provided.

SECTION \_\_.31. Section 1001.254(a), Education Code, is amended to read as follows:

(a) A temporary driver education instructor license may be issued authorizing a person to teach or provide classroom driver education training if the person:

- (1) has completed the educational requirements prescribed by Section 1001.253(d)(1);
- (2) holds a Texas teaching certificate with an effective date before February 1, 1986;
- (3) meets all license requirements, other than successful completion of the examination required under rules adopted by the State Board for Educator Certification to revalidate the teaching certificate; and
- (4) demonstrates, in a manner prescribed by the department [~~commissioner~~], the intention to comply with the examination requirement at the first available opportunity.

SECTION \_\_.32. Sections 1001.255(a), (b), and (c), Education Code, are amended to read as follows:

(a) The department [~~agency~~] shall regulate as a driver education school a driver education instructor who:

- (1) teaches driver education courses in a county having a population of 50,000 or less; and
- (2) does not teach more than 200 students annually.

(b) An instructor described by Subsection (a) must submit to the department [~~agency~~] an application for an initial or renewal driver education school license, together with all required documentation and information.

(c) The department [~~commissioner~~] may waive initial or renewal driver education school license fees or the fee for a director or administrative staff member.

SECTION \_\_.33. Section 1001.256, Education Code, is amended to read as follows:

Sec. 1001.256. DUPLICATE LICENSE. A duplicate license may be issued to a driver education instructor or driving safety instructor if:

- (1) the original license is lost or destroyed; and
- (2) an affidavit of that fact is filed with the department [~~agency~~].

SECTION \_\_.34. The heading to Subchapter G, Chapter 1001, Education Code, is amended to read as follows:

SUBCHAPTER G. LICENSE EXPIRATION [~~AND RENEWAL~~]

SECTION \_\_.35. Sections 1001.351(a) and (b), Education Code, are amended to read as follows:

(a) Not later than the 15th working day after the course completion date, a course provider or a person at the course provider's facilities shall issue and send [~~mail~~] a uniform certificate of course completion by United States mail or through a commercial delivery service to a person who successfully completes an approved driving safety course.

(b) A course provider shall electronically submit to the department [~~agency~~] in the manner established by the department [~~agency~~] data identified by the department [~~agency~~] relating to uniform certificates of course completion issued by the course provider.

SECTION \_\_.36. Section 1001.352, Education Code, is amended to read as follows:

Sec. 1001.352. FEES FOR DRIVING SAFETY COURSE. (a)(1) A course provider shall charge each student:

(A) at least \$26 [~~\$25~~] for a driving safety course; [~~and~~]

(B) a fee of at least \$4, [~~\$3~~] which shall be retained by the course provider to be used solely for course materials and for supervising and administering the course as required by this chapter and the rules of the commission; and

(C) a fee of \$2 to be remitted to the department for deposit in the general revenue fund.

(2) The department shall periodically audit course providers to verify compliance with this subsection. A course provider shall make its books and records available to the department as needed to verify compliance with this section and failure to do so may be enforced pursuant to Subchapter J.

SECTION \_\_.37. Sections 1001.354(a) and (b), Education Code, are amended to read as follows:

(a) A driving safety course may be taught at a driving safety school if the school is approved by the department [~~agency~~].

(b) A driving safety school may teach an approved driving safety course by an alternative method that does not require students to be present in a classroom if the department [~~commissioner~~] approves the alternative method. The department [~~commissioner~~] may approve the alternative method if:

(1) the department [~~commissioner~~] determines that the approved driving safety course can be taught by the alternative method; and

(2) the alternative method includes testing and security measures that are at least as secure as the measures available in the usual classroom setting.

SECTION \_\_.38. Sections 1001.404(b) and (c), Education Code, are amended to read as follows:

(b) The department [~~commissioner~~] shall establish annually the rate of interest for a refund at a rate sufficient to provide a deterrent to the retention of student money.

(c) The department [~~agency~~] may except a driver education school or course provider from the payment of interest if the school or course provider makes a good-faith effort to refund tuition, fees, and other charges but is unable to locate the student to whom the refund is owed. On request of the department [~~agency~~], the school or course provider shall document the effort to locate a student.

SECTION \_\_.39. Sections 1001.451 and 1001.452, Education Code, are amended to read as follows:

Sec. 1001.451. PROHIBITED PRACTICES. A person may not:

(1) use advertising designed to mislead or deceive a

prospective student;

(2) fail to notify the department [~~commissioner~~] of the discontinuance of the operation of a driver training school before the fourth working day after the date of cessation of classes and make available accurate records as required by this chapter;

(3) issue, sell, trade, or transfer:

(A) a uniform certificate of course completion or driver education certificate to a person or driver training school not authorized to possess the certificate;

(B) a uniform certificate of course completion to a person who has not successfully completed an approved, six-hour driving safety course; or

(C) a driver education certificate to a person who has not successfully completed a department-approved [~~commissioner-approved~~] driver education course;

(4) negotiate a promissory instrument received as payment of tuition or another charge before the student completes 75 percent of the course, except that before that time the instrument may be assigned to a purchaser who becomes subject to any defense available against the school named as payee; or

(5) conduct any part of an approved driver education course or driving safety course without having an instructor physically present in appropriate proximity to the student for the type of instruction being given.

Sec. 1001.452. COURSE OF INSTRUCTION. A driver education [~~training~~] school shall [~~may~~] not enroll a student [~~maintain, advertise, solicit for,~~] or conduct a course of instruction in this state before [~~the later of~~]:

(1) the 30th day after the date the school applies for a driver training school license; [~~or~~]

(2) the date the school receives a driver education [~~training~~] school license from the department [~~commissioner~~]; and

(3) the facilities and equipment are inspected and approved by the department.

SECTION \_\_.40. Sections 1001.453(d) and (e), Education Code, are amended to read as follows:

(d) Subchapter F, Chapter 51, Occupations Code, Section 51.353, Occupations Code, and Section [~~Sections 1001.454,~~] 1001.456(a) of this code [~~and 1001.553~~] do not apply to a violation of this section or a rule adopted under this section.

(e) Section 51.352, Occupations Code, and Sections [~~1001.455(a)(6),~~] 1001.501[~~, 1001.551, 1001.552,~~] and 1001.554 of this code do not apply to a violation of this section.

SECTION \_\_.41. Section 1001.456, Education Code, is amended to read as follows:

Sec. 1001.456. OTHER DISCIPLINARY ACTIONS. (a) If the department [~~agency~~] believes that a driver education school or instructor has violated this chapter or a rule or order of the commission or executive director [~~adopted under this chapter~~], the department [~~agency~~] may, without notice:

- (1) order a peer review;
- (2) suspend the enrollment of students in the school or the offering of instruction by the instructor; or
- (3) suspend the right to purchase driver education certificates.

(b) If the department [~~agency~~] believes that a course provider, driving safety school, or driving safety instructor has violated this chapter or a rule or order of the commission or executive director [~~adopted under this chapter~~], the department [~~agency~~] may, without notice:

- (1) order a peer review of the course provider, driving safety school, or driving safety instructor;
- (2) suspend the enrollment of students in the school or the offering of instruction by the instructor; or
- (3) suspend the right to purchase [~~uniform~~ certificates of] course completion certificate numbers.

(c) A peer review ordered under this section must be conducted by a team of knowledgeable persons selected by the department [~~agency~~]. The team shall provide the department [~~agency~~] with an objective assessment of the content of the school's or course provider's curriculum and its application. The school or course provider shall pay the costs of the peer review.

(d) A suspension of enrollment under Subsection (a)(2) or (b)(2) means a ruling by the executive director [~~commissioner~~] that restricts a school from:

- (1) accepting enrollments or reenrollments;
- (2) advertising;
- (3) soliciting; or
- (4) directly or indirectly advising prospective students of its program or course offerings.

SECTION \_\_.42. The heading to Subchapter L, Chapter 1001, Education Code, is amended to read as follows:

SUBCHAPTER L. PENALTIES [~~AND ENFORCEMENT PROVISIONS~~]

SECTION \_\_.43. Section 1001.555, Education Code, is amended to read as follows:

(a) A person commits an offense if the person knowingly sells, trades, issues, or otherwise transfers, or possesses with intent to sell, trade, issue, or otherwise transfer, a uniform certificate of course completion, including a duplicate certificate, a course completion certificate number, including a duplicate number, or a driver education certificate to an individual, firm, or corporation not authorized to possess the certificate or number.

(b) The department [~~agency~~] shall contract with the Department of Public Safety [~~department~~] to provide undercover and investigative assistance in the enforcement of Subsection (a).

(c) A person commits an offense if the person knowingly possesses a uniform certificate of course completion, including a duplicate certificate, a course completion certificate number, including a duplicate number, or a driver education certificate and is not authorized to possess the certificate or number.

SECTION \_\_.44. Article 45.0511(b), Code of Criminal Procedure, is amended to read as follows:

(b) The judge shall require the defendant to successfully complete a driving safety course approved by the Texas Department of Licensing and Regulation [~~Education Agency~~] or a course under the motorcycle operator training and safety program approved by the designated state agency under Chapter 662, Transportation Code, if:

(1) the defendant elects driving safety course or motorcycle operator training course dismissal under this article;

(2) the defendant has not completed an approved driving safety course or motorcycle operator training course, as appropriate, within the 12 months preceding the date of the offense;

(3) the defendant enters a plea under Article 45.021 in person or in writing of no contest or guilty on or before the answer date on the notice to appear and:

(A) presents in person or by counsel to the court a request to take a course; or

(B) sends to the court by certified mail, return receipt requested, postmarked on or before the answer date on the notice to appear, a written request to take a course;

(4) the defendant has a valid Texas driver's license or permit;

(5) the defendant is charged with an offense to which this article applies, other than speeding 25 miles per hour or more over the posted speed limit; and

(6) the defendant provides evidence of financial responsibility as required by Chapter 601, Transportation Code.

SECTION \_\_.45. Section 51.308, Education Code, is amended to read as follows:

Sec. 51.308. DRIVER EDUCATION. A driver education course for the purpose of preparing students to obtain a driver's license may be offered by an institution of higher education, as defined by Section 61.003, with the approval of the Texas Department of Licensing and Regulation [~~Central Education Agency~~].

SECTION \_\_.46. Section 521.1655(a), Transportation Code, is amended to read as follows:

(a) A driver education school licensed under Chapter 1001, Education Code, [~~the Texas Driver and Traffic Safety Education Act (Article 4413(29c), Vernon's Texas Civil Statutes)~~] may administer to a student of that school the vision, highway sign, and traffic law parts of the examination required by Section 521.161.

SECTION \_\_.47. Section 521.203, Transportation Code, is amended to read as follows:

Sec. 521.203. RESTRICTIONS ON CLASS A AND B LICENSES. The department may not issue a Class A or Class B driver's license to a person who:

- (1) is under 17 years of age;
- (2) is under 18 years of age unless the person has completed a driver training course approved by the Texas Department of Licensing and Regulation [~~Central Education Agency~~]; or
- (3) has not provided the department with an affidavit, on a form prescribed by the department, that states that no vehicle that the person will drive that requires a Class A or Class B license is a commercial motor vehicle as defined by Section 522.003.

SECTION \_\_.48. Subsection 521.204(a), Transportation Code, is amended to read as follows:

Sec. 521.204. RESTRICTIONS ON MINOR. (a) The department may issue a Class C driver's license to an applicant under 18 years of age only if the applicant:

- (1) is 16 years of age or older;
- (2) has submitted to the department a driver education certificate issued under Section 1001.055, Education Code [~~Section 9A, Texas Driver and Traffic Safety Education Act (Article 4413(29e), Vernon's Texas Civil Statutes)~~], that states that the person has completed and passed a driver education course approved by the department under Section 521.205 or by the Texas Department of Licensing and Regulation [~~Education Agency~~];
- (3) has obtained a high school diploma or its equivalent or is a student:

(A) enrolled in a public school, home school, or private school who attended school for at least 80 days in the fall or spring semester preceding the date of the driver's license application; or

(B) who has been enrolled for at least 45 days, and is enrolled as of the date of the application, in a program to prepare persons to pass the high school equivalency exam; and

(4) has passed the examination required by Section 521.161.

SECTION \_\_.49. Sections 521.205(b) and (d), Transportation Code, are amended to read as follows:

(b) The department may not approve a course unless it determines that the course materials are at least equal to those required in a course approved by the Texas Department of Licensing and Regulation [~~Education Agency~~], except that the department may not require that:

- (1) the classroom instruction be provided in a room with particular characteristics or equipment; or
- (2) the vehicle used for the behind-the-wheel instruction have equipment other than the equipment otherwise required by law for operation of the vehicle on a highway while the vehicle is not being used for driver training.

(d) Completion of a driver education course approved under this section has the same effect under this chapter as completion of a driver education course approved by the Texas Department of Licensing and Regulation [~~Education Agency~~].

SECTION \_\_.50. Subsections 521.222(a) and (c), Transportation Code, are amended to read as follows:

Sec. 521.222. INSTRUCTION PERMIT. (a) The department or a driver education school licensed under Chapter 1001, Education Code, [~~the Texas Driver and Traffic Safety Education Act (Article 4413(29e), Vernon's Texas Civil Statutes)~~] may issue an instruction permit, including a Class A or Class B driver's license instruction permit, to a person who:

- (1) is 15 years of age or older but under 18 years of age;
- (2) has satisfactorily completed and passed the classroom phase of an approved driver education course, which may be a course approved under Section 521.205;
- (3) meets the requirements imposed under Section 521.204(3); and
- (4) has passed each examination required under Section 521.161 other than the driving test.

(c) A driver education school may issue an instruction permit to a person 18 years of age or older who has successfully passed:

- (1) a six-hour adult classroom driver education course approved by the Texas Department of Licensing and Regulation [~~Education Agency~~]; and
- (2) each part of the driver's examination required by Section 521.161 other than the driving test.

SECTION \_\_.51. Sections 1001.001(1), 1001.053(b) and (c), 1001.054(a) and (b), 1001.152, 1001.303, 1001.304, 1001.454, 1001.455, 1001.457, 1001.458, 1001.459, 1001.460, 1001.461, 1001.551, 1001.552, and 1001.553, Education Code, and Subchapter B, Chapter 543, Transportation Code, are repealed.

SECTION \_\_.52. (a) As soon as practicable after the effective date of this Act, the Texas Education Agency and the Texas Department of Licensing and Regulation shall develop a transition plan for transferring the functions performed by the Texas Education Agency under Chapter 1001, Education Code, to the Texas Department of Licensing and Regulation. The transition plan must include a timetable with specific steps and deadlines needed to complete the transfer.

(b) In accordance with the transition plan developed by the Texas Education Agency and the Texas Department of Licensing and Regulation under Subsection (a) of this section, on November 1, 2005:

- (1) all functions and activities relating to Chapter 1001, Education Code, performed by the Texas Education Agency immediately before that date are transferred to the Texas Department of Licensing and Regulation;
- (2) a rule or form adopted by the commissioner of



education that relates to Chapter 1001, Education Code, is a rule or form of the Texas Commission of Licensing and Regulation or the Texas Department of Licensing and Regulation, as applicable, and remains in effect until amended or replaced by that commission or department;

(3) a reference in law to or an administrative rule of the Texas Education Agency that relates to Chapter 1001, Education Code, means the Texas Commission of Licensing and Regulation or the Texas Department of Licensing and Regulation, as applicable;

(4) a complaint, investigation, or other proceeding before the Texas Education Agency that is related to Chapter 1001, Education Code, is transferred without change in status to the Texas Department of Licensing and Regulation, and the Texas Department of Licensing and Regulation assumes, as appropriate and without a change in status, the position of the Texas Education Agency in an action or proceeding to which the Texas Education Agency is a party;

(5) any employee of the Texas Education Agency who is primarily involved in administering Chapter 1001, Education Code, becomes an employee of the Texas Department of Licensing and Regulation;

(6) all money, contracts, leases, property, and obligations of the Texas Education Agency related to Chapter 1001, Education Code, are transferred to the Texas Department of Licensing and Regulation;

(7) all property in the custody of the Texas Education Agency related to Chapter 1001, Education Code, is transferred to the Texas Department of Licensing and Regulation; and

(8) the unexpended and unobligated balance of any money appropriated by the legislature for the Texas Education Agency related to Chapter 1001, Education Code, is transferred to the Texas Department of Licensing and Regulation.

(c) Before November 1, 2005, the Texas Education Agency may agree with the Texas Department of Licensing and Regulation to transfer any property of the Texas Education Agency to the Texas Department of Licensing and Regulation to implement the transfer required by this Act.

(d) In the period beginning September 1, 2005, and ending on November 1, 2005, the Texas Education Agency shall continue to perform functions and activities under Chapter 1001, Education Code, as if that chapter had not been amended by this Act, and the former law is continued in effect for that purpose.

SECTION \_\_.53. Before December 31, 2007, the department shall perform a complete review and approval of each six-hour driving safety course and alternative delivery method approved before May 1, 2005, to verify compliance with Chapter 1001, Education Code, and the rules of the department applicable to the course or method. The department shall charge each course provider and alternative method owner the fee applicable to an application for initial approval of a driving safety course, which is appropriated to the department to administer the requirements of this subsection. The department may revoke the approval of any course or alternative delivery method that is not in compliance.

SECTION \_\_\_\_.54. The changes in law made by this article apply only to a fee charged on or after September 1, 2005. A fee charged before September 1, 2005, is governed by the law in effect immediately before that date, and the former law is continued in effect for that purpose.

SECTION \_\_\_\_.55. The changes in law made by this article apply only to a license issued or renewed on or after September 1, 2005. An issuance or renewal that occurs before September 1, 2005, is governed by the law in effect immediately before that date, and the former law is continued in effect for that purpose.

(Olivo now present)

**Amendment No. 36**

Representative Grusendorf offered the following amendment to Amendment No. 35:

Amend Floor Amendment No. 35 by Grusendorf as follows:  
On page 25, line 19 strike the word "river" and insert "driver"

Amendment No. 36 was adopted.

**Amendment No. 37**

Representative Alonzo offered the following amendment to Amendment No. 35:

Amend the Grusendorf amendment No. 35 to **CSSB 1863** by adding to the new ARTICLE added to that bill the following appropriately numbered SECTION and renumbering subsequent SECTIONS of the added ARTICLE accordingly:

SECTION \_\_\_\_\_. Section 521.161, Transportation Code, is amended by adding Subsection (c-1) to read as follows:

(c-1) The department shall, from money currently available, design and administer in each county of this state an alternate oral examination for applicants who because of extreme circumstances are unable to take the traffic law and highway sign part of the examination in a manner authorized by Subsection (c). The alternate oral examination must be identical to the examination administered to other applicants under Subsection (c). If the applicant takes that part of the examination orally in addition to another testing method, the applicant is considered to have passed that part of the examination if the applicant passes either version of the examination. The department shall inform each person taking the examination of the person's rights under this subsection. The fee for an alternate oral examination is \$15 in addition to any other fees applicable to an examination.

Amendment No. 37 was adopted.

Amendment No. 35, as amended, was adopted.

**Amendment No. 38**

Representative Hughes offered the following amendment to **CSSB 1863**:

Amend **CSSB 1863** by inserting the following appropriately numbered section and renumbering the subsequent sections of the bill accordingly:

SECTION \_\_\_\_ (a) Section 25.07(b), Tax Code, is amended to read as follows:

(b) Except as provided by Sections 11.11(b) [~~Subsections (b)~~] and (c) [~~of Section 11.11 of this code~~], a leasehold or other possessory interest in exempt property may not be listed if:

- (1) the property is permanent university fund land;
- (2) the property is county public school fund agricultural land;
- (3) the property is a part of a public transportation facility owned by an incorporated city or town or by a county and:

(A) is an airport passenger terminal building or a building used primarily for maintenance of aircraft or other aircraft services, for aircraft equipment storage, or for air cargo;

(B) is an airport fueling system facility;

(C) is in a foreign-trade zone:

(i) that has been granted to a joint airport board under Chapter 129, Acts of the 65th Legislature, Regular Session, 1977 (Article 1446.8, Vernon's Texas Civil Statutes);

(ii) the area of which in the portion of the zone located in the airport operated by the joint airport board does not exceed 2,500 acres; and

(iii) that is established and operating pursuant to federal law; or

(D)(i) is in a foreign trade zone established pursuant to federal law after June 1, 1991, which operates pursuant to federal law;

(ii) is contiguous to or has access via a taxiway to an airport located in two counties, one of which has a population of 500,000 or more according to the federal decennial census most recently preceding the establishment of the foreign trade zone; and

(iii) is owned, directly or through a corporation organized under the Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes), by the same incorporated city or town which owns the airport;

(4) the interest is in a part of:

(A) a park, market, fairground, or similar public facility that is owned by an incorporated city or town; or

(B) a convention center, visitor center, sports facility with permanent seating, concert hall, arena, or stadium that is owned by an incorporated city or town as such leasehold or possessory interest serves a governmental, municipal, or public purpose or function when the facility is open to the public, regardless of whether a fee is charged for admission;

(5) the interest involves only the right to use the property for grazing or other agricultural purposes;

(6) the property is owned by the Texas National Research Laboratory Commission or by a corporation formed by the Texas National Research Laboratory Commission under Section 465.008(g), Government Code, and is used or is useful in connection with an eligible undertaking as defined by Section 465.021, Government Code; or

(7) the property is:

(A) owned by a municipality, a public port, or a navigation district created or operating under Section 59, Article XVI, Texas Constitution, or under a statute enacted under Section 59, Article XVI, Texas Constitution; and

(B) used as an aid or facility incidental to or useful in the operation or development of a port or waterway or in aid of navigation-related commerce.

(b) This section applies only to the appraisal records for a tax year that begins on or after January 1, 2006.

(c) This section takes effect January 1, 2006.

Amendment No. 38 was withdrawn.

### **Amendment No. 39**

Representative Leibowitz offered the following amendment to **CSSB 1863**:

Amend **CSSB 1863** (House Committee Report) by adding the following appropriately numbered ARTICLE to the bill and renumbering subsequent ARTICLES of the bill accordingly:

#### ARTICLE \_\_. POWER MANAGEMENT SOFTWARE

SECTION \_\_.01. Subchapter F, Chapter 2054, Government Code, is amended by adding Section 2054.133 to read as follows:

Sec. 2054.133. POWER MANAGEMENT SOFTWARE. (a) After researching the software available, the department shall select power management software to be used, if technically feasible, by state agencies, including institutions of higher education as defined by Section 61.003, Education Code, to reduce the amount of energy required to operate state computer networks and networked personal computers.

(b) As determined by the department, each state agency, including an institution of higher education, that would benefit from using power management software that would provide cost savings to this state in the state fiscal biennium ending August 31, 2007, shall purchase, lease, or otherwise acquire the software for the agency's computer networks to manage the energy usage of the agency's networked personal computers.

Amendment No. 39 was adopted. (Howard and Kolkhorst recorded voting no.)

### **Amendment No. 40**

Representative Strama offered the following amendment to **CSSB 1863**:

Amend **CSSB 1863** by adding a new article to the bill, appropriately numbered, to read:

#### ARTICLE \_\_\_\_ . LOCAL GASOLINE TAX

SECTION \_\_\_\_ .01. Chapter 370, Transportation Code, is amended by adding Subchapter I to read as follows:

#### SUBCHAPTER I. FINANCIAL PARTICIPATION OF CERTAIN COUNTIES IMPOSING LOCAL GASOLINE TAX

Sec. 370.351. DEFINITIONS. In this subchapter:

(1) "Dealer" has the meaning assigned by Section 162.001, Tax Code.

(2) "Gasoline" has the meaning assigned by Section 162.001, Tax Code.

(3) "Jobber" means a person who:

(A) purchases tax-paid gasoline from a person who holds a license under Chapter 162, Tax Code; and

(B) makes a sale with the tax included to a person who maintains storage facilities for gasoline and uses all or part of the stored gasoline to operate a motor vehicle.

(4) "Motor vehicle" has the meaning assigned by Section 162.001, Tax Code.

(5) "Net gallon" has the meaning assigned by Section 162.001, Tax Code.

(6) "Public highway" has the meaning assigned by Section 162.001, Tax Code.

(7) "Sale" has the meaning assigned by Section 162.001, Tax Code.

Sec. 370.352. TAX ON SALE OF GASOLINE AUTHORIZED. (a) A county, by order of the commissioners court, may impose a tax on the sale of gasoline sold in the county to propel a motor vehicle on the public highways of this state if:

(1) the county is included in an authority or is adjacent to such a county, if the county which is not in an authority is in the same metropolitan planning organization as the county in the authority;

(2) the county is located in the boundaries of a metropolitan planning area that is served by a metropolitan planning organization; and

(3) imposition of the tax is approved at an election called for that purpose and held in each county located in that metropolitan planning area.

(a-1) This subchapter, including Subsection (a), does not apply to a county with a population of more than two million.

(b) The counties located in a metropolitan planning area described by Subsection (a)(2) may hold the election to authorize the imposition of the tax on the same uniform election dates or on different uniform election dates. If the counties hold the elections on different uniform election dates, a county included in that metropolitan planning area may not impose the tax until the imposition of the tax has been approved in each county.

Sec. 370.353. RATE OF TAX. (a) The tax authorized by this subchapter may be imposed in increments of one cent for each net gallon of gasoline sold in the county to propel a motor vehicle on the public highways of this state, with a minimum rate of three cents for each net gallon and a maximum rate of 10 cents for each net gallon.

(b) If the voters of the counties located in a metropolitan planning area described by Section 370.352(a)(3) authorize the imposition of the tax at different rates, each county shall impose the tax at the lowest authorized rate.

Sec. 370.354. ADOPTION ELECTION PROCEDURE. (a) An election to adopt the tax authorized by this subchapter is called by an order of the commissioners court.

(b) At an election to adopt the tax, the ballot shall be prepared to permit voting for or against the proposition: "The adoption of a local tax on the sale of gasoline in (insert name of county) at the maximum rate of (insert proposed rate) cents per gallon."

Sec. 370.355. COMPUTATION OF TAX. (a) A person, including a dealer or jobber, who makes a sale of gasoline in a county authorized to impose the tax to a person who uses the gasoline to propel a motor vehicle on the public highways of this state shall collect the tax authorized by this subchapter for the benefit of the county.

(b) The seller shall add the amount of the tax authorized by this subchapter to the selling price of gasoline, and the tax is a part of the gasoline price, is a debt owed to the seller, and is recoverable at law in the same manner as the gasoline fuel charge.

(c) The tax authorized by this subchapter is in addition to the tax imposed by Chapter 162, Tax Code.

Sec. 370.356. EXEMPTIONS APPLICABLE. The exemptions provided by Section 162.104, Tax Code, apply to the tax authorized by this subchapter.

Sec. 370.357. EFFECTIVE DATE OF TAX. After the imposition of the tax has been approved in each county located in a metropolitan planning area described by Section 370.352(a)(2), the commissioners court of each county shall issue a concurrent order prescribing the date on which the adoption of the tax will take effect in those counties.

Sec. 370.358. COLLECTION AND ENFORCEMENT OF TAX. (a) A person, including a dealer or jobber, required to collect the tax authorized by this subchapter shall report and send the taxes to the county as provided by the county.

(b) The county may prescribe monetary penalties, including interest charges, for failure to keep records required by this subchapter, to report when required, or to pay the tax when due.

(c) The county may permit a person who is required to collect the tax authorized by this subchapter to retain a percentage of the amount collected and required to be reported as reimbursement to the person for the costs of collecting the tax. The county may provide that the person may retain the amount only if the person pays the tax and files reports as required by the county.

(d) The county attorney may bring suit against a person who violates this subchapter.

Sec. 370.359. REFUND. (a) A person who has paid the tax authorized by this subchapter on gasoline used by the person for a purpose other than to propel a motor vehicle on the public highways of this state or for a use exempted under Section 370.356 may file a claim for a refund.

(b) The county shall prescribe the procedures a person must use to obtain a refund under this section.

Sec. 370.360. REQUIRED PERMIT. The county may require a dealer, jobber, or other person required to collect, report, and pay the tax authorized by this subchapter to obtain a permit from the county.

Sec. 370.361. TRANSFER TO AUTHORITY. (a) Not later than the last day of the first month following each calendar quarter, the county treasurer shall send to the authority the taxes collected during that calendar quarter after payment of all refunds allowed by law and expenses of collection.

(b) Net tax revenue received by an authority under this subchapter shall be accounted for separately and may not be commingled with other authority revenue.

Sec. 370.362. USE OF TAX PROCEEDS. An authority may use net tax revenue received under this subchapter only to:

(1) reduce the number of lane miles included in a proposed transportation project or a part or section of a proposed transportation project for which the authority intends to impose a toll for use according to the authority's most recently adopted toll plan;

(2) reduce the amount of the toll charged for use of a transportation project or a part or section of a transportation project in use at the time the tax is imposed under this subchapter; and

(3) waive the toll charged for use of a transportation project or for a part or section of a transportation project by one or more classes of vehicles prescribed by the authority, such as public school buses and mass transit vehicles.

Amendment No. 40 was adopted. (Baxter, T. King, Kolkhorst, and Raymond recorded voting no.)

#### **Amendment No. 41**

Representative Leibowitz 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 accordingly:

#### ARTICLE \_\_\_\_ . USE OF ENERGY-SAVING DEVICES FOR VENDING MACHINES IN STATE BUILDINGS

SECTION \_\_.01. Subchapter B, Chapter 2165, Government Code, is amended by adding Section 2165.058 to read as follows:

Sec. 2165.058. VENDING MACHINES; ENERGY-SAVING DEVICE REQUIRED. (a) The commission shall require the use of an energy-saving device for each vending machine located in a building owned or leased by the state except a vending machine that contains a perishable food product, as defined by Section 96.001, Civil Practice and Remedies Code.

(b) Notwithstanding Subsection (a), the commission may not require the acquisition or installation of an energy-saving device for a vending machine that is owned or operated by an entity that owns or operates a total of 20 or fewer vending machines. However, the commission shall require the entity to activate and maintain any internal energy-saving or energy-management device or option that is already part of the machine or contained in the machine.

(c) An entity that owns or operates a vending machine subject to this section is responsible for any expenses associated with the acquisition, installation, or maintenance of an energy-saving device required by this section.

(d) The commission may impose an administrative fine on an entity that operates a vending machine subject to this section in an amount not to exceed \$250 a year for each machine found to be in violation of this section or related rules adopted by the commission.

(e) The commission shall adopt rules relating to the specifications for and regulation of energy-saving devices required by this section.

SECTION \_\_.02. (a) An entity that owns or operates a vending machine subject to Section 2165.058, Government Code, as added by this article, is not required to comply with that section or a related rule of the Texas Building and Procurement Commission until September 1, 2006.

(b) Notwithstanding Section 2165.058(d), Government Code, as added by this article, the Texas Building and Procurement Commission may impose a fine only in relation to a vending machine that is found to be operating in violation of Section 2165.058, Government Code, as added by this article, or a related rule of the commission, on or after September 1, 2006.

Amendment No. 41 was adopted. (Howard and Kolkhorst recorded voting no.)

(Paxton now present)

#### **Amendment No. 42**

Representative Elkins offered the following amendment to **CSSB 1863**:

Amend **CSSB 1863** by adding the following appropriately numbered article to the bill and renumbering subsequent articles accordingly:

#### ARTICLE \_\_. USE OF CERTAIN TRAFFIC PENALTIES

SECTION \_\_.01. Subchapter D, Chapter 542, Transportation Code, is amended by adding Section 542.405 to read as follows:

Sec. 542.405. USE OF REVENUE FROM CERTAIN TRAFFIC PENALTIES. (a) In this section, "photographic traffic signal enforcement system" means a system that:

(1) consists of a camera system and vehicle sensor installed to exclusively work in conjunction with an electrically operated traffic-control signal;

(2) is capable of producing one or more recorded photographic or digital images that depict the license plate attached to the front or rear of a motor vehicle that is not operated in compliance with the instructions of the traffic-control signal; and

(3) is designed to enforce compliance with the instructions of the traffic-control signal by imposition of a civil or administrative penalty against the owner of the motor vehicle.

(b) This section applies only to a civil or administrative penalty imposed on the owner of a motor vehicle by a local authority that operates or contracts for the operation of a photographic traffic signal enforcement system with respect to a highway under its jurisdiction or that operates or contracts for the operation of



any other type of electronic traffic law enforcement system consisting of a camera system that automatically produces one or more recorded photographs or digital images of the license plate on a motor vehicle or the operator of a motor vehicle.

(c) Of the gross amount received by a local authority from the imposition of a civil or administrative penalty against the owner of a motor vehicle, the local authority may retain \$1 and shall remit the remainder to the comptroller for deposit to the credit of the general revenue fund. Money deposited under this subsection may be used only to finance studies relating to improvement of the state transportation system.

SECTION \_\_.02. Section 542.405, Transportation Code, as added by this article, applies to revenue received by a local authority unit of this state from the imposition of a civil or administrative penalty on or after the effective date of this article, regardless of whether the penalty was imposed before, on, or after the effective date of this article.

A record vote was requested.

Amendment No. 42 was adopted by (Record 762): 102 Yeas, 36 Nays, 2 Present, not voting.

Yeas — Allen, R.; Alonzo; Anderson; Berman; Blake; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Callegari; Campbell; Casteel; Chisum; Cook, B.; Cook, R.; Crownover; Davis, J.; Dawson; Delisi; Denny; Deshotel; Driver; Dukes; Edwards; Eiland; Eissler; Elkins; Escobar; Flynn; Frost; Gallego; Gattis; Geren; Giddings; Gonzalez Tourelles; Goodman; Goolsby; Griggs; Grusendorf; Guillen; Haggerty; Hamilton; Hamric; Hardcastle; Hegar; Homer; Hopson; Howard; Hughes; Hunter; Hupp; Isett(C); Jones, D.; Jones, J.; Keel; Keffer, B.; Keffer, J.; King, P.; King, T.; Kolkhorst; Krusee; Kuempel; Laney; Laubenberg; Luna; McReynolds; Merritt; Miller; Nixon; Noriega, M.; Oliveira; Orr; Otto; Paxton; Peña; Phillips; Pickett; Pitts; Puente; Quintanilla; Raymond; Reyna; Riddle; Rose; Smith, W.; Smithee; Solomons; Strama; Straus; Swinford; Talton; Taylor; Truitt; Turner; Uresti; Van Arsdale; Villarreal; Vo; West; Wong; Zedler.

Nays — Allen, A.; Anchia; Burnam; Castro; Chavez; Coleman; Corte; Davis, Y.; Dunnam; Dutton; Farabee; Farrar; Gonzales; Harper-Brown; Hartnett; Hilderbran; Hill; Hochberg; Hope; Jackson; Leibowitz; Madden; Martinez; Martinez Fischer; McCall; Menendez; Mowery; Naishtat; Olivo; Ritter; Rodriguez; Seaman; Solis; Thompson; Veasey; Woolley.

Present, not voting — Mr. Speaker; Baxter.

Absent, Excused — Hodge.

Absent — Bailey; Crabb; Flores; Herrero; McClendon; Moreno, P.; Morrison; Smith, T.

#### STATEMENTS OF VOTE

I was shown voting present, not voting on Record No. 762. I intended to vote yes.

Baxter

I was shown voting yes on Record No. 762. I intended to vote no.

Driver

I was shown voting no on Record No. 762. I intended to vote yes.

Gonzales

When Record No. 762 was taken, I was in the house but away from my desk. I would have voted no.

Herrero

When Record No. 762 was taken, I was in the house but away from my desk. I would have voted no.

T. Smith

### **Amendment No. 43**

Representative Miller offered the following amendment to **CSSB 1863**:

Amend **CSSB 1863** (House committee printing) in Section 7.02 of the bill as follows:

(1) In the recital to the section (page 28, line 19), strike "Subsections (f) and (g)" and substitute "Subsections (f)-(i)".

(2) At the end of the section (page 29, between lines 5 and 6), insert:

(h) The commission shall establish a pilot project to streamline and expedite the cost reporting and auditing processes for intermediate care facilities for the mentally retarded that are not operated by the state and for the home and community-based services waiver program. The commission shall commence the pilot project in time to capture financial information for the 2005 fiscal year. The commission shall ensure that the 2005 fiscal year information is available for use in the 2006 legislative appropriations process for the 80th state legislative session. The commission may consider providing in the pilot program incentives for providers to submit independently audited financial information instead of reviewed financials. The pilot project must include the following features:

(1) a significantly simplified cost reporting process that is similar to standard financial reporting expectations in banking and that includes both allowable and non-allowable costs;

(2) reimbursement regulations that eliminate all minimum spending requirements, to ensure simplicity;

(3) rules that require providers to include with all reports submitted a financial review performed by an independent accounting firm licensed under Chapter 901, Occupations Code, in accordance with generally-accepted accounting principles and with commission guidelines; and

(4) provisions for filing financial information electronically that are:

(A) for the first year of the pilot program, optional; and

(B) after the first anniversary of the pilot program, mandatory.

(i) In developing the pilot project described by Subsection (h), the commission shall:

(1) revise reimbursement rules as necessary to implement the pilot program; and

(2) develop the simplified reporting process and system by a collaborative process involving:

(A) providers of services in intermediate care facilities for the mentally retarded and home and community-based services waiver program services; and

(B) accounting firms familiar with intermediate care facilities for the mentally retarded and the home and community-based services waiver program.

Amendment No. 43 was adopted.

#### **Amendment No. 44**

Representatives Ritter and Luna offered the following amendment to **CSSB 1863**:

Amend **CSSB 1863** (house committee printing) by adding the following appropriately numbered ARTICLE to the bill and by renumbering subsequent ARTICLES of the bill accordingly:

ARTICLE \_\_. FEES FOR CERTAIN BEVERAGE CONTAINERS

SECTION \_\_.01. Subchapter H, Chapter 33, Natural Resources Code, is amended by adding Section 33.6035 to read as follows:

Sec. 33.6035. FEE ON BEVERAGE CONTAINER IF BEVERAGE TO BE CONSUMED WHERE SOLD. (a) In this section:

(1) "Beverage" means a nonalcoholic or alcoholic carbonated or noncarbonated liquid that is intended for human consumption. The term does not include milk or baby formula.

(2) "Beverage container" means a glass, metal, or plastic vessel that:

(A) can be hermetically sealed or capped; and

(B) contains a beverage at the time the vessel is sold by a facility.

(3) "Facility" means a person who sells a beverage in a container to a consumer for consumption on the premises. The term does not apply to a common carrier that sells a beverage to a passenger.

(4) "On-site recycling program" means a recycling program operated by a facility and approved by the commissioner.

(b) A facility shall collect a fee of five cents from a consumer for each beverage in a beverage container that the facility sells to the consumer.

(c) A facility that collects a fee under this section shall remit the fee to the comptroller in accordance with the following procedures:

(1) before remitting the fee to the comptroller, the facility may deduct two percent of the amount of the fee collected to cover the facility's administrative expenses;

(2) the facility shall file a sworn return with the comptroller not later than the 20th day of each month that:

(A) is in a form prescribed by the comptroller;

(B) includes a statement of the total gross receipts for the containers sold during the preceding month; and

(C) any other information required by the comptroller;

(3) a fee due for a business day that occurs in two different months is allocated to the month in which the business day begins; and

(4) the total amount of fees due for the preceding month shall accompany the return and shall be payable to the state.

(d) Annually, the comptroller shall deposit revenue from the fees collected under this section as follows:

(1) the first \$20 million collected shall be deposited in the account and may be appropriated only to the commissioner to be used for the purposes provided by Section 33.605;

(2) the next \$20 million collected shall be deposited in the state land and water conservation account under Section 11.037(c), Parks and Wildlife Code, and may be appropriated only to the Parks and Wildlife Department to be used for programs for the planning, acquisition, operation, and development of the outdoor recreation resources of this state, including acquisition of land and water and interests in land and water;

(3) the next \$10 million collected shall be deposited in the account and may be appropriated only to the commissioner to be used to make grants to a political subdivision to clean and maintain rivers within the boundaries of the subdivision;

(4) the next \$4 million collected shall be deposited in the water assistance fund under Section 15.011, Water Code, and may be appropriated only to the Texas Water Development Board to be used by the board to:

(A) make grants for the planning, permitting, design, and development of brackish groundwater desalination demonstration projects at locations to be determined by the board; and

(B) employ two full-time equivalent employees to oversee the projects, monitor the development of desalination technology, and provide educational outreach and technology transfer; and

(5) all additional revenue collected shall be deposited in the general revenue fund.

(e) Each facility that collects the fee required by this section may submit, for approval by the commissioner, a proposal to create an on-site recycling program. On the commissioner's approval of the on-site recycling program, the facility shall receive:

(1) an amount not to exceed 2.5 cents for each beverage container sold;  
and

(2) the proceeds from the sale of the recycled beverage containers.

Amendment No. 44 was withdrawn.

#### **Amendment No. 45**

Representative Turner offered the following amendment to **CSSB 1863**:

Amend **CSSB 1863** by adding the following appropriately numbered ARTICLE to read as follows and renumbering subsequent ARTICLES accordingly:

## ARTICLE \_\_. SYSTEM BENEFIT FUND

SECTION \_\_.01. (a) Section 39.903(a), as amended by Chapters 211 and 1296, Acts of the 78th Legislature, Regular Session, 2003, is reenacted and amended to read as follows:

(a) The system benefit fund is a trust fund with the comptroller and shall be administered by the commission as a trustee on behalf of the entities eligible to receive funding under this section ~~[an account in the general revenue fund. Money in the account may be appropriated only for the purposes provided by this section or other law. Interest earned on the system benefit fund shall be credited to the fund. Section 403.095, Government Code, does not apply to the system benefit fund].~~

SECTION \_\_.02. This article takes effect September 1, 2007.

Representative Chisum moved to table Amendment No. 45.

(Hupp in the chair)

A record vote was requested.

The motion to table was lost by (Record 763): 66 Yeas, 79 Nays, 2 Present, not voting.

Yeas — Allen, R.; Anderson; Berman; Blake; Branch; Brown, B.; Brown, F.; Callegari; Campbell; Casteel; Chisum; Cook, B.; Corte; Crabb; Crownover; Davis, J.; Delisi; Denny; Driver; Eissler; Elkins; Flynn; Gattis; Geren; Goolsby; Griggs; Grusendorf; Hamric; Hardcastle; Hartnett; Hill; Hope; Hopson; Howard; Hunter; Isett; Jackson; Keel; Keffer, J.; King, P.; King, T.; Kolkhorst; Krusee; Kuempel; Madden; McCall; Merritt; Miller; Morrison; Mowery; Nixon; Orr; Otto; Pitts; Reyna; Riddle; Seaman; Smith, W.; Smithee; Straus; Swinford; Talton; Van Arsdale; West; Wong; Woolley.

Nays — Allen, A.; Alonzo; Anchia; Bailey; Baxter; Bohac; Bonnen; Burnam; Castro; Chavez; Coleman; Cook, R.; Davis, Y.; Dawson; Deshotel; Dukes; Dunnam; Dutton; Edwards; Eiland; Escobar; Farabee; Farrar; Flores; Frost; Gallego; Giddings; Gonzales; Gonzalez Toureilles; Goodman; Guillen; Haggerty; Hamilton; Harper-Brown; Hegar; Herrero; Hilderbran; Hochberg; Homer; Hughes; Jones, D.; Jones, J.; Keffer, B.; Laubenberg; Leibowitz; Luna; Martinez; Martinez Fischer; McClendon; McReynolds; Menendez; Moreno, P.; Naishtat; Noriega, M.; Oliveira; Olivo; Paxton; Peña; Phillips; Pickett; Puente; Quintanilla; Raymond; Ritter; Rodriguez; Rose; Smith, T.; Solis; Solomons; Strama; Taylor; Thompson; Truitt; Turner; Uresti; Veasey; Villarreal; Vo; Zedler.

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

Absent, Excused — Hodge.

Absent — Laney.

**Amendment No. 45 - Point of Order**

Representative Chisum raised a point of order against further consideration of Amendment No. 45 under Rule 11, Section 2 of the House Rules on the grounds that it is not germane to the bill.

The point of order was withdrawn.

Amendment No. 45 was adopted.

**Amendment No. 46**

Representative Villarreal offered the following amendment to **CSSB 1863**:

Amend **CSSB 1863** as follows:

On page \_\_, after line \_\_, insert the following appropriately numbered sections:

SECTION 1. The heading to Subchapter C, Chapter 22, Tax Code, is amended to read as follows:

SUBCHAPTER C. ~~[OTHER]~~ REPORTS OF POLITICAL SUBDIVISION ACTIONS

SECTION 2. Chapter 22, Tax Code, is amended by adding Subchapter D to read as follows:

SUBCHAPTER D. REPORT OF SALES PRICE

Sec. 22.61. SALES PRICE DISCLOSURE REPORT. (a) Except as provided by Subsection (b), not later than the 10th day after the date the deed is recorded in the county real property records, the purchaser or grantee of real property under a recorded deed conveying an interest in the real property shall file a sales price disclosure report with the chief appraiser of the appraisal district established for the county in which the property is located.

(b) This section does not apply to a sale or other transfer of real property if:

(1) the sale or other transfer is made:

(A) pursuant to a court order;

(B) to or from a trustee in bankruptcy;

(C) pursuant to a power of sale under a deed of trust or other encumbrance secured by the property;

(D) by a deed in lieu of foreclosure;

(E) by one co-owner to one or more other co-owners;

(F) to a spouse or to a person or persons in the first degree of lineal consanguinity of one or more of the sellers or grantors;

(G) to or from a governmental entity;

(H) pursuant to the power of eminent domain; or

(I) to a utility company and the real property is an easement, license, or right-of-way; or

(2) the real property is a severed mineral interest.

(c) A sales price disclosure report must be signed by the purchaser or grantee of the real property described in the report.

Sec. 22.62. REPORT FORM. (a) A sales price disclosure report filed under this subchapter must read as follows, with the appropriate information included in the blanks:

SALES PRICE DISCLOSURE REPORT

Section 22.61, Tax Code, requires a purchaser or grantee under a deed to prepare this report, sign it, and file it with the chief appraiser of the appraisal district established for the county in which the property is located not later than the 10th day after the date the deed is recorded. This report is not required to be

filed if the sale or transfer is made: (1) under a court order; (2) to or from a trustee in bankruptcy; (3) under a deed of trust or other encumbrance secured by the property; (4) by a deed in lieu of foreclosure; (5) between co-owners; (6) between spouses or between family members in the first degree of lineal consanguinity; (7) to or from a governmental entity; (8) pursuant to the power of eminent domain; or (9) to a utility company and the property is an easement, license, or right-of-way. In addition, this report is not required to be filed if the property being sold or transferred is a severed mineral interest. Knowingly making a false statement on this form is grounds for prosecution of a Class A misdemeanor or a state jail felony under Section 37.10, Penal Code. The chief appraiser may not use the information in this form as the sole basis on which to increase the market value of the property.

Seller's or grantor's name: \_\_\_\_\_

Purchaser's or grantee's name: \_\_\_\_\_

Purchaser's or grantee's address: \_\_\_\_\_

Property description (as stated in deed): \_\_\_\_\_

Sales price of or other consideration paid for the property: \_\_\_\_\_

The method used to finance the sales price or other consideration was:  none (cash sale)  cash and third-party financing  cash and seller financing  exchange of other property  other, describe: \_\_\_\_\_

Describe any unusual or extraordinary terms of the sale or transfer that affected the amount of the sales price or other consideration: \_\_\_\_\_

Provide any additional information relevant to the sale or transfer, including:

(1) whether the sale or transfer involved property other than real property and the type of property, whether tangible or intangible, involved in the sale or transfer;

(2) whether the sale or transfer involved property located in more than one appraisal district and, if so, the portion of the sales price or other consideration allocated to the property located in the appraisal district with which the report is filed;

(3) in the case of a sale, whether the sale is the sale of an entire business or business unit; and

(4) any other facts or circumstances that affected the sales price or other consideration (optional): \_\_\_\_\_

To the best of my knowledge, this statement is true and accurate.

Purchaser's or grantee's signature: \_\_\_\_\_

Date: \_\_\_\_\_

Return this form to: \_\_\_\_\_

(b) The appraisal district shall include at the end of the form instructions for the filing of the form by mail, hand delivery, or, if permitted by the chief appraiser, facsimile machine or other electronic means.

(c) Each appraisal district shall prepare and make available sales price disclosure report forms that conform to the requirements of this section. Except for instructions for the filing of the form, no additional information may be required to be included in a sales price disclosure report form.

Sec. 22.63. FILING AND RECEIPT OF REPORT. (a) A purchaser or grantee may file a sales price disclosure report with a chief appraiser by mail, hand delivery, or, if permitted by the chief appraiser, facsimile machine or other electronic means.

(b) On receipt of the completed sales price disclosure report, the chief appraiser shall provide to the purchaser or grantee a written acknowledgement that the report has been received. If the acknowledgement of receipt is mailed, the chief appraiser shall mail it to the purchaser or grantee at the address provided in the report.

Sec. 22.64. PREPARATION OF REPORT; IMMUNITY FROM LIABILITY. (a) A sales price disclosure report must be prepared by the purchaser or grantee of the property described in the report or by a person on behalf of the purchaser or grantee.

(b) A person who prepares a sales price disclosure report on behalf of a purchaser or grantee of the property described in the report is not liable to any person for preparing the report or for any unintentional error or omission in the report.

Sec. 22.65. ACTION TO COMPEL COMPLIANCE. The chief appraiser may bring an action for an injunction to compel a person to comply with the requirements of this subchapter. If the court finds that this subchapter applies and that the person has failed to fully comply with its requirements, the court:

(1) shall order the person to comply; and

(2) may assess costs and reasonable attorney's fees against the person.

Sec. 22.66. PUBLIC INFORMATION. A sales price disclosure report filed with the chief appraiser under this subchapter is a public record and must be made available on request for inspection and copying during normal business hours.

SECTION 3. Section 23.013, Tax Code, is amended to read as follows:

Sec. 23.013. MARKET DATA COMPARISON METHOD OF APPRAISAL. (a) If the chief appraiser uses the market data comparison method of appraisal to determine the market value of real property, the chief appraiser shall use comparable sales data and shall adjust the comparable sales to the subject property.

(b) The chief appraiser may use information contained in a sales price disclosure report filed under Subchapter D, Chapter 22, in determining the market value of real property but may not increase the market value of the real property described in the report solely on the basis of the information contained in the report.

SECTION 4. (a) As soon as practicable after the effective date of this Act, but not later than January 1, 2006, each appraisal district shall prepare and make available sales price disclosure report forms as provided by Section 22.62, Tax Code, as added by this Act.

(b) This Act applies only to a sale of real property that occurs on or after January 1, 2006.



SECTION 5. (a) Except as provided by Subsection (b) of this section, this Act takes effect September 1, 2005.

(b) Sections 1, 2, and 3 of this Act take effect January 1, 2006.

**Amendment No. 46 - Point of Order**

Representative Orr raised a point of order against further consideration of Amendment No. 46 under Rule 11, Section 2 of the House Rules on the grounds that it is not germane to the bill.

The point of order was withdrawn.

Amendment No. 46 was withdrawn.

(Speaker in the chair)

**RECESS**

At 11:47 a.m., the speaker announced that the house would stand recessed until 1 p.m. today.

**AFTERNOON SESSION**

The house met at 1 p.m. and was called to order by the speaker.

**CSSB 1863 - (pending business)**

Representative Pitts moved to postpone consideration of **CSSB 1863** until 10 a.m. tomorrow.

The motion prevailed.

**POSTPONED BUSINESS**

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

**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** was read second time on May 22 and was postponed until 10:30 p.m. May 22.

(Crownover in the chair)

**Amendment No. 1**

Representative Eiland offered the following amendment to **SB 1691**:

Amend **SB 1691** (house committee printing) as follows:

(1) In SECTION 6 of the bill, in added Section 22.103, Education Code, in the first sentence (page 6, lines 11-12), strike "Subject to the availability of funds, each" and substitute "Each".

(2) In SECTION 6 of the bill, in added Section 22.103, Education Code, in the first sentence (page 6, lines 19-21), strike "multiplied by the amount specified in the General Appropriations Act for purposes of this subchapter and divided by 12" and substitute "multiplied by \$1000 or a greater amount as provided by the General Appropriations Act for purposes of this subchapter".

Amendment No. 1 was withdrawn.

### **Amendment No. 2**

Representative McReynolds offered the following amendment to **SB 1691**:

Amend **SB 1691** (house committee printing) as follows:

(1) Strike SECTION 12 of the bill (page 15, lines 18-25).

(2) Insert the following new SECTION to the bill, numbered appropriately:

SECTION \_\_\_\_. Section 825.110, Government Code, is amended to read as follows:

Sec. 825.110. DETERMINATION OF ANNUAL COMPENSATION. The board of trustees shall [~~may~~] adopt rules to exclude from annual compensation all or part of salary and wages in the final years of a member's employment that reasonably can be presumed to have been derived from a conversion of fringe benefits, maintenance, or other payments not includable in annual compensation to salary and wages. The board of trustees shall [~~may~~] adopt rules that include a percentage limitation on the amount of increases in annual compensation that may be subject to credit and deposit during a member's final years of employment.

(3) Renumber SECTIONS of the bill accordingly.

Representative Eiland moved to table Amendment No. 2.

A record vote was requested.

The motion to table prevailed by (Record 764): 85 Yeas, 55 Nays, 2 Present, not voting.

Yeas — Allen, R.; Baxter; Berman; Blake; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Callegari; Casteel; Chisum; Cook, B.; Corte; Crabb; Crownover(C); Davis, J.; Dawson; Delisi; Denny; Driver; Eiland; Eissler; Elkins; Flores; Flynn; Frost; Gattis; Geren; Goolsby; Griggs; Grusendorf; Haggerty; Hamric; Hardcastle; Harper-Brown; Hartnett; Hegar; Hill; Hope; Hunter; Hupp; Isett; Jackson; Jones, D.; Keffer, B.; King, P.; King, T.; Kolkhorst; Krusee; Kuempel; Laubenberg; Madden; McCall; McClendon; Merritt; Miller; Morrison; Mowery; Nixon; Oliveira; Orr; Otto; Paxton; Phillips; Pitts; Quintanilla; Reyna; Riddle; Ritter; Seaman; Smith, T.; Smithee; Solomons; Strama; Straus; Swinford; Talton; Taylor; Truitt; Van Arsdale; Vo; Wong; Woolley; Zedler.

Nays — Allen, A.; Alonzo; Anchia; Anderson; Bailey; Burnam; Campbell; Castro; Chavez; Coleman; Cook, R.; Davis, Y.; Deshotel; Dunnam; Dutton; Edwards; Escobar; Farabee; Farrar; Giddings; Gonzales; Gonzalez Toureilles; Goodman; Guillen; Hamilton; Herrero; Hilderbran; Hochberg; Homer; Hopson;

Howard; Hughes; Jones, J.; Keel; Laney; Leibowitz; Luna; Martinez; Martinez Fischer; McReynolds; Menendez; Naishtat; Olivo; Peña; Puente; Raymond; Rodriguez; Smith, W.; Solis; Thompson; Turner; Uresti; Veasey; Villarreal; West.

Present, not voting — Mr. Speaker; Noriega, M.

Absent, Excused — Hodge.

Absent — Dukes; Gallego; Keffer, J.; Moreno, P.; Pickett; Rose.

### STATEMENTS OF VOTE

When Record No. 764 was taken, I was in the house but away from my desk. I would have voted no.

Gallego

When Record No. 764 was taken, I was in the house but away from my desk. I would have voted no.

Rose

I was shown voting yes on Record No. 764. I intended to vote no.

Strama

### Amendment No. 3

Representative McReynolds offered the following amendment to **SB 1691**:

Amend **SB 1691** (house committee printing) by inserting the following new SECTION to the bill, numbered appropriately, and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_ . Section 825.110, Government Code, is amended to read as follows:

Sec. 825.110. DETERMINATION OF ANNUAL COMPENSATION. The board of trustees shall ~~may~~ adopt rules to exclude from annual compensation all or part of salary and wages in the final years of a member's employment that reasonably can be presumed to have been derived from a conversion of fringe benefits, maintenance, or other payments not includable in annual compensation to salary and wages. The board of trustees shall ~~may~~ adopt rules that include a percentage limitation on the amount of increases in annual compensation that may be subject to credit and deposit during a member's final years of employment.

Amendment No. 3 was adopted.

### Amendment No. 4

Representative Giddings offered the following amendment to **SB 1691**:

Amend **SB 1691**, Section 21, by adding "Except as provided herein," before the word "Chapter" on page 20, line 24, and inserting the following language at the between the end of page 21, line 4, and the beginning of page 21, line 5: "The retirement system shall be subject to the relevant requirements of Chapter 412, Texas Labor Code, only for the specific program(s) or service(s) the board elects to obtain from or through the State Office of Risk Management."

**Amendment No. 5**

Representative Eiland offered the following amendment to Amendment No. 4:

Amend Amendment No. 4 by Giddings, in the beginning of the full sentence added by the amendment, by striking "The retirement system", and substituting "In accordance with terms mutually agreed upon by both parties, the retirement system".

Amendment No. 5 was adopted.

Amendment No. 4, as amended, was adopted.

**Amendment No. 6**

Representative Hardcastle offered the following amendment to **SB 1691**:

Amend **SB 1691** (house committee printing), in SECTION 29 of the bill, by striking added Subsection (e), Section 825.4092, Government Code (page 30, lines 5-8), and substituting:

(e) The amounts required to be paid under Subsections (b) and (c) are not required to be paid by a reporting employer for a retiree who was reported under the retirement system rules in effect for the report month of January 2005 by:

(1) that reporting employer; or

(2) another employer, if both employers are school districts that consolidated into a consolidated school district on or before September 1, 2005.

Amendment No. 6 was adopted.

**Amendment No. 7**

Representative Phillips offered the following amendment to **SB 1691**:

Amend **SB 1691** (house committee printing), in SECTION 29 of the bill, by striking added Subsection (e), Section 825.4092, Government Code (page 30, lines 5-8), and substituting:

(e) The amounts required to be paid under Subsections (b) and (c) are not required to be paid by a reporting employer for a retiree if:

(1) the retiree was reported under the retirement system rules in effect for the report month of January 2005 by that reporting employer; or

(2) the retiree:

(A) is reported under the retirement system rules for a month during the 2005-2006 school year by that reporting employer;

(B) was reported under the retirement system rules in effect for the report month after January 2005 by a different employer; and

(C) has not, for a report month of January 2005, been reported by any employer other than the two employers described by Paragraph (A) and Paragraph (B).

Amendment No. 7 failed of adoption. (Guillen recorded voting yes.)

**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).

**SB 1691 - (consideration continued)****Amendment No. 8**

Representative Coleman offered the following amendment to **SB 1691**:

Amend **SB 1691**, on page 49, by inserting a new Section 62 as follows and by renumbering the remaining section accordingly.

"SECTION 62. Notwithstanding any other provision of law, the changes made by **SB 1691**, 79th Legislature, Regular Session, do not take effect unless **HB 2**, 79th Legislature, Regular Session, or similar legislation, is enacted that would provide each classroom teacher, full-time librarian, full-time counselor and full-time school nurse a monthly salary increase of not less than \$300."

Representative Eiland moved to table Amendment No. 8.

A record vote was requested.

The motion to table prevailed by (Record 765): 83 Yeas, 59 Nays, 2 Present, not voting.

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

Nays — Allen, A.; Alonzo; Anchia; Bailey; Burnam; Castro; Chavez; Coleman; Cook, R.; Davis, Y.; Deshotel; Dukes; Dunnam; Dutton; Edwards; Escobar; Farabee; Farrar; Flores; Frost; Gallego; Giddings; Gonzales; Gonzalez Tourelles; Guillen; Hamilton; Herrero; Hochberg; Homer; Hopson; Jones, J.; King, T.; Laney; Leibowitz; Martinez; Martinez Fischer; McClendon; McReynolds; Menendez; Moreno, P.; Naishtat; Oliveira; Olivo; Peña; Pickett; Puente; Quintanilla; Raymond; Reyna; Rodriguez; Rose; Solis; Strama; Thompson; Turner; Uresti; Veasey; Villarreal; Vo.

Present, not voting — Mr. Speaker; Noriega, M.

Absent, Excused — Hodge.

Absent — Gattis; Hughes; Phillips; Smithee.

**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 incorrect and misleading.

The chair overruled the point of order.

**MEMORANDUM BY REPRESENTATIVE Y. DAVIS**

"Each committee report on a bill...must include in summary or section-by-section form a detailed analysis of the subject matter of the bill or resolution, specifically including...an analysis of the content of the bill." See Rule 4, Sec. 32(c), House Rules (79th Legislature).

**VIOLATION 1**

SECTION 21 of the section-by-section analysis states that the bill adds Section 825.103(e), requiring "the board of trustees to control all aspects of information technology and associated resources relating to TRS, including computer data management" See Bill Analysis, **SB 1691**, page 6 (79th Legislature). The bill states, "the board of trustees shall control all aspects of information technology and associated resources relating to the retirement system, including computer, data management" See House Committee Report, 1st Printing, **SB 1691**, page 22 (79th Legislature).

The omission of the comma between "computer" and "data" found in the bill analysis is not a harmless typographical error. The error significantly changes the meaning of the text and misrepresents the content of the bill in violation of the Rules of the House.

The bill requires the board of trustees to control all aspects of information technology and associated resources. The bill explicitly lists certain types of operations and tasks in order to clarify to what "all aspects of information technology and associated resources" refers. The bill clarifies that "all aspects of information technology and associated resources" refers to computer operations and data management operations. However, the bill analysis states that "all aspects of information technology and associated resources" includes computer data management operations, thus misrepresenting the content of the bill by failing to state that the information technology and associated resources include computer operations and, separately, data management operations. Computer operations and data management operations constitute something wholly distinct from computer data management operations.

To clarify, the board is required to control non-computerized data management operations as well as computerized data management operations because data management operations encompass both computerized and non-computerized data. Additionally, the board is required to control computer operations, not simply computer data management which does not encompass the broader concept of all computer operations.

**VIOLATION 2**

SECTION 22 of the section-by-section analysis contains a gaping omission that represents a failure to analyze, in detail, the content of the bill, thus directly violating the Rules of the House. The bill analysis fails to state that the bill strikes language that requires the board to purchase insurance only "from an insurer licensed to do business in this state" See Bill Analysis, **SB 1691**, page 6 (79th Legislature) and House Committee Report, 1st printing, **SB 1691**, pages 22-23 (79th Legislature). This change allows the board to purchase insurance from an insurer not licensed in Texas. Given the thoroughness of the analysis, an omission of this nature constitutes a deception and creates an affirmative harm to members.

**VIOLATION 3**

SECTION 27 of the section-by-section analysis states that the bill adds Subsection 825.403(1) to require that the commissioner of education notify TRS in writing of changes in charter and funding status of certain open-enrollment charter schools and other reporting entities. This statement is inaccurate. While the bill does require the commissioner to notify TRS in cases of cessation or resumption of reception of state funds, the bill does not require the commissioner to notify TRS in cases of the issuance of a charter (only in cases of the revocation, denial of renewal, or surrender of a charter). Stating that the bill requires the commissioner to notify TRS of changes in charter status includes the issuance of a charter, yet, the bill does not require notification in such a case. Thus, the bill analysis indicates that the commissioner is required to do something that he or she is not actually required to do.

**VIOLATION 4**

SECTION 29 of the section-by-section analysis states that the bill adds Section 825.4092(c) to require that, "the employer who reports the employment of a retiree...for each retiree who is enrolled in the Texas Public School Employees Group Benefits Program under Chapter 1575 (Texas Public School Employees Group Benefits Program), Insurance Code, to contribute to the trust fund under that chapter any difference between" certain amounts. This statement is inaccurate and impossible. Chapter 1575, Insurance Code, does not establish the "Texas Public School Employees Group Benefits Program." Chapter 1575, Insurance Code, does establish the "Texas Public School Employees Group Insurance Program," and, indeed, the bill states, "for each retiree who is enrolled in the Texas Public School Employees Group Insurance Program under Chapter 1575." This constitutes an explicit inaccuracy in the bill analysis that represents a violation of the Rules of the House.

**VIOLATION 5**

SECTION 29 of the section-by-section analysis states that the bill adds Section 825.4092(c) to require, "the amount of the required payment to be prorated among the employers if more than one employer reports the retiree to TRS." The bill actually states, "if more than one employer reports the retiree to the retirement system during a month, the amount of the required payment shall be prorated among the employers." There exists an immensely important logical

difference between the content of the bill and the summary statement contained in the bill analysis. "During a month" is a qualifier that drastically alters the effects of the legislation and must be included in the bill analysis to fulfill the purpose of the rule.

#### **VIOLATION 6**

SECTION 45 of the section-by-section analysis states, "amends Section 1576.006, Insurance Code, to authorize TRS to adopt rules as necessary to administer, rather than implement, this subchapter." This is a gross inaccuracy. The bill amends Section 1576.006, Insurance Code, to authorize TRS to adopt rules as necessary to administer the chapter—not the subchapter. The practical difference between the actual effect of the bill and the effect of the bill if it were as the bill analysis states is extremely significant and would constitute a drastic change in rulemaking authority.

For the foregoing reasons, the point of order should be sustained.

#### **SB 1691 - STATEMENT OF LEGISLATIVE INTENT**

REPRESENTATIVE SOLOMONS: Thank you, Madam Chair, Madam Speaker. Craig, I've got some questions I want to ask you just for the record. I've supported you on the bill, I've supported you on the amendments. I did want to ask you about this little blue form that I got that brings up some issues. The first part says that **SB 1691** takes away \$1.5 billion in pension benefits from half a million teachers and other education employees in public schools and higher education. Is that true?

REPRESENTATIVE EILAND: Nope. This bill has an actuarial impact of \$450 million and the only place that this comes from is what is the anticipated savings of the pension fund for the retirement behavior pattern alteration.

SOLOMONS: So it's not taking away \$1.5 billion in pension benefits as it's described in this form that we were handed?

EILAND: No. This is a qualified plan and you can't take benefits that have been vested.

SOLOMONS: Okay, one of the statements in here says that **SB 1691** overrides the rule of 80 by setting a minimum age of 60 per standard retirement benefits. Is that true?

EILAND: It would be true if you finished the sentence, and saying "applies to sophomores in college." If you recall, one of the purposes of this bill is to save the rule of 80 and not go back to a rule of 85. And so this bill applies, if you meet the rule of 80 the only thing that impacts you in this bill is that your highest five years as opposed to the highest three-year average will be used to calculate your retirement benefit. Like I said yesterday, that is not unprecedented. We did that. Until 1961 we did 10-year highest average, 1981 is when we switched from the highest five-year average to the three-year average.

SOLOMONS: So that's a misstatement unless it goes further and explains what we're doing in connection with the rule of 80.



EILAND: That leaves out the grandfather provision. Remember, we talked about the mother of all grandfathers that says, if you don't meet the rule of 80 and you're at least 60 years old, you'll take a five percent reduction in your annuity benefit. That only applies if you're not working in the system now, if you don't work in the system next year, and you don't work in the system the year after that.

SOLOMONS: The next thing I have is that this statement says that **SB 1691** eliminates the state's commitment to provide a \$1,000 health care supplement for teachers and school support personnel.

EILAND: That is not true. The appropriations bill moved the funding for the \$1,000 or \$500 teacher pass through. Whatever it is, they moved the funding from that to TRS, to TEA. So this bill recognizes the appropriations bill moving of that funding and moves it from TRS to TEA. That is just not accurate.

SOLOMONS: That's simply not a true statement as it applies to **SB 1691**.

EILAND: Correct.

SOLOMONS: The bill says it lowers—this statement, this form that we were handed says **SB 1691** lowers pensions by basing them on employees best five years instead of three. Is that true?

EILAND: That is true except for the grandfather provision that grandfathers over a third of current teachers. We have 1,718,000 active members. This bill on this provision grandfathers anyone that meets the rule of 50, has served 25 years, or meets the rule of 70. Other than that, that is a fairly accurate statement.

SOLOMONS: Okay, and last couple things. It says that **SB 1691** increases active employee pay deductions for TRS care by another 30 percent. Is that true?

EILAND: It is true that it goes from .5 to .65 and so whatever that math is. If you remember last session, we put in that active teachers would contribute to the retirees' health care by .5 percent of salary school districts contribute. So the appropriations bill, as I explained, introduced \$233 million underfunded on retirees' health care. We have split that retirees' health care \$233 million up between the state, the school districts, and active teachers in an attempt to avoid increasing retirees' monthly premiums. If we did not do this, we would have to increase their premiums by 14 percent.

SOLOMONS: A couple last things. It says that **SB 1691** drastically reduces benefits for those with at least 20 years of service who retire early. Is that a true statement?

EILAND: That's a fairly true statement. What we're doing right now is if you do not meet the rule of 80, okay, you do not meet the rule of 80 and you serve 20 years, you can retire early and take an actuarial unsound reduction of two percent. It should be around 12 percent, so that is true. We are not going to incentivize people to retire early because we cannot afford it. If you remember on retiree health care it costs the state, we subsidize retirees' health care because we don't

want them to have to pay the full \$700 a month average. They only pay \$300 a month average. We lose \$5,000 average per teacher, per year under age 65. We have to quit incentivizing people to retire early, so that is true.

SOLOMONS: The last, but not least, this says **SB 1691** means a significant loss of benefits for more than 500,000 current teachers and other education employees who currently contribute to TRS. Is that a true statement?

EILAND: It depends on what you would consider significant because we eliminate air time for everybody, which means if you're going to buy air time, you've got to do that by December. We do eliminate the early retirement subsidize. We do say if you're not currently working, we're going to eliminate out-of-state subsidies. We're doing things that say we're not going to subsidize and incentivize actuarially unsound things.

### REMARKS ORDERED PRINTED

Representative Solomons moved to print remarks between Representative Eiland and Representative Solomons.

The motion prevailed.

### SB 1691 - REMARKS BY REPRESENTATIVE Y. DAVIS

Thank you, Mr. Speaker and members. I just wanted to take a couple of seconds to talk about what we're doing here. I think it's important that we are clear about what our commitments are and what we plan on doing. I offered a couple points of order on this bill because I think it's important that we not get caught up into creating public policy that would put our constituents and our districts against each other, competing for dollars. The State of Texas has the resources to make do if it wants to do it. There are many ways that we can make this fund solvent. There is not question that we all want to have the system solvent. The question is whether or not we're willing to do it the correct way or are we committed in doing it in this patched approach.

The argument here is it's important that we do something, and so the ends justify the means. Clearly, clearly we've got to stop making public policy in that manner. I will tell you, arguing to take money to place it into a retiree's pot, to take it out of teachers that are active now to support the retirees, is just wrong. We are not continuing to move in that way. We keep undermining our integrity and our commitment by doing these shams through our public policy. Last session, we cut teachers, we continued to do this, and we come up with shams saying we've got to make it solvent. Won't we make the commitment to do it? Why don't we put the money where we need to put it and show that we don't have this patched approach.

That's the argument here. The argument is not whether or not we need to do it, but whether or not we want to do it right, whether we want to continue to have our constituents fighting and competing over these limited dollars when we leave so many other dollars off the table. These are different times and these are difficult times financially. We ought to make a commitment. And if everybody

gives a little bit more, then it ought to be everybody giving a little bit more. We ought to not take the programs that are designed, that we made commitments to and have them fighting over dollars when we could do it differently.

So members, I ask you to think about this before you cast your vote for this bill. Do you really think it's good public policy to continue to make public policy on the backs of others, at the expense of others, instead of ponying up as a state and make a real commitment, and do what's right in the systemic way, so when we leave home we can tell folks that we worked for them? We worked for the greater good of this state.

So I'd ask you to think about and do as I'm going to do. I'm going to pass and not vote against my teachers or retirees. I think they are too important to the fabric of our communities and to our society for us to be poised to vote against one or the other because we, as a state legislative body, have not done what we need to do with the appropriations process. We have not set the proper priorities and we keep hiding behind these shams of approaches to deal with a band-aid approach.

So I'd ask you to really think about, do you really want to go back home and say this is the only way we could do this? Because everyone of you know we could do it differently and better and have a more systemic commitment to these programs. So I'd ask you to join me and not vote against either one of your constituencies, either one of them.

A record vote was requested.

**SB 1691**, as amended, was passed to third reading by (Record 766): 115 Yeas, 16 Nays, 13 Present, not voting.

Yeas — Allen, R.; Anderson; Bailey; Baxter; Berman; Blake; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Burnam; Callegari; Campbell; Casteel; Chavez; Chisum; Cook, B.; Cook, R.; Corte; Crabb; Crownover(C); Davis, J.; Dawson; Delisi; Denny; Deshotel; Driver; Eiland; Eissler; Elkins; Escobar; Farabee; Flynn; Frost; Gattis; Geren; Gonzales; Goodman; Goolsby; Griggs; Grusendorf; Guillen; Haggerty; Hamric; Hardcastle; Harper-Brown; Hartnett; Hegar; Herrero; Hill; Hochberg; Homer; Hope; Hopson; Howard; Hughes; Hunter; Hupp; Isett; Jackson; Jones, D.; Keel; Keffer, B.; Keffer, J.; King, P.; King, T.; Kolkhorst; Krusee; Kuempel; Laney; Laubenberg; Luna; Madden; Martinez; Martinez Fischer; McCall; McReynolds; Merritt; Miller; Morrison; Mowery; Naishtat; Nixon; Oliveira; Orr; Otto; Paxton; Phillips; Pitts; Puente; Quintanilla; Reyna; Riddle; Ritter; Rodriguez; Seaman; Smith, T.; Smith, W.; Solomons; Strama; Straus; Swinford; Talton; Taylor; Truitt; Uresti; Van Arsdale; Veasey; Villarreal; Vo; West; Wong; Woolley; Zedler.

Nays — Allen, A.; Coleman; Dukes; Dutton; Edwards; Farrar; Giddings; Hamilton; Leibowitz; Menendez; Olivo; Raymond; Rose; Solis; Thompson; Turner.

Present, not voting — Mr. Speaker; Alonzo; Anchia; Castro; Davis, Y.; Dunnam; Flores; Gonzalez Tourelles; Hilderbran; Jones, J.; Moreno, P.; Noriega, M.; Peña.

Absent, Excused — Hodge.

Absent — Gallego; McClendon; Pickett; Smithee.

**STATEMENTS OF VOTE**

I was shown voting yes on Record No. 766. I intended to vote no.

Escobar

I was shown voting no on Record No. 766. I intended to vote present, not voting.

Farrar

When Record No. 766 was taken, I was in the house but away from my desk. I would have voted yes.

Gallego

I was shown voting yes on Record No. 766. I intended to vote no.

Guillen

I was shown voting no on Record No. 766. I intended to vote yes.

Hamilton

I was shown voting yes on Record No. 766. I intended to vote present, not voting.

Herrero

I was shown voting no on Record No. 766. I intended to vote present, not voting.

Leibowitz

I was shown voting yes on Record No. 766. I intended to vote present, not voting.

Martinez Fischer

I was shown voting no on Record No. 766. I intended to vote present, not voting.

Solis

I was shown voting no on Record No. 766. I intended to vote present, not voting.

Thompson

I was shown voting yes on Record No. 766. I intended to vote present, not voting.

Veasey

**SB 1660 ON SECOND READING  
(Hilderbran - House Sponsor)**

**SB 1660**, A bill to be entitled An Act relating to the assumption of road district powers and duties by certain municipal utility districts; authorizing bonds.

**SB 1660** was read second time on May 19 and was postponed until 9 a.m. today.

**SB 1660 - POINT OF ORDER**

Representative Miller raised a point of order against further consideration of **SB 1660** under Rule 4, Sections 19 and 20(a)(2) and (3) of the House Rules.

The chair sustained the point of order.

The ruling precluded further consideration of **SB 1660**.

**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** was read second time on May 22 and was postponed until 10 a.m. today.

(Vo in the chair)

Representative Puente moved to postpone consideration of **CSSB 1879** until 12 p.m. tomorrow.

The motion prevailed.

**HR 1839 - ADOPTED**  
**(by Hilderbran)**

Representative Hilderbran moved to suspend all necessary rules to take up and consider at this time **HR 1839**.

The motion prevailed.

The following resolution was laid before the house:

**HR 1839**, Congratulating the 2005 graduating class of the Ed Brune Charter School in Leakey and honoring the Hill Country Youth Ranch.

**HR 1839** was adopted.

**SB 335 ON THIRD READING**  
**(Hartnett - House Sponsor)**

**SB 335**, A bill to be entitled An Act relating to the recording of electronic documents.

**SB 335** was read third time on May 17, postponed until May 18, postponed until May 19, and was again postponed until 10 a.m. today.

**Amendment No. 1**

Representative Isett offered the following amendment to **SB 335**:

Amend **SB 335** (House Committee Printing) as follows:

(1) In SECTION 1 of the bill, added Section 15.006(b), Property Code, in added Subdivision 3 (page 4, line 15), strike "; and" and substitute "₂".

(2) In SECTION 1 of the bill, added Section 15.006(b), Property Code, in added Subdivision (4) (page 4, line 17), strike the period and substitute "; and".

(2) In SECTION one of the bill, added Section 15.006(b), Property Code (page 4, between lines 17 and 18), immediately following subdivision 4, insert the following:

(5) standards to keep information private and protected from disclosure to unauthorized persons.

Representative Hartnett moved to table Amendment No. 1.

The motion to table prevailed.

**SB 335** was passed. (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.)

(Nixon in the chair)

**SB 447 ON SECOND READING  
(Madden - House Sponsor)**

**SB 447**, A bill to be entitled An Act relating to the sale of tax receivables by a local government.

**SB 447** was read second time on May 16, postponed until May 17, and was again postponed until 10 a.m. today.

Representative Madden moved to postpone consideration of **SB 447** until 5:30 p.m. today.

The motion prevailed.

**REMARKS ORDERED PRINTED**

Representative Anchia moved to print closing remarks by Representative Y. Davis on **SB 1691**.

The motion prevailed.

**MAJOR STATE CALENDAR  
SENATE BILLS  
THIRD READING**

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

**SB 410 ON THIRD 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 Truitt offered the following amendment to **SB 410**:

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

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

Sec. 554.016. PROTECTION OF HEALTH AND SAFETY IN DRUG IMPORTATION PROGRAM. Notwithstanding any other state law, the board shall protect public health and welfare by establishing a drug importation program that complies with all relevant federal and state prescription drug laws and regulations.

Representative Truitt moved to postpone consideration of **SB 410** until 4:30 p.m. today.

The motion prevailed.

**SB 411 ON THIRD READING  
(Hamric - House Sponsor)**

**SB 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.

**Amendment No. 1**

Representative Hamric offered the following amendment to **SB 411**:

Amend **SB 411** on third reading as follows:

(1) In amended Section 1602.002, Occupations Code, between "COSMETOLOGY." and "In", insert "(a)".

(2) In amended Section 1602.002(2), Occupations Code, strike "[~~or braiding~~]" and substitute "or braiding".

(3) At the end of amended Section 1602.002, Occupations Code, insert the following:

(b) The commission by rule may amend the definition of cosmetology to eliminate a service included in that definition under Subsection (a).

Amendment No. 1 was adopted.

A record vote was requested.

**SB 411**, as amended, was passed by (Record 767): 141 Yeas, 0 Nays, 4 Present, not voting.

Yeas — 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; Gallego; Gattis; Geren; Giddings;

Gonzales; Gonzalez Toureilles; Goodman; Griggs; Grusendorf; Guillen; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Hegar; Herrero; Hilderbran; Hill; Hochberg; Homer; Hope; Hopson; Howard; Hughes; Hunter; Hupp; Isett; Jackson; Jones, D.; Keel; Keffer, B.; Keffer, J.; King, P.; Kolkhorst; Krusee; Kuempel; Laney; Laubenberg; Leibowitz; Luna; Madden; Martinez; Martinez Fischer; McCall; McClendon; McReynolds; Menendez; Merritt; Miller; Moreno, P.; Morrison; Mowery; Naishtat; Noriega, M.; Oliveira; Olivo; Orr; Otto; Paxton; Phillips; Pickett; Pitts; 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.

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

Absent, Excused — Hodge.

Absent — Bailey; Goolsby; Jones, J.

#### STATEMENT OF VOTE

I was shown voting yes on Record No. 767. I intended to vote no.

Phillips

#### SB 408 ON THIRD READING

(P. King - House Sponsor)

**SB 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

Representatives P. King and Dutton offered the following amendment to **SB 408**:

Amend **SB 408** on third reading in Section 65.003(b), Utilities Code, as added by Amendment No. 16 by Dutton, by inserting the following between "provider" and "electing":

, other than a cable service provider serving fewer than 35 percent of the total cable customers in a municipality,

Amendment No. 1 was adopted.

**SB 408**, as amended, was passed. (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.)

#### SB 409 ON THIRD READING

(P. King - House Sponsor)

**SB 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 P. King offered the following amendment to **SB 409**:

Amend **SB 409** as follows:

In SECTION 2 of the bill, amend Sec. 13.003(a)(3) to read:

Section 13.003(a)(3) may initiate an action, appear, or intervene, as a party or otherwise, as a matter of right on behalf of:

Amendment No. 1 was withdrawn.

**Amendment No. 2**

Representatives Hilderbran, Hope, Otto, and Van Arsdale offered the following amendment to **SB 409**:

Amend **SB 409** on third reading 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 may represent the interests of residential and small commercial consumers under this chapter. In representing residential and small commercial consumers under this chapter, the office has the same powers and duties in relation to water issues that the office has under Chapter 13, Utilities Code, in relation to electricity and telecommunications issues, including the powers and duties prescribed by Section 13.003, Utilities Code.

(c) This section does not limit the authority of the commission to represent residential or small commercial consumers.

(d) 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 adopted.

**SB 409**, as amended, was passed. (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.)

### **SB 743 ON THIRD READING** **(P. King - House Sponsor)**

**SB 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 P. King offered the following amendment to **SB 743**:

Amend **SB 743** on third reading by adding the following new appropriately numbered SECTION and renumbering the remaining SECTIONS:

SECTION \_\_\_\_. Subsection (c), Section 39.051, Utilities Code, is amended as follows:

(c) An electric utility may accomplish the separation required by Subsection (b) either through the creation of separate nonaffiliated companies or separate affiliated companies owned by a common holding company or through the sale of assets to a third party. An electric utility may create separate transmission and distribution utilities. Notwithstanding any other provision of this Chapter, an electric utility that does not have stranded costs described by Section 39.254 and that on September 1, 2005 has not finalized unbundling pursuant to a commission order approving an unbundling plan may also meet the requirements of Subsection (b) for generation facilities existing on September 1, 2005 in the Electric Reliability Council of Texas if it meets and maintains compliance with the following requirements:

(1) the electric utility has no more than 400 megawatts of Texas jurisdictional capacity from generating units within the Electric Reliability Council of Texas that have not been mothballed or retired;

(2) the electric utility has a contract or contracts with separate nonaffiliated companies or separate affiliated companies for the sale of all of the output from its generating units that have not been mothballed or retired with a contract term that is no shorter than twenty years or the life of the generating units, whichever is shorter; and

(3) the electric utility has a separate division within the electric utility for its generation business activities.

(c-1) A separate division described by Subsection (c)(3) is subject to subsection (d) and, for the purposes of this Chapter, is considered a separate affiliated power generation company and a competitive affiliate.

Amendment No. 1 was withdrawn.

### **Amendment No. 2**

Representative P. King offered the following amendment to **SB 743**:

Amend Floor Amendment No. 1 to **SB 743** by adding the following sentence after the word "2017." on Page 2, Line 30 as follows:

"The costs of any renewable energy credits acquired by an electric utility in accordance with commission rules implemented to achieve the intent of this section shall be treated as eligible fuel expense and recovered by the utility as fuel costs."

Amendment No. 2 was withdrawn.

### **Amendment No. 3**

Representatives Hunter and Swinford offered the following amendment to **SB 743**:

Amend **SB 743** on third reading by striking the section of the bill amending Section 39.904, Utilities Code, as added on second reading by Amendment No. 1 by Hunter amendment and by Amendment No. 2 Swinford amendment and substituting:

SECTION \_\_\_\_ . Section 39.904, Utilities Code, is amended by amending Subsections (a) and (d) and adding Subsections (a-1) and (g)-(o) 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 [~~1,280~~] megawatts by January 1, 2017. 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 [~~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.

(d) In this section, "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, or on gasification of municipal solid waste. In this subsection, "municipal solid waste" means nondurable goods, containers, packaging, food wastes, yard trimmings, and miscellaneous organic wastes from residential, commercial, and industrial nonprocess sources. A renewable energy technology, other the gasification of municipal solid waste, does not rely on energy resources derived from fossil fuels, waste products from fossil fuels, or waste products from inorganic sources.

(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 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;

(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; and

(5) 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 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.

(o) 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 with each appropriate independent organization, electric reliability council, or regional transmission organization, shall file a report with the legislature not later than December 31, 2006, detailing the costs and benefits of additional renewable energy use in this state. The report must include the projected net effects throughout this state on fuel costs, transmission costs, wholesale energy costs, environmental impacts, tax revenues, and economic development of achieving renewable energy use of up to 10 percent of electric energy consumption in this state on or before January 1, 2020.

Amendment No. 3 was adopted.

#### **Amendment No. 4**

Representative Flores offered the following amendment to **SB 743**:

Amend **SB 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. 4 was adopted.

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

Representative P. King offered the following amendment to **SB 743**:

Amend **SB 743** on third reading by adding the following new appropriately numbered SECTION and renumbering the remaining SECTIONS:

SECTION \_\_\_\_ . Subsection (c), Section 39.051, Utilities Code, is amended as follows:

(c) An electric utility may accomplish the separation required by Subsection (b) either through the creation of separate nonaffiliated companies or separate affiliated companies owned by a common holding company or through the sale of assets to a third party. An electric utility may create separate transmission and distribution utilities. Notwithstanding any other provision of this Chapter, an electric utility that does not have stranded costs described by Section 39.254 and that on September 1, 2005 has not finalized unbundling pursuant to a commission order approving an unbundling plan may also meet the requirements of Subsection (b) for generation facilities existing on September 1, 2005 in the Electric Reliability Council of Texas if it meets and maintains compliance with the following requirements:

(1) the electric utility has no more than 400 megawatts of Texas jurisdictional capacity from generating units within the Electric Reliability Council of Texas that have not been mothballed or retired;

(2) the electric utility has a contract or contracts with separate nonaffiliated companies or separate affiliated companies for the sale of all of the output from its generating units that have not been mothballed or retired with a contract term that is no shorter than twenty years or the life of the generating units, whichever is shorter; and

(3) the electric utility has a separate division within the electric utility for its generation business activities.

(c-1) A separate division described by Subsection (c)(3) is subject to subsection (d) and, for the purposes of this Chapter, is considered a separate affiliated power generation company and a competitive affiliate.

Amendment No. 5 was adopted.

### **PROVIDING FOR A LOCAL, CONSENT, AND RESOLUTIONS CALENDAR**

Representative Reyna moved to set a local, consent, and resolutions calendar for 7 p.m. Wednesday, May 25.

The motion prevailed.

### **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 at 4:15 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:

Local and Consent Calendars, 4:15 p.m. today, 3W.9, for a formal meeting, to consider the calendar.

### **MESSAGE FROM THE SENATE**

A message from the senate was received at this time (see the addendum to the daily journal, Messages from the Senate, Message No. 2).

### **SB 743 - (consideration continued)**

**SB 743**, as amended, was passed. (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: Hartnett recorded voting no.)

### **SB 1830 ON THIRD 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.

**SB 1830** was passed. (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.)

### **SB 1378 ON THIRD 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.

A record vote was requested.

**SB 1378** was passed by (Record 768): 143 Yeas, 0 Nays, 2 Present, not voting.

Yeas — Allen, A.; Allen, R.; Alonzo; Anchia; Bailey; 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; Gallego; Gattis; Geren; Giddings; Gonzales; Gonzalez Toureilles; Goodman; Goolsby; Griggs; Grusendorf; Guillen; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Hegar; Herrero; Hilderbran; Hill; Hochberg; Homer; Hope; Hopson; Howard; Hughes; Hunter; Hupp; Isett; Jackson; Jones, D.; Jones, J.; Keel; Keffer, B.; Keffer, J.; King, P.; King, T.; Kolkhorst; Kuempel; Laney; Laubenberg; Leibowitz; Luna; Madden; Martinez; Martinez Fischer; McCall; McReynolds; Menendez; Merritt; Miller; Moreno, P.; Morrison; Mowery; Naishtat; Noriega, M.; Oliveira; Olivo; Orr; Otto; Paxton; Peña; Phillips; Pickett; Pitts; 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.

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

Absent, Excused — Hodge.

Absent — Anderson; Krusee; McClendon.

### STATEMENT OF VOTE

When Record No. 768 was taken, I was in the house but away from my desk. I would have voted yes.

Anderson

### SB 1176 ON THIRD READING (Eiland - House Sponsor)

**SB 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 Eiland offered the following amendment to **SB 1176**:

Amend **SB 1176** as follows:

1). In SECTION 34 add a new subsection (5) to read as follows: "(5) Section 814.1042" and renumber subsequent subsections appropriately.

2). In SECTION 35, Subsection (b), insert the following between "Insurance Code," and "as added by this Act": "and the repeal of Section 814.1042, Government Code".

Amendment No. 1 was adopted.



Representative Eiland moved to postpone consideration of **SB 1176** until 4:25 p.m. today.

The motion prevailed.

**SB 11 ON THIRD READING**  
**(Delisi - House Sponsor)**

**SB 11**, A bill to be entitled An Act relating to security in public schools.

**Amendment No. 1**

Representative Olivo offered the following amendment to **SB 11**:

Amend **SB 11** on third reading as follows:

(1) In the recital to SECTION 1 of the bill, strike "Section 37.108" and substitute "Section 37.108 and 37.1085".

(2) In SECTION 1 of the bill, at the end of added Section 37.108, Education Code, insert the following:

Sec. 37.1085. ADDITIONAL TRAINING. (a) A school district that employs a school district peace officer under Section 37.081, may require each officer to attend a security training program for school resource officers and school district peace officers.

(b) The training program must use a curriculum that incorporates learning objectives approved by the commissioner and developed jointly by the Bill Blackwood Law Enforcement Management Institute of Texas at Sam Houston State University and the Texas School Safety Center at Texas State University regarding:

(1) multihazard emergency operations plans;

(2) security audits;

(3) safety training programs; and

(4) discipline management practices or behavior management practices

that are consistent with Section 37.0021, Education Code, and the procedures adopted under that section.

(c) The training program curriculum must provide information on the areas related to school security described in Subsection (b) and should distinguish between appropriate safety and discipline management practices or behavior management practices to be applied by a school resource officer or school district peace officer who has been authorized to carry a weapon under Section 37.081, Education Code, and those practices to be applied by a school resource officer or school district peace officer who is not authorized to carry a weapon.

(3) Add the following appropriately numbered SECTION to the bill and renumber subsequent SECTIONS accordingly:

SECTION \_\_. The Bill Blackwood Law Enforcement Management Institute of Texas and the Texas School Safety Center shall develop the curriculum for the training program required under Section 37.1085, Education Code, as added by this Act, not later than January 1, 2006.

Amendment No. 1 was adopted.

**SB 11**, as amended, was passed. (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, Kolkhorst, and Leibowitz recorded voting no.)

**SB 1458 ON THIRD READING**  
**(Corte - House Sponsor)**

**SB 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.

**SB 1458** was passed. (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, Herrero, and Leibowitz recorded voting no.) (The vote was reconsidered later today, and **SB 1458** was amended and was passed.)

**SB 872 ON THIRD 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 Truitt offered the following amendment to **SB 872**:

Amend **SB 872** on third reading by adding appropriately numbered sections to the bill to read as follows and renumbering the other sections of the bill accordingly:

SECTION \_\_. Subtitle D, Title 2, Health and Safety Code, is amended by adding Chapter 96 to read as follows:

CHAPTER 96. HEALTH CARE ASSOCIATED INFECTION RATE  
AND PROCESS MEASURE REPORTING  
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 96.001. DEFINITIONS. (a) In this chapter:

(1) "Advisory panel" means the Advisory Panel on Health Care Associated Infections.

(2) "Commissioner" means the commissioner of state health services.

(3) "Department" means the Department of State Health Services.

(4) "Health care associated infection" means a localized or symptomatic condition resulting from an adverse reaction to an infectious agent or its toxins to which a patient is exposed in the course of health care delivery.

(5) "Health care facility" means a hospital licensed under Chapter 241 or an ambulatory surgical center licensed under Chapter 243.

(6) "Infection rate" means the number of health care associated infections at a health care facility divided by a numerical measure over time of the population at risk for contracting the infection.

(7) "Process measure" means a measure of a health care facility's compliance with recommended infection control practices.

(b) The advisory panel may modify or define the term "infection rate" as necessary to accomplish the purposes of this chapter.

Sec. 96.002. APPLICABILITY OF OTHER LAW. Chapter 2110, Government Code, does not apply to the advisory panel created under Subchapter B.

Sec. 96.003. EXPIRATION. This chapter expires January 1, 2007.

[Sections 96.004-96.050 reserved for expansion]

SUBCHAPTER B. ADVISORY PANEL ON  
HEALTH CARE ASSOCIATED INFECTIONS

Sec. 96.051. ESTABLISHMENT. The commissioner shall establish the Advisory Panel on Health Care Associated Infections within the regulatory licensing unit of the health care quality section of the department.

Sec. 96.052. MEMBERSHIP. The advisory panel is composed of 14 members as follows:

(1) two infection control practitioner members who:

(A) are certified by the Certification Board of Infection Control and Epidemiology; and

(B) are practicing in hospitals in this state, at least one of which must be a rural hospital;

(2) two infection control practitioner members who:

(A) are certified by the Certification Board of Infection Control and Epidemiology; and

(B) are nurses licensed to engage in professional nursing under Chapter 301, Occupations Code;

(3) three board-certified or board-eligible physician members who:

(A) are licensed to practice medicine in this state under Chapter 155, Occupations Code, at least two of whom have active medical staff privileges at a hospital in this state;

(B) are active members of the Society for Healthcare Epidemiology of America; and

(C) have demonstrated expertise in infection control in health care facilities;

(4) one member who is a chief executive officer of a hospital licensed under Chapter 241;

(5) one member who is a chief executive officer of an ambulatory surgical center licensed under Chapter 243;

(6) three members who:

(A) are department employees representing the department in epidemiology and the licensing of hospitals or ambulatory surgical centers; and

(B) serve as nonvoting members of the advisory panel; and

(7) two members who represent the public as consumers.

Sec. 96.053. MEMBER ELIGIBILITY. A person may not be a member of the advisory panel if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to health care.

Sec. 96.054. OFFICERS. The members of the advisory panel shall elect a presiding officer and an assistant presiding officer from among the members.

Sec. 96.055. COMPENSATION; EXPENSES. (a) Except as provided by Subsection (b), a member of the advisory panel is not entitled to compensation for service on the advisory panel and is not entitled to reimbursement for travel expenses.

(b) A member who is a representative of a state agency shall be reimbursed for travel expenses incurred while conducting the business of the advisory panel from the funds of the agency the person represents in accordance with the General Appropriations Act.

Sec. 96.056. VACANCY. A vacancy on the advisory panel shall be filled by the commissioner.

Sec. 96.057. ABOLISHED. The Advisory Panel on Health Care Associated Infections is abolished January 1, 2007.

[Sections 96.058-96.100 reserved for expansion]

#### SUBCHAPTER C. POWERS AND DUTIES OF ADVISORY PANEL

Sec. 96.101. GENERAL POWERS AND DUTIES. (a) The advisory panel, using nationally accepted measures, shall study and recommend definitions and methodologies for collecting and reporting evidence-based data on:

- (1) infection rates;
- (2) process measures; or
- (3) both infection rates and process measures.

(b) In developing the recommendations described in Subsection (a), the advisory panel shall consider:

(1) adjusting the reported infection rates to account for the differences in patient populations and for factors outside the control of the health care facility;

(2) standardizing data collection methodology and reporting;

(3) reviewing data collection and reporting systems of other entities related to infection rates, such as the National Nosocomial Infections Surveillance System of the federal Centers for Disease Control and Prevention;

(4) reviewing data collection and reporting systems of other entities related to process measures, such as the Joint Commission on Accreditation of Healthcare Organizations or the Centers for Medicare and Medicaid Services;

(5) maximizing the efficient use of the resources required for health care facilities to conduct required surveillance and reporting;

(6) recognizing the potential unintended consequences of public reporting that is poorly designed or executed and that may diminish the overall quality of this state's health care or mislead or fail to protect health care consumers who use the data; and

(7) providing additional benefits to health care consumers.

Sec. 96.102. REPORT TO LEGISLATURE. (a) Not later than November 1, 2006, the commissioner shall file a report with the presiding officer of each house of the legislature on the advisory panel's recommendations for legislation regarding the collection and reporting of infection rates, process measures, or both.

(b) The report shall include a recommendation that the legislation set September 1, 2007, as the date for hospitals and ambulatory surgical centers to comply with the legislation.

SECTION \_\_. As soon as practicable after the effective date of this Act, the commissioner of the Department of State Health Services shall appoint members to the Advisory Panel on Health Care Associated Infections as required by Chapter 96, Health and Safety Code, as added by this Act.

Amendment No. 1 was withdrawn.

**HR 2067 - ADOPTED**  
**(by Thompson)**

Representative Thompson moved to suspend all necessary rules to take up and consider at this time **HR 2067**.

The motion prevailed.

The following resolution was laid before the house:

**HR 2067**, Recognizing and congratulating Mr. Lurendran Hubbard on his scholastic and athletic accomplishments.

**HR 2067** was adopted.

**SB 872 - (consideration continued)**

**Amendment No. 2**

Representatives Y. Davis, Delisi, McReynolds, and Truitt offered the following amendment to **SB 872**:

Amend **SB 872** on third reading by adding appropriately numbered sections to the bill to read as follows and renumbering the other sections of the bill accordingly:

SECTION \_\_. Subtitle D, Title 2, Health and Safety Code, is amended by adding Chapter 96 to read as follows:

CHAPTER 96. HEALTH CARE ASSOCIATED INFECTION RATE  
AND PROCESS MEASURE REPORTING  
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 96.001. DEFINITIONS. (a) In this chapter:

(1) "Advisory panel" means the Advisory Panel on Health Care Associated Infections.

(2) "Commissioner" means the commissioner of state health services.

(3) "Department" means the Department of State Health Services.

(4) "Health care associated infection" means a localized or symptomatic condition resulting from an adverse reaction to an infectious agent or its toxins to which a patient is exposed in the course of health care delivery.

(5) "Health care facility" means a hospital licensed under Chapter 241 or an ambulatory surgical center licensed under Chapter 243.

(6) "Infection rate" means the number of health care associated infections at a health care facility divided by a numerical measure over time of the population at risk for contracting the infection.

(7) "Process measure" means a measure of a health care facility's compliance with recommended infection control practices.

(b) The advisory panel may modify or define the term "infection rate" as necessary to accomplish the purposes of this chapter.

Sec. 96.002. APPLICABILITY OF OTHER LAW. Chapter 2110, Government Code, does not apply to the advisory panel created under Subchapter B.

Sec. 96.003. EXPIRATION. This chapter expires January 1, 2007.

[Sections 96.004-96.050 reserved for expansion]

SUBCHAPTER B. ADVISORY PANEL ON  
HEALTH CARE ASSOCIATED INFECTIONS

Sec. 96.051. ESTABLISHMENT. The commissioner shall establish the Advisory Panel on Health Care Associated Infections within the regulatory licensing unit of the health care quality section of the department.

Sec. 96.052. MEMBERSHIP. The advisory panel is composed of 14 members as follows:

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(A) are certified by the Certification Board of Infection Control and Epidemiology; and

(B) are practicing in hospitals in this state, at least one of which must be a rural hospital;

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(A) are certified by the Certification Board of Infection Control and Epidemiology; and

(B) are nurses licensed to engage in professional nursing under Chapter 301, Occupations Code;

(3) three board-certified or board-eligible physician members who:

(A) are licensed to practice medicine in this state under Chapter 155, Occupations Code, at least two of whom have active medical staff privileges at a hospital in this state;

(B) are active members of the Society for Healthcare Epidemiology of America; and

(C) have demonstrated expertise in infection control in health care facilities;

(4) one member who is a chief executive officer of a hospital licensed under Chapter 241;

(5) one member who is a chief executive officer of an ambulatory surgical center licensed under Chapter 243;

(6) three members who:

(A) are department employees representing the department in epidemiology and the licensing of hospitals or ambulatory surgical centers; and

(B) serve as nonvoting members of the advisory panel; and

(7) two members who represent the public as consumers.

Sec. 96.053. MEMBER ELIGIBILITY. A person may not be a member of the advisory panel if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to health care.

Sec. 96.054. OFFICERS. The members of the advisory panel shall elect a presiding officer and an assistant presiding officer from among the members.

Sec. 96.055. COMPENSATION; EXPENSES. (a) Except as provided by Subsection (b), a member of the advisory panel is not entitled to compensation for service on the advisory panel and is not entitled to reimbursement for travel expenses.

(b) A member who is a representative of a state agency shall be reimbursed for travel expenses incurred while conducting the business of the advisory panel from the funds of the agency the person represents in accordance with the General Appropriations Act.

Sec. 96.056. VACANCY. A vacancy on the advisory panel shall be filled by the commissioner.

Sec. 96.057. ABOLISHED. The Advisory Panel on Health Care Associated Infections is abolished January 1, 2007.

[Sections 96.058-96.100 reserved for expansion]

#### SUBCHAPTER C. POWERS AND DUTIES OF ADVISORY PANEL

Sec. 96.101. GENERAL POWERS AND DUTIES. (a) The advisory panel, using nationally accepted measures, shall study and recommend definitions and methodologies for collecting and reporting evidence-based data on:

- (1) infection rates;
- (2) process measures; or
- (3) both infection rates and process measures.

(b) In developing the recommendations described in Subsection (a), the advisory panel shall consider:

(1) adjusting the reported infection rates to account for the differences in patient populations and for factors outside the control of the health care facility;

(2) standardizing data collection methodology and reporting;

(3) reviewing data collection and reporting systems of other entities related to infection rates, such as the National Nosocomial Infections Surveillance System of the federal Centers for Disease Control and Prevention;

(4) reviewing data collection and reporting systems of other entities related to process measures, such as the Joint Commission on Accreditation of Healthcare Organizations or the Centers for Medicare and Medicaid Services;

(5) maximizing the efficient use of the resources required for health care facilities to conduct required surveillance and reporting;

(6) recognizing the potential unintended consequences of public reporting that is poorly designed or executed and that may diminish the overall quality of this state's health care or mislead or fail to protect health care consumers who use the data; and

(7) providing additional benefits to health care consumers.

Sec. 96.102. REPORT TO LEGISLATURE. (a) Not later than November 1, 2006, the commissioner shall file a report with the presiding officer of each house of the legislature on the advisory panel's recommendations for legislation regarding the collection and reporting of infection rates, process measures, or both.

(b) The report shall include a recommendation that the legislation set September 1, 2007, as the date for hospitals and ambulatory surgical centers to comply with the legislation.

(c) Nothing shall preclude the reporting of deaths from infection by hospitals and niche hospitals as included in this legislation.

SECTION \_\_. As soon as practicable after the effective date of this Act, the commissioner of the Department of State Health Services shall appoint members to the Advisory Panel on Health Care Associated Infections as required by Chapter 96, Health and Safety Code, as added by this Act.

Representative Truitt moved to postpone consideration of **SB 872** until 4:50 p.m. today.

The motion prevailed.

### POSTPONED BUSINESS

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

#### **SB 1176 ON THIRD READING (Eiland - House Sponsor)**

**SB 1176**, A bill to be entitled An Act relating to systems and programs administered by the Employees Retirement System of Texas.

**SB 1176** was read third time earlier today, was amended, and was postponed until this time.

#### **Amendment No. 2**

Representative McClendon offered the following amendment to **SB 1176**:

Amend **SB 1176** by adding the following appropriately numbered SECTIONS and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_. Section 815.003, Government Code, is amended by amending Subsections (a) and (b) and adding Subsection (b-1) to read as follows:

(a) Three members of the board of trustees are nominated and elected by members of the retirement system and retirees under rules adopted by the board. Two of the trustees must meet the eligibility requirements specified in Subsection (b) and one trustee must meet the eligibility requirements specified in Subsection (b-1).

(b) To be eligible to serve as an elected member of the board, two of the elected trustees [~~a person~~] must be members [~~a member~~] of the retirement system and must hold a position that:

- (1) is included in the employee class of membership; and
- (2) is not with an agency or department with which another trustee holds a position.



(b-1) To be eligible to serve as an elected member of the board, one of the trustees must be a retiree.

SECTION \_\_. At the trustee election held by the Employees Retirement System of Texas to fill a position on the board of trustees that expires August 31, 2007, the members and retirees of the retirement system shall elect a trustee who meets the eligibility requirements of Section 815.003 (b-1), Government Code, as added by this Act.

Amendment No. 2 was adopted.

### **Amendment No. 3**

Representatives Eiland and McClendon offered the following amendment to **SB 1176**:

Amend **SB 1176** by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_. The Employees Retirement System of Texas shall recompute the annuities of all persons who retired or received a death benefit annuity from the Judicial Retirement System of Texas Plan One or the Judicial Retirement System of Texas Plan Two before January 1, 2002, as if the changes in law made by Chapter 1240, Acts of the 77th Legislature, Regular Session, 2001, to Subsection (b), Section 834.102, and Subsection (b), Section 839.102, Government Code, had been in effect on the date of the person's retirement or death. The first payment of any annuity increased under this section becomes payable with the first payment due on or after the effective date of this Act.

Amendment No. 3 was adopted.

**SB 1176**, as amended, was passed. (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.)

### **SB 410 ON THIRD 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.

**SB 410** was read third time earlier today, an amendment was offered, and was postponed until this time.

Amendment No. 1 was pending at the time of postponement.

Amendment No. 1 was withdrawn.

A record vote was requested.

**SB 410** was passed by (Record 769): 141 Yeas, 0 Nays, 2 Present, not voting.

Yeas — Allen, A.; Allen, R.; Alonzo; Anchia; Anderson; Bailey; Baxter; Berman; Blake; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Burnam; Callegari; Campbell; Casteel; Castro; Chavez; Chisum; 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; Gallego; Gattis; Geren; Giddings; Gonzales; Gonzalez Toureilles; Goodman; Goolsby; Griggs; Grusendorf; Guillen; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Hegar; Herrero; Hilderbran; Hill; Hochberg; Homer; Hope; Hopson; Howard; Hughes; Hunter; Hupp; Isett; Jackson; Jones, J.; Keel; Keffer, B.; Keffer, J.; King, P.; King, T.; Kolkhorst; Kuempel; Laney; Laubenberg; Leibowitz; Luna; Madden; Martinez; Martinez Fischer; McCall; McClendon; McReynolds; Menendez; Merritt; Miller; Moreno, P.; Morrison; Mowery; Noriega, M.; Oliveira; Olivo; Orr; Otto; Paxton; Peña; Phillips; Pickett; Pitts; Puente; Quintanilla; Raymond; Reyna; Riddle; Ritter; 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.

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

Absent, Excused — Hodge.

Absent — Coleman; Jones, D.; Krusee; Naishtat; Rodriguez.

#### STATEMENT OF VOTE

When Record No. 769 was taken, I was in the house but away from my desk. I would have voted yes.

Naishtat

#### SB 872 ON THIRD 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.

**SB 872** was read third time earlier today, amendments were offered, and was postponed until this time.

Amendment No. 2 was pending at the time of postponement.

Amendment No. 2 was withdrawn.

#### Amendment No. 3

Representatives Y. Davis, Delisi, McReynolds, and Truitt offered the following amendment to **SB 872**:

Amend **SB 872** on third reading by adding appropriately numbered sections to the bill to read as follows and renumbering the other sections of the bill accordingly:

SECTION \_\_. Subtitle D, Title 2, Health and Safety Code, is amended by adding Chapter 96 to read as follows:

CHAPTER 96. HEALTH CARE ASSOCIATED INFECTION RATE  
AND PROCESS MEASURE REPORTING  
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 96.001. DEFINITIONS. (a) In this chapter:

(1) "Advisory panel" means the Advisory Panel on Health Care Associated Infections.

(2) "Commissioner" means the commissioner of state health services.

(3) "Department" means the Department of State Health Services.

(4) "Health care associated infection" means a localized or symptomatic condition resulting from an adverse reaction to an infectious agent or its toxins to which a patient is exposed in the course of health care delivery.

(5) "Health care facility" means a hospital licensed under Chapter 241 or an ambulatory surgical center licensed under Chapter 243.

(6) "Infection rate" means the number of health care associated infections at a health care facility divided by a numerical measure over time of the population at risk for contracting the infection.

(7) "Process measure" means a measure of a health care facility's compliance with recommended infection control practices.

(b) The advisory panel may modify or define the term "infection rate" as necessary to accomplish the purposes of this chapter.

Sec. 96.002. APPLICABILITY OF OTHER LAW. Chapter 2110, Government Code, does not apply to the advisory panel created under Subchapter B.

Sec. 96.003. EXPIRATION. This chapter expires January 1, 2007.

[Sections 96.004-96.050 reserved for expansion]

SUBCHAPTER B. ADVISORY PANEL ON  
HEALTH CARE ASSOCIATED INFECTIONS

Sec. 96.051. ESTABLISHMENT. The commissioner shall establish the Advisory Panel on Health Care Associated Infections within the regulatory licensing unit of the health care quality section of the department.

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(A) are certified by the Certification Board of Infection Control and Epidemiology; and

(B) are practicing in hospitals in this state, at least one of which must be a rural hospital;

(2) two infection control practitioner members who:

(A) are certified by the Certification Board of Infection Control and Epidemiology; and

(B) are nurses licensed to engage in professional nursing under Chapter 301, Occupations Code;

(3) three board-certified or board-eligible physician members who:

(A) are licensed to practice medicine in this state under Chapter 155, Occupations Code, at least two of whom have active medical staff privileges at a hospital in this state;

(B) are active members of the Society for Healthcare Epidemiology of America; and

(C) have demonstrated expertise in infection control in health care facilities;

(4) one member who is a chief executive officer of a hospital licensed under Chapter 241;

(5) one member who is a chief executive officer of an ambulatory surgical center licensed under Chapter 243;

(6) three members who:

(A) are department employees representing the department in epidemiology and the licensing of hospitals or ambulatory surgical centers; and

(B) serve as nonvoting members of the advisory panel; and

(7) two members who represent the public as consumers.

Sec. 96.053. MEMBER ELIGIBILITY. A person may not be a member of the advisory panel if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to health care.

Sec. 96.054. OFFICERS. The members of the advisory panel shall elect a presiding officer and an assistant presiding officer from among the members.

Sec. 96.055. COMPENSATION; EXPENSES. (a) Except as provided by Subsection (b), a member of the advisory panel is not entitled to compensation for service on the advisory panel and is not entitled to reimbursement for travel expenses.

(b) A member who is a representative of a state agency shall be reimbursed for travel expenses incurred while conducting the business of the advisory panel from the funds of the agency the person represents in accordance with the General Appropriations Act.

Sec. 96.056. VACANCY. A vacancy on the advisory panel shall be filled by the commissioner.

Sec. 96.057. ABOLISHED. The Advisory Panel on Health Care Associated Infections is abolished January 1, 2007.

[Sections 96.058-96.100 reserved for expansion]

#### SUBCHAPTER C. POWERS AND DUTIES OF ADVISORY PANEL

Sec. 96.101. GENERAL POWERS AND DUTIES. (a) The advisory panel, using nationally accepted measures, shall study and recommend definitions and methodologies for collecting and reporting evidence-based data on:

(1) infection rates;

(2) process measures; or

(3) both infection rates and process measures.

(b) In developing the recommendations described in Subsection (a), the advisory panel shall consider:

(1) adjusting the reported infection rates to account for the differences in patient populations and for factors outside the control of the health care facility;

(2) standardizing data collection methodology and reporting;

(3) reviewing data collection and reporting systems of other entities related to infection rates, such as the National Nosocomial Infections Surveillance System of the federal Centers for Disease Control and Prevention;

(4) reviewing data collection and reporting systems of other entities related to process measures, such as the Joint Commission on Accreditation of Healthcare Organizations or the Centers for Medicare and Medicaid Services;

(5) maximizing the efficient use of the resources required for health care facilities to conduct required surveillance and reporting;

(6) recognizing the potential unintended consequences of public reporting that is poorly designed or executed and that may diminish the overall quality of this state's health care or mislead or fail to protect health care consumers who use the data; and

(7) providing additional benefits to health care consumers.

Sec. 96.102. REPORT TO LEGISLATURE. (a) Not later than November 1, 2006, the commissioner shall file a report with the presiding officer of each house of the legislature on the advisory panel's recommendations for legislation regarding the collection and reporting of infection rates, process measures, or both.

(b) The report shall include a recommendation that the legislation set September 1, 2007, as the date for hospitals and ambulatory surgical centers to comply with the legislation.

(c) Nothing shall preclude the immediate reporting of the number of deaths from infection by hospitals and niche hospitals as included in this legislation.

SECTION \_\_. As soon as practicable after the effective date of this Act, the commissioner of the Department of State Health Services shall appoint members to the Advisory Panel on Health Care Associated Infections as required by Chapter 96, Health and Safety Code, as added by this Act.

Amendment No. 3 was adopted.

#### **Amendment No. 4**

Representative Naishtat offered the following amendment to **SB 872**:

Amend **SB 872** on third reading by adding the following appropriately numbered SECTIONS and renumbering subsequent SECTIONS accordingly:

SECTION \_\_. Section 311.033(a), Health and Safety Code, is amended to read as follows:

(a) A hospital shall submit to the department financial and utilization data for that hospital, including data relating to the hospital's:

- (1) total gross revenue, including:
  - (A) Medicare gross revenue;
  - (B) Medicaid gross revenue;
  - (C) other revenue from state programs;
  - (D) revenue from local government programs;
  - (E) local tax support;
  - (F) charitable contributions;
  - (G) other third party payments;
  - (H) gross inpatient revenue; and

- (I) gross outpatient revenue;
- (2) total deductions from gross revenue, including:
  - (A) contractual allowance; and
  - (B) any other deductions;
- (3) charity care;
- (4) bad debt expense;
- (5) total admissions, including:
  - (A) Medicare admissions;
  - (B) Medicaid admissions;
  - (C) admissions under a local government program;
  - (D) charity care admissions; and
  - (E) any other type of admission;
- (6) total discharges;
- (7) total patient days
- (8) average length of stay;
- (9) total outpatient visits
- (10) total assets;
- (11) total liabilities;
- (12) estimates of unreimbursed costs of subsidized health services reported separately in the following categories:
  - (A) emergency care and trauma care;
  - (B) neonatal intensive care;
  - (C) free-standing community clinics;
  - (D) collaborative efforts with local government or private agencies in preventative medicine, such as immunization programs; and
  - (E) other services that satisfy the definition of "subsidized health services" contained in Section 311.031 [~~311.031(13)~~];
- (13) donations;
- (14) total cost of reimbursed and unreimbursed research;
- (15) total cost of reimbursed and unreimbursed education separated into the following categories:
  - (A) education of physicians, nurses, technicians, and other medical professionals and health care providers;
  - (B) scholarships and funding to medical schools, colleges, and universities for health professions education;
  - (C) education of patients concerning diseases and home care in response to community needs;
  - (D) community health education through information programs, publications, and outreach activities in response to community needs; and
  - (E) other educational services that satisfy the definition of "education-related costs" under Section 311.031(6); and
- (16) total emergency department visits, including the percentage of patients examined or treated in the hospital's emergency room who are insured and the percentage who are uninsured.

Amendment No. 4 was adopted.

**SB 872**, as amended, was passed. (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: Hunter, Phillips, and Riddle recorded voting no.)

**SB 1458 - VOTE RECONSIDERED**

Representative Corte moved to reconsider the vote by which **SB 1458** was passed.

The motion to reconsider prevailed.

**SB 1458 ON THIRD READING**  
**(Corte - House Sponsor)**

**SB 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.

**Amendment No. 1**

Representative Talton offered the following amendment to **SB 1458**:

Amend **SB 1458**, on third reading, in SECTION 4 of the bill, in added Section 214.216, Local Government Code (house committee report, page 3, between lines 2 and 3) by adding Subsection (e) to read as follows:

(e) A municipality that has adopted a more stringent commercial building code before January 1, 2006, is not required to repeal that code and may adopt future editions of that code.

Amendment No. 1 was adopted.

**SB 1458**, as amended, was passed. (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.)

**MAJOR STATE CALENDAR**  
**(consideration continued)**

**SB 563 ON THIRD READING**  
**(Delisi - House Sponsor)**

**SB 563**, A bill to be entitled An Act relating to the prevention of Medicaid fraud; providing penalties.

**SB 563** was passed. (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.)

**SB 1605 ON THIRD READING**  
**(Luna - House Sponsor)**

**SB 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.

A record vote was requested.

**SB 1605** was passed by (Record 770): 142 Yeas, 0 Nays, 3 Present, not voting.

Yeas — Allen, A.; Allen, R.; Alonzo; Anchia; Anderson; Bailey; 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; Gallego; Gattis; Geren; Giddings; Gonzalez Toureilles; Goodman; Goolsby; Griggs; Grusendorf; Guillen; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Hegar; Herrero; Hilderbran; Hill; Hochberg; 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.; Mowery; Naishtat; Noriega, M.; Oliveira; Olivo; Orr; Otto; Paxton; Peña; Phillips; Pickett; Pitts; Puente; Quintanilla; Raymond; Reyna; Riddle; Ritter; Rodriguez; Rose; 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.

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

Absent, Excused — Hodge.

Absent — Gonzales; Morrison; Seaman.

**STATEMENT OF VOTE**

When Record No. 770 was taken, I was in the house but away from my desk. I would have voted yes.

Gonzales

**LEAVE OF ABSENCE GRANTED**

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

Driver on motion of Krusee.



**MAJOR STATE CALENDAR  
SENATE BILLS  
SECOND READING**

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

**CSSB 422 ON SECOND READING  
(Grusendorf - House Sponsor)**

**CSSB 422**, A bill to be entitled An Act relating to the continuation and functions of the Texas Education Agency and regional education service centers; providing a penalty.

(Speaker in the chair)

**CSSB 422 - POINT OF ORDER**

Representative Geren raised a point of order against further consideration of **CSSB 422** under Chapter 325.016 of the Government Code.

The speaker overruled the point of order, and had read the following statement:

Representative Geren raised a point of order against further consideration of **CSSB 422** on the grounds that the bill violates Section 325.016, Government Code. The chair overrules the point of order on the following grounds:

First, the bill does not consider the continuation, transfer, or modification of more than one state agency. The only agency that is subject sunset in this bill is TEA. Therefore, Section 325.016(a) does not apply.

Second, the bill transfers TEA functions of driver's education oversight to TDLR. Those functions are not consolidated under the bill. Therefore, Section 325.016(b) does not apply.

Third, there is no transfer of the core functions of TEA to TDLR. In the bill, TEA still maintains its function of regulating and overseeing education. Therefore, Section 325.016(c) does not apply.

Fourth, the point of order arguing that the TEA and regional service centers are in single bills and that they are separate agencies is incorrect. Regional service centers are created by Chapter 8 of the Education Code and the commissioner provides for the establishment and operation of the centers.

Without ruling on the substantive constitutionality of this provision, which the chair may not do, the chair notes that the only two authorities that bind this body on procedural matters are the Texas Constitution and the House Rules.

Therefore for the reasons stated above, the point of order is respectfully overruled.

**Amendment No. 1**

Representative Grusendorf offered the following amendment to **CSSB 422**:

Amend **CSSB 422** (committee report) as follows:

- 1) Page 2, Line 6, strike "open-enrollment"
- 2) Page 2, Line 17, strike "open-enrollment"
- 3) Page 2, Line 22, strike "open-enrollment"

- 4) Page 3, Line 3, strike "open-enrollment"
- 5) Page 3, Line 11, strike "open-enrollment"
- 6) Page 5, Line 8, strike "open-enrollment"
- 7) Page 10, Line 27, insert "and university charter school" between "school" and "under."
- 8) Page 11, Line 15, insert "and university charter school" between "school" and "or."
- 9) Page 11, Line 20, insert "and university charter school" between "school" and "or."
- 10) Page 40, Line 16, strike "open-enrollment"
- 11) Page 40, Line 24, strike "open-enrollment"
- 12) Page 41, Line 3, strike "open-enrollment"
- 13) Page 44, Line 10, strike "open-enrollment"
- 14) Page 52, Line 26, insert "and university charter school" between "school" and "ordered."
- 15) Page 53, Line 3, strike "open-enrollment"

### **Amendment No. 2**

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

Amend the amendment as follows:

Strike 7) through 15) and insert the following:

- 7) Page 10, Line 27, insert "or a college or university" between "open-enrollment" and "charter."
- 8) Page 11, Line 12, insert "or a college or university" between "open-enrollment" and "charter."
- 9) Page 11, Line 15, insert "or college or university" between "open-enrollment" and "charter."
- 10) Page 11, Line 19, insert "or college or university" between "open-enrollment" and "charter."
- 11) Page 40, Line 16, strike "open-enrollment"
- 12) Page 40, Line 24, strike "open-enrollment"
- 13) Page 41, Line 3, strike "open-enrollment"
- 14) Page 44, Line 10, strike "open-enrollment"
- 15) Page 52, Line 26, insert "or a college or university" between "open-enrollment" and "charter."
- 16) Page 53, Line 3, strike "open-enrollment"

Amendment No. 2 was adopted.

Amendment No. 1, as amended, was adopted.

### **Amendment No. 3**

Representative Grusendorf offered the following amendment to **CSSB 422**:

Amend **CSSB 422** (House committee printing) as follows:

- (1) Strike SECTION 1.13 of the bill (page 12, lines 9 through 25) and renumber the subsequent SECTIONS of Article 1 accordingly.

(2) In SECTION 2.31 of the bill, in amended Section 1001.254(a), Education Code (page 80, line 19), strike "State Board for Educator Certification" and substitute "commissioner of education [~~State Board for Educator Certification~~]".

(3) Add the following appropriately numbered ARTICLE to the bill and renumber the subsequent ARTICLES accordingly:

ARTICLE \_\_. ABOLISHMENT OF STATE BOARD FOR EDUCATOR  
CERTIFICATION; TRANSFER OF POWERS AND DUTIES

SECTION \_\_.01. Section 21.0031(a), Education Code, is amended to read as follows:

(a) An employee's probationary, continuing, or term contract under this chapter is void if the employee:

(1) does not hold a certificate or permit issued under Subchapter B [~~by the State Board for Educator Certification~~]; or

(2) fails to fulfill the requirements necessary to extend the employee's temporary or emergency certificate or permit.

SECTION \_\_.02. Sections 21.004(a)-(e), Education Code, are amended to read as follows:

(a) To the extent that funds are available, the agency[~~, the State Board for Educator Certification,~~] and the Texas Higher Education Coordinating Board shall develop and implement programs to identify talented students and recruit those students and persons, including high school and undergraduate students, mid-career and retired professionals, honorably discharged and retired military personnel, and members of underrepresented gender and ethnic groups, into the teaching profession.

(b) From available funds, the agency[~~, the State Board for Educator Certification,~~] and the Texas Higher Education Coordinating Board shall develop and distribute materials that emphasize the importance of the teaching profession and inform individuals about state-funded loan forgiveness and tuition assistance programs.

(c) The commissioner, in cooperation with the commissioner of higher education [~~and the executive director of the State Board for Educator Certification~~], shall annually identify the need for teachers in specific subject areas and geographic regions and among underrepresented groups. The commissioner shall give priority to developing and implementing recruitment programs to address those needs from the agency's discretionary funds.

(d) The agency[~~, the State Board for Educator Certification,~~] and the Texas Higher Education Coordinating Board shall encourage the business community to cooperate with local schools to develop recruiting programs designed to attract and retain capable teachers, including programs to provide summer employment opportunities for teachers.

(e) The agency[~~, the State Board for Educator Certification,~~] and the Texas Higher Education Coordinating Board shall encourage major education associations to cooperate in developing a long-range program promoting teaching as a career and to assist in identifying local activities and resources that may be used to promote the teaching profession.

SECTION \_\_.03. Sections 21.006(b), (c), (e), (f), and (g), Education Code, are amended to read as follows:

(b) In addition to the reporting requirement under Section 261.101, Family Code, the superintendent or director of a school district, regional education service center, or shared services arrangement shall notify the commissioner [~~State Board for Educator Certification~~] if the superintendent or director has reasonable cause to believe that:

(1) an educator employed by or seeking employment by the district, service center, or shared services arrangement has a criminal record;

(2) an educator's employment at the district, service center, or shared services arrangement was terminated based on a determination that the educator:

(A) abused or otherwise committed an unlawful act with a student or minor;

(B) possessed, transferred, sold, or distributed a controlled substance, as defined by Chapter 481, Health and Safety Code, or by 21 U.S.C. Section 801 et seq. [~~and its subsequent amendments~~];

(C) illegally transferred, appropriated, or expended funds or other property of the district, service center, or shared services arrangement;

(D) attempted by fraudulent or unauthorized means to obtain or alter a professional certificate or license for the purpose of promotion or additional compensation; or

(E) committed a criminal offense or any part of a criminal offense on school property or at a school-sponsored event; or

(3) the educator resigned and reasonable evidence supports a recommendation by the superintendent or director to terminate the educator based on a determination that the educator engaged in misconduct described by Subdivision (2).

(c) The superintendent or director must notify the commissioner [~~State Board for Educator Certification~~] by filing a report with the commissioner [~~board~~] not later than the seventh day after the date the superintendent or director first learns about an alleged incident of misconduct described by Subsection (b). The report must be:

(1) in writing; and

(2) in a form prescribed by the board.

(e) A superintendent or director who in good faith and while acting in an official capacity files a report with the commissioner [~~State Board for Educator Certification~~] under this section is immune from civil or criminal liability that might otherwise be incurred or imposed.

(f) The commissioner [~~State Board for Educator Certification~~] shall determine whether to impose sanctions against a superintendent or director who fails to file a report in violation of Subsection (c).

(g) The commissioner [~~State Board for Educator Certification~~] shall adopt [~~propose~~] rules as necessary to implement this section.

SECTION \_\_.04. Section 21.031, Education Code, is amended to read as follows:

Sec. 21.031. COMMISSIONER REGULATION OF EDUCATOR CERTIFICATION [PURPOSE]. (a) ~~[The State Board for Educator Certification is established to recognize public school educators as professionals and to grant educators the authority to govern the standards of their profession.]~~ The commissioner [board] shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators.

(b) The commissioner shall adopt rules governing the certification of educators and continuing education for educators. In adopting [~~in proposing~~] rules under this subchapter, the commissioner [board] shall ensure that all candidates for certification or renewal of certification demonstrate the knowledge and skills necessary to improve the performance of the diverse student population of this state.

SECTION \_\_.05. Sections 21.041, 21.044, and 21.045, Education Code, are amended to read as follows:

Sec. 21.041. RULES; FEES. [~~(a) The board may adopt rules as necessary for its own procedures.~~]

(b) The commissioner [board] shall adopt [~~propose~~] rules that:

(1) provide for the regulation of educators and the general administration of this subchapter in a manner consistent with this subchapter;

(2) specify the classes of educator certificates to be issued, including emergency certificates;

(3) specify the period for which each class of educator certificate is valid;

(4) specify the requirements for the issuance and renewal of an educator certificate;

(5) provide for the issuance of an educator certificate to a person who holds a similar certificate issued by another state or foreign country, subject to Section 21.052;

(6) provide for special or restricted certification of educators, including certification of instructors of American Sign Language;

(7) provide for disciplinary proceedings, including the suspension or revocation of an educator certificate, as provided by Chapter 2001, Government Code;

(8) provide for the adoption, amendment, and enforcement of an educator's code of ethics;

(9) provide for continuing education requirements; and

(10) provide for certification of persons performing appraisals under Subchapter H.

(c) The commissioner by rule [board] shall set [~~propose a rule adopting~~] a fee for the issuance and maintenance of an educator certificate that is adequate to cover the cost of administration of this subchapter.

Sec. 21.044. EDUCATOR PREPARATION. The commissioner [board] shall adopt [~~propose~~] rules establishing the training requirements a person must accomplish to obtain a certificate, enter an internship, or enter an induction-year program. The commissioner [board] shall specify the minimum academic qualifications required for a certificate.

Sec. 21.045. ACCOUNTABILITY SYSTEM FOR EDUCATOR PREPARATION PROGRAMS. (a) The commissioner [~~board~~] shall adopt [~~propose~~] rules establishing standards to govern the approval and continuing accountability of all educator preparation programs based on information that is disaggregated with respect to sex and ethnicity and that includes:

(1) results of the certification examinations prescribed under Section 21.048(a); and

(2) performance based on the appraisal system for beginning teachers adopted by the commissioner [~~board~~].

(b) Each educator preparation program shall submit data elements as required by the commissioner [~~board~~] for an annual performance report to ensure access and equity. At a minimum, the annual report must contain the performance data from Subsection (a) and the following information, disaggregated by sex and ethnicity:

(1) the number of candidates who apply;

(2) the number of candidates admitted;

(3) the number of candidates retained;

(4) the number of candidates completing the program;

(5) the number of candidates employed in the profession after completing the program; and

(6) the number of candidates retained in the profession.

(c) The commissioner [~~board~~] shall adopt [~~propose~~] rules establishing performance standards for the Accountability System for Educator Preparation for accrediting educator preparation programs. At a minimum, performance standards must be based on Subsection (a). The commissioner [~~board~~] shall adopt [~~propose~~] rules for the sanction of educator preparation programs and shall annually review the accreditation status of each educator preparation program.

(d) The commissioner [~~executive director of the board~~] shall appoint an oversight team of educators to make recommendations and provide assistance to educator preparation programs that do not meet accreditation standards. If, after one year, an educator preparation program has not fulfilled the recommendations of the oversight team, the commissioner [~~executive director~~] shall appoint a person to administer and manage the operations of the program. If the program does not improve after two years, the commissioner [~~board~~] shall revoke the approval of the program to prepare educators for state certification.

SECTION \_\_.06. Sections 21.046(c) and (d), Education Code, are amended to read as follows:

(c) Because an effective principal is essential to school improvement, the commissioner [~~board~~] shall ensure that:

(1) each candidate for certification as a principal is of the highest caliber; and

(2) multi-level screening processes, validated comprehensive assessment programs, and flexible internships with successful mentors exist to determine whether a candidate for certification as a principal possesses the essential knowledge, skills, and leadership capabilities necessary for success.

(d) In creating the qualifications for certification as a principal, the commissioner [~~board~~] shall consider the knowledge, skills, and proficiencies for principals as developed by relevant national organizations and the State Board of Education.

SECTION \_\_.07. Sections 21.047(a) and (b), Education Code, are amended to read as follows:

(a) The commissioner [~~board~~] may develop the process for the establishment of centers for professional development through institutions of higher education for the purpose of integrating technology and innovative teaching practices in the preservice and staff development training of public school teachers and administrators. An institution of higher education with a teacher education program may develop a center through a collaborative process involving public schools, regional education service centers, and other entities or businesses. A center may contract with other entities to develop materials and provide training.

(b) On application by a center, the commissioner [~~board~~] shall make grants to the center for its programs from funds derived from gifts, grants, and legislative appropriations for that purpose. The commissioner [~~board~~] shall award the grants on a competitive basis according to requirements established by commissioner [~~the board~~] rules.

SECTION \_\_.08. Sections 21.048(a), (b), and (c), Education Code, are amended to read as follows:

(a) The commissioner [~~board~~] shall adopt [~~propose~~] rules prescribing comprehensive examinations for each class of certificate issued by the board.

(b) The commissioner [~~board~~] may not administer a written examination to determine the competence or level of performance of an educator who has a hearing impairment unless the examination has been field tested to determine its appropriateness, reliability, and validity as applied to, and minimum acceptable performance scores for, persons with hearing impairments.

(c) An educator who has a hearing impairment is exempt from taking a written examination for a period ending on the first anniversary of the date on which the commissioner [~~board~~] determines, on the basis of appropriate field tests, that the examination complies with the standards specified in Subsection (b). On application to the commissioner [~~board~~], the commissioner [~~board~~] shall issue a temporary exemption certificate to a person entitled to an exemption under this subsection.

SECTION \_\_.09. Sections 21.0481, 21.0482, 21.0483, 21.0484, and 21.049, Education Code, are amended to read as follows:

Sec. 21.0481. MASTER READING TEACHER CERTIFICATION. (a) To ensure that there are teachers with special training to work with other teachers and with students in order to improve student reading performance, the commissioner [~~board~~] shall establish a master reading teacher certificate.

(b) The commissioner [~~board~~] shall issue a master reading teacher certificate to each eligible person.

(c) To be eligible for a master reading teacher certificate, a person must:

(1) hold a reading specialist certificate issued under this subchapter and satisfactorily complete a course of instruction as prescribed under Subdivision (2)(B); or

(2) hold a teaching certificate issued under this subchapter and:

(A) have at least three years of teaching experience;

(B) satisfactorily complete a knowledge-based and skills-based course of instruction on the science of teaching children to read that includes training in:

(i) effective reading instruction techniques, including effective techniques for students whose primary language is a language other than English;

(ii) identification of dyslexia and related reading disorders and effective reading instruction techniques for students with those disorders; and

(iii) effective professional peer mentoring techniques;

(C) perform satisfactorily on the master reading teacher certification examination prescribed by the commissioner [board]; and

(D) satisfy any other requirements prescribed by the commissioner [board].

Sec. 21.0482. MASTER MATHEMATICS TEACHER CERTIFICATION.

(a) To ensure that there are teachers with special training to work with other teachers and with students in order to improve student mathematics performance, the commissioner [board] shall establish:

(1) a master mathematics teacher certificate to teach mathematics at elementary school grade levels;

(2) a master mathematics teacher certificate to teach mathematics at middle school grade levels; and

(3) a master mathematics teacher certificate to teach mathematics at high school grade levels.

(b) The commissioner [board] shall issue the appropriate master mathematics teacher certificate to each eligible person.

(c) To be eligible for a master mathematics teacher certificate, a person must:

(1) hold a teaching certificate issued under this subchapter;

(2) have at least three years of teaching experience;

(3) satisfactorily complete a knowledge-based course of instruction on the science of teaching children mathematics that includes training in mathematics instruction and professional peer mentoring techniques that, through scientific testing, have been proven effective;

(4) perform satisfactorily on the appropriate master mathematics teacher certification examination prescribed by the commissioner [board]; and

(5) satisfy any other requirements prescribed by the commissioner [board].

(d) The course of instruction prescribed under Subsection (c)(3) shall be developed by the commissioner [board] in consultation with mathematics and science faculty members at institutions of higher education.



## Sec. 21.0483. MASTER TECHNOLOGY TEACHER CERTIFICATION.

(a) To ensure that there are teachers with special training to work with other teachers and with students in order to increase the use of technology in each classroom, the commissioner [~~board~~] shall establish a master technology teacher certificate.

(b) The commissioner [~~board~~] shall issue a master technology teacher certificate to each eligible person.

(c) To be eligible for a master technology teacher certificate, a person must:

(1) hold a technology applications or Technology Education certificate issued under this subchapter, satisfactorily complete the course of instruction prescribed under Subdivision (2)(B), and satisfactorily perform on the examination prescribed under Subdivision (2)(C); or

(2) hold a teaching certificate issued under this subchapter and:

(A) have at least three years of teaching experience;

(B) satisfactorily complete a knowledge-based and skills-based course of instruction on interdisciplinary technology applications and the science of teaching technology that includes training in:

(i) effective technology instruction techniques, including applications designed to meet the educational needs of students with disabilities;

(ii) classroom teaching methodology that engages student learning through the integration of technology;

(iii) digital learning competencies, including Internet research, graphics, animation, website mastering, and video technologies;

(iv) curriculum models designed to prepare teachers to facilitate an active student learning environment; and

(v) effective professional peer mentoring techniques;

(C) satisfactorily perform on an examination developed in cooperation with the Telecommunications Infrastructure Fund Board and administered at the conclusion of the course of instruction prescribed under Paragraph (B); and

(D) satisfy any other requirements prescribed by the commissioner [~~board~~].

(d) The commissioner [~~board~~] may provide technology applications training courses under Subsection (c)(2)(B) in cooperation with:

(1) regional education service centers; and

(2) other public or private entities, including any state council on technology.

Sec. 21.0484. MASTER SCIENCE TEACHER CERTIFICATION. (a) To ensure that there are teachers with special training to work with other teachers and with students in order to improve student science performance, the commissioner [~~board~~] shall establish:

(1) a master science teacher certificate to teach science at elementary school grade levels;

(2) a master science teacher certificate to teach science at middle school grade levels; and

(3) a master science teacher certificate to teach science at high school grade levels.

(b) The commissioner [~~board~~] shall issue the appropriate master science teacher certificate to each eligible person.

(c) To be eligible for a master science teacher certificate, a person must:

(1) hold a teaching certificate issued under this subchapter;

(2) have at least three years of teaching experience;

(3) satisfactorily complete a knowledge-based course of instruction on the science of teaching children science that includes training in science instruction and professional peer mentoring techniques that, through scientific testing, have been proven effective;

(4) perform satisfactorily on the appropriate master science teacher certification examination prescribed by the commissioner [~~board~~]; and

(5) satisfy any other requirements prescribed by the commissioner [~~board~~].

(d) The course of instruction prescribed under Subsection (c)(3) shall be developed by the commissioner [~~board~~] in consultation with science faculty members at institutions of higher education.

Sec. 21.049. ALTERNATIVE CERTIFICATION. (a) To provide a continuing additional source of qualified educators, the commissioner [~~board~~] shall adopt [~~propose~~] rules providing for educator certification programs as an alternative to traditional educator preparation programs. The rules may not provide that a person may be certified under this section only if there is a demonstrated shortage of educators in a school district or subject area.

(b) The commissioner [~~board~~] may not require a person employed as a teacher in a disciplinary [~~an~~] alternative education program under Section 37.008 or a juvenile justice alternative education program under Section 37.011 for at least three years to complete an alternative educator certification program adopted under this section before taking the appropriate certification examination.

SECTION \_\_.10. Sections 21.050(a) and (b), Education Code, are amended to read as follows:

(a) A person who applies for a teaching certificate for which commissioner [~~board~~] rules require a bachelor's degree must possess a bachelor's degree received with an academic major or interdisciplinary academic major, including reading, other than education, that is related to the curriculum as prescribed under Subchapter A, Chapter 28.

(b) The commissioner [~~board~~] may not require more than 18 semester credit hours of education courses at the baccalaureate level for the granting of a teaching certificate. The commissioner [~~board~~] shall provide for a minimum number of semester credit hours of internship to be included in the hours needed for certification. The commissioner [~~board~~] may adopt [~~propose~~] rules requiring additional credit hours for certification in bilingual education, English as a second language, early childhood education, or special education.

SECTION \_\_.11. Section 21.051, Education Code, is amended to read as follows:

Sec. 21.051. OPTIONS FOR FIELD EXPERIENCE AND INTERNSHIPS. The commissioner [~~board~~] shall adopt [~~propose~~] rules providing flexible options for persons for any field experience or internship required for certification.

SECTION \_\_.12. Section 21.052(a), Education Code, is amended to read as follows:

(a) The commissioner [~~board~~] may issue a certificate to an educator who:

(1) holds:

(A) a degree issued by an institution accredited by a regional accrediting agency or group that is recognized by a nationally recognized accreditation board; or

(B) a degree issued by an institution located in a foreign country, if the degree is equivalent to a degree described by Paragraph (A);

(2) holds an appropriate certificate or other credential issued by another state or country; and

(3) performs satisfactorily on:

(A) the examination prescribed under Section 21.048; or

(B) if the educator holds a certificate or other credential issued by another state or country, an examination similar to and at least as rigorous as that described by Paragraph (A) administered to the educator under the authority of that state.

SECTION \_\_.13. Section 21.054(a), Education Code, is amended to read as follows:

(a) The commissioner [~~board~~] shall adopt [~~propose~~] rules establishing a process for identifying continuing education courses and programs that fulfill educators' continuing education requirements.

SECTION \_\_.14. Section 21.055(a), Education Code, is amended to read as follows:

(a) As provided by this section, a school district may issue a school district teaching permit and employ as a teacher a person who does not hold a teaching certificate issued by the commissioner [~~board~~].

SECTION \_\_.15. Section 21.056, Education Code, is amended to read as follows:

Sec. 21.056. ADDITIONAL CERTIFICATION. The commissioner [~~board~~] by rule shall provide for a certified educator to qualify for additional certification to teach at a grade level or in a subject area not covered by the educator's certificate upon satisfactory completion of an examination or other assessment of the educator's qualification.

SECTION \_\_.16. Section 21.057(d), Education Code, is amended to read as follows:

(d) For purposes of this section, "inappropriately certified or uncertified teacher":

(1) includes:

(A) an individual serving on an emergency certificate issued under Section 21.041(b)(2); or

(B) an individual who does not hold any certificate or permit issued under this chapter and is not employed as specified by Subdivision (2)(E); and

(2) does not include an individual:

(A) who is a certified teacher assigned to teach a class or classes outside his or her area of certification, as determined by rules adopted ~~[proposed]~~ by the commissioner ~~[board]~~ in specifying the certificate required for each assignment;

(B) serving on a certificate issued due to a hearing impairment under Section 21.048;

(C) serving on a certificate issued pursuant to enrollment in an approved alternative certification program under Section 21.049;

(D) certified by another state or country and serving on a certificate issued under Section 21.052;

(E) serving on a school district teaching permit issued under Section 21.055; or

(F) employed under a waiver granted by the commissioner pursuant to Section 7.056.

SECTION \_\_.17. Sections 21.058(b) and (d), Education Code, are amended to read as follows:

(b) Notwithstanding Section 21.041(b)(7), not later than the fifth day after the date the board receives notice under Article 42.018, Code of Criminal Procedure, of the conviction of a person who holds a certificate under this subchapter, the commissioner ~~[board]~~ shall:

(1) revoke the certificate held by the person; and

(2) provide to the person and to any school district or open-enrollment charter school employing the person at the time of revocation written notice of:

(A) the revocation; and

(B) the basis for the revocation.

(d) A person whose certificate is revoked under Subsection (b) may reapply for a certificate in accordance with commissioner ~~[board]~~ rules.

SECTION \_\_.18. Section 21.105(c), Education Code, is amended to read as follows:

(c) On written complaint by the employing district, the commissioner ~~[State Board for Educator Certification]~~ may impose sanctions against a teacher employed under a probationary contract who:

(1) resigns;

(2) fails without good cause to comply with Subsection (a) or (b); and

(3) fails to perform the contract.

SECTION \_\_.19. Section 21.160(c), Education Code, is amended to read as follows:

(c) On written complaint by the employing district, the commissioner ~~[State Board for Educator Certification]~~ may impose sanctions against a teacher who is employed under a continuing contract that obligates the district to employ the person for the following school year and who:

(1) resigns;

(2) fails without good cause to comply with Subsection (a) or (b); and

(3) fails to perform the contract.

SECTION \_\_.20. Section 21.210(c), Education Code, is amended to read as follows:

(c) On written complaint by the employing district, the commissioner [~~State Board for Educator Certification~~] may impose sanctions against a teacher who is employed under a term contract that obligates the district to employ the person for the following school year and who:

- (1) resigns;
- (2) fails without good cause to comply with Subsection (a) or (b); and
- (3) fails to perform the contract.

SECTION \_\_.21. Section 21.503, Education Code, is amended to read as follows:

Sec. 21.503. ELIGIBILITY. A person is eligible for the program if the person:

- (1) has served in the armed forces of the United States;
- (2) is honorably discharged, retired, or released from active duty on or after October 1, 1990, after at least six years of continuous active duty service immediately before the discharge, retirement, or release;
- (3) has received a baccalaureate or advanced degree from a public or private institution of higher education accredited by a regional accrediting agency or group that is recognized by a nationally recognized accreditation board; and
- (4) satisfies any other criteria for selection [~~jointly~~] prescribed by the agency [~~and the State Board for Educator Certification~~].

SECTION \_\_.22. Section 21.504(b), Education Code, is amended to read as follows:

(b) The agency [~~and the State Board for Educator Certification~~] shall distribute the applications and information regarding the program.

SECTION \_\_.23. Section 21.510(c), Education Code, is amended to read as follows:

(c) For purposes of this section, a participant in the program is not considered to be in violation of an agreement under Section 21.508 during any period in which the participant:

- (1) is pursuing a full-time course of study related to the field of teaching at a public or private institution of higher education approved by the agency [~~State Board for Educator Certification~~];
- (2) is serving on active duty as a member of the armed forces of the United States;
- (3) is temporarily totally disabled for a period not to exceed three years as established by sworn affidavit of a qualified physician;
- (4) is unable to secure employment for a period not to exceed one year because of care required by a disabled spouse;
- (5) is seeking and unable to find full-time employment as a teacher in a public elementary or secondary school for a single period not to exceed 27 months; or
- (6) satisfies the provisions of any additional reimbursement exception adopted by the agency.

SECTION \_\_.24. Sections 21.551, 21.552, and 21.553, Education Code, are amended to read as follows:

Sec. 21.551. PURPOSES. The purposes of the alternative certification Teach for Texas Pilot Program are to:

(1) attract to the teaching profession persons who have expressed interest in teaching and to support the certification of those persons as teachers;

(2) recognize the importance of the certification process governed by the commissioner [~~State Board for Educator Certification~~] under Subchapter B, which requires verification of competence in subject area and professional knowledge and skills;

(3) encourage the creation and expansion of educator preparation programs that recognize the knowledge and skills gained through previous educational and work-related experiences and that are delivered in a manner that recognizes individual circumstances, including the need to remain employed full-time while enrolled in the Teach for Texas Pilot Program; and

(4) provide annual stipends to postbaccalaureate teacher certification candidates.

Sec. 21.552. PROGRAM ESTABLISHED. The commissioner [~~State Board for Educator Certification~~] by rule shall establish the Teach for Texas Pilot Program consistent with the purposes provided by Section 21.551.

Sec. 21.553. FINANCIAL INCENTIVES. (a) The pilot program must offer to participants financial incentives, including tuition assistance and loan forgiveness. In offering a financial incentive, the commissioner [~~State Board for Educator Certification~~] shall:

(1) require a contract between each participant who accepts a financial incentive and the agency [~~State Board for Educator Certification~~] under which the participant is obligated to teach in a public school in this state for a stated period after certification;

(2) provide financial incentives in proportion to the length of the period the participant is obligated by contract to teach after certification; and

(3) give special financial incentives to a participant who agrees in the contract to teach in an underserved area.

(b) Financial incentives may be paid only from funds appropriated specifically for that purpose and from gifts, grants, and donations solicited or accepted by the commissioner [~~State Board for Educator Certification~~] for that purpose.

(c) The commissioner [~~State Board for Educator Certification~~] shall adopt [~~propose~~] rules establishing criteria for awarding financial incentives under this section, including criteria for awarding financial incentives if there are more participants than funds available to provide the financial incentives.

SECTION \_\_.25. Section 21.604(b), Education Code, is amended to read as follows:

(b) The agency [~~and the State Board for Educator Certification~~] shall distribute the applications and information regarding the program.

SECTION \_\_.26. Section 21.609(c), Education Code, is amended to read as follows:

(c) For purposes of this section, a participant in the program is not considered to be in violation of an agreement under Section 21.607 during any period in which the participant:

(1) is pursuing a full-time course of study related to the field of teaching at an institution of higher education approved by the agency [~~State Board for Educator Certification~~];

(2) is serving on active duty as a member of the armed forces of the United States;

(3) is temporarily totally disabled for a period not to exceed three years as established by affidavit of a qualified physician;

(4) is unable to secure employment for a period not to exceed one year because of care required by a disabled spouse;

(5) is seeking and unable to find full-time employment as a teacher in a public elementary or secondary school for a single period not to exceed 27 months; or

(6) satisfies the provisions of any additional reimbursement exception adopted by the agency.

SECTION \_\_.27. Section 22.0512(b), Education Code, is amended to read as follows:

(b) In this section, "disciplinary proceeding" means:

(1) an action brought by the school district employing a professional employee of a school district to discharge or suspend the employee or terminate or not renew the employee's term contract; or

(2) an action brought by the agency [~~State Board for Educator Certification~~] to enforce the educator's code of ethics adopted under Section 21.041(b)(8).

SECTION \_\_.28. Section 22.082, Education Code, is amended to read as follows:

Sec. 22.082. ACCESS TO CRIMINAL HISTORY RECORDS BY AGENCY [~~STATE BOARD FOR EDUCATOR CERTIFICATION~~]. The agency [~~State Board for Educator Certification~~] shall obtain from any law enforcement or criminal justice agency all criminal history record information that relates to an applicant for or holder of a certificate issued under Subchapter B, Chapter 21.

SECTION \_\_.29. Section 22.083(d), Education Code, is amended to read as follows:

(d) The superintendent of a district or the director of an open-enrollment charter school, private school, regional education service center, or shared services arrangement shall promptly notify the commissioner [~~State Board for Educator Certification~~] in writing if the person obtains or has knowledge of information showing that an applicant for or holder of a certificate issued under Subchapter B, Chapter 21, has a reported criminal history.

SECTION \_\_.30. Sections 22.085 and 22.086, Education Code, are amended to read as follows:

Sec. 22.085. DISCHARGE OF EMPLOYEES CONVICTED OF OFFENSES. A school district, open-enrollment charter school, private school, regional education service center, or shared services arrangement may discharge

an employee if the district or school obtains information of the employee's conviction of a felony or of a misdemeanor involving moral turpitude that the employee did not disclose to the agency [~~State Board for Educator Certification~~] or the district, school, service center, or shared services arrangement. An employee discharged under this section is considered to have been discharged for misconduct for purposes of Section 207.044, Labor Code.

Sec. 22.086. LIABILITY FOR REPORTING OFFENSES. The agency [~~State Board for Educator Certification~~], a school district, an open-enrollment charter school, a private school, a regional education service center, a shared services arrangement, or an employee of the agency [~~board~~], district, school, service center, or shared services arrangement is not civilly or criminally liable for making a report required under this subchapter.

SECTION \_\_.31. Sections 29.061(a)-(c) and (e), Education Code, are amended to read as follows:

(a) The commissioner [~~State Board for Educator Certification~~] shall provide for the issuance of teaching certificates appropriate for bilingual education instruction to teachers who possess a speaking, reading, and writing ability in a language other than English in which bilingual education programs are offered and who meet the general requirements of Chapter 21. The commissioner [~~board~~] shall also provide for the issuance of teaching certificates appropriate for teaching English as a second language. The commissioner [~~board~~] may issue emergency endorsements in bilingual education and in teaching English as a second language.

(b) A teacher assigned to a bilingual education program must be appropriately certified under Subchapter B, Chapter 21, for bilingual education [~~by the board~~].

(c) A teacher assigned to an English as a second language or other special language program must be appropriately certified under Subchapter B, Chapter 21, for English as a second language [~~by the board~~].

(e) The agency [~~State Board for Educator Certification~~] and the Texas Higher Education Coordinating Board shall develop a comprehensive plan for meeting the teacher supply needs created by the programs outlined in this subchapter.

SECTION \_\_.32. Sections 33.002(b) and (c), Education Code, are amended to read as follows:

(b) A school district with 500 or more students enrolled in elementary school grades shall employ a counselor certified under the rules of the commissioner [~~State Board for Educator Certification~~] for each elementary school in the district. A school district shall employ at least one counselor for every 500 elementary school students in the district.

(c) A school district with fewer than 500 students enrolled in elementary school grades shall provide guidance and counseling services to elementary school students by:

(1) employing a part-time counselor certified under the rules of the commissioner [~~State Board for Educator Certification~~];



(2) employing a part-time teacher certified as a counselor under the rules of the commissioner [~~State Board for Educator Certification~~]; or

(3) entering into a shared services arrangement agreement with one or more school districts to share a counselor certified under the rules of the commissioner [~~State Board for Educator Certification~~].

SECTION \_\_.33. Section 37.007(g), Education Code, is amended to read as follows:

(g) A school district shall inform each teacher who has regular contact with a student through a classroom assignment of the conduct of a student who has engaged in any violation listed in this section. A teacher shall keep the information received in this subsection confidential. The commissioner [~~State Board for Educator Certification~~] may revoke or suspend the certification of a teacher who intentionally violates this subsection.

SECTION \_\_.34. Section 61.0514, Education Code, is amended to read as follows:

Sec. 61.0514. INTEGRATED COURSEWORK. The board, with the cooperation and advice of the commissioner of education [~~State Board for Educator Certification~~], shall adopt educator preparation coursework guidelines that promote, to the greatest extent practicable, the integration of subject matter knowledge with classroom teaching strategies and techniques in order to maximize the effectiveness and efficiency of coursework required for certification under Subchapter B, Chapter 21.

SECTION \_\_.35. Section 61.077, Education Code, as amended by Chapters 61, 818, and 820, Acts of the 78th Legislature, Regular Session, 2003, is reenacted and amended to read as follows:

Sec. 61.077. P-16 COUNCIL. (a) The P-16 Council shall advise the Texas Higher Education Coordinating Board and the State Board of Education in coordinating postsecondary career and technology activities, career and technology teacher education programs offered or proposed to be offered in the colleges and universities of this state, and other relevant matters, including those listed in Section 61.076.

(b) The council is composed of the commissioner of education, the commissioner of higher education, and the executive director of the Texas Workforce Commission[, ~~and the executive director of the State Board for Educator Certification~~]. Existing members of the council may appoint additional members as the members consider necessary. The position of presiding officer rotates among the members of the council in the order the members are listed in this subsection, with each member serving as the presiding officer for one two-year term.

(c) The council shall meet at least once each calendar quarter and may hold other meetings as necessary at the call of the presiding officer. Each member of the council or the member's designee shall make a report of the council's activities at least twice annually to the governing body of the member's agency or, in the case of the commissioner of education, to the State Board of Education.

(d) The purposes of this council shall include the following:

(1) to advise the two boards on the coordination of postsecondary career and technology education and the articulation between postsecondary career and technology education and secondary career and technology education;

(2) to facilitate the transfer of responsibilities for the administration of postsecondary career and technology education from the State Board of Education to the board in accordance with Section 111(a)(I) of the Carl D. Perkins Vocational Education Act, Public Law 98-524;

(3) to cooperate with the commissioner of higher education and the State Board of Education, when it acts as the State Board for Career and Technology Education, on the following:

(A) the transfer of federal funds to the board for allotment to eligible public postsecondary institutions of higher education;

(B) the career and technology education funding for projects and institutions as determined by the board when the State Board for Career and Technology Education is required by federal law to endorse such determinations;

(C) the development and updating of the state plan for career and technology education and the evaluation of programs, services, and activities of postsecondary career and technology education and such amendments to the state plan for career and technology education as may relate to postsecondary education;

(D) other matters related to postsecondary career and technology education; and

(E) the coordination of curricula, instructional programs, research, and other functions as appropriate, including areas listed in Section 61.076, school-to-work and school-to-college transition programs, and professional development activities;

(4) to advise the Texas Workforce Investment Council on educational policy issues related to workforce preparation; and

(5) to examine and make recommendations regarding the alignment of secondary and postsecondary education:

(A) curricula; and

(B) testing and assessment.

(e) Subsection (d)(5) does not require the council to establish curriculum or testing or assessment standards.

SECTION \_\_.36. Article 15.27(a), Code of Criminal Procedure, is amended to read as follows:

(a) A law enforcement agency that arrests any person or refers a child to the office or official designated by the juvenile board who the agency believes is enrolled as a student in a public primary or secondary school, for an offense listed in Subsection (h), shall attempt to ascertain whether the person is so enrolled. If the law enforcement agency ascertains that the individual is enrolled as a student in a public primary or secondary school, the agency shall orally notify the superintendent or a person designated by the superintendent in the school district in which the student is enrolled of that arrest or referral within 24 hours after the arrest or referral is made, or on the next school day. If the law enforcement agency cannot ascertain whether the individual is enrolled as a student, the

agency shall orally notify the superintendent or a person designated by the superintendent in the school district in which the student is believed to be enrolled of that arrest or detention within 24 hours after the arrest or detention, or on the next school day. If the individual is a student, the superintendent shall promptly notify all instructional and support personnel who have responsibility for supervision of the student. All personnel shall keep the information received in this subsection confidential. The commissioner of education [~~State Board for Educator Certification~~] may revoke or suspend the certification of personnel who intentionally violate this subsection. Within seven days after the date the oral notice is given, the law enforcement agency shall mail written notification, marked "PERSONAL and CONFIDENTIAL" on the mailing envelope, to the superintendent or the person designated by the superintendent. Both the oral and written notice shall contain sufficient details of the arrest or referral and the acts allegedly committed by the student to enable the superintendent or the superintendent's designee to determine whether there is a reasonable belief that the student has engaged in conduct defined as a felony offense by the Penal Code. The information contained in the notice may be considered by the superintendent or the superintendent's designee in making such a determination.

SECTION \_\_.37. Article 42.018(b), Code of Criminal Procedure, is amended to read as follows:

(b) Not later than the fifth day after the date a person who holds a certificate issued under Subchapter B, Chapter 21, Education Code, is convicted or granted deferred adjudication on the basis of an offense, the clerk of the court in which the conviction or deferred adjudication is entered shall provide to the Texas Education Agency [~~State Board for Educator Certification~~] written notice of the person's conviction or deferred adjudication, including the offense on which the conviction or deferred adjudication was based.

SECTION \_\_.38. Section 411.090, Government Code, is amended to read as follows:

Sec. 411.090. ACCESS TO CRIMINAL HISTORY RECORD INFORMATION: TEXAS EDUCATION AGENCY [~~STATE BOARD FOR EDUCATOR CERTIFICATION~~]. (a) The Texas Education Agency [~~State Board for Educator Certification~~] is entitled to obtain from the department any criminal history record information maintained by the department about a person who has applied to the commissioner of education [~~board~~] for a certificate or holds a certificate under Subchapter B, Chapter 21, Education Code.

(b) Criminal history record information obtained by the agency [~~board~~] under Subsection (a):

(1) may be used for any purpose related to the issuance, denial, suspension, or cancellation of a certificate issued under Subchapter B, Chapter 21, Education Code [~~by the board~~];

(2) may not be released to any other person except on court order or with the consent of the applicant for a certificate; and

(3) shall be destroyed by the agency [~~board~~] after the information is used for the authorized purposes.

SECTION \_\_.39. Section 411.097(d), Government Code, is amended to read as follows:

(d) Criminal history record information obtained by a school district, charter school, private school, service center, commercial transportation company, or shared services arrangement under Subsection (a), (b), or (c) may not be released or disclosed to any person, other than the individual who is the subject of the information, the Texas Education Agency, [~~the State Board for Educator Certification~~], or the chief personnel officer of the transportation company, if the information is obtained under Subsection (a)(2).

SECTION \_\_.40. Section 654.011(a), Government Code, is amended to read as follows:

(a) The position classification plan and the salary rates and provisions in the General Appropriations Act apply to all hourly, part-time, temporary, and regular, full-time salaried employments in the state departments, agencies, or judicial entities specified in the articles of the General Appropriations Act that appropriate money to:

- (1) general government agencies;
- (2) health and human services agencies;
- (3) the judiciary, except for judges, district attorneys, and assistant district attorneys;
- (4) public safety and criminal justice agencies;
- (5) natural resources agencies;
- (6) business and economic development agencies;
- (7) regulatory agencies; and
- (8) agencies of public education, but only the Texas Education Agency, the Texas School for the Blind and Visually Impaired, [~~the State Board for Educator Certification~~], the Telecommunications Infrastructure Fund, and the Texas School for the Deaf.

SECTION \_\_.41. Section 821.001(7), Government Code, is amended to read as follows:

(7) "Employer" means any agents or agencies in the state responsible for public education, including the governing board of any school district created under the laws of this state, any county school board, the board of trustees, the board of regents of any college or university, or any other legally constituted board or agency of any public school, but excluding the State Board of Education and~~[,]~~ the Texas Education Agency~~[, and the State Board for Educator Certification]~~.

SECTION \_\_.42. Section 821.103, Government Code, is amended to read as follows:

Sec. 821.103. REVOCATION [~~CANCELLATION~~] OF TEACHER CERTIFICATE. (a) After receiving notice from the board of trustees of an offense under Section 821.101 and after complying with Chapter 2001 and rules adopted by the commissioner of education [~~State Board for Educator Certification~~], the commissioner [~~State Board for Educator Certification~~] may

revoke ~~[cancel]~~ the teacher certificate of a person if the commissioner ~~[State Board for Educator Certification]~~ determines that the person committed the offense.

(b) The commissioner of education ~~[executive director of the State Board for Educator Certification]~~ may enter into an agreed sanction.

(c) A criminal prosecution of an offender under Section 821.101 is not a prerequisite to action by the commissioner of education ~~[State Board for Educator Certification or its executive director]~~.

SECTION 43. Section 2054.352(a), Government Code, is reenacted and amended to conform to Chapters 553, 1216, and 1275, Acts of the 78th Legislature, Regular Session, 2003, and further amended to read as follows:

(a) The following licensing entities shall participate in the system established under Section 2054.353~~[-, as added by Chapter 353, Acts of the 77th Legislature, Regular Session, 2001]~~:

- (1) State Board of Barber Examiners;
- (2) Texas Board of Chiropractic Examiners;
- (3) Texas Cosmetology Commission;
- (4) Court Reporters Certification Board;
- (5) State Board of Dental Examiners;
- (6) Texas Funeral Service Commission;
- (7) Texas Board of Professional Land Surveying;
- (8) Texas State Board of Medical Examiners;
- (9) Board of Nurse Examiners;
- (10) Texas Optometry Board;
- (11) Texas Structural Pest Control Board;
- (12) Texas State Board of Pharmacy;
- (13) Executive Council of Physical Therapy and Occupational Therapy Examiners;
- (14) Texas State Board of Plumbing Examiners;
- (15) Texas State Board of Podiatric Medical Examiners;
- (16) Board of Tax Professional Examiners;
- (17) Polygraph Examiners Board;
- (18) Texas State Board of Examiners of Psychologists;
- (19) State Board of Veterinary Medical Examiners;
- (20) Texas Real Estate Commission;
- (21) Texas Appraiser Licensing and Certification Board;
- (22) Texas Department of Licensing and Regulation;
- (24) Texas State Board of Public Accountancy;
- (25) Texas Education Agency ~~[State Board for Educator Certification]~~;
- (26) Texas Board of Professional Engineers;
- (27) Texas Department of Health;
- (28) Texas Board of Architectural Examiners;
- (29) Texas Racing Commission;
- (30) Commission on Law Enforcement Officer Standards and Education; and
- (31) Texas Commission on Private Security.

SECTION \_\_.44. Section 2165.104(c), Government Code, is amended to read as follows:

(c) To the extent possible without sacrificing critical public or client services, the commission may not allocate usable office space, as defined by the commission, to a state agency under Article I, II, V, VI, VII, or VIII of the General Appropriations Act or to the Texas Higher Education Coordinating Board, the Texas Education Agency, ~~the State Board for Educator Certification,~~ the Telecommunications Infrastructure Fund Board, or the Office of Court Administration of the Texas Judicial System in an amount that exceeds an average of 135 square feet per agency employee for each agency site. To the extent that any of those agencies allocates its own usable office space, as defined by the commission, the agency shall allocate the space to achieve the required ratio. This subsection does not apply to:

(1) an agency site at which there are so few employees that it is not practical to apply this subsection to that site, as determined by the commission; and

(2) an agency site at which it is not practical to apply this subsection because of the site's type of space or use of space, as determined by the commission.

SECTION \_\_.45. Section 504.002(b), Occupations Code, is amended to read as follows:

(b) This chapter does not apply to an activity or service of a person who:

(1) is employed as a counselor by a federal institution and is providing chemical dependency counseling within the scope of the person's employment;

(2) except as provided by Section 504.057, is a student, intern, or trainee pursuing a supervised course of study in counseling at a regionally accredited institution of higher education or training institution, if the person:

(A) is designated as a "counselor intern"; and

(B) is engaging in the activity or providing the service as part of the course of study;

(3) is not a resident of this state, if the person:

(A) engages in the activity or provides the service in this state for not more than 30 days during any year; and

(B) is authorized to engage in the activity or provide the service under the law of the state of the person's residence;

(4) is a licensed physician, psychologist, professional counselor, or social worker;

(5) is a religious leader of a congregation providing pastoral chemical dependency counseling within the scope of the person's duties;

(6) is working for or providing counseling with a program exempt under Subchapter C, Chapter 464, Health and Safety Code; or

(7) is a school counselor certified under Subchapter B, Chapter 21, Education Code ~~[by the State Board for Educator Certification]~~.

SECTION \_\_.46. Sections 21.032, 21.033, 21.034, 21.035, 21.036, 21.037, 21.038, 21.039, 21.040, 21.042, and 21.043, Education Code, are repealed.

SECTION \_\_.47. (a) The State Board for Educator Certification is abolished, and all powers, duties, personnel, property, assets, and obligations of the board are transferred to the Texas Education Agency. The validity of a prior action of the State Board for Educator Certification is not affected by the abolishment, and any pending activities of the State Board for Educator Certification shall be deemed to have continued without interruption or material change.

(b) All rules of the State Board for Educator Certification relating to a transferred power or duty remain in effect as rules of the commissioner of education until amended or repealed by the commissioner.

(c) A contested case, rulemaking procedure, program, test, fee, contract, review, evaluation, sanction, act, or decision of the State Board for Educator Certification that is pending, completed, or in effect on the effective date of this article shall be deemed that of the commissioner of education to the extent authorized by Subchapter B, Chapter 21, Education Code, as amended by this article, or other law, until and unless a change is expressly made by the commissioner.

(d) A person who holds a certificate issued under Subchapter B, Chapter 21, Education Code, as it existed on January 1, 2005, may continue to practice under that certificate until the certificate is renewed or replaced under Subchapter B, Chapter 21, Education Code, as amended by this article.

(e) The code of ethics adopted under Subchapter B, Chapter 21, Education Code, by the State Board for Educator Certification and in effect on the effective date of this article remains in effect until superseded by rules of the commissioner of education.

Amendment No. 3 was adopted.

#### **Amendment No. 4**

Representative Grusendorf offered the following amendment to **CSSB 422**:

Amend **CSSB 422** as follows:

(1) Strike Sections 1.18 and 1.19 of the bill (house committee report, page 26, line 3, through page 27, line 2).

(2) In Section 1.36 of the bill (house committee report, page 55, lines 21 and 22), strike "Subsections (d) and (e), Section 31.1011,".

(3) Between Articles 2 and 3 of the bill (house committee report, page 92, between lines 8 and 9), insert the following new article, appropriately numbered, and renumber the subsequent articles accordingly:

#### **ARTICLE \_\_. USE OF TECHNOLOGY IN PUBLIC SCHOOLS AND ACQUISITION OF INSTRUCTIONAL MATERIALS**

SECTION \_\_.01. Subchapter B, Chapter 7, Education Code, is amended by adding Section 7.030 to read as follows:

Sec. 7.030. REVIEW OF STATE- AND FEDERALLY-FUNDED GRANT PROGRAMS. (a) The agency shall conduct a review of state- and federally-funded grant programs and incentives designed to improve student academic performance and shall actively determine the full extent to which funds awarded under those programs may be used to enhance or expand the use of

technology in public schools. For purposes of removing barriers to and encouraging the use of technology in public schools, the commissioner may, as appropriate, issue a waiver to one or more schools.

(b) Not later than December 1, 2006, the agency shall submit a report regarding the findings of the review conducted under this section to the legislature. The report must include a summary of promising practices for current grant programs that leverage technology. This section expires January 15, 2007.

SECTION \_\_\_\_\_.02. Section 7.055(b)(28), Education Code, is amended to read as follows:

(28) The commissioner shall perform duties relating to the funding, adoption, and purchase of instructional materials [~~textbooks~~] under Chapter 31.

SECTION \_\_\_\_\_.03. Section 7.056(f), Education Code, is amended to read as follows:

(f) A school district or campus that is required to develop and implement a student achievement improvement plan under Section 39.131 or 39.132 may receive an exemption or waiver under this section from any law or rule other than:

- (1) a prohibition on conduct that constitutes a criminal offense;
- (2) a requirement imposed by federal law or rule;
- (3) a requirement, restriction, or prohibition imposed by state law or rule relating to:

(A) public school accountability as provided by Subchapters B, C, D, and G, Chapter 39; or

(B) educator rights and benefits under Subchapters A, C, D, E, F, G, and I, Chapter 21, or under Subchapter A, Chapter 22; or

- (4) [~~textbook~~] selection of instructional materials under Chapter 31.

SECTION \_\_\_\_\_.04. Section 7.102(c)(23), Education Code, is amended to read as follows:

(23) The board shall adopt and purchase or license instructional materials [~~textbooks~~] as provided by Chapter 31 and adopt rules required by that chapter.

SECTION \_\_\_\_\_.05. Sections 7.108(a) and (c), Education Code, are amended to read as follows:

(a) A person interested in selling bonds of any type or a person engaged in manufacturing, shipping, selling, or advertising instructional materials [~~textbooks~~] or otherwise connected with the instructional material [~~textbook~~] business commits an offense if the person makes or authorizes a political contribution to or takes part in, directly or indirectly, the campaign of any person seeking election to or serving on the board.

(c) In this section:

(1) "Instructional material" has the meaning assigned by Section 31.002.

(2) "Political contribution" has the meaning assigned by Section 251.001, Election Code.

~~(2) "Textbook" has the meaning assigned by Section 31.002.]~~



SECTION \_\_\_\_ .06. The heading to Section 7.112, Education Code, is amended to read as follows:

Sec. 7.112. REPRESENTATION OF [~~TEXTBOOK~~] PUBLISHER OF INSTRUCTIONAL MATERIALS BY FORMER MEMBER OF BOARD.

SECTION \_\_\_\_ .07. Section 7.112(a), Education Code, is amended to read as follows:

(a) A former member of the State Board of Education who is employed by or otherwise receives compensation from a [~~textbook~~] publisher of instructional materials may not, before the second anniversary of the date on which the person last served as a member of the State Board of Education:

(1) confer with a member of the board of trustees of a school district concerning instructional materials [~~a textbook~~] published by that [~~textbook~~] publisher; or

(2) appear at a meeting of the board of trustees on behalf of the [~~textbook~~] publisher.

SECTION \_\_\_\_ .08. Section 7.112(c)(2), Education Code, is amended to read as follows:

(2) "Instructional material" and "publisher" [~~"Publisher" and "textbook"~~] have the meanings assigned by Section 31.002.

SECTION \_\_\_\_ .09. Section 11.158(b), Education Code, is amended to read as follows:

(b) The board may not charge fees for:

(1) instructional materials [~~textbooks~~], workbooks, laboratory supplies, or other supplies necessary for participation in any instructional course except as authorized under this code;

(2) field trips required as a part of a basic education program or course;

(3) any specific form of dress necessary for any required educational program or diplomas;

(4) the payment of instructional costs for necessary school personnel employed in any course or educational program required for graduation;

(5) library materials [~~books~~] required to be used for any educational course or program, other than fines for lost, damaged, or overdue materials [~~books~~];

(6) admission to any activity the student is required to attend as a prerequisite to graduation;

(7) admission to or examination in any required educational course or program; or

(8) lockers.

SECTION \_\_\_\_ .10. Section 11.164(a), Education Code, is amended to read as follows:

(a) The board of trustees of each school district shall limit redundant requests for information and the number and length of written reports that a classroom teacher is required to prepare. A classroom teacher may not be required to prepare any written information other than:

(1) any report concerning the health, safety, or welfare of a student;

(2) a report of a student's grade on an assignment or examination;

- (3) a report of a student's academic progress in a class or course;
- (4) a report of a student's grades at the end of each grade reporting period;
- (5) a [~~textbook~~] report on instructional materials;
- (6) a unit or weekly lesson plan that outlines, in a brief and general manner, the information to be presented during each period at the secondary level or in each subject or topic at the elementary level;
- (7) an attendance report;
- (8) any report required for accreditation review;
- (9) any information required by a school district that relates to a complaint, grievance, or actual or potential litigation and that requires the classroom teacher's involvement; or
- (10) any information specifically required by law, rule, or regulation.

SECTION \_\_\_\_ .11. Section 19.007(e), Education Code, is amended to read as follows:

(e) The district may participate in the instructional materials [~~textbook~~] program under Chapter 31.

SECTION \_\_\_\_ .12. Sections 26.006(a) and (c), Education Code, are amended to read as follows:

(a) A parent is entitled to:

- (1) review all teaching materials, instructional materials [~~textbooks~~], and other teaching aids used in the classroom of the parent's child; and
- (2) review each test administered to the parent's child after the test is administered.

(c) A student's parent is entitled to request that the public school [~~district or open enrollment charter school~~] the student attends allow the student to take home any instructional materials [~~textbook~~] used by the student. Subject to the availability of the instructional materials [~~a textbook~~], the [~~district or~~] school shall honor the request. A student who takes home instructional materials [~~a textbook~~] must return the instructional materials [~~textbook~~] to school at the beginning of the next school day if requested to do so by the student's teacher. In this subsection, "instructional material" [~~"textbook"~~] has the meaning assigned by Section 31.002.

SECTION \_\_\_\_ .13. Sections 28.002(c) and (h), Education Code, are amended to read as follows:

(c) The State Board of Education, with the direct participation of educators, parents, business and industry representatives, and employers shall by rule identify the essential knowledge and skills of each subject of the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials [~~textbooks~~] under Chapter 31 and addressed on the assessment instruments required under Subchapter B, Chapter 39. As a condition of accreditation, the board shall require each district to provide instruction in the essential knowledge and skills at appropriate grade levels.

(h) The State Board of Education and each school district shall foster the continuation of the tradition of teaching United States and Texas history and the free enterprise system in regular subject matter and in reading courses and in the adoption of instructional materials [~~textbooks~~]. A primary purpose of the public

school curriculum is to prepare thoughtful, active citizens who understand the importance of patriotism and can function productively in a free enterprise society with appreciation for the basic democratic values of our state and national heritage.

SECTION \_\_\_\_ .14. Subchapter A, Chapter 28, Education Code, is amended by adding Section 28.010 to read as follows:

Sec. 28.010. COMPUTER-ADAPTIVE ASSESSMENT TOOLS. (a) The agency shall develop or acquire ongoing, computer-adaptive, interactive, assessment tools for each subject and grade level for which an assessment instrument is adopted under Section 39.023.

(b) From funds appropriated for the purpose, the agency shall make assessment tools developed or acquired under this section available to public schools at no cost.

SECTION \_\_\_\_ .15. The heading to Chapter 31, Education Code, is amended to read as follows:

CHAPTER 31. INSTRUCTIONAL MATERIALS [~~TEXTBOOKS~~]

SECTION \_\_\_\_ .16. Section 31.001, Education Code, is amended to read as follows:

Sec. 31.001. FREE INSTRUCTIONAL MATERIALS [~~TEXTBOOKS~~]. Instructional materials [~~Textbooks~~] selected for use in the public schools shall be furnished without cost to the students attending those schools in accordance with Section 3(b), Article VII, Texas Constitution.

SECTION \_\_\_\_ .17. Sections 31.002(1), (2), and (4), Education Code, are amended to read as follows:

(1) "Instructional material" [~~"Electronic textbook"~~] means a medium for conveying information to a student. The term includes a book, supplementary materials, a combination of a book and supplementary materials, computer software, interactive videodisc, magnetic media, CD-ROM, computer courseware, on-line services, an electronic medium, or other means of conveying information to the student or otherwise contributing to the learning process through electronic means.

(2) "Publisher" means a person who prepares instructional materials for sale or distribution to educational institutions. The term includes an on-line service or a developer or distributor of [am] electronic instructional materials [~~textbook~~].

(4) "Technological equipment" means hardware, a device, or equipment necessary for:

(A) instructional use in the classroom, including to gain access to or enhance the use of [am] electronic instructional materials [~~textbook~~]; or

(B) professional use by a classroom teacher.

SECTION \_\_\_\_ .18. Section 31.003, Education Code, is amended to read as follows:

Sec. 31.003. RULES. The State Board of Education may adopt rules, consistent with this chapter, for the approval [~~adoption~~], requisition, distribution, care, use, and disposal of instructional materials [~~textbooks~~].

SECTION \_\_\_\_ .19. The heading to Subchapter B, Chapter 31, Education Code, is amended to read as follows:

SUBCHAPTER B. STATE APPROVAL  
[FUNDING, ADOPTION, AND PURCHASE]

SECTION \_\_\_\_ .20. Subchapter B, Chapter 31, Education Code, is amended by adding Sections 31.0251 and 31.0252 to read as follows:

Sec. 31.0251. SUBMISSION OF INSTRUCTIONAL MATERIALS; AGENCY REVIEW. (a) A publisher may at any time submit an instructional material to the State Board of Education for approval. As part of a submission, a publisher must include a statement that identifies in writing the essential knowledge and skills for a subject and grade level as determined by the board under Section 28.002 that the instructional material covers.

(b) The agency shall:

- (1) promptly review each instructional material submitted for approval;
- and
- (2) determine whether the instructional material covers the essential knowledge and skills identified in the submission.

Sec. 31.0252. APPROVAL BY STATE BOARD OF EDUCATION. (a) The State Board of Education shall meet quarterly to approve instructional materials submitted under Section 31.0251. The board must approve or reject each submitted instructional material not later than the second meeting held under this section after the date the instructional material was submitted.

(b) By majority vote, the State Board of Education shall approve an instructional material submitted under Section 31.0251 unless the board determines, based on the agency's review or the board's own review, that the instructional material does not contain the essential knowledge and skills identified by the publisher in the submission. The board shall identify the essential knowledge and skills for a subject and grade level that an approved instructional material covers.

(c) Each approved instructional material must be free from factual errors.

(d) For each subject and grade level, the board shall list the approved instructional materials. The board shall periodically:

- (1) review each list of approved instructional materials; and
- (2) by majority vote, remove approved instructional materials that the board determines no longer adequately cover the appropriate essential knowledge and skills.

SECTION \_\_\_\_ .21. Sections 31.026-31.030, Education Code, are amended to read as follows:

Sec. 31.026. CONTRACT; PRICE. (a) The Department of Information Resources may [State Board of Education shall] execute a contract[+:

- [(1)] for the purchase or licensing of each approved instructional material [adopted textbook other than an electronic textbook; and
- [(2)] for the purchase or licensing of each adopted electronic textbook].

(b) A contract must require the publisher to provide all of the approved instructional materials ~~[the number of textbooks]~~ required by public schools ~~[school districts]~~ in this state for the term of the contract~~[, which must coincide with the board's adoption cycle].~~

(c) As applicable, a contract must provide for the purchase or licensing of instructional materials ~~[a textbook]~~ at a [specific] price determined through negotiation between the publisher and the Department of Information Resources that does ~~[, which may]~~ not exceed the lowest price paid by any other state or any school or school district. The price must be fixed for the term of the contract.

(d) The Department of Information Resources shall execute a blanket purchase order with the publisher of an approved instructional material. A school district or open-enrollment charter school may requisition instructional materials under the purchase order.

(e) The agency and the Department of Information Resources shall enter into an interagency contract specifying each agency's duties regarding the purchasing and licensing of instructional materials.

(f) The contract may allow the publisher of an approved instructional material to update the material as provided by Section 31.032.

Sec. 31.027. INFORMATION TO PUBLIC SCHOOLS ~~[SCHOOL DISTRICTS]~~; SAMPLE COPIES. (a) A publisher shall provide each public school ~~[district and open-enrollment charter school]~~ with information that fully describes each of the publisher's approved instructional materials. ~~[adopted textbooks. On request of a school district, a publisher shall provide a sample copy of an adopted textbook.]~~

(b) A publisher shall provide at least two sample copies of each approved instructional material ~~[adopted textbook]~~ to be maintained at each regional education service center.

Sec. 31.028. SPECIAL INSTRUCTIONAL MATERIALS ~~[TEXTBOOKS]~~. (a) The State Board of Education may provide for ~~[purchase]~~ special instructional materials ~~[textbooks]~~ for the education of blind and visually impaired students in public schools. In addition, for a teacher who is blind or visually impaired, the board shall provide a teacher's edition in Braille or large type, as requested by the teacher, for each printed instructional material ~~[textbook]~~ the teacher uses in the instruction of students. The printed teacher edition must be available at the same time the printed student instructional materials ~~[textbooks]~~ become available.

(b) The publisher of an approved printed instructional material ~~[adopted textbook]~~ shall provide the agency with computerized ~~[textbook]~~ files for the production of Braille instructional materials ~~[textbooks]~~ or other versions of instructional materials ~~[textbooks]~~ to be used by students with disabilities, on request of the State Board of Education. A publisher shall arrange the computerized ~~[textbook]~~ files in one of several optional formats specified by the State Board of Education.

(c) The board shall require electronic instructional materials submitted for approval under Section 31.0251 to comply with the standards established under Section 508, Rehabilitation Act of 1973 (29 U.S.C. Section 794d) ~~[may also enter~~

~~into agreements providing for the acceptance, requisition, and distribution of special textbooks and instructional aids pursuant to 20 U.S.C. Section 101 et seq.]~~  
for use by students enrolled in:

- (1) public schools; or
- (2) private nonprofit schools, if state funds, other than for administrative costs, are not involved.

(d) In this section:

(1) "Blind or visually impaired student" includes any student whose visual acuity is impaired to the extent that the student is unable to read the ~~text~~ ~~[print]~~ in ~~[a]~~ regularly approved instructional materials ~~[adopted textbook]~~ used in the student's class.

(2) "Special instructional materials" ~~[textbook]~~ means instructional materials ~~[a textbook]~~ in Braille, large type or any other medium or any apparatus that conveys information to a student or otherwise contributes to the learning process.

Sec. 31.029. BILINGUAL INSTRUCTIONAL MATERIALS ~~[TEXTBOOKS]~~. The board shall approve instructional materials ~~[purchase or otherwise acquire textbooks]~~ for use in bilingual education classes.

Sec. 31.030. USED INSTRUCTIONAL MATERIALS ~~[TEXTBOOKS]~~. The State Board of Education shall adopt rules to ensure that used instructional materials ~~[textbooks]~~ sold to school districts and open-enrollment charter schools are not sample copies that contain factual errors. The rules may provide for the imposition of an administrative penalty in accordance with Section 31.151 against a seller of used instructional materials ~~[textbooks]~~ who knowingly violates this section.

SECTION \_\_\_\_ .22. Subchapter B, Chapter 31, Education Code, is amended by adding Sections 31.031 and 31.032 to read as follows:

Sec. 31.031. SUBSCRIPTION-BASED ELECTRONIC INSTRUCTIONAL MATERIALS. The publisher of an approved electronic instructional material may offer the material to public schools on an annual subscription basis.

Sec. 31.032. UPDATING INSTRUCTIONAL MATERIALS. The publisher of an approved instructional material may, under the terms of a contract under Section 31.026, update the instructional material. The State Board of Education by rule shall provide for an expedited review process to determine the extent to which an updated instructional material:

(1) is aligned with the essential knowledge and skills for the subject and grade level; and

(2) does not contain factual errors.

SECTION \_\_\_\_ .23. Subchapter C, Chapter 31, Education Code, is amended by adding Sections 31.1012 and 31.1013 to read as follows:

Sec. 31.1012. LOCAL SELECTION AND PURCHASE. (a) A school district or open-enrollment charter school shall:

(1) select the instructional materials to be used by the district or school;  
and

(2) using funds allotted under Section 32.005 or other funds that may be used for the purpose, purchase those materials:

(A) directly from the publisher of the materials; or

(B) through the Department of Information Resources.

(b) A school district or open-enrollment charter school is not required to select an instructional material that is approved by the State Board of Education.

Sec. 31.1013. CERTIFICATION OF PROVISION OF INSTRUCTIONAL MATERIALS. Each school district and open-enrollment charter school shall annually certify to the agency that, for each subject in the required curriculum and each grade level, the district or school provides each student with instructional materials that are aligned with the essential knowledge and skills adopted by the State Board of Education for that subject and grade level.

SECTION \_\_\_\_ .24. Section 31.102, Education Code, is amended to read as follows:

Sec. 31.102. TITLE AND CUSTODY. (a) Each instructional material ~~[textbook]~~ purchased as provided by this chapter is the property of this state.

(b) Subsection (a) applies to an electronic instructional material ~~[textbook]~~ only to the extent of any applicable licensing agreement.

(c) The board of trustees of a school district or the governing body of an open-enrollment charter school is the legal custodian of instructional materials ~~[textbooks]~~ purchased as provided by this chapter for the district or school. The board of trustees or governing body shall distribute instructional materials ~~[textbooks]~~ to students in the manner that the board or governing body determines is most effective and economical.

SECTION \_\_\_\_ .25. Sections 31.104-31.106, Education Code, are amended to read as follows:

Sec. 31.104. DISTRIBUTION AND HANDLING. (a) The board of trustees of a school district or the governing body of an open-enrollment charter school may delegate to an employee the authority to requisition, distribute, and manage the inventory of instructional materials ~~[textbooks]~~ in a manner consistent with this chapter and rules adopted under this chapter.

(b) A school district or open-enrollment charter school may order replacements for instructional materials ~~[textbooks]~~ that have been lost or damaged directly from[=

~~(1) the textbook depository; or~~

~~(2) the [textbook] publisher of the instructional materials [or manufacturer if the textbook publisher or manufacturer does not have a designated textbook depository in this state under Section 31.151(a)(6)(B)].~~

(c) Each instructional material ~~[textbook]~~ must state that the instructional material ~~[textbook]~~ is the property of or is licensed to this state, as appropriate. The board may require the publisher of a textbook that must be returned by a student under Subsection (d) to place a bar code with a unique identifying number on the textbook. Each instructional material ~~[textbook]~~, other than an electronic instructional material ~~[textbook]~~, must be covered by the student under

the direction of the teacher. A student must return all instructional materials [~~textbooks~~] to the teacher at the end of the school year or when the student withdraws from school.

(d) Each student, or the student's parent or guardian, is responsible for each instructional material [~~textbook~~] not returned by the student. A student who fails to return all instructional materials [~~textbooks~~] forfeits the right to free instructional materials [~~textbooks~~] until each instructional material [~~textbook~~] previously issued but not returned is paid for by the student, parent, or guardian. As provided by policy of the board of trustees or governing body, a school district or open-enrollment charter school may waive or reduce the payment requirement if the student is from a low-income family. The district or school shall allow the student to use instructional materials [~~textbooks~~] at school during each school day. If an instructional material [~~a textbook~~] is not returned or paid for, the district or school may withhold the student's records. A district or school may not, under this subsection, prevent a student from graduating, participating in a graduation ceremony, or receiving a diploma.

(e) The board of trustees of a school district may not require an employee of the district to pay for an instructional material [~~a textbook~~] or instructional technology that is stolen, misplaced, or not returned by a student.

Sec. 31.105. SALE, EXCHANGE, OR LOAN OF INSTRUCTIONAL MATERIALS [~~TEXTBOOKS~~]. (a) The board of trustees of a school district or governing body of an open-enrollment charter school may sell instructional materials [~~textbooks~~], other than electronic instructional materials [~~textbooks~~], to a student or another school at a [~~the state contract~~] price determined by board rule. Money [~~The district shall send money~~] from the sale of instructional materials may be used only to purchase items that may be purchased lawfully using the allotment provided by Section 32.005.

(b) Subject to any applicable licensing agreement, the board of trustees of a school district or governing body of an open-enrollment charter school may:

(1) exchange instructional materials with another school district or open-enrollment charter school; or

(2) loan instructional materials to another school district or open-enrollment charter school [~~textbooks to the commissioner as required by the commissioner. The commissioner shall deposit the money in the state textbook fund~~].

Sec. 31.106. USE OF LOCAL FUNDS. A [~~In addition to any textbook selected under this chapter, a~~] school district or open-enrollment charter school may use local funds to purchase any instructional materials [~~textbooks~~].

SECTION \_\_\_\_\_.26. The heading to Section 31.151, Education Code, is amended to read as follows:

Sec. 31.151. DUTIES OF PUBLISHERS [~~AND MANUFACTURERS~~].

SECTION \_\_\_\_\_.27. Sections 31.151(a), (b), and (d), Education Code, are amended to read as follows:

(a) A publisher [~~or manufacturer~~] of instructional materials [~~textbooks~~]:



(1) shall furnish any instructional material [~~textbook~~] the publisher [~~or manufacturer~~] offers in this state[;] at a price that does not exceed the lowest price at which the publisher offers that instructional material [~~textbook~~] for adoption or sale to any state, public school, or school district in the United States;

(2) shall automatically reduce the price of an instructional material [~~a textbook~~] sold for use in a public school [~~district or open enrollment charter school~~] to the extent that the price is reduced elsewhere in the United States;

(3) shall provide any instructional material [~~textbook~~] or ancillary item free of charge in this state to the same extent that the publisher [~~or manufacturer~~] provides the instructional material [~~textbook~~] or ancillary item free of charge to any state, public school, or school district in the United States;

(4) shall guarantee that each copy of an instructional material [~~a textbook~~] sold in this state is at least equal in quality to copies of that instructional material [~~textbook~~] sold elsewhere in the United States and is free from factual error;

(5) may not become associated or connected with, directly or indirectly, any combination in restraint of trade in instructional materials [~~textbooks~~] or enter into any understanding or combination to control prices or restrict competition in the sale of instructional materials [~~textbooks~~] for use in this state;

(6) shall[;]

~~[(A) maintain a depository in this state or arrange with a depository in this state to receive and fill orders for textbooks, other than on line textbooks or on line textbook components, consistent with State Board of Education rules; or~~

~~[(B) deliver instructional materials [~~textbooks~~] to a public school [~~district or open enrollment charter school~~] without a delivery charge to the school [~~district, open enrollment charter school,~~] or state[; if:~~

~~[(i) the publisher or manufacturer does not maintain or arrange with a depository in this state under Paragraph (A) and the publisher's or manufacturer's textbooks and related products are warehoused or otherwise stored less than 300 miles from a border of this state; or~~

~~[(ii) the textbooks are on line textbooks or on line textbook components];~~

(7) shall, at the time an order for instructional materials [~~textbooks~~] is acknowledged, provide to public [~~school districts or open enrollment charter~~] schools an accurate shipping date for instructional materials [~~textbooks~~] that are back-ordered;

(8) shall guarantee delivery of instructional materials [~~textbooks~~] at least 10 business days before the opening day of school of the year for which the instructional materials [~~textbooks~~] are ordered if the instructional materials [~~textbooks~~] are ordered by a date specified in the sales contract; and

(9) shall submit to the State Board of Education an affidavit certifying any instructional material [~~textbook~~] the publisher [~~or manufacturer~~] offers in this state to be free of factual errors at the time the publisher executes the contract required by Section 31.026.

(b) The State Board of Education may impose a reasonable administrative penalty against a publisher [~~or manufacturer~~] who knowingly violates Subsection (a). The board shall provide for a hearing to be held to determine whether a penalty is to be imposed and, if so, the amount of the penalty. The board shall base the amount of the penalty on:

- (1) the seriousness of the violation;
- (2) any history of a previous violation;
- (3) the amount necessary to deter a future violation;
- (4) any effort to correct the violation; and
- (5) any other matter justice requires.

(d) A penalty collected under this section shall be deposited to the credit of the foundation school [~~state textbook~~] fund.

SECTION \_\_\_\_.28. The heading to Section 31.152, Education Code, is amended to read as follows:

Sec. 31.152. ACCEPTING REBATE ON INSTRUCTIONAL MATERIALS [~~TEXTBOOKS~~].

SECTION \_\_\_\_.29. Sections 31.152(a), (b), and (d), Education Code, are amended to read as follows:

(a) A school trustee, administrator, or teacher commits an offense if that person receives any commission or rebate on any instructional materials [~~textbooks~~] used in the schools with which the person is associated as a trustee, administrator, or teacher.

(b) A school trustee, administrator, or teacher commits an offense if the person accepts a gift, favor, or service that:

- (1) is given to the person or the person's school;
- (2) might reasonably tend to influence a trustee, administrator, or teacher in the selection of instructional materials [~~a textbook~~]; and
- (3) could not be lawfully purchased with state instructional materials funds [~~from the state textbook fund~~].

(d) In this section, "gift, favor, or service" does not include:

- (1) staff development, in-service, or teacher training; or
- (2) ancillary [~~instructional~~] materials, such as maps or worksheets, that convey information to the student or otherwise contribute to the learning process.

SECTION \_\_\_\_.30. The heading to Section 31.153, Education Code, is amended to read as follows:

Sec. 31.153. VIOLATION OF FREE INSTRUCTIONAL MATERIALS [~~TEXTBOOK~~] LAW.

SECTION \_\_\_\_.31. Section 31.153(a), Education Code, is amended to read as follows:

(a) A person commits an offense if the person knowingly violates any law providing for the purchase or distribution of free instructional materials [~~textbooks~~] for the public schools.

SECTION \_\_\_\_.32. Subchapter E, Chapter 31, Education Code, is amended to read as follows:

SUBCHAPTER E. DISPOSITION OF  
INSTRUCTIONAL MATERIALS [TEXTBOOKS]

Sec. 31.201. DISPOSITION OF INSTRUCTIONAL MATERIALS [TEXTBOOKS]. (a) The commissioner, with the approval of the State Board of Education, may provide for the disposition of:

(1) instructional materials [textbooks], other than electronic instructional materials [textbooks], that are no longer in acceptable condition to be used for instructional purposes; or

(2) discontinued instructional materials [textbooks], other than electronic instructional materials [textbooks].

(b) The commissioner, as provided by rules adopted by the State Board of Education, shall make available on request copies of discontinued instructional materials [textbooks], other than electronic instructional materials [textbooks], for use in libraries maintained in municipal and county jails and facilities of the institutional division of the Texas Department of Criminal Justice and other state agencies.

(c) The State Board of Education shall adopt rules under which a public school [district or open enrollment charter school] may donate discontinued instructional materials [textbooks], other than electronic instructional materials [textbooks], to a student, to an adult education program, or to a nonprofit organization.

SECTION \_\_\_\_ .33. Subchapter A, Chapter 32, Education Code, is amended by adding Section 32.0011 to read as follows:

Sec. 32.0011. ADVISORY COMMITTEE FOR TECHNOLOGY AND IMPLEMENTATION. (a) The commissioner, in consultation with the lieutenant governor, the speaker of the house of representatives, and the presiding officers of the standing committees of the senate and the house of representatives with jurisdiction over the agency, shall appoint an advisory committee of business, education, and public members to assist the agency and permit the agency to monitor changing technology in business, industry, and education.

(b) The advisory committee is subject to Chapters 551 and 552, Government Code.

SECTION \_\_\_\_ .34. Sections 32.002 and 32.003, Education Code, are amended to read as follows:

Sec. 32.002. AUTHORITY OF PUBLIC SCHOOL [DISTRICT]. A public school [district] is not required by this subchapter to acquire or use technology that has been approved, selected, or contracted for by the State Board of Education or the commissioner.

Sec. 32.003. AUTHORITY OF COMMISSIONER TO CONTRACT. The commissioner may contract with developers of technology to supply technology for use by public schools [school districts] throughout this state.

SECTION \_\_\_\_ .35. The heading to Section 32.005, Education Code, is amended to read as follows:

Sec. 32.005. INSTRUCTIONAL MATERIALS AND TECHNOLOGY ALLOTMENT.

SECTION \_\_\_\_\_.36. Effective September 1, 2005, Section 32.005, Education Code, is amended by amending Subsections (a) and (b) and adding Subsection (a-1) to read as follows:

(a) Each school district or open-enrollment charter school is entitled to an allotment of \$70 [~~\$30~~] for each student in average daily attendance or a different amount for any year provided by appropriation.

(a-1) From the funds a school district receives under Subsection (a), the district shall use an amount equal to \$40 for each student in average daily attendance to fund targeted technology programs under Section 32.006. A school district shall use funds for targeted technology programs in a manner that allows each student and teacher assigned to a targeted campus, grade level on a campus, or specific educational program to benefit from a targeted technology program. The commissioner shall adopt rules concerning the use of funds under this subsection. This subsection expires September 1, 2006.

(b) An allotment under this section may be used only to:

(1) provide for the purchase by school districts and open-enrollment charter schools of instructional materials [~~electronic textbooks~~] or technological equipment that contributes to student learning; and

(2) pay for training educational personnel directly involved in student learning in the appropriate use of electronic instructional materials [~~textbooks~~] and for providing for access to technological equipment for instructional use.

SECTION \_\_\_\_\_.37. Effective September 1, 2006, Section 32.005, Education Code, is amended by amending Subsection (a) and adding Subsection (a-1) to read as follows:

(a) Each school district or open-enrollment charter school is entitled to an allotment of \$150 [~~\$30~~] for each student in average daily attendance or a different amount for any year provided by appropriation.

(a-1) From the funds a school district receives under Subsection (a), the district shall use an amount equal to \$60 for each student in average daily attendance to fund targeted technology programs under Section 32.006. A school district shall use funds for targeted technology programs in a manner that allows each student and teacher assigned to a targeted campus, grade level on a campus, or specific educational program to benefit from a targeted technology program. The commissioner shall adopt rules concerning the use of funds under this subsection.

SECTION \_\_\_\_\_.38. Subchapter A, Chapter 32, Education Code, is amended by adding Sections 32.006 and 32.007 to read as follows:

Sec. 32.006. TARGETED TECHNOLOGY PROGRAMS. (a) Each school district shall use funds designated for targeted technology programs under Section 32.005(a-1) in accordance with this section and in a manner consistent with the long-range plan developed by the State Board of Education under Section 32.001 and the district's own technology plan. A school district may use funds from other sources, including grants, donations, and state and federal funds, to provide targeted technology programs.

(b) A targeted technology program must provide for each student and teacher at a targeted campus or grade level on a targeted campus:

- (1) the provision of:
- (A) wireless electronic mobile computing devices;
  - (B) productivity software and hardware, including writing, computation, presentation, printing, and communication tools;
  - (C) electronic learning software aligned with the essential knowledge and skills adopted by the State Board of Education under Section 28.002;
  - (D) library and other research tools;
  - (E) electronic assessment tools;
  - (F) electronic learning tools to improve communications among students, teachers, school administrators, parents, and the community; and
  - (G) classroom management systems;
- (2) professional development for teachers to integrate the tools and solutions described by Subdivision (1); or
- (3) the provision of other infrastructure, components, and technologies to support and enhance student performance through individual instruction programs.

(c) The Legislative Budget Board shall:

(1) conduct a biennial study of the cost of school district targeted technology programs, including the cost of implementing those programs on a statewide basis; and

(2) based on the results of the study required by Subdivision (1), make recommendations to the legislature before the beginning of each regular session of the legislature concerning statewide implementation of targeted technology programs.

(d) Each biennium, the Legislative Budget Board and the commissioner shall jointly conduct a performance evaluation of school district targeted technology programs.

Sec. 32.007. AGREEMENT WITH PUBLIC BROADCASTING STATION. (a) The commissioner may enter into an agreement with a public broadcasting station, or a consortium of public broadcasting stations, under which the station or consortium will provide online instructional content and educational materials.

(b) From funds appropriated to the agency, the commissioner may, under an agreement entered into under Subsection (a), make instructional materials available through public broadcasting stations for purposes of instruction and professional development and for use in providing adult-based education.

(c) An agreement entered into under Subsection (a) must, to the extent practicable, provide access to instructional materials and online content to persons located in all parts of this state.

(d) For purposes of providing high-quality online instructional materials under this section, the commissioner may:

- (1) use federal funds that may be used for those purposes; or
- (2) use unexpended balances of funds appropriated to the agency for educational purposes, including adult education.

SECTION \_\_\_\_39. Section 32.156, Education Code, as added by Chapter 1216, Acts of the 78th Legislature, Regular Session, 2003, is amended to read as follows:

Sec. 32.156. ON-LINE INSTRUCTIONAL MATERIALS [~~TEXTBOOKS~~]. (a) The agency may develop and adopt strategies for making instructional materials [~~textbooks~~] available through the portal or through other means in an electronic format as an alternative or supplement to traditional instructional materials [~~textbooks~~].

(b) In developing and adopting strategies under this section, the agency shall seek to achieve a system under which a student may, in addition to [~~a~~] traditional instructional materials [~~textbook~~], be provided with secure Internet access to each instructional material [~~textbook~~] used by the student.

SECTION \_\_\_\_40. Section 32.161(b), Education Code, is amended to read as follows:

(b) To the extent possible considering other statutory requirements, the commissioner and agency shall encourage the use of instructional materials [~~textbook funds~~] and technology allotment funds under Section 32.005 [~~31.021(b)(2)~~] in a manner that facilitates the development and use of the portal.

SECTION \_\_\_\_41. Subchapter B, Chapter 39, Education Code, is amended by adding Section 39.0233 to read as follows:

Sec. 39.0233. COMPUTER-ADAPTIVE ASSESSMENT. (a) To the extent practicable and appropriate, the agency shall provide for assessment instruments required under Section 39.023 to be designed so that those assessment instruments can be computer-adaptive.

(b) To the extent practicable and appropriate, the agency shall require school districts to administer to students the computer-adaptive assessment instruments.

(c) The commissioner may adopt rules to implement this section.

(d) As necessary to implement this section, the commissioner by rule may delay the release of assessment instrument questions and answer keys under Section 39.023(e).

(e) The agency shall implement this section not later than May 1, 2007. This subsection expires September 1, 2007.

SECTION \_\_\_\_42. Section 41.124(c), Education Code, is amended to read as follows:

(c) A school district that receives tuition for a student from a school district with a wealth per student that exceeds the equalized wealth level may not claim attendance for that student for purposes of Chapters 42 and 46 and the instructional materials and technology allotment under Section 32.005 [~~31.021(b)(2)~~].

SECTION \_\_\_\_43. Subchapter B, Chapter 44, Education Code, is amended by adding Section 44.046 to read as follows:

Sec. 44.046. PURCHASE OF INSTRUCTIONAL MATERIALS. Notwithstanding Section 44.031, a public school may purchase instructional materials, as defined by Section 31.002, under a blanket purchase order executed by the Department of Information Resources under Section 31.026.

SECTION \_\_\_\_.44. Sections 31.002(3), 31.021, 31.022, 31.023, 31.024, 31.025, 31.101, 31.103, and 31.1031, Education Code, are repealed.

(4) Strike Section 3.01 of the bill (house committee report, page 92, lines 10-14) and substitute the following section, appropriately numbered:

SECTION \_\_\_\_.01. Except as otherwise provided by this Act, this Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2005, except as otherwise provided by this Act.

Amendment No. 4 was withdrawn.

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

Representative Grusendorf offered the following amendment to **CSSB 422**:

Amend **CSSB 422** (committee report) as follows:

- 1) Strike SECTION 1.18.
- 2) Strike SECTION 1.19.

Amendment No. 5 was adopted.

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

Representative Grusendorf offered the following amendment to **CSSB 422**:

Amend **CSSB 422** as follows:

- (1) On page \_\_\_\_, line \_\_\_\_ insert the following:

"The Urban School Choice Pilot Program described by this subchapter shall not be expanded, modified or amended in any way except by an Act of the Texas Legislature."

- (2) On page \_\_\_\_, line \_\_\_\_ insert the following:

"No portion of the Urban School Choice Pilot Program described by this subchapter shall result in a reduction in funding for non-eligible or non-participating districts."

(3) On page \_\_\_\_, line \_\_\_\_ strike the existing subsection (E) and substitute the following new subsection (E) and (F):

"(E) has been or is currently placed in a foster home or child care institution as defined by Chapter 42, Human Resources Code, pursuant to Subchapter B, 264 Family Code.;

(F) resides in a household in which the annual household income, according to the most recently filed federal income tax return, did not exceed 200 percent of the qualifying income for a reduced-price lunch under the national free or reduced-price lunch program established under 42 U.S.C. Section 1751 et seq."

(4) On page \_\_\_\_, between lines \_\_\_\_ and \_\_\_\_ insert a new subsection (1) to read as follows:

"(1) resides in a household in which the annual household income, according to the most recently filed federal income tax return, did not exceed 200 percent of the qualifying income for a reduced-price lunch under the national free or reduced-price lunch program established under 42 U.S.C. Section 1751 et seq."

- (5) On page \_\_\_\_, line \_\_\_\_ strike "(1)" and substitute "(A)".
- (6) On page \_\_\_\_, line \_\_\_\_ strike "(2)" and substitute "(B)".
- (7) On page \_\_\_\_, line \_\_\_\_ strike "(3)" and substitute "(2)".

Amendment No. 6 was withdrawn.

### **Amendment No. 7**

Representative Grusendorf offered the following amendment to **CSSB 422**:

Amend **CSSB 422** (House committee printing) as follows:

(1) Strike SECTION 2.44 (page 87, lines 10 through 16), and renumber the subsequent SECTIONS of Article 2 accordingly.

(2) In Article 2 of the bill, add the following appropriately numbered SECTIONS and renumber the subsequent SECTIONS of Article 2 accordingly:

SECTION 2. \_\_. Subchapter C, Chapter 1001, Education Code, is amended by adding Section 1001.109 to read as follows:

Sec. 1001.109. DRIVER EDUCATION IN PUBLIC SCHOOLS. (a) The commission shall develop a program of organized instruction in driver education and traffic safety for public school students. A student who will be 15 years of age or older before a driver education and traffic safety course ends may enroll in the course.

(b) The commission shall establish standards for the certification of professional and paraprofessional personnel who conduct the programs in the public schools.

SECTION 2. \_\_. Section 521.204(a), Transportation Code, is amended to read as follows:

(a) The department may issue a Class C driver's license to an applicant under 18 years of age only if the applicant:

(1) is 16 years of age or older;

(2) has submitted to the department a driver education certificate issued under Section 1001.055, Education Code [~~9A, Texas Driver and Traffic Safety Education Act (Article 4413(29c), Vernon's Texas Civil Statutes)~~], that states that the person has completed and passed a driver education course approved by the department under Section 521.205 or by the Texas Department of Licensing and Regulation [~~Education Agency~~];

(3) has obtained a high school diploma or its equivalent or is a student:

(A) enrolled in a public school, home school, or private school who attended school for at least 80 days in the fall or spring semester preceding the date of the driver's license application; or

(B) who has been enrolled for at least 45 days, and is enrolled as of the date of the application, in a program to prepare persons to pass the high school equivalency exam; and

(4) has passed the examination required by Section 521.161.



SECTION 2.\_\_\_\_. Sections 521.222(a) and (c), Transportation Code, are amended to read as follows:

(a) The department or a driver education school licensed under Chapter 1001, Education Code, [~~the Texas Driver and Traffic Safety Education Act (Article 4413(29c), Vernon's Texas Civil Statutes)~~] may issue an instruction permit, including a Class A or Class B driver's license instruction permit, to a person who:

- (1) is 15 years of age or older but under 18 years of age;
- (2) has satisfactorily completed and passed the classroom phase of an approved driver education course, which may be a course approved under Section 521.205;
- (3) meets the requirements imposed under Section 521.204(3); and
- (4) has passed each examination required under Section 521.161 other than the driving test.

(c) A driver education school may issue an instruction permit to a person 18 years of age or older who has successfully passed:

- (1) a six-hour adult classroom driver education course approved by the Texas Department of Licensing and Regulation [~~Education Agency~~]; and
- (2) each part of the driver's examination required by Section 521.161 other than the driving test.

(3) In SECTION 2.48, between "Sections" and "1001.152" (page 89, line 3), insert "7.021(b)(9), 29.902, 51.308,".

Amendment No. 7 was withdrawn.

### **Amendment No. 8**

Representative Grusendorf offered the following amendment to **CSSB 422**:

Amend **CSSB 422** (house committee report) in Article 1 of the bill by inserting the following new section, appropriately numbered, and renumbering the subsequent sections of Article 1 of the bill accordingly:

SECTION 1.\_\_\_\_. Subchapter A, Chapter 32, Education Code, is amended by adding Section 32.007 to read as follows:

Sec. 32.007. AGREEMENT WITH PUBLIC BROADCASTING STATION. (a) The commissioner may enter into an agreement with a public broadcasting station, or a consortium of public broadcasting stations, under which the station or consortium will provide online instructional content and educational materials.

(b) From funds appropriated to the agency, the commissioner may, under an agreement entered into under Subsection (a), make instructional materials available through public broadcasting stations for purposes of instruction and professional development and for use in providing adult-based education.

(c) An agreement entered into under Subsection (a) must, to the extent practicable, provide access to instructional materials and online content to persons located in all parts of this state.

(d) For purposes of providing high-quality online instructional materials under this section, the commissioner may:

- (1) use federal funds that may be used for those purposes; or

(2) use unexpended balances of funds appropriated to the agency for educational purposes, including adult education.

Amendment No. 8 was adopted.

#### **Amendment No. 9**

Representative Grusendorf offered the following amendment to **CSSB 422**:

Amend **CSSB 422** (house committee report) in Article 1 of the bill by inserting the following new section, appropriately numbered, and renumbering the subsequent sections of Article 1 of the bill accordingly:

SECTION 1. \_\_. Subchapter B, Chapter 7, Education Code, is amended by adding Section 7.030 to read as follows:

Sec. 7.030. REVIEW OF STATE- AND FEDERALLY-FUNDED GRANT PROGRAMS. (a) The agency shall conduct a review of state- and federally-funded grant programs and incentives designed to improve student academic performance and shall actively determine the full extent to which funds awarded under those programs may be used to enhance or expand the use of technology in public schools. For purposes of removing barriers to and encouraging the use of technology in public schools, the commissioner may, as appropriate, issue a waiver to one or more schools.

(b) Not later than December 1, 2006, the agency shall submit a report regarding the findings of the review conducted under this section to the legislature. The report must include a summary of promising practices for current grant programs that leverage technology. This section expires January 15, 2007.

Amendment No. 9 was adopted.

#### **Amendment No. 10**

Representative Grusendorf offered the following amendment to **CSSB 422**:

Amend **CSSB 422** (committee report) by adding the following appropriately numbered SECTIONS to the bill and renumbering the subsequent SECTIONS accordingly:

SECTION \_\_. Section 29.005, Education Code, is amended by adding Subsection (e) to read as follows:

(e) The commissioner by rule may require a school district to include in the individualized education program of a student with autism or another pervasive developmental disorder any information or requirement authorized under the Individuals with Disabilities Education Act (20 U.S.C. Section 1400 et seq.).

SECTION \_\_. Subchapter A, Chapter 29, Education Code, is amended by adding Section 29.0051 to read as follows:

Sec. 29.0051. STUDY OF RULE CONCERNING CONTENT OF INDIVIDUALIZED EDUCATION PROGRAM FOR STUDENT WITH PERVERSIVE DEVELOPMENT DISORDER. (a) The agency shall establish a committee composed of parents of students with autism or other pervasive developmental disorders, teachers, school administrators, and other interested persons to study the rule concerning the content of an individualized education program for a student with autism or another pervasive developmental disorder

(19 T.A.C. Section 89.1055(e)). School district employees or educational consultants or contractors who receive or are employed by entities that receive compensation from a school district may not constitute more than 50 percent of the committee.

(b) In studying the rule, the committee shall consider whether any other considerations, such as applied behavior analysis, communication training, or the use of inclusive settings, should be included in the rule.

(c) Not later than July 1, 2006, the committee shall recommend to the commissioner any necessary changes to the rule.

(d) This section expires August 1, 2006.

Amendment No. 10 was adopted.

### **Amendment No. 11**

Representative Hochberg offered the following amendment to **CSSB 422**:

Amend **CSSB 422** as follows:

- (1) On page 1, strike Section 1.01.
- (2) On page 2, line 1 strike "2017" and substitute "2007"
- (3) Strike Sections 1.03 through 1.39 (page 2, line 2 through page 58, line 2) and renumber the remaining sections of the bill accordingly.

### **Amendment No. 12**

Representative Hochberg offered the following amendment to Amendment No. 11:

Amend Amendment No. 11 by Hochberg to **CSSB 422** by striking all language (lines 1-6) and substituting the following:

Amend **CSSB 422** as follows:

- (1) On page 1, strike Section 1.01.
- (2) On page 2, line 1 strike "2017" and substitute "2007"
- (3) Strike Sections 1.03 through 1.12 (page 2, line 2 through page 12, line 8).
- (4) Strike Sections 1.14 through 1.39 (page 12, line 26 through page 58, line 2).
- (5) Renumber the remaining sections of the bill accordingly.

Amendment No. 12 was adopted.

Representative Grusendorf moved to table Amendment No. 11.

A record vote was requested.

The vote of the house was taken on the motion to table Amendment No. 11 and the vote was announced yeas 73, nays 70.

A verification of the vote was requested and was granted.

The roll of those voting yea and nay was again called and the verified vote resulted, as follows (Record 771): 72 Yeas, 71 Nays, 0 Present, not voting.

Yeas — Mr. Speaker(C); Allen, R.; Anderson; Baxter; Berman; Bohac; Branch; Brown, B.; Brown, F.; Callegari; Campbell; Chisum; Cook, B.; Corte; Crabb; Crownover; Davis, J.; Delisi; Denny; Eissler; Elkins; Flynn; Gattis; Goodman; Grusendorf; Haggerty; Hamric; Hardcastle; Harper-Brown; Hartnett; Hegar; Hilderbran; Hill; Hope; Howard; Hughes; Hupp; Isett; Jackson; Keffer, B.; Keffer, J.; King, P.; Kolkhorst; Krusee; Laubenberg; Madden; McCall; Miller; Morrison; Mowery; Nixon; Orr; Otto; Paxton; Phillips; Pitts; Reyna; Riddle; Seaman; Smith, T.; Smith, W.; Solomons; Straus; Swinford; Talton; Taylor; Truitt; Van Arsdale; West; Wong; Woolley; Zedler.

Nays — Allen, A.; Alonzo; Anchia; Blake; Burnam; Casteel; Castro; Chavez; Coleman; Cook, R.; Davis, Y.; Dawson; Deshotel; Dukes; Dunnam; Edwards; Eiland; Escobar; Farabee; Farrar; Flores; Frost; Gallego; Geren; Giddings; Gonzales; Gonzalez Toureilles; Goolsby; Griggs; Guillen; Hamilton; Herrero; Hochberg; Homer; Hopson; Hunter; Jones, D.; Jones, J.; Keel; King, T.; Kuempel; Laney; Leibowitz; Luna; Martinez; Martinez Fischer; McClendon; McReynolds; Menendez; Merritt; Moreno, P.; Naishtat; Noriega, M.; Oliveira; Olivo; Peña; Pickett; Puente; Quintanilla; Raymond; Ritter; Rodriguez; Rose; Solis; Strama; Thompson; Turner; Uresti; Veasey; Villarreal; Vo.

Absent, Excused — Driver; Hodge.

Absent — Bailey; Bonnen; Dutton; Smithee.

The speaker stated that the motion to table prevailed by the above vote.

#### **STATEMENT OF VOTE**

When Record No. 771 was taken, I was absent because of illness in the family. Had I been present I would have voted no.

Bonnen

I was shown voting yes on Record No. 771. I intended to vote no.

Hardcastle

When Record No. 771 was taken, I was temporarily out of the house chamber. I would have voted yes.

Smithee

#### **LEAVES OF ABSENCE GRANTED**

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

Bonnen on motion of Keel.

The following members were granted leaves of absence for the remainder of today because of important business in the district:

Bailey on motion of Luna.

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

Dutton on motion of Geren.

**BILLS AND RESOLUTIONS SIGNED BY THE SPEAKER**

Notice was given at this time that the speaker had signed bills and resolutions in the presence of the house (see the addendum to the daily journal, Signed by the Speaker, Senate List No. 27).

**CSSB 422 - (consideration continued)****CSSB 422 - POINT OF ORDER**

Representative Dunnam raised a point of order against further consideration of **CSSB 422** under Rule 4, Section 34(b)(1) of the House Rules on the grounds that the committee report does not include a criminal justice impact statement.

The speaker overruled the point of order, and had read the following statement:

Mr. Dunnam raised a point of order against further consideration of **CSSB 422** on the grounds that the House Committee Report does not include a criminal justice impact statement. Mr. Dunnam refers to the section of the bill which provides that a person creates an offense if the person "intentionally destroys, conceals, or tampers with a record that is required to be preserved, transferred, or surrendered."

The chair overrules the point of order based on longstanding precedent and practice it is within the discretion of the chair to determine whether an impact statement is required. In fact, Rule 4, Section 34 affirmatively places such a burden on the chair only if the chair determines that a bill or resolution authorizes or requires a change in sanctions applicable to adults convicted of felony crimes. (See 74 Regular Session House Journal 3038; 74 Regular Session House Journal 3309; 78 Regular Session House Journal 860; 78 Regular Session House Journal 1987; 78 Regular Session House Journal 3982; 74th Regular Session House Journal 2474.)

Even if the chair accepted Mr. Dunnam's analysis, the chair notes that merely referencing a provision in the Penal Code does not make the conduct an offense under the code, and in this case, would not necessarily make the conduct a felony. In every instance, it is the elements of the offense, as cited in the Penal Code that must be alleged and proven with specificity.

Therefore, the point of order is respectfully overruled.

**MEMORANDUM BY REPRESENTATIVE DUNNAM**

Rule 4, Section 34 requires that "all members of the house are timely informed as to the impact of proposed legislation on the state or other unit of government".

Rule 4, Section 34(b)(1) states the committee "chair shall send a copy of the measure to the Legislative Budget Board for the preparation of a criminal justice impact statement" if the measure "authorizes or requires a change in the sanctions applicable to adults convicted of felony crimes."

In Section 39.1331 of **CSSB 422** (page 52, lines 17-20), a felony offense is created.

"(c) A person who intentionally destroys, conceals, or tampers with a record that is required to be preserved, transferred, or surrendered under Subsection (b)(4) commits an offense punishable under Section 37.10(c)(2), Penal Code."

Section 37.10 (c)(2) Penal Code states:

"An offense under this section is a felony of the third degree if it is shown on the trial of the offense that the governmental record was a public school record, report, or assessment instrument required under Chapter 39, Education Code, or was a license, certificate, permit, seal, title, letter of patent, or similar document issued by government, by another state, or by the United States, unless the actor's intent is to defraud or harm another, in which event the offense is a felony of the second degree."

**CSSB 422** creates a felony offense, but the chair failed to request the criminal justice impact statement as required by Rule 4, Section 34.

For the foregoing reasons, the point of order should be sustained.

### **CSSB 422 - POINT OF ORDER**

Representative Dunnam raised a point of order against further consideration of **CSSB 422** under Rule 4, Section 32(c) of the House Rules on the grounds that the bill analysis contains multiple inaccuracies.

The speaker overruled the point of order with respect to violations 1, 3, 5, 6, and 7, and had read the following statement:

Mr. Dunnam raised several points of order as to the sufficiency and accuracy of the bill analysis. The chair has reviewed the bill analysis in detail and states the following:

With respect to violations 1, 3, 5, 6, and 7, the chair believes that the analysis is sufficient under the rules and that it fulfills the purpose of Rule 4, Section 32(c) in that it is a proper analysis.

The point of order is respectfully overruled with respect to violations 1, 3, 5, 6, and 7. (The chair ruled on the remaining violations later today.)

### **MEMORANDUM BY REPRESENTATIVE DUNNAM**

#### **VIOLATION 1**

The bill analysis violates Rule 4, Section 32(c)(3) by inaccurately describing a rulemaking authority provision in the bill. The bill analysis states, "rulemaking authority previously granted to the Commissioner of Education is transferred to the Texas Commission of Licensing and Regulation in SECTION 2.08, SECTION 2.10, SECTION 2.13, SECTION 2.16, SECTION 2.17, SECTION 2.18." This statement omits SECTION 2.06 in which the rulemaking authority previously granted to the Commissioner of Education is transferred to the Texas Commission of Licensing and Regulation. Under current law the Commissioner of Education is granted necessary rulemaking authority to administer Chapter 1001, Education Code. Under **CSSB 422** the Texas Commission of Licensing and Regulation is given this rulemaking authority.

**VIOLATION 2**

The bill analysis violates Rule 4, Section 32(c)(3) in another place where it states, "rulemaking authority is expressly granted to the Commissioner of Education in...SECTION 1.30." This is inaccurate. SECTION 1.30 directs the commissioner to take certain actions if a school district does not satisfy the accreditation criteria under Section 39.071, the academic performance standard under Section 39.072, or any financial accountability standard as determined by commissioner rule. This does not in any way grant rulemaking authority to the commissioner. The authority to adopt rules relating to financial accountability standards that the bill refers to is expressly granted in Section 39.204, Education Code.

**VIOLATION 3**

The "analysis" section of the bill analysis states, "a child attending a qualifying school is entitled to receive an annual scholarship" (page 2, 2nd paragraph). This is explicitly untrue. The quantifier "a" must logically be interpreted to mean "any." However, only some children attending a qualifying school—not any child attending a qualifying school—are entitled to receive an annual scholarship. Only children that are at risk of dropping out, are a victim or sibling of a victim of assault, have limited English proficiency, are receiving special education services or are from a family with income no more than twice the reduced price lunch income limit are entitled. Additionally, other children who do not attend a qualifying school (drop-outs and first time students) are entitled to receive a scholarship.

**VIOLATION 4**

The bill analysis fails to satisfy Rule 4, Section 32(c)(4). "Each committee report on a bill...must include...a detailed analysis...specifically including...a statement of substantial differences between a complete committee substitute and the original bill." See Rule 4, Section 32(c) of the House Rules (79th Legislature)

Two sections of statute proposed by the senate engrossed version of the bill are removed in the committee substitute. The "comparison of original to substitute" section of the bill analysis makes no mention of the following substantial differences:

(1) Proposed Section 7.062, Education Code, would have required the commissioner to develop and implement a policy to encourage the use of negotiated rulemaking and alternative dispute resolution (page 6, line 27 through page 7, line 20 of engrossed version).

(2) Proposed Section 7.063 would have required the commissioner, before adopting a new rule, to evaluate whether it would impose additional paperwork requirements on teachers and attempt to minimize that (page 7, line 21 through line 25 of engrossed version).

**VIOLATION 5**

The "background and purpose" section of the bill analysis explicitly violates the House Rules. The "background and purpose" section contains absolutely no information on what the bill proposes to do. This violates Rule 4, Section 32(c)(1). "Each committee report on a bill...must include...a detailed

analysis...specifically including...background information on the proposal and information on what the bill or resolution proposes to do." See Rule 4, Section 32(c) of the House Rules (79th Legislature).

### **VIOLATION 6**

The "analysis" section of the bill analysis (page 1, 2nd paragraph) contains a substantial omission that creates an affirmative harm and misrepresents the content of the bill. The analysis does not mention that the informal review by the Commissioner of Accountability and School Finance is final and not subject to appeal. In fact, the section of the bill takes away all avenues of appeal parties currently have under other law (page 5, lines 15-16), including court cases and administrative hearings. In other places where the bill states that a commissioner's determination is final, the bill analysis notes this (e.g. page 2, 7th paragraph). This omission is deceptive.

### **VIOLATION 7**

The "analysis" section of the bill analysis makes no mention of the requirement to designate private non-profits as schools of choice resource centers or the requirement for this private organization to determine whether or not a child is eligible for a state program. This should be included in the section of the analysis that discusses voucher programs (page 2, 2nd paragraph). These centers are an integral part of the voucher program, yet they are not mentioned anywhere in the bill analysis. This omission is deceptive.

For the foregoing reasons, the point of order should be sustained.

### **Amendment No. 13**

Representative Hegar offered the following amendment to **CSSB 422**:

Amend **CSSB 422** by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS of the bill appropriately:

SECTION \_\_\_\_\_. Section 8.051(a), Education Code, is amended to read as follows:

(a) Except as provided by Subchapter E, each ~~[Each]~~ regional education service center shall use funds distributed to the center under Section 8.121 to develop, maintain, and deliver services identified under this section to improve student and school district performance.

SECTION \_\_\_\_\_. Section 8.103, Education Code, is amended to read as follows:

Sec. 8.103. ANNUAL EVALUATION. Except as provided by Subchapter E, the ~~[The]~~ commissioner shall conduct an annual evaluation of each executive director and regional education service center. Each evaluation must include:

- (1) an audit of the center's finances;
- (2) a review of the center's performance on the indicators adopted under Section 8.101;
- (3) a review of client satisfaction with services provided under Subchapter B; and



(4) a review of any other factor the commissioner determines to be appropriate.

SECTION \_\_\_\_\_. Section 8.121(c), Education Code, is amended to read as follows:

(c) Each regional education service center shall use money distributed to it under this section:

(1) for the provision of core services required under Section 8.051;

(2) [or] for payment of necessary administrative and operational expenses of the center related to the provision of core [~~those~~] services required under Section 8.051; or

(3) as provided by Section 8.151, if the center is approved to operate under Subchapter E.

SECTION \_\_\_\_\_. Chapter 8, Education Code, is amended by adding Subchapter E to read as follows:

SUBCHAPTER E. VOLUNTARY PILOT PROGRAM ESTABLISHING  
ALTERNATIVE  
METHOD OF PROVIDING SERVICES

Sec. 8.151. DIRECT FUNDING TO DISTRICTS PERMITTED ON APPROVAL; EVALUATION. (a) A regional education service center approved by the commissioner to operate under this subchapter may distribute funds received under Subchapter D directly to school districts in the region served by the center for the purpose of providing the school districts the freedom to purchase curriculum materials, professional development services, and instructional technology from the center or any other service provider.

(b) The commissioner by rule shall establish:

(1) a procedure for regional education service centers to apply for approval to operate under this subchapter;

(2) criteria for approving or denying an application under this subchapter; and

(3) criteria for evaluating each executive director and regional education service center approved to operate under this subchapter.

Sec. 8.152. ANNUAL AUDIT. (a) At least once each year, a regional education service center operating under this subchapter shall have a fiscal audit performed by a certified public accountant.

(b) A regional education service center shall submit a copy of the annual audit to the commissioner for review. The commissioner may:

(1) examine any working papers from the annual audit; and

(2) conduct a separate audit if, after reviewing the independent audit, the commissioner considers a separate audit necessary.

(c) A regional education service center operating under this subchapter is not subject to the management processes, procedures, and guidelines established by and for regional education service centers that do not operate under this subchapter.

(d) A regional education service center operating under this subchapter may use management processes, procedures, and guidelines that are reasonable and necessary to sustain the center financially.

(e) A regional education service center operating under this subchapter is accountable to the school districts in the region served by the center and the commissioner.

Sec. 8.153. EXPIRATION. This subchapter expires September 1, 2009.

SECTION \_\_\_\_\_. Effective September 1, 2009, Section 8.051(a), Education Code, is amended to read as follows:

(a) Each regional education service center shall use funds distributed to the center under Section 8.121 to develop, maintain, and deliver services identified under this section to improve student and school district performance.

SECTION \_\_\_\_\_. Effective September 1, 2009, Section 8.103, Education Code, is amended to read as follows:

Sec. 8.103. ANNUAL EVALUATION. The commissioner shall conduct an annual evaluation of each executive director and regional education service center. Each evaluation must include:

- (1) an audit of the center's finances;
- (2) a review of the center's performance on the indicators adopted under Section 8.101;
- (3) a review of client satisfaction with services provided under Subchapter B; and
- (4) a review of any other factor the commissioner determines to be appropriate.

SECTION \_\_\_\_\_. Effective September 1, 2009, Section 8.121(c), Education Code, is amended to read as follows:

(c) Each regional education service center shall use money distributed to it under this section:

- (1) for the provision of core services required under Section 8.051; or
- (2) for payment of necessary administrative and operational expenses of the center related to the provision of core [~~these~~] services required under Section 8.051.

SECTION \_\_\_\_\_. Not later than January 1, 2006, the commissioner of education shall adopt rules to authorize regional education service centers to operate under Subchapter E, Chapter 8, Education Code, as added by this Act.

SECTION \_\_\_\_\_. (a) The commissioner of education shall conduct a study to review the performance of regional education service centers operating under Subchapter E, Chapter 8, Education Code, as added by this Act.

(b) Not later than January 1, 2009, the commissioner of education shall report the results of the study to the governor, lieutenant governor, speaker of the house of representatives, and the chairs of the standing committees of each house of the legislature with primary jurisdiction over public education. In the report, the commissioner shall:

- (1) state the commissioner's findings and recommendations; and
- (2) identify any opportunities for legislative or administrative actions.

SECTION \_\_\_\_\_. Sections 8.051(a), 8.103, 8.121(c), Education Code, as amended by this Act, and Subchapter E, Chapter 8, Education Code, as added by this Act, apply beginning with the 2006-2007 school year.

**Amendment No. 14**

Representative Hegar offered the following amendment to Amendment No. 13:

Amend Amendment No. 13 by Hegar to **CSSB 422** as follows:

(1) Strike page 1, lines 11-23, and substitute the following:

SECTION \_\_. Section 8.103, Education Code, is amended to read as follows:

Sec. 8.103. ANNUAL EVALUATION. (a) Except as provided by Subchapter E, the [The] commissioner shall conduct an annual evaluation of each executive director and regional education service center. Each evaluation must include:

(1) an audit of the center's finances;  
(2) a review of the center's performance on the indicators adopted under Section 8.101;

(3) a review of client satisfaction with services provided under Subchapter B;

(4) a survey of the center's board of directors concerning the performance of the center's executive director;

(5) a review of:

(A) the number of programs offered by the center to improve student performance on assessment instruments administered under Section 39.023; and

(B) the attendance rate at each program described by Paragraph (A) during each year of the preceding two years;

(6) a review of the center's performance on four goals established by the center for improving the center's performance; and

(7) [(4)] a review of any other factor the commissioner determines to be appropriate.

(b) The agency shall post the results of an evaluation conducted under this section on the agency's Internet website.

SECTION \_\_. Subchapter C, Chapter 8, Education Code, is amended by adding Section 8.1031 to read as follows:

Sec. 8.1031. RATING SYSTEM. (a) The commissioner shall establish a system for rating regional education service centers on the basis of the results of evaluations conducted under Section 8.103.

(b) The rating system must include a minimum level of performance that a regional education service center is expected to achieve on each area evaluated under Section 8.103 and on the overall evaluation. A center that does not meet the minimum level of overall performance is considered to be low-performing.

SECTION \_\_. Section 8.104, Education Code, is amended to read as follows:

Sec. 8.104. SANCTIONS. (a) The commissioner shall develop a system of corrective actions to require a regional education service center that the commissioner determines to be low-performing [~~deficient in an accountability measure~~] under Section 8.1031 [~~8.103~~].

(b) The actions must include, in increasing order of severity:

- (1) conducting an on-site investigation of the center;
- (2) requiring the center to send notice ~~[of each deficiency]~~ to each school district and campus in the center's region or served by the center the previous year concerning any area of performance, including overall performance, that is below the minimum level of performance established for that area under Section 8.1031; and
- (3) requiring the center to prepare for the commissioner's approval a plan to address each area of performance that is below the minimum level of performance established for that area under Section 8.1031 ~~[deficiency;~~
- ~~[(4) appointing a master to oversee the operations of the center;~~
- ~~[(5) replacing the executive director or board of directors; and~~
- ~~[(6) in the case of deficient performance in two consecutive years, closing the center].~~

(c) In addition to the actions required under Subsection (b), the commissioner shall take the following actions:

(1) for a regional education service center that has been low-performing for one school year, place the center on probation;

(2) for a regional education service center that has been low-performing for two consecutive school years, continue the center's probation and:

(A) withhold any state money to which the center is otherwise entitled; and

(B) distribute the money withheld to school districts in the region that the center serves; and

(3) for a regional education service center that has been low-performing for three consecutive school years:

(A) both:

(i) appoint a master to oversee the operations of the center; and

(ii) replace the executive director or board of directors; or

(B) order the closure of the center.

(2) Strike page 3, line 29, through page 4, line 7, and substitute the following:

Sec. 8.103. ANNUAL EVALUATION. (a) The commissioner shall conduct an annual evaluation of each executive director and regional education service center. Each evaluation must include:

(1) an audit of the center's finances;

(2) a review of the center's performance on the indicators adopted under Section 8.101;

(3) a review of client satisfaction with services provided under Subchapter B;

(4) a survey of the center's board of directors concerning the performance of the center's executive director;

(5) a review of:

(A) the number of programs offered by the center to improve student performance on assessment instruments administered under Section 39.023; and

(B) the attendance rate at each program described by Paragraph (A) during each year of the preceding two years;

(6) a review of the center's performance on four goals established by the center for improving the center's performance; and

(7) [(4)] a review of any other factor the commissioner determines to be appropriate.

(b) The agency shall post the results of an evaluation conducted under this section on the agency's Internet website.

(3) On page 4, between lines 16 and 17, insert the following:

SECTION \_\_. (a) As soon as practicable after the effective date of this Act, the commissioner of education shall establish a rating system for regional education service centers as required by Section 8.1031, Education Code, as added by this Act.

(b) The Texas Education Agency shall begin rating regional education service centers as required by Section 8.1031, Education Code, as added by this Act, beginning with the 2006-2007 school year.

(c) The commissioner of education may not take an action under Section 8.104, Education Code, as amended by this Act, based on the performance of a regional education service center for the 2005-2006 school year or an earlier school year.

Amendment No. 14 was adopted.

Amendment No. 13, as amended, was adopted.

### **Amendment No. 15**

Representative Olivo offered the following amendment to **CSSB 422**:

Amend **CSSB 422** (House committee printing) in SECTION 1.03 of the bill by striking added Section 7.010(b)(2), Education Code (page 2, lines 19 and 20), and substituting the following:

(2) specific examples of successful best practices, including information relating to:

(A) the cultural and language needs of Hispanic and African-American students;

(B) the creation of programs that facilitate parental involvement in public schools; and

(C) methods for eliminating differences in facilities and curriculum among public schools; and

Representative Eissler moved to table Amendment No. 15.

A record vote was requested.

The motion to table prevailed by (Record 772): 82 Yeas, 58 Nays, 1 Present, not voting.

Yeas — Allen, R.; Baxter; Berman; Blake; Bohac; Branch; Brown, B.; Brown, F.; Callegari; Campbell; Chisum; Cook, B.; Cook, R.; Corte; Crabb; Crownover; Davis, J.; Dawson; Delisi; Denny; Eissler; Elkins; Flynn; Gattis; Goodman; Griggs; Grusendorf; Haggerty; Hamilton; Hamric; Hardcastle;

Harper-Brown; Hartnett; Hegar; Hilderbran; Hill; Hope; Howard; Hughes; Hunter; Hupp; Isett; Jackson; Jones, D.; Keel; Keffer, B.; Keffer, J.; King, P.; Kolkhorst; Krusee; Kuempel; Laubenberg; Madden; McCall; Merritt; Miller; Morrison; Mowery; Nixon; Orr; Otto; Paxton; Phillips; Pitts; Reyna; Riddle; Ritter; Seaman; Smith, T.; Smith, W.; Smithee; Solomons; Straus; Swinford; Talton; Taylor; Truitt; Van Arsdale; West; Wong; Woolley; Zedler.

Nays — Allen, A.; Alonzo; Anchia; Burnam; Casteel; Castro; Chavez; Coleman; Davis, Y.; Deshotel; Dukes; Dunnam; Edwards; Eiland; Escobar; Farabee; Farrar; Flores; Frost; Gallego; Geren; Gonzales; Gonzalez Toureilles; Guillen; Herrero; Hochberg; Homer; Hopson; Jones, J.; King, T.; Laney; Leibowitz; Luna; Martinez; Martinez Fischer; McClendon; McReynolds; Menendez; Moreno, P.; Naishtat; Noriega, M.; Oliveira; Olivo; Peña; Pickett; Puente; Quintanilla; Raymond; Rodriguez; Rose; Solis; Strama; Thompson; Turner; Uresti; Veasey; Villarreal; Vo.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Bailey; Bonnen; Driver; Dutton; Hodge.

Absent — Anderson; Giddings; Goolsby.

#### STATEMENT OF VOTE

When Record No. 772 was taken, I was in the house but away from my desk. I would have voted yes.

Anderson

#### Amendment No. 16

Representative Hochberg offered the following amendment to **CSSB 422**:

Amend **CSSB 422** by striking Section 1.06 (page 5, lines 4 through 21).

Amendment No. 16 was withdrawn.

#### Amendment No. 17

Representative Coleman offered the following amendment to **CSSB 422**:

Amend **CSSB 422** as follows:

(1) In ARTICLE 1 of the bill (committee printing, page 12, lines 9 through 25), strike SECTION 1.13 and renumber accordingly:

Amendment No. 17 was withdrawn.

#### Amendment No. 18

Representative Olivo offered the following amendment to **CSSB 422**:

Amend **CSSB 422** in Section 1.15 of the bill, in added Section 29.0162(b), Education Code (house committee report, page 13, lines 17 and 18), between "must" and "include", by inserting "be provided in English and Spanish and must".

Representative Eissler moved to table Amendment No. 18.

A record vote was requested.

The motion to table prevailed by (Record 773): 81 Yeas, 59 Nays, 1 Present, not voting.

Yeas — Allen, R.; Anderson; Baxter; Berman; Blake; Bohac; Branch; Brown, B.; Brown, F.; Callegari; Campbell; Chisum; Cook, B.; Cook, R.; Corte; Crabb; Crownover; Davis, J.; Dawson; Delisi; Denny; Eissler; Elkins; Flynn; Gattis; Goolsby; Grusendorf; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Hegar; Hilderbran; Hill; Homer; Hope; Hopson; Howard; Hughes; Hunter; Hupp; Isett; Jackson; Jones, D.; Keel; Keffer, B.; Keffer, J.; King, P.; Kolkhorst; Kuempel; Laubenberg; Madden; McCall; Merritt; Miller; Morrison; Mowery; Nixon; Orr; Otto; Paxton; Phillips; Pitts; Reyna; Riddle; Ritter; Seaman; Smith, T.; Smith, W.; Smithee; Solomons; Straus; Swinford; Talton; Taylor; Van Arsdale; West; Wong; Woolley; Zedler.

Nays — Allen, A.; Alonzo; Anchia; Burnam; Casteel; Castro; Chavez; Coleman; Davis, Y.; Deshotel; Dukes; Dunnam; Edwards; Eiland; Escobar; Farabee; Farrar; Flores; Frost; Gallego; Geren; Giddings; Gonzales; Gonzalez Tourelles; Goodman; Griggs; Guillen; Herrero; Hochberg; Jones, J.; King, T.; Laney; Leibowitz; Luna; Martinez; Martinez Fischer; McClendon; McReynolds; Menendez; Moreno, P.; Naishtat; Noriega, M.; Oliveira; Olivo; Peña; Pickett; Puente; Quintanilla; Raymond; Rodriguez; Rose; Solis; Strama; Thompson; Turner; Uresti; Veasey; Villarreal; Vo.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Bailey; Bonnen; Driver; Dutton; Hodge.

Absent — Haggerty; Krusee; Truitt.

### STATEMENT OF VOTE

I was shown voting no on Record No. 773. I intended to vote yes.

Goodman

### Amendment No. 19

Representative Casteel offered the following amendment to **CSSB 422**:

Amend **CSSB 422** (House committee printing) by striking SECTION 1.17 (page 16, line 1, through page 26, line 2) and SECTIONS 1.37 and 1.38 (page 55, line 24, through page 57, line 24), and renumbering the subsequent SECTIONS of Article 1 accordingly.

### MESSAGE FROM THE SENATE

A message from the senate was received at this time (see the addendum to the daily journal, Messages from the Senate, Message No. 3).

### **CSSB 422 - (consideration continued)**

Representative J. Davis moved to table Amendment No. 19.

A record vote was requested.

The vote of the house was taken on the motion to table Amendment No. 19 and the vote was announced yeas 72, nays 72.

A verification of the vote was requested and was granted.

The roll of those voting yea and nay was again called and the verified vote resulted, as follows (Record 774): 72 Yeas, 72 Nays, 0 Present, not voting.

Yeas — Mr. Speaker(C); Allen, R.; Anderson; Baxter; Berman; Bohac; Branch; Brown, B.; Brown, F.; Callegari; Campbell; Chisum; Cook, B.; Corte; Crabb; Crownover; Davis, J.; Delisi; Denny; Eissler; Elkins; Flynn; Gattis; Goodman; Grusendorf; Hamric; Hardcastle; Harper-Brown; Hartnett; Hegar; Hilderbran; Hill; Hope; Howard; Hughes; Hupp; Isett; Jackson; Keffer, B.; Keffer, J.; King, P.; Kolkhorst; Krusee; Laubenberg; Madden; McCall; Miller; Morrison; Mowery; Nixon; Orr; Otto; Paxton; Phillips; Pitts; Reyna; Riddle; Seaman; Smith, T.; Smith, W.; Smithee; Solomons; Straus; Swinford; Talton; Taylor; Truitt; Van Arsdale; West; Wong; Woolley; Zedler.

Nays — Allen, A.; Alonzo; Anchia; Blake; Burnam; Casteel; Castro; Chavez; Coleman; Cook, R.; Davis, Y.; Dawson; Deshotel; Dukes; Dunnam; Edwards; Eiland; Escobar; Farabee; Farrar; Flores; Frost; Gallego; Geren; Giddings; Gonzales; Gonzalez Toureilles; Goolsby; Griggs; Guillen; Haggerty; Hamilton; Herrero; Hochberg; Homer; Hopson; Hunter; Jones, D.; Jones, J.; Keel; King, T.; Kuempel; Laney; Leibowitz; Luna; Martinez; Martinez Fischer; McClendon; McReynolds; Menendez; Merritt; Moreno, P.; Naishtat; Noriega, M.; Oliveira; Olivo; Peña; Pickett; Puente; Quintanilla; Raymond; Ritter; Rodriguez; Rose; Solis; Strama; Thompson; Turner; Uresti; Veasey; Villarreal; Vo.

Absent, Excused — Bailey; Bonnen; Driver; Dutton; Hodge.

The speaker stated that the motion to table Amendment No. 19 was lost by the above vote.

### STATEMENTS OF VOTE

When Record No. 774 was taken, I was absent because of illness in the family. Had I been present I would have voted no.

Bonnen

I was shown voting yes on Record No. 774. I intended to vote no.

Hardcastle

A record vote was requested.

The vote of the house was taken on the adoption of Amendment No. 19 and the vote was announced yeas 70, nays 72.

A verification of the vote was requested and was granted.

The roll of those voting yea and nay was again called and the verified vote resulted, as follows (Record 775): 72 Yeas, 72 Nays, 0 Present, not voting.

Yeas — Allen, A.; Alonzo; Anchia; Blake; Burnam; Casteel; Castro; Chavez; Coleman; Cook, R.; Davis, Y.; Dawson; Deshotel; Dukes; Dunnam; Edwards; Eiland; Escobar; Farabee; Farrar; Flores; Frost; Gallego; Geren; Giddings; Gonzales; Gonzalez Toureilles; Goolsby; Griggs; Guillen; Haggerty;



Hamilton; Herrero; Hochberg; Homer; Hopson; Hunter; Jones, D.; Jones, J.; Keel; King, T.; Kuempel; Laney; Leibowitz; Luna; Martinez; Martinez Fischer; McClendon; McReynolds; Menendez; Merritt; Moreno, P.; Naishtat; Noriega, M.; Oliveira; Olivo; Peña; Pickett; Puente; Quintanilla; Raymond; Ritter; Rodriguez; Rose; Solis; Strama; Thompson; Turner; Uresti; Veasey; Villarreal; Vo.

Nays — Mr. Speaker(C); Allen, R.; Anderson; Baxter; Berman; Bohac; Branch; Brown, B.; Brown, F.; Callegari; Campbell; Chisum; Cook, B.; Corte; Crabb; Crownover; Davis, J.; Delisi; Denny; Eissler; Elkins; Flynn; Gattis; Goodman; Grusendorf; Hamric; Hardcastle; Harper-Brown; Hartnett; Hegar; Hilderbran; Hill; Hope; Howard; Hughes; Hupp; Isett; Jackson; Keffer, B.; Keffer, J.; King, P.; Kolkhorst; Krusee; Laubenberg; Madden; McCall; Miller; Morrison; Mowery; Nixon; Orr; Otto; Paxton; Phillips; Pitts; Reyna; Riddle; Seaman; Smith, T.; Smith, W.; Smithee; Solomons; Straus; Swinford; Talton; Taylor; Truitt; Van Arsdale; West; Wong; Woolley; Zedler.

Absent, Excused — Bailey; Bonnen; Driver; Dutton; Hodge.

The speaker stated that Amendment No. 19 failed of adoption by the above vote.

### STATEMENT OF VOTE

When Record No. 775 was taken, I was absent because of illness in the family. Had I been present I would have voted yes.

Bonnen

### Amendment No. 20

Representative Geren offered the following amendment to **CSSB 422**:

Amend **CSSB 422** in SECTION 1.17 of the bill, in added Subchapter J, Chapter 29, Education Code (house committee report), as follows:

- (1) On page 16, line 26, strike "750,000" and substitute "one million".
- (2) On page 17, line 2, between "is" and "the", insert "not".
- (3) On page 17, line 5, strike "90" and substitute "85".

### Amendment No. 21

Representative Geren offered the following amendment to Amendment No. 20:

Amend the Geren amendment to **CSSB 422** as follows:

(1) On page 1 of the amendment, line 5, strike "one million" and substitute "1.4 million or more that is adjacent to another county with a population of 1.4 million or more".

(2) On page 1 of the amendment, strike lines 6-8 and substitute the following:

(2) On page 17, strike lines 2-4 and substitute the following:

(1) the district is the second largest district in the county in which at least 48 percent of the students are educationally disadvantaged according to the data provided through the Public Education Information Management System for the fall semester of the 2004-2005 school year.

(3) On page 17, strike lines 5-6 and renumber accordingly.

Amendment No. 21 was adopted.

Representative B. Keffer moved to table Amendment No. 20.

A record vote was requested.

The motion to table was lost by (Record 776): 67 Yeas, 76 Nays, 1 Present, not voting.

Yeas — Allen, R.; Anderson; Baxter; Berman; Bohac; Branch; Brown, B.; Callegari; Campbell; Chisum; Cook, B.; Corte; Crabb; Crownover; Davis, J.; Delisi; Denny; Eissler; Elkins; Flynn; Gattis; Goodman; Grusendorf; Hamric; Harper-Brown; Hartnett; Hegar; Hilderbran; Hill; Hope; Howard; Hughes; Hupp; Isett; Jackson; Keffer, B.; King, P.; Krusee; Laubenberg; Madden; McCall; Miller; Morrison; Mowery; Nixon; Orr; Otto; Paxton; Phillips; Pitts; Reyna; Riddle; Seaman; Smith, T.; Smith, W.; Smithee; Solomons; Straus; Swinford; Talton; Taylor; Truitt; Van Arsdale; West; Wong; Woolley; Zedler.

Nays — Allen, A.; Alonzo; Anchia; Blake; Brown, F.; Burnam; Casteel; Castro; Chavez; Coleman; Cook, R.; Davis, Y.; Dawson; Deshotel; Dukes; Dunnam; Edwards; Eiland; Escobar; Farabee; Farrar; Flores; Frost; Gallego; Geren; Giddings; Gonzales; Gonzalez Toureilles; Goolsby; Griggs; Guillen; Haggerty; Hamilton; Hardcastle; Herrero; Hochberg; Homer; Hopson; Hunter; Jones, D.; Jones, J.; Keel; Keffer, J.; King, T.; Kolkhorst; Kuempel; Laney; Leibowitz; Luna; Martinez; Martinez Fischer; McClendon; McReynolds; Menendez; Merritt; Moreno, P.; Naishtat; Noriega, M.; Oliveira; 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; Bonnen; Driver; Dutton; Hodge.

Amendment No. 20 was adopted.

### **Amendment No. 22**

Representative Geren offered the following amendment to **CSSB 422**:

Amend **CSSB 422** in SECTION 1.17 of the bill, in added Subchapter J, Chapter 29, Education Code (house committee report), as follows:

- (1) On page 16, strike lines 9-14.
- (2) On page 16, line 18, after "Subchapter G;", insert "or".
- (3) On page 16, line 21, strike "; or" and substitute ":".
- (4) On page 16, strike lines 22-23.
- (5) Strike page 18, line 18, through page 23, line 15.
- (6) On page 23, line 16, strike "Sec. 29.360" and substitute "Sec. 29.355".
- (7) On page 24, line 2, strike "Sec. 29.361" and substitute "Sec. 29.356".

- (8) On page 24, line 8, strike "Sec. 29.362" and substitute "Sec. 29.357".  
(9) On page 24, line 13, strike "or qualifying school".  
(10) Strike page 24, line 15, through page 25, line 1.  
(11) On page 25, line 2, strike "Sec. 29.364" and substitute "Sec. 29.358".  
(12) On page 25, line 15, strike "and private".

(Chisum in the chair)

Representative Grusendorf moved to table Amendment No. 22.

A record vote was requested.

The motion to table was lost by (Record 777): 70 Yeas, 72 Nays, 1 Present, not voting.

Yeas — Allen, R.; Anderson; Baxter; Berman; Bohac; Branch; Brown, B.; Brown, F.; Callegari; Campbell; Chisum(C); Cook, B.; Corte; Crabb; Crownover; Davis, J.; Delisi; Denny; Eissler; Elkins; Flynn; Gattis; Goodman; Grusendorf; Hamric; Hardcastle; Harper-Brown; Hartnett; Hegar; Hilderbran; Hill; Hope; Howard; Hughes; Hupp; Isett; Jackson; Keffer, B.; Keffer, J.; King, P.; Kolkhorst; Krusee; Laubenberg; Madden; McCall; Miller; Morrison; Mowery; Nixon; 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.; Alonzo; Anchia; Blake; Burnam; Casteel; Castro; Chavez; Coleman; Cook, R.; Davis, Y.; Dawson; Deshotel; Dukes; Dunnam; Edwards; Eiland; Escobar; Farabee; Farrar; Flores; Frost; Gallego; Geren; Giddings; Gonzales; Gonzalez Toureilles; Goolsby; Griggs; Guillen; Haggerty; Hamilton; Herrero; Hochberg; Homer; Hopson; Hunter; Jones, D.; Jones, J.; Keel; King, T.; Kuempel; Laney; Leibowitz; Luna; Martinez; Martinez Fischer; McClendon; McReynolds; Menendez; Merritt; Moreno, P.; Naishtat; Noriega, M.; Oliveira; Olivo; Peña; Pickett; Puente; Quintanilla; Raymond; Ritter; Rodriguez; Rose; Solis; Strama; Thompson; Turner; Uresti; Veasey; Villarreal; Vo.

Present, not voting — Mr. Speaker.

Absent, Excused — Bailey; Bonnen; Driver; Dutton; Hodge.

Absent — Truitt.

### STATEMENT OF VOTE

When Record No. 777 was taken, I was absent because of illness in the family. Had I been present I would have voted no.

Bonnen

(Speaker in the chair)

A record vote was requested.

Amendment No. 22 was adopted by (Record 778): 74 Yeas, 70 Nays, 0 Present, not voting.

Yeas — Allen, A.; Allen, R.; Alonzo; Anchia; Blake; Burnam; Casteel; Castro; Chavez; Coleman; Cook, R.; Davis, Y.; Dawson; Deshotel; Dukes; Dunnam; Edwards; Eiland; Escobar; Farabee; Farrar; Flores; Frost; Gallego; Geren; Giddings; Gonzales; Gonzalez Toureilles; Goodman; Goolsby; Griggs; Guillen; Haggerty; Hamilton; Herrero; Hochberg; Homer; Hopson; Hunter; Jones, D.; Jones, J.; Keel; King, T.; Kuempel; Laney; Leibowitz; Luna; Martinez; Martinez Fischer; McClendon; McReynolds; Menendez; Merritt; Moreno, P.; Naishtat; Noriega, M.; Oliveira; Olivo; Peña; Pickett; Puente; Quintanilla; Raymond; Ritter; Rodriguez; Rose; Solis; Strama; Thompson; Turner; Uresti; Veasey; Villarreal; Vo.

Nays — Mr. Speaker(C); Anderson; Baxter; Berman; Bohac; Branch; Brown, B.; Brown, F.; Callegari; Campbell; Chisum; Cook, B.; Corte; Crabb; Crownover; Davis, J.; Delisi; Denny; Eissler; Elkins; Flynn; Gattis; Grusendorf; Hamric; Hardcastle; Harper-Brown; Hartnett; Hegar; Hilderbran; Hill; Hope; Howard; Hughes; Hupp; Isett; Jackson; Keffer, B.; Keffer, J.; King, P.; Kolkhorst; Krusee; Laubenberg; Madden; McCall; Miller; Morrison; Mowery; Nixon; Orr; Otto; Paxton; Phillips; Pitts; Reyna; Riddle; Seaman; Smith, T.; Smith, W.; Smithee; Solomons; Straus; Swinford; Talton; Taylor; Truitt; Van Arsdale; West; Wong; Woolley; Zedler.

Absent, Excused — Bailey; Bonnen; Driver; Dutton; Hodge.

#### STATEMENTS OF VOTE

I was shown voting yes on Record No. 778. I intended to vote no.

R. Allen

When Record No. 778 was taken, I was absent because of illness in the family. Had I been present I would have voted yes.

Bonnen

#### CSSB 422 - POINT OF ORDER

Representative Thompson raised a point of order against further consideration of **CSSB 422** under Rule 4, Section 6 and Rule 6, Section 16 of the House Rules on the grounds that the duties of the chair were not fulfilled and the calendar was not printed and distributed correctly.

The speaker overruled the point of order.

#### CSSB 422 - POINT OF ORDER DISPOSITION

Representative Dunnam had raised a point of order against further consideration of **CSSB 422** under Rule 4, Section 32(c) of the House Rules on the grounds that the bill analysis contains multiple inaccuracies.

The speaker sustained the point of order, and had read the following statement:

Representative Dunnam raised seven points of order on the sufficiency of the bill analysis to **CSSB 422**. Five of those violations have been previously overruled.

Violation 4 notes the failure of the bill analysis to satisfy the requirements of Rule 4, Section 32(c)(4) to discuss two proposed sections. The first, a standard Sunset across-the-board provisions, language relating to encouraging the use of negotiated rulemaking and alternative dispute resolution provisions, and the second, a provision that require the commissioner to evaluate, before adopting a rule, whether it would impose additional paperwork requirements on teachers and attempt to minimize that paperwork.

Both of these provisions appear in the senate engrossed version and do not appear in house committee of the bill. There is no discussion of the absence of these two provisions in the portion of the bill analysis containing a comparison of the original to the substitute.

In making a determination of whether a bill analysis complies with the provisions of Rule 4, Sec. 32(c), the presiding officer must examine each unique bill and each unique bill analysis. In this case, the chair has reviewed the house and senate version of the bills and the bill analysis. Failure to describe, in this case, the deletion of the rulemaking and alternative dispute resolution provision and the reduction of paperwork provision failed to set out a statement of substantial differences between the complete committee substitute and the original bill.

Accordingly, the point of order raised by Representative Dunnam is sustained.

The ruling precluded further consideration of **CSSB 422**.

#### **CSSB 422 - REASONS FOR VOTE**

My support for the TEA Sunset bill was contingent on the Chisum amendment being adopted, which would guarantee that no funds from rural school districts would be used to cover costs of a limited pilot voucher program. The Chisum amendment would have also forbidden the limited pilot voucher program from being expanded into rural areas without an additional Act of the legislature. Because the TEA Sunset bill was killed on the point of order prior to the Chisum amendment being added, I want the house record to clearly state my support of the pilot voucher program was solely contingent on this rural protection being a requirement of the pilot program.

Anderson, F. Brown, Campbell, Chisum, B. Cook, Flynn, Hardcastle, Hilderbran, J. Keffer, Kolkhorst, Miller, Orr, Otto, Pitts, Swinford, Smithee

I supported **CSSB 422** because it was the Texas Education Agency (TEA) sunset bill. Without this legislation, the TEA would be abolished this coming year. I was not willing to kill the Texas Education Agency because of an amendment added in the Public Education committee. In committee, an amendment was added to this legislation that would have allowed a pilot voucher program for urban school districts. Before the point of order on **CSSB 422** was sustained, I authored several amendments which would have limited the pilot voucher program to only the five largest school districts in Texas with no ability for expansion to other areas of the state without prior legislative approval. Furthermore, my amendments would have limited funding of the pilot voucher

program only from funds from those five school districts that would have implemented the program. My amendment provided that no education dollars from outside the five districts could be used to fund the pilot and, therefore, would have prevented money from being siphoned away from rural schools to fund the program.

Miller

I voted for the TEA Sunset bill contingent on the Chisum amendment being adopted which would guarantee that no funds from rural school districts would be used to cover costs of a limited pilot voucher program. Because TEA Sunset bill was killed on the point of order prior to the Chisum amendment being added. I want the House record to clearly state my support of the pilot voucher program was solely contingent on this rural protection being a requirement of the pilot program.

West

### **HB 540 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS**

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

**HB 540**, A bill to be entitled An Act relating to the designation of the portion of U.S. Highway 290 inside Harris County as the Ronald Reagan Memorial Highway.

Representative Bohac moved to concur in the senate amendments to **HB 540**.

The motion to concur in senate amendments prevailed. (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, Herrero, Leibowitz, McClendon, Solis, and Veasey, recorded voting no.)

#### **Senate Committee Substitute**

**HB 540**, A bill to be entitled An Act relating to the designation of a portion of U.S. Highway 290 inside Harris County as the Ronald Reagan Memorial Highway.

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

SECTION 1. Subchapter B, Chapter 225, Transportation Code, is amended by adding Section 225.059 to read as follows:

Sec. 225.059. RONALD REAGAN MEMORIAL HIGHWAY. (a) The part of U.S. Highway 290 in Harris County between the Harris County boundary with Waller County and Beltway 8 is designated as the Ronald Reagan Memorial Highway.

(b) The department shall design and construct memorial markers indicating the highway number, the designation as the Ronald Reagan Memorial Highway, and any other appropriate information.

(c) The department shall erect a marker at each end of the highway and at appropriate intermediate sites along the highway.

(d) The department is not required to design, construct, or erect a marker under this section unless the department receives a grant or donation to cover the cost of the design, construction, and erection.

(e) Funds collected under Section 225.021 for the purpose of implementing this section shall be deposited to the credit of the state highway fund.

SECTION 2. This Act takes effect September 1, 2005.

### **HB 874 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS**

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

**HB 874**, A bill to be entitled An Act relating to designating a portion of State Highway 123 as the Senator John Traeger Memorial Highway.

Representative Kuempel moved to concur in the senate amendments to **HB 874**.

A record vote was requested.

The motion to concur in senate amendments prevailed by (Record 779): 132 Yeas, 0 Nays, 1 Present, not voting.

Yeas — Allen, A.; Allen, R.; Alonzo; Anchia; Anderson; Baxter; Berman; Blake; Bohac; Branch; Brown, B.; Brown, F.; Callegari; Campbell; Casteel; Castro; Chavez; Chisum; Coleman; Cook, B.; Cook, R.; Corte; Crabb; Crownover; Davis, J.; Davis, Y.; Dawson; Delisi; Denny; Dunnam; Edwards; Eiland; Eissler; Elkins; Escobar; Farabee; Farrar; Flynn; Frost; Gallego; Gattis; Geren; Giddings; Gonzales; Gonzalez Toureilles; Goodman; Goolsby; Griggs; Grusendorf; Guillen; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Hegar; Herrero; Hilderbran; Hill; Hochberg; Homer; Hope; Hopson; Howard; Hunter; Hupp; Isett; Jackson; Jones, D.; Keel; Keffer, B.; Keffer, J.; King, P.; King, T.; Kolkhorst; Krusee; Kuempel; Laney; Laubenberg; Leibowitz; Luna; Madden; Martinez; Martinez Fischer; McCall; McReynolds; Menendez; Merritt; Miller; Moreno, P.; Morrison; Mowery; Naishtat; Nixon; Noriega, M.; Oliveira; Olivo; Orr; Otto; Paxton; Peña; Phillips; Pickett; Quintanilla; Raymond; Reyna; Riddle; Ritter; 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.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Bailey; Bonnen; Driver; Dutton; Hodge.

Absent — Burnam; Deshotel; Dukes; Flores; Hughes; Jones, J.; McClendon; Pitts; Puente; Rodriguez; Rose.

### STATEMENTS OF VOTE

When Record No. 779 was taken, I was in the house but away from my desk. I would have voted yes.

Deshotel

When Record No. 779 was taken, I was in the house but away from my desk. I would have voted yes.

Rose

#### Senate Committee Substitute

**HB 874**, A bill to be entitled An Act relating to designating a portion of State Highway 123 as the Senator John Traeger Memorial Highway.

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

SECTION 1. Subchapter B, Chapter 225, Transportation Code, is amended by adding Section 225.0395 to read as follows:

Sec. 225.0395. SENATOR JOHN TRAEGER MEMORIAL HIGHWAY.

(a) State Highway 123 between Interstate Highway 10 and United States Highway 90A is designated as the Senator John Traeger Memorial Highway.

(b) The department shall design and construct memorial markers indicating the highway number, the designation as the Senator John Traeger Memorial Highway, and any other appropriate information.

(c) Except as provided by Subsection (d), the department shall erect a marker at each end of the highway and at appropriate intermediate sites along the highway.

(d) The department is not required to design, construct, or erect a marker required by this section unless a grant or donation of private funds is made to the department to cover the cost of the design, construction, and erection of the marker.

(e) Money collected under Section 225.021 for the purpose of implementing this section shall be deposited to the credit of the state highway fund.

SECTION 2. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2005.

#### **HB 1045 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS**

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

**HB 1045**, A bill to be entitled An Act relating to amendments to the Texas Timeshare Act.

Representative Goolsby moved to concur in the senate amendments to **HB 1045**.

A record vote was requested.



The motion to concur in senate amendments prevailed by (Record 780): 141 Yeas, 0 Nays, 1 Present, not voting.

Yeas — Allen, A.; Allen, R.; Alonzo; Anchia; Anderson; Baxter; Berman; Blake; Bohac; Branch; Brown, B.; Brown, F.; Callegari; Campbell; Casteel; Castro; Chavez; Chisum; Coleman; Cook, B.; Cook, R.; Corte; Crabb; Crownover; Davis, J.; Davis, Y.; Dawson; Delisi; Denny; Deshotel; Dukes; Dunnam; Edwards; Eiland; Eissler; Elkins; Escobar; Farabee; Farrar; Flores; Flynn; Frost; Gallego; Gattis; Geren; Giddings; Gonzales; Gonzalez Toureilles; Goodman; Goolsby; Griggs; Grusendorf; Guillen; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Hegar; Herrero; Hilderbran; Hill; Hochberg; 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; Pitts; Puente; Quintanilla; Raymond; Reyna; Riddle; Ritter; 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.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Bailey; Bonnen; Driver; Dutton; Hodge.

Absent — Burnam; Rodriguez.

### Senate Committee Substitute

**HB 1045**, A bill to be entitled An Act relating to amendments to the Texas Timeshare Act.

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

SECTION 1. Section 221.002, Property Code, is amended to read as follows:

Sec. 221.002. DEFINITIONS. As used in this chapter:

(1) "Accommodation" means any apartment, condominium or cooperative unit, ~~or~~ hotel or motel room, cabin, lodge, or other private or commercial structure that:

(A) is affixed to real property;

(B) is designed for occupancy or use by one or more individuals;

and

(C) is part of [in a building or commercial structure that is situated on] a timeshare plan [property and subject to a timeshare regime].

(2) "Advertisement [~~Advertising~~]" means any written, oral, or electronic communication that is directed to or targeted at individuals in this state and contains a promotion, [direct or indirect solicitation or] inducement, or offer to sell a timeshare interest, including a promotion, inducement, or offer to sell:

(A) contained in a brochure, pamphlet, or radio or television transcript;

(B) communicated by [to purchase and includes a solicitation or inducement made by print or] electronic media or telephone; or

(C) solicited[;] through direct [the] mail[, or by personal contact].

(3) "Amenities" means all common areas and includes recreational and maintenance facilities of the timeshare plan [property].

(4) "Assessment" means an amount assessed against or collected from a purchaser by an association or its managing entity in a fiscal year, regardless of the frequency with which the amount is assessed or collected, to cover expenditures, charges, reserves, or liabilities related to the operation of a timeshare plan or timeshare properties managed by the same managing entity.

(5) "Association" means a council or association composed of all persons who have purchased a timeshare interest.

(6) "Commission" means the Texas Real Estate Commission.

(7) "Component site" means a specific geographic location where accommodations that are part of a multisite timeshare plan are located. Separate phases of a single timeshare property in a specific geographic location and under common management are a single component site.

~~(8) [(5) "Council of purchasers" means a council or association composed of all persons who have purchased a timeshare estate.~~

~~[(6)] "Developer" means:~~

(A) any person, excluding a sales agent, who creates a timeshare plan or is in the business of selling timeshare interests or employs a sales agent to sell timeshare interests; or

(B) any person who succeeds in the developer's interest by sale, lease, assignment, mortgage, or other transfer if the person:

(i) offers at least 12 timeshare interests in a particular timeshare plan; and

(ii) is in the business of selling timeshare interests or employs a sales agent to sell timeshare interests [regime].

(9) ~~[(7)]~~ "Dispose" or "disposition" means a voluntary transfer of any legal or equitable timeshare interest but does not include the transfer or release of a real estate lien or of a security interest.

(10) ~~[(8)]~~ "Escrow agent" means a [an independent] bonded escrow company, a financial [or an] institution whose accounts are insured by a governmental agency or instrumentality, or an attorney or title insurance agent licensed in this state [and] who is responsible for the receipt and disbursement of funds in accordance with this chapter.

(11) ~~[(9)]~~ "Exchange company" means any person ~~[, including a developer,]~~ who owns or operates an exchange program.

(12) ~~[(10)]~~ "Exchange disclosure statement" means a written statement that includes the information required by Section 221.033 [201.033].

(13) ~~[(11)]~~ "Exchange program" means any method, arrangement, or procedure for the voluntary exchange of [program under which the owner of a] timeshare interests among purchasers or owners [interest may exchange a timeshare period for another timeshare period in the same or a different timeshare

~~property, but does not include a one-time exchange of timeshare periods in the same timeshare property if offered to a purchaser by a developer after that purchaser's disposition].~~

(14) "Incidental use right" means the right to use accommodations and amenities at one or more timeshare properties that is not guaranteed and is administered by the managing entity of the timeshare properties that makes vacant accommodations at the timeshare properties available to owners of timeshare interests in the timeshare properties.

(15) [(12)] "Managing entity" means the person responsible for operating and maintaining a timeshare property.

(16) "Multisite timeshare plan" means a plan in which a timeshare purchaser has:

(A) a specific timeshare interest, which is the right to use and occupy accommodations at a specific timeshare property and the right to use and occupy accommodations at one or more other component sites created by or acquired solely through the reservation system of the timeshare plan; or

(B) a nonspecific timeshare interest, which is the right to use and occupy accommodations at more than one component site created by or acquired solely through the reservation system of the timeshare plan but which does not include a right to use and occupy a particular accommodation.

~~(17) [(13)] "Master deed" or "master lease" or "declaration" means the deed, lease, or declaration establishing real property as a timeshare regime.~~

[(14)] "Offering" or "offer" means any advertisement, inducement, or solicitation and includes any attempt to encourage a person to purchase a timeshare interest other than as a security for an obligation.

(18) [(15)] "Project instrument" means a timeshare instrument or one or more recordable documents, by whatever name denominated, applying to the whole of a timeshare project and containing restrictions or covenants regulating the use, occupancy, or disposition of units in a project, including a ~~master deed, master lease,~~ declaration for a condominium, association articles of incorporation, association [or] bylaws, and rules for a condominium in which a timeshare plan is created.

(19) [(16)] "Promotion" means any program, [or] activity, contest, or gift, prize, or other item of value used to induce any person to attend a timeshare sales presentation.

~~(20) [(17)] "Promotional disclosure statement" means a written statement that includes the information required by Section 201.031.~~

[(18)] "Purchaser" means any person, other than a developer ~~seller~~, who by means of a voluntary transfer acquires a legal or equitable interest in a timeshare interest other than as a security for an obligation.

(21) "Reservation system" means the method, arrangement, or procedure by which a purchaser, in order to reserve the use and occupancy of an accommodation of a multisite timeshare plan for one or more timeshare periods, is required to compete with other purchasers in the same multisite timeshare plan, regardless of whether the reservation system is operated and maintained by the multisite timeshare plan, a managing entity, an exchange company, or any other

person. If a purchaser is required to use an exchange program as the purchaser's principal means of obtaining the right to use and occupy the accommodations and facilities of the plan, the arrangement is considered a reservation system. If the exchange company uses a mechanism to exchange timeshare periods among members of the exchange program, the use of the mechanism is not considered a reservation system of the multisite timeshare plan.

~~[(19) "Seller" means any person, including a developer, who in the ordinary course of business offers a timeshare interest for sale to the public, but does not include a person who acquires a timeshare interest for his use and subsequently offers it for resale.~~

~~[(20) "Substantially complete" means that the timeshare unit, including furnishings and appliances, is complete as represented in the timeshare disclosure statement, the accommodations are ready for occupancy, and the amenities dedicated to the timeshare regime are as represented in the timeshare disclosure statement.~~

~~[(21) "Timeshare estate" means any arrangement under which the purchaser receives a freehold estate or an estate for years in a timeshare property and the right to use an accommodation or amenities, or both, in that property for a timeshare period on a recurring basis.]~~

(22) "Single-site timeshare plan" means a timeshare plan in which a timeshare purchaser's right to use and occupy accommodations is limited to a single timeshare property. A single-site timeshare plan that includes an incidental use right or a program under which the owner of a timeshare interest at a specific timeshare property may exchange a timeshare period for another timeshare period at the same or another timeshare property under common management does not transform the single-site timeshare plan into a multisite timeshare plan.

(23) "Timeshare disclosure statement" means a written statement that includes the information required by Section 221.032 [201.032].

(24) [(23)] "Timeshare estate [expenses]" means an arrangement under which the purchaser receives a right to occupy [expenditures, charges, or liabilities for the operation of] a timeshare property and an estate interest in the real property [or timeshare system, including any allocations to maintain reserves but excluding any purchase money payable for timeshare interests:

[(A) incurred in connection with a timeshare interest by or on behalf of the owner of all timeshare interests in a timeshare property; and

[(B) imposed on timeshare interests by the managing entity].

(25) [(24)] "Timeshare interest" means a timeshare estate or timeshare use.

(26) [(25)] "Timeshare instrument" means a master deed, master lease, declaration, or any other instrument used in the creation of a timeshare plan [regime].

~~[(26) "Timeshare liability" means the liability for timeshare expenses allocated to each timeshare interest.]~~

(27) "Timeshare period" means the period within which the purchaser of a timeshare interest is entitled to the exclusive possession, occupancy, and use of an accommodation [a timeshare unit and to the general use of all amenities].

(28) "Timeshare plan" means any arrangement, plan, scheme, or similar method, excluding an exchange program but including a membership agreement, sale, lease, deed, license, or right-to-use agreement, by which a purchaser, in exchange for consideration, receives an ownership right in or the right to use accommodations for a period of time less than a year during a given year, but not necessarily consecutive years.

(29) [(28)] "Timeshare property" means:

(A) one or more [all real property that is subject to a timeshare declaration, including all] accommodations and any related amenities subject to the same timeshare instrument; and

(B) any other property or property rights appurtenant to the accommodations and amenities.

[(29) "Timeshare regime" means the real property use that is created by the filing and recordation of a master deed, master lease, or declaration.]

(30) ["Timeshare unit" means any accommodation that is divided into timeshare periods.

[(31) "Timeshare use" means any arrangement [other than a hotel or motel operation, whether by lease, rental agreement, license, use agreement or other means,] under which the purchaser receives a right to occupy [use an accommodation or amenities or both for] a timeshare property [period on a recurring basis], but under which the purchaser does not receive an an [a freehold] estate interest [or an estate for years] in the [a] timeshare property.

[(32) "Timeshare fees" means an amount assessed against or collected from an owner by a managing entity in a fiscal year, without regard to the frequency with which the amount is assessed or collected.

[(33) "Owner" means a person who holds a legal or equitable interest in a timeshare interest in timeshare property subject to the requirements of this Act.

[(34) "Timeshare system" means two or more timeshare properties located in separate geographic areas that are:

[(A) managed by the same managing entity; and

[(B) subject to a written arrangement or agreement whereby an owner of a timeshare interest in any one of the timeshare properties may use a timeshare unit and the amenities of any of the other timeshare properties as provided in the project instruments.]

SECTION 2. Section 221.003, Property Code, is amended by adding Subsections (d) and (e) to read as follows:

(d) A timeshare property subject to this chapter is not subject to Chapter 209 unless an individual timeshare owner continuously occupies a single timeshare property as the owner's primary residence 12 months of the year.

(e) If a person with a specific program that might otherwise be subject to this chapter received from the commission, before January 31, 2005, a written determination that the program is exempt from this chapter as the chapter existed when the determination was made, the program remains exempt from this chapter if:

(1) the program does not vary materially from the terms on which the exemption was granted; or

(2) the program varies materially from the terms on which the exemption was granted, but the person receives from the commission a new written determination that the program is exempt from this chapter.

SECTION 3. Sections 221.011, 221.012, 221.013, and 221.014, Property Code, are amended to read as follows:

Sec. 221.011. DECLARATION. (a) The developer of a timeshare plan any part of which is located in this state must record the timeshare instrument in this state. When a person [who is a developer, the sole owner, or the co owner of a building or proposed building or buildings] expressly declares an intent to subject the property to a timeshare plan through the recordation of a timeshare instrument [master deed, master lease, or declaration] that sets forth the information provided in Subsections (b) and (c), [and that sets forth the intent to submit that property to a timeshare regime,] that property shall be established thenceforth as a timeshare plan [regime].

(b) The declaration made in a timeshare instrument recorded under this section must include:

(1) a legal description of the timeshare property, including a ground plan indicating the location of each existing or proposed building included in [to be constructed on] the timeshare plan [property];

(2) a description of each existing or proposed accommodation [timeshare unit], including the location and square footage of each unit and an interior floor plan of each existing or proposed building;

(3) a description of any [the] amenities furnished or to be furnished to the purchaser;

(4) a statement of the fractional or percentage part that each timeshare interest bears to the entire timeshare plan [regime];

(5) if applicable, a statement that the timeshare property is part of a multisite timeshare plan [system]; and

(6) any additional provisions that are consistent with this section.

(c) Any timeshare interest created under this section is subject to [an interest in real property within the meaning of] Section 1101.002(5), Occupations Code, but Sections 1101.351(a)(1) and (c), Occupations Code, do not apply to the acts of an exchange company in exchanging timeshare periods [under a timeshare program].

~~[(d) Any timeshare interest located wholly without this state may be sold or otherwise disposed of within this state if the timeshare property is in full compliance with the legal requirements of and may be validly sold or otherwise disposed of as a timeshare property in the jurisdiction in which the timeshare property is located and if all information required in this section is included in the disclosure statement.]~~

Sec. 221.012. CONVEYANCE AND ENCUMBRANCE. Once the property is established as a timeshare plan [regime], each timeshare interest may be individually conveyed or encumbered and shall be entirely independent of all other timeshare interests in the same timeshare property. Any title or interest in a timeshare interest may be recorded.

Sec. 221.013. COMMON OWNERSHIP. (a) Any timeshare interest may be jointly or commonly owned by more than one person.

(b) A timeshare estate may be jointly or commonly owned in the same manner as any other real property interest in this state.

Sec. 221.014. PARTITION. An action for partition of a timeshare interest may not be maintained during the term of a timeshare plan [unless expressly permitted by the declaration].

SECTION 4. Subchapter C, Chapter 221, Property Code, is amended by amending Sections 221.021, 221.022, 221.023, 221.024, and 221.025 and adding Section 221.026 to read as follows:

Sec. 221.021. REGISTRATION REQUIRED. (a) Except as provided by Subsection (b) or (d) of this section or another provision of this chapter, a [A] person may not offer or dispose of a timeshare interest unless the timeshare plan [property] is registered with the commission.

(b) Before a registration application for a timeshare plan is submitted or completed, a [A] developer or any person acting on the developer's [his] behalf may accept a reservation and a deposit from a [the] prospective purchaser if the deposit is placed in a segregated [an] escrow account with an independent escrow agent and if the deposit is fully refundable at any time at the request of the purchaser. The deposit may not be forfeited unless the purchaser affirmatively creates a binding obligation by a subsequent written instrument.

(c) A developer or any person [anyone] acting on the developer's [his] behalf may not offer or dispose of [or encumber] a timeshare interest during any period within which there is in effect an order by the commission or by any court of competent jurisdiction revoking or suspending the registration of the timeshare plan [property] of which such timeshare interest is a part.

(d) At the developer's request, the commission may authorize the developer to conduct presales before a timeshare plan is registered if the registration application is administratively complete, as determined by the commission or as established by commission rule. The authorization for presales permits the developer to offer and dispose of timeshare interests during the period the application is in process. To obtain a presales authorization, the developer must:

(1) submit a written request to the commission for an authorization to conduct presales;

(2) submit an administratively complete application for registration, including appropriate fees and exhibits required by the commission; and

(3) provide evidence acceptable to the commission that all funds received by the developer will be placed with an escrow agent with instructions requiring the funds to be retained until a registration application is complete as determined by the commission.

(e) During the presales authorization period, the developer must:

(1) provide to each purchaser and prospective purchaser a copy of the proposed timeshare disclosure statement that the developer submitted to the commission with the initial registration application; and

(2) offer each purchaser the opportunity to cancel the purchase contract as provided by Section 221.041.

(f) After the final timeshare disclosure statement is approved by the commission, the developer must:

(1) give each purchaser and prospective purchaser a copy of the final timeshare disclosure statement; and

(2) if the commission determines that a materially adverse change exists between the disclosures contained in the proposed timeshare disclosure statement and the final timeshare disclosure statement, provide the purchaser a second opportunity to cancel the purchase contract as provided by Section 221.041.

(g) The requirements of this subchapter remain in effect during the period the developer offers or disposes of timeshare interests of the timeshare plan registered with the commission. The developer must notify the commission in writing when all of the timeshare interests of a timeshare plan have been disposed of.

Sec. 221.022. APPLICATION FOR REGISTRATION. (a) An application for registration filed under this section must include a timeshare disclosure statement and any required exchange disclosure statement required by Section 221.033, recorded ~~[201.033, certified]~~ copies of all timeshare instruments, and other information as may be required by the commission. If the timeshare property is a newly developed property, recorded copies of the timeshare instruments must be provided promptly after recorded copies are available from the entity with which the instruments are recorded. If existing or proposed accommodations are in a condominium, an applicant who complies with this section is not required to prepare or deliver a condominium information statement or a resale certificate as described by Chapter 82.

(b) If existing or proposed accommodations ~~[timeshare units]~~ are in a condominium or similar development, the application for registration must contain the project instruments of that development and affirmatively indicate that the creation and disposition of timeshare interests are not prohibited by those instruments. If the project instruments do not expressly authorize the creation and disposition of timeshare interests, the application must contain evidence that existing owners of the condominium development were provided written notice, at least 60 days before the application for registration, that timeshare interests would be created and sold. If the project instruments prohibit the creation or disposition of timeshare interests, the application must contain a certification by the authorized representative of all existing owners that the project instruments have been properly amended to permit that creation and disposition.

(c) The commission may accept an abbreviated registration application from a developer of a timeshare plan if all accommodations in the plan are located outside this state. The developer must file written notice of the intent to register under this section not later than the 15th day before the date the abbreviated application is submitted.

(d) A developer of a timeshare plan with any accommodation located in this state may not file an abbreviated application unless:

(1) the developer is a:

(A) successor in interest after a merger or acquisition; or



(B) joint venture in which the previous developer or its affiliate is a partner or a member; and

(2) the previous developer registered the timeshare plan in this state preceding the merger, acquisition, or joint venture.

(e) A developer filing an abbreviated application must provide:

(1) the legal name and any assumed names and the principal office location, mailing address, telephone number, and primary contact person of the developer;

(2) the name, location, mailing address, telephone number, and primary contact person of the timeshare plan;

(3) the name and address of the developer's authorized or registered agent for service of process in this state;

(4) the name, primary office location, mailing address, and telephone number of the managing entity of the timeshare plan;

(5) the certificate or other evidence of registration from any jurisdiction in which the timeshare plan is approved or accepted;

(6) the certificate or other evidence of registration from the appropriate regulatory agency of any other jurisdiction in the United States in which some or all of the accommodations are located;

(7) a declaration stating whether the timeshare plan is a single-site timeshare plan or a multisite timeshare plan;

(8) if the plan is a multisite timeshare plan, a declaration stating whether the plan consists of specific timeshare interests or nonspecific timeshare interests;

(9) a disclosure of each jurisdiction in which the developer has applied for registration of the timeshare plan and whether the timeshare plan, the developer, or the managing entity used were denied registration or, during the five-year period before the registration application date, were the subject of a final adverse disposition in a disciplinary proceeding;

(10) if requested by the commission, copies of any disclosure documents required to be provided to purchasers or filed with any jurisdiction that approved or accepted the timeshare plan;

(11) the appropriate filing fee; and

(12) any other information reasonably requested by the commission or required by commission rule.

(f) A foreign jurisdiction providing evidence of registration as provided by Subsection (e)(6) must have registration and disclosure requirements that are substantially similar to or stricter than the requirements of this chapter.

(g) The commission shall investigate all matters relating to the application and may in its discretion require a personal inspection of the proposed timeshare property by any persons designated by it. All direct expenses incurred by the commission in inspecting the property shall be borne by the applicant. The commission may require the applicant to pay an advance deposit sufficient to cover those expenses.

Sec. 221.023. AMENDMENT OF REGISTRATION. The developer shall ~~[or managing entity shall promptly]~~ file amendments to the registration reporting to the commission any materially ~~[material and]~~ adverse change in any document contained in the registration not later than the 30th day after the date the developer knows or reasonably should know of the change. The developer may continue to offer and dispose of timeshare interests under the existing registration pending review of the amendments by the commission if the materially adverse change is disclosed to prospective purchasers.

Sec. 221.024. POWERS OF COMMISSION. (a) The commission may prescribe and publish forms and adopt rules necessary to carry out the provisions of this chapter and may suspend or revoke the registration of any developer, place on probation the registration of a developer that has been suspended or revoked, reprimand a developer, impose an administrative penalty of not more than \$10,000, or take any other disciplinary action authorized by this chapter ~~[seller]~~ if, after notice and hearing, the commission determines that a developer ~~[seller]~~ has materially violated this chapter, the Deceptive Trade Practices-Consumer Protection Act (Subchapter E, Chapter 17, Business & Commerce Code), or the Contest and Gift Giveaway Act (Chapter 40, Business & Commerce Code). ~~[The commission may bring suit in a district court of Travis County, Texas, to enjoin a violation of this Act or for any other relief as the court may deem appropriate.]~~

(b) The commission may:

(1) authorize specific employees to conduct hearings and issue final decisions in contested cases; and

(2) [shall] establish reasonable fees for forms and documents it provides to the public and for the filing or registration of documents required by this chapter.

(c) If the commission initiates a disciplinary proceeding under this chapter, the person is entitled to a hearing before the commission or a hearing officer appointed by the commission. The commission by rule shall adopt procedures to permit an appeal to the commission from a determination made by a hearing officer in a disciplinary action.

(d) The commission shall set the time and place of the hearing.

(e) A disciplinary procedure under this chapter is governed by the contested case procedures of Chapter 2001, Government Code.

(f) The commission may file a suit in a district court of Travis County to prevent a violation of this chapter or for any other appropriate relief.

(g) Judicial review of a commission order imposing an administrative penalty is:

(1) instituted by filing a petition as provided by Subchapter G, Chapter 2001, Government Code; and

(2) by trial de novo.

Sec. 221.025. EFFECT OF REGISTRATION ON OTHER LAWS: EXEMPTION ~~[SALE EXEMPT]~~ FROM CERTAIN LAWS ~~[SECURITIES ACT]~~. (a) A developer's compliance with [The filing of a registration under] this

chapter exempts the developer's offer and disposition of ~~sale of~~ timeshare interests subject to this chapter from securities and dealer registration under The Securities Act (Article 581-1 et seq., Vernon's Texas Civil Statutes).

(b) A timeshare plan created as a condominium regime before January 1, 1994, that complies with this chapter is exempt from the requirements of Section 81.112 relating to club membership.

(c) A timeshare plan subject to Chapter 82 that complies with this chapter is exempt from the requirements of Section 82.0675 relating to club membership.

(d) A developer's compliance with this chapter as to any timeshare plan exempts any company, as defined by Chapter 181, Finance Code (Texas Trust Company Act), that holds title to the timeshare interests in the timeshare plan from compliance with the Texas Trust Company Act as to the company's activities relating to the holding of that title.

Sec. 221.026. ISSUANCE AND RENEWAL OF REGISTRATION. (a) The commission by rule shall adopt requirements for the issuance and renewal of a developer's registration under this chapter, including:

(1) the form required for application for registration or a renewal of registration; and

(2) any supporting documentation required for registration or renewal of registration.

(b) The commission shall issue or renew a registration under this chapter for a period not to exceed 24 months.

(c) The commission may assess and collect a fee for the issuance or renewal of a registration under this chapter.

(d) The commission may assess and collect a late fee if the commission has not received the fee or any supporting documentation required before the 61st day after the date a registration is issued or renewed under this section.

(e) Failure to pay a renewal fee or late fee is a violation of this chapter.

SECTION 5. Sections 221.031 and 221.032, Property Code, are amended to read as follows:

Sec. 221.031. ADVERTISEMENTS AND PROMOTIONS [~~PROMOTIONAL DISCLOSURE STATEMENT~~]. (a) At any time, the commission may request a developer to file for review by the commission any advertisement used in this state by the developer in connection with offering a timeshare interest. The developer shall provide the advertisement not later than the 15th day after the date the commission makes the request. If the commission determines that the advertisement violates this chapter or Chapter 40, Business & Commerce Code, the commission shall notify the developer in writing, stating the specific grounds for the commission's determination not later than the 15th day after the date the commission makes its determination. The commission may grant the developer provisional approval for the advertisement if the developer agrees to correct the deficiencies identified by the commission. A developer, on its own initiative, may submit any proposed advertisement to the commission for review and approval by the commission.

(b) Any advertisement that contains a promotion in connection with the offering of a timeshare interest must comply with Chapter 40, Business & Commerce Code.

(c) As provided by Subsections (d) and (e), an advertisement that contains a [Before the use of any] promotion in connection with the offering of a timeshare interest must include, in addition to any disclosures required under Chapter 40, Business & Commerce Code, [the person who intends to use the promotion shall include] the following [information in its advertisements to the prospective purchaser]:

(1) a statement to the effect that the promotion is intended to solicit purchasers of timeshare interests;

(2) if applicable, a statement to the effect that any person whose name is obtained during the promotion may be solicited to purchase a timeshare interest;

(3) the full name of the developer [~~and seller~~] of the timeshare property; and

(4) if applicable, the full name and address of any marketing company involved in the promotion of the timeshare property, excluding the developer or an affiliate or subsidiary of the developer.

(d) An advertisement containing the disclosures required by Chapter 40, Business & Commerce Code, and Subsection (c) must be provided in writing or electronically:

(1) at least once before a scheduled sales presentation; and

(2) in a reasonable period before the scheduled sales presentation to ensure that the recipient receives the disclosures before leaving to attend the sales presentation.

(e) The developer is not required to provide the disclosures required by this section in every advertisement or other written, oral, or electronic communication provided or made to a recipient before a scheduled sales presentation[;

~~(5) the complete rules of the promotion; and~~

~~(6) the method of awarding, the odds of winning, a statement of the retail value of prizes, gifts, or other benefits under the promotion as set forth in Subsection (b) of this section, the geographic region in which the promotion is being conducted, the beginning and ending dates of the promotion, and the date by which each prize, gift, or benefit will be awarded or conferred].~~

~~(b) For the purposes of this section, the retail value of the item is the price at which a substantial number of sales of the exact item, having the same manufacturer, brand, model number, and type, have been made to members of the general public by at least two principal retail outlets in the State of Texas during the six months immediately preceding the offering of the prize or gift described in the promotion. However, if a substantial number of sales of a particular prize have not been made in the State of Texas in the six months immediately preceding the offering of the prize or gift in a promotion or if the developer elects, then the retail value of the prize or gift is the actual unit cost of the prize or the gift, net of any discounts or rebates to the developer, plus 200 percent.~~

~~[Provided, however, in the event a prize or gift involves lodging, airfare, trips, or recreational activity, the retail value shall be the retail sales price of the lodging, airfare, trips, or recreational activity to a member of the general public not involved in a promotional or other discount transaction.]~~

Sec. 221.032. TIMESHARE DISCLOSURE STATEMENT. (a) Before the signing of any agreement ~~[or contract]~~ to acquire a timeshare interest, the developer shall provide a timeshare disclosure statement to the prospective purchaser and shall obtain from the purchaser a written acknowledgement of receipt of the timeshare disclosure statement.

(b) The timeshare disclosure statement for a single-site timeshare plan or a multisite timeshare plan that includes a specific timeshare interest must include:

(1) the type of timeshare plan offered and the name and address of:

(A) the developer; and

(B) the single site or specific site offered for the multisite timeshare plan [and the name and specific location of the timeshare property];

(2) a description of the duration and operation of the timeshare plan;

(3) a description of the existing or proposed accommodations, including the type and number of timeshare interests in the accommodations expressed in periods of seven-day use availability or other time increment applicable to the timeshare plan. The description of each type of accommodation included in the timeshare plan shall be categorized by the number of bedrooms, the number of bathrooms, and sleeping capacity, and shall include a statement indicating whether the accommodation contains a full kitchen, which means a kitchen that has a minimum of a dishwasher, range, sink, oven, and refrigerator. If the accommodations are proposed or incomplete, a schedule for commencement, completion, and availability of the accommodations shall be provided [amenities, timeshare property, and any project or development within which the timeshare property is located or of which it is a part; the total number of timeshare units in the timeshare property and whether and under what circumstances that number may be increased or decreased; and, if a timeshare interest includes amenities not yet in existence, the commencement and completion schedule of the proposed amenities];

(4) [(3)] a description of any existing or proposed amenities of the timeshare plan and, if the amenities are proposed or incomplete, a schedule for commencement, completion, and availability of the amenities [the timeshare interests currently available for disposition and, if applicable, the types and number of units available];

(5) the extent to which financial arrangements have been provided for the completion of all promised accommodations and amenities that are committed to be built;

(6) a description of the method and timing for performing maintenance of the accommodations;

(7) a statement indicating that, on an annual basis, the sum of the nights that purchasers are entitled to use the accommodations does not exceed the number of nights the accommodations are available for use by the purchasers;

(8) a description of the method by which purchasers' use of the accommodations is scheduled;

(9) ~~(4)~~ a statement that an association ~~[a council of purchasers]~~ exists or is expected to be created or that such an association ~~[a council]~~ does not exist and is not expected to be created and, if such an association ~~[a council]~~ exists or is reasonably contemplated, a description of its powers and responsibilities;

(10) relating to the single-site timeshare plan or the specific timeshare interest of a multisite timeshare plan, copies of the following documents, if applicable, including any amendments to the documents, unless separately provided to the purchaser simultaneously with the timeshare disclosure statement:

(A) the declaration;

(B) the association articles of incorporation;

(C) the association bylaws;

(D) the association rules; and

(E) any lease or contract, excluding the purchase contract and other loan documents required to be signed by the purchaser at closing;

(11) ~~(5)~~ the name and principal address of the managing entity and a description of the procedures, if any, for altering the powers and responsibilities of the managing entity and for removing or replacing it;

(12) the current annual ~~(6) a complete~~ budget, if available, or the projected annual budget for the timeshare plan or timeshare properties managed by the same managing entity if assessments are deposited in a common account. The budget ~~[for the operation of the timeshare property for a period of one year after the first disposition of a timeshare interest in the property, and thereafter, the current operating budget, which operating budget]~~ must include:

(A) a statement of the amount reserved or budgeted for repairs, replacements, and refurbishment ~~[the total amount included as a reserve for the maintenance of the timeshare property and for the repair or replacement of personal property or fixtures];~~

(B) the projected common expense liability, if any, by category of expenditure for the timeshare plan or timeshare properties managed by the same managing entity ~~[total amount of any other reserve and the purpose of the reserve];~~

(C) ~~[the projected timeshare liability expressed by categories of expenditure for all timeshare interests;~~

~~(D) the timeshare liability projected by categories of expenditures for each timeshare interest;~~

~~(E) the name and address of the person who prepared the operating budget; and~~

~~(D) ~~(F)~~ the assumptions on which the operating budget is based;~~

(13) the projected assessments and ~~(7)~~ a description of the ~~[nature and estimated amount of any timeshare liability that may in the future be assessed and the]~~ method for calculating and apportioning those assessments among purchasers ~~[and formula for assessing the timeshare liability];~~

(14) any initial fee or special fee due from the purchaser at closing, together with a description of the purpose and method of calculating the fee;

(15) [(8)] a description of any lien, defect, or encumbrance on or affecting title to the timeshare interest and, if applicable, a copy of each written warranty provided by the developer [service that the developer or person acting on his behalf provides or expense that is paid that reasonably may be expected to become a timeshare liability, and the projected timeshare liability attributable to that service or expense];

(16) [(9)] a description of any bankruptcy that is pending or that has occurred within the past five years, pending civil or criminal suit, adjudication, or disciplinary actions material to the timeshare plan of which the developer has knowledge [the existing or proposed amenities of the timeshare property and, if the amenities are proposed or not yet complete or fully functional, a schedule for the projected commencement, completion, and availability of those amenities];

(17) a description of any financing offered by or available through the developer;

(18) any current or anticipated [(10) a description and amount of any current or expected dues, assessments,] fees[;] or charges to be paid by timeshare purchasers for the use of any accommodations or amenities related to the timeshare plan, and a statement that the fees or charges are subject to change [or for any other purpose];

(19) [(11) a description of any unsatisfied final judgment against the developer, seller, managing entity, or exchange company with which the developer is under contract, but not including any individual sales agent or representative who offers a timeshare interest;

[(12) a description and status of any pending lawsuit or administrative action of which the developer has actual knowledge that may materially affect a timeshare interest;

[(13)] a description and amount of insurance coverage provided for the protection of the purchaser;

(20) [(14)] the extent to which a timeshare interest may become subject to a tax lien or other lien arising out of claims against purchasers of different timeshare interests;

(21) [(15)] a description of those matters required by Section 221.041 [201.041];

(22) [(16)] a statement disclosing any right of first refusal or other restraint on the transfer of all or any portion of a timeshare interest;

(23) [(17)] a statement disclosing that any deposit made in connection with the purchase of a timeshare interest must [will] be held by [in] an escrow agent [account] until expiration of any right to cancel the contract and that any deposit must be [or any later time specified in the contract and will be] returned to the purchaser if the purchaser [he] elects to exercise the [his] right of cancellation; or, if the commission accepts from the developer a surety bond, irrevocable letter of credit, or other form of financial assurance instead of an escrow deposit, a statement disclosing that the developer has provided a surety bond, irrevocable letter of credit, or other form of financial assurance in an

amount equal to or in excess of the funds that would otherwise be held by an escrow agent and that the deposit must be returned if the purchaser elects to exercise the right of cancellation;

(24) [(18)] if applicable, a statement that the assessments [timeshare property is part of a timeshare system and that timeshare fees] collected from the purchasers [owners] may be placed in a common account with the assessments [timeshare fees] collected from the purchasers [owners] of other timeshare properties managed by the same managing entity [participating in the timeshare system];

(25) if the timeshare plan provides purchasers with the opportunity to participate in an exchange program, a description of the name and address of the exchange company and the method by which a purchaser accesses the exchange program; and

(26) [(19)] any other information the commission determines is necessary to protect prospective purchasers or to implement the purpose of this chapter [material circumstances concerning a timeshare interest].

(c) A developer who offers a specific timeshare interest in a multisite timeshare plan also must fully disclose the following information in written, graphic, or tabular form:

(1) a description of each component site, including the name and address of each component site;

(2) a description of each type of accommodation in each component site, categorized by the number of bedrooms, the number of bathrooms, and sleeping capacity, and a statement indicating whether the accommodation contains a full kitchen, which means a kitchen that has a minimum of a dishwasher, range, sink, oven, and refrigerator;

(3) a description of the amenities at each component site available for use by the purchasers;

(4) a description of the reservation system, which must include:

(A) the entity responsible for operating the reservation system, its relationship to the developer, and the duration of any agreement for operation of the reservation system;

(B) a summary or the rules governing access to and use of the reservation system; and

(C) the existence of and explanation regarding any priority reservation features that affect a purchaser's ability to make reservations for the use of a given accommodation on a first-come, first-served basis;

(5) the name and principal address of the managing entity for the multisite timeshare plan and a description of the procedures, if any, for altering the powers and responsibilities of the managing entity and for removing or replacing it;

(6) a description of any right to make additions to, substitutions in, or deletions from accommodations, amenities, or component sites, and a description of the basis on which accommodations, amenities, or component sites may be added to, substituted in, or deleted from the multisite timeshare plan;



(7) a description of the purchaser's liability for any fees associated with the multisite timeshare plan;

(8) the location of each component site of the multisite timeshare plan, the historical occupancy of each component site for the prior 12-month period, if the component site was part of the multisite timeshare plan during such 12-month time period, as well as any periodic adjustment or amendment to the reservation system that may be needed in order to respond to actual purchaser use patterns and changes in purchaser use demand for the accommodations existing at the time within the multisite timeshare plan; and

(9) any other information the commission determines is necessary to protect prospective purchasers or to implement the purpose of this chapter.

(d) A developer who offers a nonspecific timeshare interest in a multisite timeshare plan must disclose the following information in written, graphic, or tabular form:

(1) the name and address of the developer;

(2) a description of the type of interest and the usage rights the purchaser will receive;

(3) a description of the duration and operation of the timeshare plan;

(4) a description of the type of insurance coverage provided for each component site;

(5) an explanation of who holds title to the accommodations of each component site;

(6) a description of each component site, including the name and address of each component site;

(7) a description of the existing or proposed accommodations, expressed in periods of seven-day use availability or any other time increment applicable to the timeshare plan. The description of each type of accommodation included in the timeshare plan shall be categorized by the number of bedrooms, the number of bathrooms, and sleeping capacity, and shall include a statement indicating whether the accommodation contains a full kitchen, which means a kitchen that has a minimum of a dishwasher, range, sink, oven, and refrigerator. If the accommodations are proposed or incomplete, a schedule for commencement, completion, and availability of the accommodations shall be provided;

(8) a statement that an association exists or is expected to be created or that such an association does not exist and is not expected to be created and, if such an association exists or is reasonably contemplated, a description of its powers and responsibilities;

(9) if applicable, copies of the following documents applicable to the multisite timeshare plan, including any amendments to the documents, unless separately provided to the purchaser simultaneously with the timeshare disclosure statement:

(A) the declaration;

(B) the association articles of incorporation;

(C) the association bylaws;

(D) the association rules; and

(E) any lease or contract, excluding the purchase contract and other loan documents required to be signed by the purchaser at closing;

(10) a description of the method and timing for performing maintenance of the accommodations;

(11) a statement indicating that, on an annual basis, the sum of the nights that purchasers are entitled to use the accommodations does not exceed the number of nights the accommodations are available for use by the purchasers;

(12) a description of each type of accommodation included in the timeshare plan, categorized by the number of bedrooms, the number of bathrooms, and sleeping capacity, and a statement indicating whether the accommodation contains a full kitchen, which means a kitchen that has a minimum of a dishwasher, range, sink, oven, and refrigerator;

(13) a description of amenities available for use by the purchaser at each component site;

(14) the location of each component site of the multisite timeshare plan, the historical occupancy of each component site for the prior 12-month period, if the component site was part of the multisite timeshare plan during such 12-month time period, as well as any periodic adjustment or amendment to the reservation system that may be needed in order to respond to actual purchaser use patterns and changes in purchaser use demand for the accommodations existing at the time within the multisite timeshare plan;

(15) a description of the right to make any additions, substitutions, or deletions of accommodations, amenities, or component sites, and a description of the basis upon which accommodations, amenities, or component sites may be added to, substituted in, or deleted from the multisite timeshare plan;

(16) a description of the reservation system that shall include all of the following:

(A) the entity responsible for operating the reservation system, its relationship to the developer, and the duration of any agreement for operation of the reservation system;

(B) a summary of the rules governing access to and use of the reservation system; and

(C) the existence of and an explanation regarding any priority reservation features that affect a purchaser's ability to make reservations for the use of a given accommodation on a first-come, first-served basis;

(17) the name and principal address of the managing entity for the multisite timeshare plan and a description of the procedures, if any, for altering the powers and responsibilities of the managing entity and for removing or replacing it, and a description of the relationship between the multisite timeshare plan managing entity and the managing entity of the component sites of the multisite timeshare plan, if different from the multisite timeshare plan managing entity;

(18) the current annual budget of the multisite timeshare plan, if available, or the projected annual budget for the multisite timeshare plan, which must include:

(A) a statement of the amount reserved or budgeted for repairs, replacements, and refurbishment;

(B) the projected common expense liability, if any, by category of expenditure for the multisite timeshare plan;

(C) the name and address of the person who prepared the operating budget; and

(D) the assumptions on which the operating budget is based;

(19) the projected assessments and a description of the method for calculating and apportioning those assessments among purchasers of the multisite timeshare plan;

(20) if applicable, a statement that the assessments collected from the purchasers may be placed in a common account with the assessments collected from the purchasers of other timeshare properties managed by the same managing entity;

(21) any current fees or charges to be paid by timeshare purchasers for the use of any amenities related to the timeshare plan and a statement that the fees or charges are subject to change;

(22) any initial or special fee due from the purchaser at closing, together with a description of the purpose of and method of calculating the fee;

(23) a description of the purchaser's liability for any fees associated with the multisite timeshare plan;

(24) a description of any lien, defect, or encumbrance on or affecting title to the timeshare interest and, if applicable, a copy of each written warranty provided by the developer;

(25) the extent to which a timeshare interest may become subject to a tax lien or other lien arising out of claims against purchasers of different timeshare interests;

(26) a description of those matters required by Section 221.041;

(27) a description of any financing offered by or available through the developer;

(28) a description of any bankruptcy that is pending or that has occurred within the past five years, pending civil or criminal suits, adjudications, or disciplinary actions material to the timeshare plan of which the developer has knowledge;

(29) a statement disclosing any right of first refusal or other restraint on the transfer of all or a portion of a timeshare interest;

(30) a statement disclosing that any deposit made in connection with the purchase of a timeshare interest must be held by an escrow agent until expiration of any right to cancel the contract and that any deposit must be returned to the purchaser if the purchaser elects to exercise the right of cancellation; or, if the commission accepts from the developer a surety bond, irrevocable letter of credit, or other form of financial assurance instead of an escrow deposit, a statement disclosing that the developer has provided a surety bond, irrevocable letter of credit, or other form of financial assurance in an

amount equal to or in excess of the funds that would otherwise be held by an escrow agent and that the deposit must be returned if the purchaser elects to exercise the right of cancellation;

(31) if the timeshare plan provides purchasers with the opportunity to participate in an exchange program, a description of the name and address of the exchange company and the method by which a purchaser accesses the exchange program; and

(32) any other information the commission determines is necessary to protect prospective purchasers or to implement the purpose of this chapter.

(e) A developer may include any other information in a timeshare disclosure statement required by this section on approval by the commission.

(f) If a timeshare plan is located wholly outside this state, the commission may permit the developer to submit a timeshare disclosure statement the developer is currently providing purchasers or an equivalent timeshare disclosure statement filed for the timeshare plan in another state if the current statement or the equivalent statement substantially complies with the requirements of this subchapter. This subsection does not exempt the developer from other requirements of this chapter.

SECTION 6. Section 221.033(a), Property Code, is amended to read as follows:

(a) Before the signing of any agreement to purchase ~~[or contract to acquire]~~ a timeshare interest in which a prospective purchaser is also offered participation in any exchange program, the developer shall also deliver to the prospective purchaser the exchange disclosure statement of any exchange company whose service is advertised or offered by the developer or other person in connection with the disposition.

SECTION 7. Section 221.034, Property Code, is amended to read as follows:

Sec. 221.034. EXEMPT OFFERINGS AND DISPOSITIONS; COMMUNICATIONS ~~[WHEN DISCLOSURE NOT REQUIRED]~~. (a) An offering or disposition is exempt from this chapter if it is ~~[A disclosure statement need not be delivered in the case of]~~:

(1) a gratuitous offering or disposition of a timeshare interest;

(2) a disposition pursuant to a court order;

(3) a disposition by a governmental agency;

(4) a disposition by foreclosure or deed in lieu of foreclosure;

(5) an offering or ~~[a]~~ disposition by an association of its own timeshare interest acquired through foreclosure, deed in lieu of foreclosure, or gratuitous transfer ~~[that may be canceled by the purchaser without penalty at any time and for any reason]~~;

(6) an offering or ~~[a]~~ disposition of all timeshare interests in a timeshare plan ~~[regime]~~ to not more than five persons;

(7) an offering or ~~[a]~~ disposition of a timeshare interest in a timeshare property situated wholly outside this state under a contract executed wholly outside this state, if there has been no offering to the purchaser within this state;

(8) an offering or [a] disposition of a timeshare interest to a purchaser who is not a resident of this state under a contract executed wholly outside this state, if there has been no offering to the purchaser within this state; [e#]

(9) the offering or redispotion of a timeshare interest by a purchaser who acquired the interest for the purchaser's [his] personal use; or

(10) the offering or disposition of a rental of an accommodation for a period of three years or less.

(b) If a developer has a timeshare plan registered under this chapter and is subject to Section 221.024, the developer may offer or dispose of an interest in a timeshare plan that is not registered under this chapter to a person who is the owner of a timeshare interest in a timeshare plan created by the developer. A developer under this subsection is exempt from Sections 221.021, 221.022, 221.023, 221.032, 221.041, 221.042, 221.043, 221.061, 221.071(a)(1) and (8), 221.074, and 221.075 if the developer:

(1) permits the purchaser to cancel the purchase contract before the sixth day after the date the contract is signed; and

(2) provides the purchaser all timeshare disclosure documents required by law to be provided in the jurisdiction in which the timeshare property is located.

(c) The following communications are not advertisements under this chapter:

(1) any stockholder communication, including an annual report or interim financial report, proxy material, registration statement, securities prospectus, timeshare disclosure statement, or other material required to be delivered to a prospective purchaser by a state or federal governmental entity;

(2) any oral or written statement disseminated by a developer to broadcast or print media, excluding:

(A) paid advertising or promotional material relating to plans for acquiring or developing timeshare property; and

(B) the rebroadcast or other dissemination of any oral statements by a developer to a prospective purchaser or the distribution or other dissemination of written statements, including newspaper or magazine articles or press releases, by a developer to prospective purchasers;

(3) the offering of a timeshare interest in a national publication or by electronic media that is not directed to or targeted at any individual located in this state;

(4) any audio, written, or visual publication or material relating to the availability of any accommodations for transient rental if:

(A) a sales presentation is not a term or condition of the availability of the accommodations; and

(B) the failure of the transient renter to take a tour of the timeshare property or attend a sales presentation does not result in a reduction in the level of services or an increase in the rental price that would otherwise be available to the renter; or

(5) any follow-up communication with a person relating to a promotion if the person previously received an advertisement relating to the promotion that complied with Section 221.031.

(d) The following communications are exempt from this chapter if they are delivered to a person who has previously executed a contract for the purchase of or is an owner of a timeshare interest in a timeshare plan:

(1) any communication addressed to and relating to the account of the person; or

(2) any audio, written, or visual publication or material relating to an exchange company or program if the person is a member of that exchange company or program.

SECTION 8. Sections 221.041, 221.042, and 221.043, Property Code, are amended to read as follows:

Sec. 221.041. PURCHASER'S RIGHT TO CANCEL. (a) A purchaser may cancel a purchase contract ~~[to purchase a timeshare interest]~~ before the sixth day after the date the purchaser signs and receives a copy of the purchase contract or receives the required timeshare disclosure statement, whichever is later ~~[contract is signed].~~

~~(b) [If a purchaser does not receive a copy of the contract at the time the contract is signed, the purchaser may cancel the contract to purchase the timeshare interest before the sixth day after the date the contract is received by the purchaser.~~

~~[(e)]~~ A purchaser may not waive the ~~[his]~~ right of cancellation under this section. A contract containing a waiver is voidable by the purchaser.

Sec. 221.042. NOTICE; REFUND. (a) If a purchaser elects to cancel a purchase contract under Section 221.041 ~~[201.041]~~, the purchaser ~~[he]~~ may do so by hand-delivering notice of cancellation to the developer, ~~[seller or]~~ by mailing notice by prepaid United States mail to the developer ~~[seller]~~ or to the developer's ~~[seller's]~~ agent for service of process, or by providing notice by overnight common carrier delivery service to the developer or the developer's agent for service of process.

(b) Cancellation is without penalty, and all payments made by the purchaser before cancellation must be refunded on or before the 30th ~~[21st]~~ day after the date on which the developer ~~[seller]~~ receives a timely notice of cancellation or on or before the fifth day after the date the developer receives good funds from the purchaser, whichever is later.

Sec. 221.043. CONTRACT REQUIREMENTS. (a) Each purchase contract ~~[Attached to each contract shall be a separate page identified as Exhibit A. Exhibit A shall be provided to each purchaser at the time the contract is signed and]~~ shall contain the following information. The statements required by this subsection ~~[Subdivisions (1)]~~ and Subsection (c)(8) ~~[(3)]~~ shall be provided in a conspicuous manner and in the exact language set forth in this section with the developer's ~~[seller's]~~ name and address, the date of the last day of the fiscal year, and the address of the managing entity inserted where indicated:

~~[(4)]~~ "PURCHASER'S RIGHT TO CANCEL.

"(1) ~~[(A)]~~ BY SIGNING THIS CONTRACT YOU ARE INCURRING AN OBLIGATION TO PURCHASE A TIMESHARE INTEREST. YOU MAY, HOWEVER, CANCEL THIS CONTRACT WITHOUT PENALTY OR OBLIGATION BEFORE THE SIXTH DAY AFTER THE DATE YOU SIGN AND RECEIVE A COPY OF THE PURCHASE CONTRACT, OR RECEIVE THE REQUIRED TIMESHARE DISCLOSURE STATEMENT, WHICHEVER IS LATER ~~[THE CONTRACT. IF YOU DO NOT RECEIVE A COPY OF THE CONTRACT AT THE TIME THE CONTRACT IS SIGNED, YOU MAY CANCEL THIS CONTRACT WITHOUT PENALTY OR OBLIGATION BEFORE THE SIXTH DAY AFTER THE DATE YOU RECEIVE A COPY OF THE CONTRACT].~~

"(2) ~~[(B)]~~ IF YOU DECIDE TO CANCEL THIS CONTRACT, YOU MAY DO SO BY EITHER HAND-DELIVERING NOTICE OF CANCELLATION TO THE DEVELOPER, ~~[SELLER OR]~~ BY MAILING NOTICE BY PREPAID UNITED STATES MAIL TO THE DEVELOPER ~~[SELLER]~~ OR THE DEVELOPER'S ~~[SELLER'S]~~ AGENT FOR SERVICE OF PROCESS, OR BY PROVIDING NOTICE BY OVERNIGHT COMMON CARRIER DELIVERY SERVICE TO THE DEVELOPER OR THE DEVELOPER'S AGENT FOR SERVICE OF PROCESS. YOUR NOTICE OF CANCELLATION IS EFFECTIVE ON THE DATE SENT OR DELIVERED TO (INSERT NAME OF DEVELOPER ~~[SELLER]~~) AT (INSERT ADDRESS OF DEVELOPER ~~[SELLER]~~). FOR YOUR PROTECTION, SHOULD YOU DECIDE TO CANCEL YOU SHOULD EITHER SEND YOUR NOTICE OF CANCELLATION BY CERTIFIED MAIL WITH A RETURN RECEIPT REQUESTED OR OBTAIN A SIGNED AND DATED RECEIPT IF DELIVERING IT IN PERSON OR BY OVERNIGHT COMMON CARRIER.

"(3) ~~[(C)]~~ A PURCHASER SHOULD NOT RELY ON STATEMENTS OTHER THAN THOSE INCLUDED IN THIS CONTRACT AND THE DISCLOSURE STATEMENT."

~~[(2) A statement disclosing the amount of the timeshare fees, on a monthly or annual basis, which are being assessed currently against or collected from the owners of a timeshare interest. Immediately following the timeshare fee disclosure statement shall be a statement that the timeshare fees collected by the managing entity may be used to pay for the administrative and operating expenses of the property; and~~

~~[(3) "AS A TIMESHARE OWNER YOU HAVE A RIGHT TO REQUEST A WRITTEN ANNUAL TIMESHARE FEE AND EXPENSE STATEMENT. THIS STATEMENT IS PREPARED ANNUALLY BY THE MANAGING ENTITY AND WILL BE AVAILABLE NO LATER THAN THE 90TH DAY FOLLOWING (INSERT THE DATE OF THE LAST DAY OF THE FISCAL YEAR). YOU MAY REQUEST THE STATEMENT BY WRITING TO (INSERT ADDRESS OF THE MANAGING ENTITY)."]~~

(b) Immediately following the required statements in Subsection (a) ~~[on Exhibit A]~~ shall be a space reserved for the signature of the purchaser. ~~[The seller shall obtain the purchaser's signature on Exhibit A at the time the contract is signed.]~~

(c) The purchase contract must also include the following:

(1) the name and address of the developer [seller] and the address of the timeshare property or the address of any available timeshare interest being offered [unit];

(2) an agreement describing the cancellation policy prescribed by Section 221.041 [whether the purchaser visited the location of the timeshare unit before signing the contract];

(3) [an agreement by the seller that if the purchaser timely exercises the right of cancellation under the contract, all payments made by the purchaser to the seller in connection with the contract shall be returned to such purchaser before the 21st day after the seller receives notice of cancellation];

~~(4)~~ the name of the person or persons primarily [actively] involved in the sales presentation on behalf of the developer [seller];

(4) a statement disclosing the amount of the periodic assessments currently assessed against or collected from the purchasers of the timeshare interest, immediately followed by a statement providing that collected assessments will be used by the managing entity to pay for expenditures, charges, reserves, or liabilities relating to the operation of the timeshare plan or timeshare properties managed by the managing entity;

(5) a statement disclosing [warranty] that the timeshare common properties are not mortgaged, unless the mortgage contains a nondisturbance clause which fully protects the use and enjoyment rights of each timeshare owner in the event of foreclosure; [and]

(6) in the event such timeshare interests are sold under a lease, right to use, or membership agreement where free and clear title to the accommodation [timeshare unit] is not passed to the purchaser [buyer], then the purchase contract must contain a statement [warranty] that the timeshare is free and clear; or if subject to a mortgage, the mortgage must contain a nondisturbance clause which fully protects the use and enjoyment rights of each timeshare owner in the event of foreclosure;

(7) the date the purchaser signs the contract; and

(8) the following statement:

"AS A TIMESHARE OWNER, YOU HAVE A RIGHT TO REQUEST A WRITTEN ANNUAL TIMESHARE FEE AND EXPENSE STATEMENT. THIS STATEMENT IS PREPARED ANNUALLY BY THE MANAGING ENTITY AND WILL BE AVAILABLE NOT LATER THAN FIVE MONTHS AFTER (INSERT THE DATE OF THE LAST DAY OF THE FISCAL YEAR). YOU MAY REQUEST THE STATEMENT BY WRITING TO (INSERT NAME AND ADDRESS OF THE MANAGING ENTITY)."

(d) The information required to be provided by this section may be provided in the purchase contract or in an exhibit to the purchase contract, or it may be provided in part in both if all of the information is provided.

SECTION 9. Section 221.052, Property Code, is amended to read as follows:



Sec. 221.052. LIABILITY OF DEVELOPER AND EXCHANGE COMPANY. (a) A developer does not incur any liability arising out of the use, delivery, or publication ~~[by the developer]~~ to a ~~[the]~~ purchaser of written information or audio-visual materials provided to it by the exchange company in accordance with Subchapter D, unless ~~[-A developer is subject to liability arising out of the use, delivery, or publication to the purchaser of materials provided by the exchange company if]~~ the developer knows or has reason to know that the materials are inaccurate or false.

(b) No exchange company shall have any liability with respect to any violation under this chapter arising out of the use by a developer of information relating to an exchange program other than that provided to the developer by the exchange company.

(c) An exchange company that denies exchange privileges to an owner whose use of accommodations in the owner's timeshare plan is denied is not liable to any member of the exchange company or exchange program or any third party because of the denial of the owner's exchange privileges.

SECTION 10. Subchapter G, Chapter 221, Property Code, is amended by amending Sections 221.061, 221.062, and 221.063 and adding Section 221.064 to read as follows:

Sec. 221.061. ESCROW OR TRUST ACCOUNT REQUIRED. (a) A ~~[The]~~ developer or escrow agent of a timeshare plan ~~[other person acting on its behalf]~~ shall deposit in [establish] an escrow or trust account in a federally insured depository 100 percent of all funds received during the purchaser's cancellation period ~~[with an escrow agent for the purpose of protecting deposits made by purchasers in connection with proposed dispositions of timeshare interests].~~

(b) An escrow agent owes the purchaser a fiduciary duty.

(c) The escrow agent and the developer shall execute an agreement that includes a statement providing that:

(1) funds may be disbursed to the developer from the escrow or trust account by the agent only:

(A) after the purchaser's cancellation period has expired; and

(B) as provided by the purchase contract, subject to this subchapter; and

(2) if the purchaser cancels the purchase contract as provided by the contract, the funds must be paid to:

(A) the purchaser; or

(B) the developer if the purchaser's funds have been refunded previously by the developer.

(d) If a developer contracts to sell a timeshare interest and the construction of the building in which the timeshare interest is located has not been completed when the cancellation period expires, the developer shall continue to maintain all funds received from the purchaser under the purchase agreement in the escrow or trust account until construction of the building is completed. The documentation required for evidence of completion of construction includes:

(1) a certificate of occupancy;

- (2) a certificate of substantial completion;
- (3) evidence of a public safety inspection equivalent to Subdivision (1) or (2) from a government agency in the applicable jurisdiction; or
- (4) any other evidence acceptable to the commission.

Sec. 221.062. ~~[ESCROW AMOUNT. Fifty percent of any deposit obtained from a purchaser shall be placed in the escrow account.~~

~~[Sec. 221.063.]~~ RELEASE OF ESCROW. (a) The funds or property constituting the escrow or trust deposit may be released from escrow only in accordance with this section.

(b) If the purchaser cancels the purchase contract as provided by the contract, the funds shall be paid to:

- (1) the purchaser; or
- (2) the developer if the purchaser's funds have been refunded previously by the developer.

(c) If the purchaser defaults in the performance of obligations under the terms of the purchase [a] contract [to purchase a timeshare interest], the funds shall be paid to the developer [or other person legally entitled to the escrow deposit shall file an application with the escrow agent requesting release of the applicable amount. The application for release of the escrow deposit must be verified and must include:

~~[(1) a concise statement by the applicant that the purchaser has materially defaulted in the performance of obligations under the terms of a contract to purchase a timeshare interest and that the applicant and the developer have complied with all terms and obligations of that contract;~~

~~[(2) a complete explanation of the nature of the purchaser's material default under the contract and of the date of its occurrence;~~

~~[(3) a statement that pursuant to the terms of the purchase contract the applicant is entitled to the escrow deposit;~~

~~[(4) a statement that the developer has no knowledge of a dispute between the purchaser and developer and a statement that the purchaser has not, to the applicant's knowledge, made a demand for the return of the deposit; and~~

~~[(5) a statement that the purchaser has not exercised a right of cancellation under Subchapter E].~~

(d) If the developer defaults in the performance of obligations under the purchase contract, the funds shall be paid to the purchaser.

(e) If the funds of the purchaser have not been disbursed previously as provided by Subsections (a)-(d), the funds may be disbursed to the developer by the escrow or trust agent if acceptable evidence of completion of construction is provided.

(f) If there is a dispute relating to the funds in the escrow or trust account, the agent shall maintain the funds in the account until:

- (1) the agent receives written directions agreed to and signed by all parties; or
- (2) a civil action relating to the disputed funds is filed.

(g) If a civil action is filed under Subsection (f)(2), the escrow or trust account agent shall deposit the funds with the court in which the action is filed.

Sec. 221.063. ALTERNATIVE TO ESCROW OR TRUST ACCOUNT: FINANCIAL ASSURANCE. (a) Instead of the deposit of funds in an escrow or trust account as provided by Section 221.061, the commission may accept from the developer a surety bond, irrevocable letter of credit, or other form of financial assurance, including financial assurance posted in another state or jurisdiction.

(b) The amount of the financial assurance provided under this section must be an amount equal to or more than the amount of funds that would otherwise be placed in an escrow or trust account under Section 221.061(a).

(c) The amount of the financial assurance provided under this section for timeshare property under construction as provided by Section 221.061(d) must be the lesser of:

(1) an amount equal to or more than the amount of funds that would otherwise be placed in an escrow or trust account under that subsection; or

(2) the amount necessary to assure completion of the building in which the timeshare interest is located.

Sec. 221.064. DOCUMENTATION REQUIRED. The escrow or trust account agent or developer shall make documents related to the escrow or trust account or the financial assurance provided available to the commission at the commission's request.

~~[(e) Notwithstanding the other provisions of this section, the escrow agent may release the escrow deposit to the applicant on presentation to the escrow agent of:~~

~~[(1) an affidavit by the developer that the timeshare unit is substantially complete and that no applicable right of cancellation of the contract has been exercised by the purchaser;~~

~~[(2) if funds were placed in the escrow account in connection with the proposed disposition of a timeshare estate, a true and correct copy of the instrument transferring ownership of the timeshare estate to the purchaser free and clear of all liens and encumbrances, except for any encumbrance created by purchaser financing; and~~

~~[(3) if funds were placed in the escrow account in connection with the proposed disposition of a timeshare use, a true and correct copy of a properly executed and recorded nondisturbance agreement executed by the developer and all holders of a lien recorded against the timeshare property and providing that subsequent owners or foreclosing holders of a lien shall take title to the timeshare property subject to the rights of prior purchasers under their contracts of sale.~~

~~[(d) A deposit may not be released from escrow until the escrow agent has provided the purchaser written notice of intent to release the escrow at least 14 days before the release.]~~

SECTION 11. Section 221.071, Property Code, is amended by amending Subsection (a) and adding Subsections (c) and (d) to read as follows:

(a) A developer ~~[seller]~~ or other person commits a false, misleading, or deceptive act or practice within the meaning of Subsections (a) and (b) of Section 17.46 of the Texas Deceptive Trade Practices-Consumer Protection Act (Article 17.46 et seq., Business & Commerce Code), by engaging in any of the following acts:

(1) failing to disclose information concerning a timeshare interest required by Subchapter D;

(2) making false or misleading statements of fact concerning the characteristics of accommodations or amenities available to a consumer;

(3) predicting specific or immediate increases in the value of a timeshare interest without a reasonable basis for such predictions;

(4) making false or misleading statements of fact concerning the duration that accommodations or amenities will be available to a consumer;

(5) making false or misleading statements of fact concerning the conditions under which a purchaser of a timeshare interest may exchange the right to occupy a unit for the right to occupy a unit in the same or another timeshare property;

(6) representing that a prize, gift, or other benefit will be awarded in connection with a promotion with the intent not to award that prize, gift, or benefit in the manner represented;

(7) failing to provide a copy of the purchase contract to the purchaser at the time the contract is signed by the purchaser [~~unless the purchaser requests in writing that the contract be mailed, and the contract is mailed to the purchaser before the end of the next business day~~];

(8) failing to provide the annual [~~timeshare fee and expense~~] statement as required by Section 221.074(a) [~~221.074~~]; or

(9) exceeding a one-to-one purchaser-to-accommodation ratio for a timeshare plan during a consecutive 12-month period, as determined under Subsection (c) [~~furnishing false information in the annual timeshare fee and expense statement as required by Section 221.074~~].

(c) A developer complies with the one-to-one purchaser-to-accommodation ratio referred to in Subsection (a)(9) if the total number of purchasers eligible to use the accommodations of the timeshare plan during a consecutive 12-month period never exceeds the total number of accommodations available for use in the timeshare plan during that same period. A purchaser-to-accommodation ratio is computed by dividing the number of purchasers eligible to use an accommodation in a timeshare plan on any given day by the number of accommodations within the plan available for use on that day. For purposes of computing the purchaser-to-accommodation ratio:

(1) each purchaser is counted at least once each consecutive 12-month period;

(2) each accommodation is counted not more than 365 times each consecutive 12-month period, excluding a leap year, in which each accommodation may be counted 366 times; and

(3) a purchaser who is delinquent in paying timeshare assessments is considered eligible to use timeshare plan accommodations.

(d) If a developer has substantially complied with this chapter in good faith, a nonmaterial error or omission is not actionable. Any nonmaterial error or omission is not sufficient to permit a purchaser to cancel a purchase contract after the period provided for cancellation expires under this chapter.

SECTION 12. Section 221.072, Property Code, is amended to read as follows:

Sec. 221.072. INSURANCE. Before the disposition of any timeshare interest, the developer or managing entity shall maintain the following insurance with respect to the timeshare property:

(1) property insurance on the timeshare property and any personal property for use by purchasers, other than personal property separately owned by a purchaser, insuring against all risks of direct physical loss commonly insured against, in a total amount, after application of deductibles, of the full replacement cost of the accommodations and amenities of the timeshare property; and

(2) liability insurance covering all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership, and maintenance of the timeshare property.

SECTION 13. Sections 221.073(a) and (b), Property Code, are amended to read as follows:

(a) A developer ~~[or seller]~~ subject to this chapter commits an offense if the developer ~~[or seller]~~ offers or disposes of a timeshare interest in a timeshare property which has not been registered with the commission.

(b) It is not a violation of this section for a developer ~~[or seller]~~ subject to ~~[the provisions of]~~ this chapter [Act] to accept reservations and deposits from prospective purchasers in accordance with Section 221.021(b) or (d) ~~[the provisions of Subsection (b) of Section 221.021 of this Act]~~.

SECTION 14. Section 221.074, Property Code, is amended to read as follows:

Sec. 221.074. ANNUAL TIMESHARE FEE AND EXPENSE STATEMENT. (a) Notwithstanding any contrary [a] provision of the required timeshare [promotional] disclosure statement, project instrument, timeshare instrument, or bylaws adopted pursuant to a timeshare instrument, the managing entity shall make a written annual accounting of the operation of the timeshare properties managed by the managing entity to each purchaser who requests an accounting not later than five months [the 60th day] after the last day of each fiscal year [the managing entity shall make available to each owner a written annual accounting of the operation of the timeshare property or timeshare system]. The statement shall fairly and accurately represent the collection and expenditure of assessments and include:

(1) a balance sheet;

(2) an income and expense statement ~~[which complies with generally accepted accounting principles and reflects the collection and expenditure of timeshare fees]~~;

(3) the current ~~[operating]~~ budget for the timeshare property, timeshare properties managed by the same managing entity, or multisite timeshare plan [system] required by Section 221.032(b)(12) ~~[221.032(b)(6)]~~; and

(4) ~~[an accounting identifying any unfunded reserves for capital improvements and maintenance and upkeep of the timeshare property; and~~

~~[(5) the name and address of each member of the board of directors of the council of purchasers or the owners' association, if one exists, and] the name, address, and telephone number of a designated representative of the managing entity.~~

(b) On the request of an owner, the [The] managing entity of the timeshare plan shall provide the owner with the name and address of each member of the board of directors of the owners' association, if one exists [make the fee statement available to owners of record of a timeshare interest as of the last day of the fiscal year as reflected in the managing entity's records].

(c) A developer or managing entity shall have an annual independent audit of the financial statements of the timeshare plan or timeshare properties managed by the managing entity performed by a certified public accountant or an accounting firm. The audit must be:

(1) conducted in accordance with generally accepted auditing standards as prescribed by the American Institute of Certified Public Accountants, the Governmental Accounting Standards Board, the United States General Accounting Office, or other professionally recognized entities that prescribe auditing standards; and

(2) completed not later than five months after the last day of the fiscal year of the timeshare plan or timeshare property. [The statement shall be delivered in person or by mail to each person on the board of directors of the council of purchasers or the owners' association, if one exists.]

(d) Knowingly furnishing false information in the annual timeshare fee and expense statement is a violation of the Deceptive Trade Practices-Consumer Protection Act (Section 17.41 et seq., Business & Commerce Code).

(e) The managing entity of any accommodation located in this state shall post prominently in the registration area of the accommodations [each timeshare property] the following notice, with the date of the last day of the current fiscal year and the address of the managing entity inserted where indicated:

"AS A TIMESHARE OWNER YOU HAVE A RIGHT TO REQUEST A WRITTEN ANNUAL TIMESHARE FEE AND EXPENSE STATEMENT. THIS STATEMENT IS PREPARED ANNUALLY BY THE MANAGING ENTITY AND WILL BE AVAILABLE NO LATER THAN FIVE MONTHS [THE 90TH DAY] FOLLOWING (INSERT THE DATE OF THE LAST DAY OF THE CURRENT FISCAL YEAR). YOU MAY REQUEST THE STATEMENT, BY WRITING TO (INSERT ADDRESS OF THE MANAGING ENTITY)."

~~[(e) If a request for the statement is received by the managing entity prior to the date by which the statement is available, the statement shall be provided no later than one week after the date the statement becomes available. If a request for the statement is received by the managing entity after the date the statement becomes available, the statement shall be provided no later than two weeks after the date the request is received by the managing entity. For the purposes of this section, the statement shall be deemed provided if it is deposited in the mail, properly addressed, with postage prepaid.]~~

~~[(f) A managing entity shall provide a separate annual timeshare fee and expense statement for each timeshare property unless the property is part of a timeshare system. A managing entity may provide a consolidated statement for all timeshare properties comprising a timeshare system.]~~

SECTION 15. Sections 221.075(a) and (d), Property Code, are amended to read as follows:

(a) On receipt of a written request filed with the commission by a managing entity before the date on which the statement required by Section 221.074 must be made available, the commission for good cause shown may grant the managing entity an extension of no more than 30 days in which to provide the statement.

(d) A managing entity may not assess against or collect from the purchasers ~~[owners]~~ of a timeshare property the amount of a penalty incurred under this section.

SECTION 16. Sections 221.076 and 221.077, Property Code, are amended to read as follows:

Sec. 221.076. MANAGING ENTITIES THAT MANAGE MORE THAN ONE TIMESHARE ~~[SYSTEM OR]~~ PROPERTY. (a) A managing entity that manages two or more single-site timeshare plans ~~[properties which are not participants of the same timeshare system]~~ may ~~[not]~~ commingle the assessments ~~[timeshare fees]~~ collected from purchasers ~~[owners]~~ of one timeshare plan ~~[property]~~ with the assessments ~~[timeshare fees]~~ collected from purchasers ~~[owners]~~ of any other single-site plan for which it is the managing entity only if the practice is disclosed in the timeshare disclosure statement for each timeshare property and the appropriate statement is included in the declaration for each timeshare property as required by Subchapter B.

~~(b) [A managing entity that manages two or more timeshare systems may not commingle the timeshare fees collected from owners participating in one timeshare system with the timeshare fees collected from owners participating in any other timeshare system.]~~

~~[(e)]~~ A managing entity which manages a multisite timeshare plan ~~[system]~~ may deposit assessments ~~[timeshare fees]~~ collected from purchasers ~~[owners]~~ of one timeshare property into a common account with assessments ~~[timeshare fees]~~ collected from purchasers ~~[owners]~~ of other timeshare properties participating in the same multisite timeshare plan ~~[system]~~ only if the practice is disclosed in the timeshare disclosure statement for each timeshare property in the multisite timeshare plan ~~[system]~~ and the appropriate statement is included in the declaration for each timeshare plan ~~[regime]~~ as required by Subchapter B.

(c) Nothing in this section shall be construed to allow a managing entity to commingle assessments ~~[the timeshare fees]~~ of a multisite timeshare plan with the assessments of a separate multisite timeshare plan or a timeshare plan that is not a part of the multisite timeshare plan ~~[-~~

~~[(1) separate timeshare systems;~~

~~[(2) separate timeshare properties which are not part of a timeshare system; or~~

~~[(3) a timeshare system with the timeshare fees of a separate timeshare property which is not a participant in the timeshare system].~~

Sec. 221.077. AVAILABILITY OF BOOKS AND RECORDS; RECORDS RETENTION. (a) A developer or managing entity, on written request of an owner, shall make available for examination at its registered office or principal place of business and at any reasonable time or times the relevant books and records relating to the collection and expenditure of assessments ~~[timeshare fees].~~

(b) A developer or managing entity shall maintain in its records a copy of each purchase contract for an accommodation sold by the developer for a timeshare period unless the contract has been canceled. If a sale of the timeshare estate is pending, the developer shall retain a copy of the contract until a deed of conveyance, agreement for deed, or lease is recorded in the real property records of the county in which the timeshare property is located.

SECTION 17. This Act applies to timeshare plans created on or after January 15, 2006, and to any developer who offers or disposes of an interest in a timeshare plan and a managing entity that manages a timeshare property under Chapter 221, Property Code, as amended by this Act, on or after that date.

SECTION 18. If a timeshare plan is registered with the Texas Real Estate Commission before January 15, 2006:

(1) the registration expires 24 months after the last anniversary of the date the timeshare plan was registered;

(2) a developer may renew the registration as provided by Section 221.023, Property Code, as amended by this Act; and

(3) the developer may continue to use the timeshare disclosure statement for the timeshare plan as approved by the Texas Real Estate Commission prior to January 15, 2006, so long as the registration is amended from time to time to disclose any materially adverse changes as required by Section 221.023, Property Code, as amended by this Act.

SECTION 19. This Act takes effect January 15, 2006.

### **HB 1339 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS**

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

**HB 1339**, A bill to be entitled An Act relating to the appointment of a voting proxy by a legislative policy board member of a metropolitan planning organization.

Representative Strama moved to concur in the senate amendments to **HB 1339**.

A record vote was requested.

(Phillips in the chair)

The motion to concur in senate amendments prevailed by (Record 781): 137 Yeas, 0 Nays, 2 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; Denny; Dukes; Dunnam; Edwards; Eiland; Eissler; Elkins; Escobar; Farabee; Farrar; Flores; Flynn; Frost; Gallego; Gattis; Geren; Giddings; Gonzales; Gonzalez Toureilles; Goodman; Goolsby; Griggs; Grusendorf; Guillen; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Hegar; Herrero; Hilderbran; Hill; Hochberg; Homer; Hope; Hopson; Howard; Hughes; Hunter; Hupp; Isett; Jackson; Jones, D.; Jones, J.; Keel; Keffer, B.; Keffer, J.; King, P.; King, T.; Krusee; Laney; Laubenberg; Leibowitz; Luna; Martinez; Martinez Fischer; McCall; McClendon; McReynolds; Menendez; Merritt; Miller; Moreno, P.; Morrison; Naishtat; Nixon; Noriega, M.; Oliveira; Olivo; Orr; Otto; Paxton; Peña; Pickett; Pitts; 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.

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

Absent, Excused — Bailey; Bonnen; Driver; Dutton; Hodge.

Absent — Deshotel; Kolkhorst; Kuempel; Madden; Mowery.

#### STATEMENT OF VOTE

When Record No. 781 was taken, I was in the house but away from my desk. I would have voted yes.

Deshotel

#### Senate Committee Substitute

**HB 1339**, A bill to be entitled An Act relating to the appointment of a voting proxy by a legislative policy board member of a metropolitan planning organization.

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

SECTION 1. Section 472.031, Transportation Code, is amended by adding Subsection (c) to read as follows:

(c) A legislative member of a policy board may only appoint a proxy under Subsection (a) who is:

(1) the legislative member's employee or staff member;

(2) a person related to the member within the second degree by consanguinity, as determined under Subchapter B, Chapter 573, Government Code, who is not required to register as a lobbyist under Chapter 305, Government Code;

(3) another legislative member of the policy board; or

(4) a locally elected official.

SECTION 2. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2005.

**HB 1705 - HOUSE CONCURS IN SENATE AMENDMENTS  
TEXT OF SENATE AMENDMENTS**

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

**HB 1705**, A bill to be entitled An Act relating to the release of hazardous waste in connection with dredging and placement or storage of dredged materials by a port authority or navigation district.

Representative Kuempel moved to concur in the senate amendments to **HB 1705**.

A record vote was requested.

The motion to concur in senate amendments prevailed by (Record 782): 136 Yeas, 0 Nays, 1 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; Crabb; Crownover; Davis, J.; Davis, Y.; Dawson; Delisi; Denny; Deshotel; Dukes; Dunnam; Edwards; Eiland; Eissler; Elkins; Escobar; Farabee; Farrar; Flores; Flynn; Frost; Gallego; Gattis; Geren; Giddings; Gonzales; Gonzalez Toureilles; Goolsby; Griggs; Grusendorf; Guillen; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Herrero; Hilderbran; Hill; Hochberg; 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; Moreno, P.; Morrison; Mowery; Naishtat; Nixon; Noriega, M.; Oliveira; Olivo; Orr; Otto; Paxton; Peña; Phillips(C); 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; Wong; Woolley; Zedler.

Present, not voting — Mr. Speaker.

Absent, Excused — Bailey; Bonnen; Driver; Dutton; Hodge.

Absent — Branch; Callegari; Goodman; Hegar; Miller; Pitts; West.

**STATEMENT OF VOTE**

When Record No. 782 was taken, my vote failed to register. I would have voted yes.

Branch

**Senate Committee Substitute**

**HB 1705**, A bill to be entitled An Act relating to the release of hazardous waste in connection with dredging and placement or storage of dredged materials by a port authority or navigation district.

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

SECTION 1. Section 361.271, Health and Safety Code, is amended by adding Subsections (g), (h), and (i) to read as follows:

(g) A port authority or navigation district created under Section 59, Article XVI, or Section 52, Article III, Texas Constitution, is not a person responsible under this chapter for the release or threatened release of hazardous waste from a facility or at a site solely for its activities related to construction or maintenance of waterways to facilitate navigation if, in performing those activities:

(1) the port authority or navigation district is acting by virtue of the authority's or district's function as sovereign;

(2) the port authority or navigation district requires that dredged materials be sampled and analyzed before placement or storage of those materials on land or submerged land; and

(3) the port authority or navigation district, after exercising due diligence, does not accept dredged materials that are hazardous waste.

(h) Subsection (g) may not be construed to relieve a port authority or navigation district of liability if the port authority or navigation district causes or contributes to the generation of hazardous waste.

(i) As used in Subsection (g), activities related to construction or maintenance of waterways to facilitate navigation include:

(1) the dredging of materials from navigable waters or the banks of navigable waters;

(2) the placement or storage of dredged materials on land or submerged land; and

(3) the construction, operation, or maintenance of a placement area for dredged material.

SECTION 2. The change in law made by this Act does not apply to an act or governmental proceeding of a port authority or navigation district created under Section 59, Article XVI, or Section 52, Article III, Texas Constitution, that is the subject of litigation pending on the effective date of this Act.

SECTION 3. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2005.

### **HB 1938 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS**

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

**HB 1938**, A bill to be entitled An Act relating to the award of a grant and reporting requirements under the Texas Enterprise Fund.

Representative Ritter moved to concur in the senate amendments to **HB 1938**.

The motion to concur in senate amendments prevailed. (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.)

#### **Senate Committee Substitute**

**HB 1938**, A bill to be entitled An Act relating to the award of a grant and reporting requirements under the Texas Enterprise Fund.

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

SECTION 1. Section 481.078, Government Code, is amended by amending Subsection (f) and adding Subsections (e-1) and (g)-(j) to read as follows:

(e-1) To be eligible to receive a grant under this section, the entity must:

(1) be in good standing under the laws of the state in which the entity was formed or organized, as evidenced by a certificate issued by the secretary of state or the state official having custody of the records pertaining to entities or other organizations formed under the laws of that state; and

(2) owe no delinquent taxes to a taxing unit of this state.

(f) Before awarding a grant under this section, the governor shall ~~may~~ enter into a written agreement with the entity to be awarded the grant money specifying that:

(1) if the governor finds that the grant recipient has not met each of the performance targets specified in the agreement as of a date certain provided in the agreement:

(A) the recipient shall repay the grant and any related interest to the state at the agreed rate and on the agreed terms;

(B) the governor will not distribute to the recipient any grant money that remains to be awarded under the agreement; and

(C) the governor may assess specified penalties for noncompliance against the recipient;

(2) if all or any portion of the amount of the grant is used to build a capital improvement, the state may:

(A) retain ~~the state retains~~ a lien or other interest in the capital improvement in proportion to the percentage of the grant amount used to pay for the capital improvement; and

(B) require the recipient of the grant ~~shall~~, if the capital improvement is sold, to:

(i) repay to the state the grant money used to pay for the capital improvement, with interest at the rate and according to the other terms provided by the agreement; and

(ii) share with the state a proportionate amount of any profit realized from the sale; and

(3) ~~(2)~~ if, as of a date certain provided in the agreement, the grant recipient has not used grant money awarded under this section for the purposes for which the grant was intended, the recipient shall repay that amount and any related interest to the state at the agreed rate and on the agreed terms.

(g) The grant agreement may include a provision providing that a reasonable percentage of the total amount of the grant will be withheld until specified performance targets are met by the entity as of the date described by Subsection (f)(1).

(h) The governor, after consultation with the speaker of the house of representatives and the lieutenant governor, shall determine:

(1) the performance targets and date required to be contained in the grant agreement as provided by Subsection (f)(1); and

(2) if the grant agreement includes the provision authorized by Subsection (g), the percentage of grant money required to be withheld.

(i) An entity entering into a grant agreement under this section shall submit to the governor, lieutenant governor, and speaker of the house of representatives an annual progress report containing the information compiled during the previous calendar year regarding the attainment of each of the performance targets specified in the agreement.

(j) Repayment of a grant under Subsection (f)(1)(A) may be prorated to reflect a partial attainment of performance targets.

SECTION 2. Subchapter E, Chapter 481, Government Code, is amended by adding Sections 481.079 and 481.080 to read as follows:

Sec. 481.079. REPORT ON USE OF MONEY IN TEXAS ENTERPRISE FUND. (a) Before the beginning of each regular session of the legislature, the governor shall submit to the lieutenant governor, the speaker of the house of representatives, and each other member of the legislature a report on grants made under Section 481.078 that states:

(1) the number of direct jobs each recipient committed to create in this state;

(2) the number of direct jobs each recipient created in this state;

(3) the median wage of the jobs each recipient created in this state;

(4) the amount of capital investment each recipient committed to expend or allocate per project in this state;

(5) the amount of capital investment each recipient expended or allocated per project in this state;

(6) the total amount of grants made to each recipient;

(7) the average amount of money granted in this state for each job created in this state by grant recipients;

(8) the number of jobs created in this state by grant recipients in each sector of the North American Industry Classification System (NAICS); and

(9) of the number of direct jobs each recipient created in this state, the number of positions created that provide health benefits for employees.

(b) The report may not include information that is made confidential by law.

(c) The governor may require a recipient of a grant under Section 481.078 to submit, on a form the governor provides, information required to complete the report.

Sec. 481.080. ECONOMIC AND FISCAL IMPACT STATEMENT FOR CERTAIN GRANT PROPOSALS. (a) Before the governor awards a grant under Section 481.078 to an entity for a proposed initiative, the office shall prepare a statement that, specifically and in detail, assesses the direct economic impact that approval of the grant will have on the residents of this state.

(b) The statement must include:

(1) for the period covered by the grant:

(A) the estimated number of jobs to be created in this state by the potential recipient each biennium; and

(B) the estimated median wage of the jobs to be created in this state by the potential recipient each biennium;

(2) the additional amount of ad valorem taxes, sales and use taxes, and fee revenues projected to be generated each year by governmental entities of this state;

(3) the total amount of tax credits, local incentives, and other money or credits estimated to be distributed to the proposed grant recipient by governmental entities of this state; and

(4) any other information the office considers necessary to include in the statement.

SECTION 3. The changes in law made by this Act to Section 481.078, Government Code, apply only to an agreement that is entered into on or after the effective date of this Act. An agreement that is entered into before the effective date of this Act is governed by the law in effect on the date the agreement was entered into, and the former law is continued in effect for that purpose.

SECTION 4. This Act takes effect September 1, 2005.

### **HB 2331 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS**

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

**HB 2331**, A bill to be entitled An Act relating to the emergency possession of certain abandoned children; providing a penalty.

Representative Morrison moved to concur in the senate amendments to **HB 2331**.

The motion to concur in senate amendments prevailed. (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.)

#### **Senate Committee Substitute**

**HB 2331**, A bill to be entitled An Act relating to the emergency possession of certain abandoned children; providing a penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS

SECTION 1. Subchapter D, Chapter 262, Family Code, is amended by adding Sections 262.308 and 262.309 to read as follows:

Sec. 262.308. CONFIDENTIALITY. (a) All identifying information, documentation, or other records regarding a person who voluntarily delivers a child to a designated emergency infant care provider under this subchapter is confidential and not subject to release to any individual or entity except as provided by Subsection (b).

(b) Any pleading or other document filed with a court under this subchapter is confidential, is not public information for purposes of Chapter 552, Government Code, and may not be released to a person other than to a party in a suit regarding the child, the party's attorney, or an attorney ad litem or guardian ad litem appointed in the suit.

(c) In a suit concerning a child for whom the Department of Family and Protective Services assumes care, control, and custody under this subchapter, the court shall close the hearing to the public unless the court finds that the interests of the child or the public would be better served by opening the hearing to the public.

(d) Unless the disclosure, receipt, or use is permitted by this section, a person commits an offense if the person knowingly discloses, receives, uses, or permits the use of information derived from records or files described by this section or knowingly discloses identifying information concerning a person who voluntarily delivers a child to a designated emergency infant care provider. An offense under this subsection is a Class B misdemeanor.

Sec. 262.309. SEARCH FOR RELATIVES NOT REQUIRED. The Department of Family and Protective Services is not required to conduct a search for the relatives of a child for whom the department assumes care, control, and custody under this subchapter.

SECTION 2. Section 263.407, Family Code, is amended by amending Subsection (a) and adding Subsections (a-1) and (c) to read as follows:

(a) ~~There [In a suit to terminate the parent-child relationship, there]~~ is a rebuttable presumption that a parent who delivers a child to a designated emergency infant care provider in accordance with Subchapter D, Chapter 262:

(1) is the child's biological parent; and

(2) intends to relinquish parental rights and[;] consents to the termination of parental rights with regard to the child.

(a-1) A party that seeks to rebut a presumption in Subsection (a) may do so at any time before the parent-child relationship is terminated with regard to the child.

(c) Before filing a petition to terminate the parental rights with regard to a child taken into the department's custody under Section 262.303, the department must:

(1) verify with the National Crime Information Center and state and local law enforcement agencies that the child is not a missing child; and

(2) obtain a certificate of the search of the paternity registry under Subchapter E, Chapter 160, not earlier than the date the department estimates to be the 30th day after the child's date of birth.

SECTION 3. Section 263.3025(d), Family Code, is repealed.

SECTION 4. The change in law made by this Act applies to a child for whom the Department of Family and Protective Services assumes responsibility under Subchapter D, Chapter 262, Family Code, as amended by this Act, regardless of whether the department assumed responsibility for the child before, on, or after the effective date of this Act.

SECTION 5. This Act takes effect September 1, 2005.

### **HB 2921 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS**

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

**HB 2921**, A bill to be entitled An Act relating to the condemnation of certain property for railroad purposes.

Representative Pitts moved to concur in the senate amendments to **HB 2921**.

A record vote was requested.

The motion to concur in senate amendments prevailed by (Record 783): 136 Yeas, 0 Nays, 2 Present, not voting.

Yeas — Allen, A.; Allen, R.; Alonzo; Anchia; Anderson; Baxter; Berman; Blake; Bohac; 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; Dukes; Dunnam; Edwards; Eissler; Elkins; Escobar; Farabee; Farrar; Flores; Flynn; Frost; Gallego; Gattis; Geren; Giddings; Gonzales; Gonzalez Toureilles; Goodman; Goolsby; Griggs; Grusendorf; Guillen; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Hegar; Herrero; Hilderbran; Hill; Hochberg;

Homer; Hope; Hopson; Howard; Hughes; Hunter; Hupp; 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; Merritt; Miller; Moreno, P.; Morrison; Naishtat; Nixon; Noriega, M.; Oliveira; Olivo; Orr; Otto; Paxton; Peña; Pickett; Pitts; Puente; Quintanilla; Raymond; Reyna; Riddle; Ritter; Rodriguez; 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.

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

Absent, Excused — Bailey; Bonnen; Driver; Dutton; Hodge.

Absent — Branch; Eiland; Isett; Menendez; Mowery; Rose.

### STATEMENT OF VOTE

When Record No. 783 was taken, I was in the house but away from my desk. I would have voted yes.

Rose

### Senate Committee Substitute

**HB 2921**, A bill to be entitled An Act relating to the condemnation of certain property for railroad purposes.

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

SECTION 1. Chapter 6, Title 112, Revised Statutes, is amended by adding Article 6336a to read as follows:

Art. 6336a. LOCAL REGULATIONS OF RESIDENTIAL PROPERTY.

(a) This article applies only to the condemnation of property for a terminal switching railroad handling fewer than 10,000 but more than 3,000 carloads a year that operates in a single county with a population of 110,000 or more that is not adjacent to the Texas border and does not contain a portion of a national forest.

(b) The power to condemn property given to a railroad company under this title, including Articles 6316a, 6336, and 6351, does not apply to any property used for or designated under local zoning regulations for residential use unless the use of the condemned property is authorized under or in conformity with local zoning or development regulations.

SECTION 2. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2005.

### HB 322 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

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

**HB 322**, A bill to be entitled An Act relating to concealed handgun licenses for members and veterans of the United States armed forces.

Representative Hupp moved to concur in the senate amendments to **HB 322**.

The motion to concur in senate amendments prevailed.



**Senate Committee Substitute**

**HB 322**, A bill to be entitled An Act relating to concealed handgun licenses for members and veterans of the United States armed forces.

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

SECTION 1. Section 411.172, Government Code, is amended by adding Subsections (g) and (h) to read as follows:

(g) Notwithstanding Subsection (a)(2), a person who is at least 18 years of age but not yet 21 years of age is eligible for a license to carry a concealed handgun if the person:

(1) is a member or veteran of the United States armed forces, including a member or veteran of the reserves or national guard;

(2) was discharged under honorable conditions, if discharged from the United States armed forces, reserves, or national guard; and

(3) meets the other eligibility requirements of Subsection (a) except for the minimum age required by federal law to purchase a handgun.

(h) The issuance of a license to carry a concealed handgun to a person eligible under Subsection (g) does not affect the person's ability to purchase a handgun or ammunition under federal law.

SECTION 2. Section 411.174(a), Government Code, is amended to read as follows:

(a) An applicant for a license to carry a concealed handgun must submit to the director's designee described by Section 411.176:

(1) a completed application on a form provided by the department that requires only the information listed in Subsection (b);

(2) two recent color passport photographs of the applicant, except that an applicant who is younger than 21 years of age must submit two recent color passport photographs in profile of the applicant;

(3) a certified copy of the applicant's birth certificate or certified proof of age;

(4) proof of residency in this state;

(5) two complete sets of legible and classifiable fingerprints of the applicant taken by a person appropriately trained in recording fingerprints who is employed by a law enforcement agency or by a private entity designated by a law enforcement agency as an entity qualified to take fingerprints of an applicant for a license under this subchapter;

(6) a nonrefundable application and license fee of \$140 paid to the department;

(7) a handgun proficiency certificate described by Section 411.189;

(8) an affidavit signed by the applicant stating that the applicant:

(A) has read and understands each provision of this subchapter that creates an offense under the laws of this state and each provision of the laws of this state related to use of deadly force; and

(B) fulfills all the eligibility requirements listed under Section 411.172; and

(9) a form executed by the applicant that authorizes the director to make an inquiry into any noncriminal history records that are necessary to determine the applicant's eligibility for a license under Section 411.172(a).

SECTION 3. Section 411.184(a), Government Code, is amended to read as follows:

(a) To modify a license to allow a license holder to carry a handgun of a different category than the license indicates, the license holder must:

- (1) complete a proficiency examination as provided by Section 411.188(e);
- (2) obtain a handgun proficiency certificate under Section 411.189 not more than six months before the date of application for a modified license; and
- (3) submit to the department:
  - (A) an application for a modified license on a form provided by the department;
  - (B) a copy of the handgun proficiency certificate;
  - (C) payment of a modified license fee of \$25; and
  - (D) two recent color passport photographs of the license holder, except that an applicant who is younger than 21 years of age must submit two recent color passport photographs in profile of the applicant.

SECTION 4. Subchapter H, Chapter 411, Government Code, is amended by adding Section 411.1951 to read as follows:

Sec. 411.1951. REDUCTION OF FEES FOR MEMBERS OF UNITED STATES ARMED FORCES. Notwithstanding any other provision of this subchapter, the department shall reduce by 50 percent any fee required for the issuance of an original, duplicate, modified, or renewed license under this subchapter if the applicant for the license is a member of the United States armed forces, including a member of the reserves, national guard, or state guard.

SECTION 5. This Act takes effect September 1, 2005.

### **HB 1734 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS**

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

**HB 1734**, A bill to be entitled An Act relating to the use of municipal hotel occupancy taxes for the enhancement and upgrading of sports facilities and fields by certain municipalities.

Representative Krusee moved to concur in the senate amendments to **HB 1734**.

A record vote was requested.

The motion to concur in senate amendments prevailed by (Record 784): 135 Yeas, 0 Nays, 2 Present, not voting.

Yeas — Allen, A.; Allen, R.; Alonzo; Anchia; Anderson; Baxter; Berman; Blake; Bohac; Branch; Brown, B.; Brown, F.; Callegari; Campbell; Casteel; Castro; Chavez; Chisum; Coleman; Cook, B.; Cook, R.; Corte; Crabb; Crownover; Davis, J.; Davis, Y.; Dawson; Delisi; Denny; Deshotel; Dunnam; Edwards; Eiland; Eissler; Elkins; Escobar; Farabee; Farrar; Flores; Flynn; Frost; Gallego; Gattis; Geren; Giddings; Gonzales; Gonzalez Toureilles; Goodman; Goolsby; Griggs; Grusendorf; Guillen; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Hegar; Herrero; Hilderbran; Hill; Hochberg; Homer; Hope; Hopson; Howard; Hughes; Hunter; Hupp; Jackson; Jones, D.; Jones, J.; Keel; Keffer, B.; Keffer, J.; King, P.; Kolkhorst; Krusee; Kuempel; Laubenberg; Leibowitz; Luna; Madden; Martinez; Martinez Fischer; McCall; McClendon; McReynolds; Menendez; Miller; Moreno, P.; Morrison; Mowery; Nixon; Noriega, M.; Oliveira; Olivo; Orr; Otto; Paxton; Peña; Pickett; Pitts; 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.

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

Absent, Excused — Bailey; Bonnen; Driver; Dutton; Hodge.

Absent — Burnam; Dukes; Isett; King, T.; Laney; Merritt; Naishtat.

### Senate Committee Substitute

**HB 1734**, A bill to be entitled An Act relating to the use of municipal hotel occupancy taxes for the enhancement and upgrading of sports facilities and fields by certain municipalities.

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

SECTION 1. Section 351.101(a), Tax Code, is amended to read as follows:

(a) Revenue from the municipal hotel occupancy tax may be used only to promote tourism and the convention and hotel industry, and that use is limited to the following:

(1) the acquisition of sites for and the construction, improvement, enlarging, equipping, repairing, operation, and maintenance of convention center facilities or visitor information centers, or both;

(2) the furnishing of facilities, personnel, and materials for the registration of convention delegates or registrants;

(3) advertising and conducting solicitations and promotional programs to attract tourists and convention delegates or registrants to the municipality or its vicinity;

(4) the encouragement, promotion, improvement, and application of the arts, including instrumental and vocal music, dance, drama, folk art, creative writing, architecture, design and allied fields, painting, sculpture, photography, graphic and craft arts, motion pictures, radio, television, tape and sound recording, and other arts related to the presentation, performance, execution, and exhibition of these major art forms;

(5) historical restoration and preservation projects or activities or advertising and conducting solicitations and promotional programs to encourage tourists and convention delegates to visit preserved historic sites or museums:

(A) at or in the immediate vicinity of convention center facilities or visitor information centers; or

(B) located elsewhere in the municipality or its vicinity that would be frequented by tourists and convention delegates; ~~and~~

(6) for a municipality located in a county with a population of one million ~~[290,000]~~ or less, expenses, including promotion expenses, directly related to a sporting event in which the majority of participants are tourists who substantially increase economic activity at hotels and motels within the municipality or its vicinity; and

(7) subject to Section 351.1076, the promotion of tourism by the enhancement and upgrading of existing sports facilities or fields, including facilities or fields for baseball, softball, soccer, and flag football, if:

(A) the municipality owns the facilities or fields;

(B) the municipality:

(i) has a population of 80,000 or more and is located in a county that has a population of 350,000 or less; or

(ii) has a population of at least 65,000 but not more than 70,000 and is located in a county that has a population of 155,000 or less; and  
(C) the sports facilities and fields have been used, in the preceding calendar year, a combined total of more than 10 times for district, state, regional, or national sports tournaments.

SECTION 2. Subchapter B, Chapter 351, Tax Code, is amended by adding Section 351.1076 to read as follows:

Sec. 351.1076. ALLOCATION OF REVENUE: CERTAIN MUNICIPALITIES. (a) A municipality that spends municipal hotel occupancy tax revenue for the enhancement and upgrading of existing sports facilities or fields as authorized by Section 351.101(a)(7):

(1) shall determine the amount of municipal hotel occupancy tax revenue generated for the municipality by hotel activity attributable to the sports events and tournaments held on the enhanced or upgraded facilities or fields for five years after the date the enhancements and upgrades are completed; and

(2) may not spend hotel occupancy tax revenue for the enhancement and upgrading of the facilities or fields in a total amount that exceeds the amount of area hotel revenue attributable to the enhancements and upgrades.

(b) The municipality shall reimburse from the municipality's general fund any expenditure in excess of the amount of area hotel revenue attributable to the enhancements and upgrades to the municipality's hotel occupancy tax revenue fund.

SECTION 3. Subchapter C, Chapter 334, Local Government Code, is amended by adding Section 334.045 to read as follows:

Sec. 334.045. PUBLIC SQUARE OR MUNICIPAL PARK. Section 253.001(b) does not apply to the sale or lease of a public square or municipal park for the acquisition, establishment, development, construction, or renovation of an approved venue project.

SECTION 4. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2005.

(Speaker in the chair)

### **HB 56 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS**

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

**HB 56**, A bill to be entitled An Act relating to the offense of tampering with a direct recording electronic voting machine; providing criminal penalties.

Representative Denny moved to concur in the senate amendments to **HB 56**.

The motion to concur in senate amendments prevailed. (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.)

#### **Senate Committee Substitute**

**HB 56**, A bill to be entitled An Act relating to the offense of tampering with a direct recording electronic voting machine; providing criminal penalties.

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

SECTION 1. Chapter 33, Penal Code, is amended by adding Section 33.05 to read as follows:

Sec. 33.05. TAMPERING WITH DIRECT RECORDING ELECTRONIC VOTING MACHINE. (a) In this section:

(1) "Direct recording electronic voting machine" has the meaning assigned by Section 121.003, Election Code.

(2) "Measure" has the meaning assigned by Section 1.005, Election Code.

(b) A person commits an offense if the person knowingly accesses a computer, computer network, computer program, computer software, or computer system that is a part of a voting system that uses direct recording electronic voting machines and by means of that access:

(1) prevents a person from lawfully casting a vote;

(2) changes a lawfully cast vote;

(3) prevents a lawfully cast vote from being counted; or

(4) causes a vote that was not lawfully cast to be counted.

(c) An offense under this section does not require that the votes as affected by the person's actions described by Subsection (b) actually be the votes used in the official determination of the outcome of the election.

(d) An offense under this section is a felony of the first degree.

(e) Notwithstanding Section 15.01(d), an offense under Section 15.01(a) is a felony of the third degree if the offense the actor intends to commit is an offense under this section.

SECTION 2. (a) The change in law made by this Act applies only to an offense committed on or after the effective date of this Act. For purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before the effective date.

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

SECTION 3. This Act takes effect September 1, 2005.

(Dutton now present)

## **HB 544 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS**

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

**HB 544**, A bill to be entitled An Act relating to the right of certain sexual assault victims to a forensic medical examination.

Representative Naishtat moved to concur in the senate amendments to **HB 544**.

The motion to concur in senate amendments prevailed. (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.)

### **Senate Committee Substitute**

**HB 544**, A bill entitled An Act relating to the right of certain sexual assault victims to a forensic medical examination.

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

SECTION 1. Article 56.02(a), Code of Criminal Procedure, is amended to read as follows:

(a) A victim, guardian of a victim, or close relative of a deceased victim is entitled to the following rights within the criminal justice system:

(1) the right to receive from law enforcement agencies adequate protection from harm and threats of harm arising from cooperation with prosecution efforts;

(2) the right to have the magistrate take the safety of the victim or his family into consideration as an element in fixing the amount of bail for the accused;

(3) the right, if requested, to be informed:

(A) by the attorney representing the state of relevant court proceedings, including appellate proceedings, and to be informed if those proceedings have been canceled or rescheduled prior to the event; and

(B) by an appellate court of decisions of the court, after the decisions are entered but before the decisions are made public;

(4) the right to be informed, when requested, by a peace officer concerning the defendant's right to bail and the procedures in criminal investigations and by the district attorney's office concerning the general procedures in the criminal justice system, including general procedures in guilty plea negotiations and arrangements, restitution, and the appeals and parole process;

(5) the right to provide pertinent information to a probation department conducting a presentencing investigation concerning the impact of the offense on the victim and his family by testimony, written statement, or any other manner prior to any sentencing of the offender;

(6) the right to receive information regarding compensation to victims of crime as provided by Subchapter B, including information related to the costs that may be compensated under that subchapter and the amount of compensation, eligibility for compensation, and procedures for application for compensation under that subchapter, the payment for a medical examination under Article 56.06 for a victim of a sexual assault, and when requested, to referral to available social service agencies that may offer additional assistance;

(7) the right to be informed, upon request, of parole procedures, to participate in the parole process, to be notified, if requested, of parole proceedings concerning a defendant in the victim's case, to provide to the Board of Pardons and Paroles for inclusion in the defendant's file information to be

considered by the board prior to the parole of any defendant convicted of any crime subject to this subchapter, and to be notified, if requested, of the defendant's release;

(8) the right to be provided with a waiting area, separate or secure from other witnesses, including the offender and relatives of the offender, before testifying in any proceeding concerning the offender; if a separate waiting area is not available, other safeguards should be taken to minimize the victim's contact with the offender and the offender's relatives and witnesses, before and during court proceedings;

(9) the right to prompt return of any property of the victim that is held by a law enforcement agency or the attorney for the state as evidence when the property is no longer required for that purpose;

(10) the right to have the attorney for the state notify the employer of the victim, if requested, of the necessity of the victim's cooperation and testimony in a proceeding that may necessitate the absence of the victim from work for good cause;

(11) the right to counseling, on request, regarding acquired immune deficiency syndrome (AIDS) and human immunodeficiency virus (HIV) infection and testing for acquired immune deficiency syndrome (AIDS), human immunodeficiency virus (HIV) infection, antibodies to HIV, or infection with any other probable causative agent of AIDS, if the offense is an offense under Section 21.11(a)(1), 22.011, or 22.021, Penal Code;

(12) the right to request victim-offender mediation coordinated by the victim services division of the Texas Department of Criminal Justice; ~~and~~

(13) the right to be informed of the uses of a victim impact statement and the statement's purpose in the criminal justice system, to complete the victim impact statement, and to have the victim impact statement considered:

(A) by the attorney representing the state and the judge before sentencing or before a plea bargain agreement is accepted; and

(B) by the Board of Pardons and Paroles before an inmate is released on parole; and

(14) except as provided by Article 56.06(a), for a victim of a sexual assault, the right to a forensic medical examination if the sexual assault is reported to a law enforcement agency within 96 hours of the assault.

SECTION 2. Article 56.06, Code of Criminal Procedure, is amended to read as follows:

Art. 56.06. MEDICAL EXAMINATION FOR SEXUAL ASSAULT VICTIM; COSTS ~~[OF MEDICAL EXAMINATION]~~. (a) If a sexual assault is reported to a law enforcement agency within 96 hours of the assault, the law enforcement agency, with the consent of the victim, a person authorized to act on behalf of the victim, or an employee of the Department of Family and Protective Services, shall request a medical examination of the victim of the alleged assault for use in the investigation or prosecution of the offense. A law enforcement agency may decline to request a medical examination under this subsection only

if the person reporting the sexual assault has made one or more false reports of sexual assault to any law enforcement agency and if there is no other evidence to corroborate the current allegations of sexual assault.

(b) If a sexual assault is not reported within the period described by Subsection (a), on receiving the consent described by that subsection the law enforcement agency may request a medical examination of a victim of an alleged sexual assault as considered appropriate by the agency.

(c) A law enforcement agency that requests a medical examination of a victim of an alleged sexual assault for use in the investigation or prosecution of the offense shall pay all costs of the examination. On application to the attorney general, the law enforcement agency is entitled to be reimbursed for the reasonable costs of that examination if the examination was performed by a physician or by a sexual assault examiner or sexual assault nurse examiner, as defined by Section 420.003, Government Code.

(d) ~~(b)~~ A law enforcement agency or prosecuting attorney's office may pay all costs related to the testimony of a licensed health care professional in a criminal proceeding regarding the results of the medical examination or manner in which it was performed.

(e) ~~(c)~~ This article does not require a law enforcement agency to pay any costs of treatment for injuries.

SECTION 3. The changes in law made by this Act to Chapter 56, Code of Criminal Procedure, apply only to a sexual assault reported on or after the effective date of this Act. A sexual assault reported before the effective date of this Act is governed by the law in effect on the date the assault is reported, and the current law remains in effect for that purpose.

SECTION 4. This Act takes effect September 1, 2005.

### **HB 481 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS**

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

**HB 481**, A bill to be entitled An Act relating to the eligibility for unemployment benefits of certain persons with disabilities.

Representative Hochberg moved to concur in the senate amendments to **HB 481**.

A record vote was requested.

The motion to concur in senate amendments prevailed by (Record 785): 138 Yeas, 0 Nays, 1 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; Denny; Deshotel; Dukes; Dunnam; Dutton; Edwards; Eiland; Eissler; Elkins; Escobar; Farabee; Farrar; Flores; Flynn; Frost; Gallego; Geren; Gonzales; Gonzalez Tourelles; Goodman; Goolsby; Griggs; Grusendorf; Guillen; Haggerty; Hamric; Hardcastle;



Harper-Brown; Hartnett; Hegar; Herrero; Hilderbran; Hochberg; Homer; Hope; Hopson; Howard; Hughes; Hunter; Hupp; Isett; Jackson; Jones, D.; Jones, J.; Keel; Keffer, B.; Keffer, J.; King, P.; King, T.; Kolkhorst; 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; Pitts; Puente; Quintanilla; Raymond; Reyna; Riddle; Ritter; Rodriguez; Rose; Seaman; Smith, W.; Smithee; Solis; Solomons; Strama; Straus; Swinford; Talton; Taylor; Thompson; Truitt; Turner; Uresti; Van Arsdale; Veasey; Villarreal; Vo; West; Wong; Woolley; Zedler.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Bailey; Bonnen; Driver; Hodge.

Absent — Gattis; Giddings; Hamilton; Hill; Krusee; Smith, T.

### STATEMENTS OF VOTE

When Record No. 785 was taken, I was in the house but away from my desk. I would have voted yes.

Giddings

When Record No. 785 was taken, I was in the house but away from my desk. I would have voted yes.

T. Smith

### Senate Committee Substitute

**HB 481**, A bill entitled An Act relating to the eligibility for unemployment benefits of certain persons with disabilities.

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

SECTION 1. Subchapter B, Chapter 207, Labor Code, is amended by adding Section 207.0211 to read as follows:

Sec. 207.0211. ELIGIBILITY OF CERTAIN DISABLED PERSONS. A permanently disabled individual is considered to be able to work under Section 207.021(a)(3) and available for work for purposes of Section 207.021(a)(4) if, as a result of the individual's disability, the individual:

(1) is unable to work full-time;

(2) has worked part-time during a substantial part of the individual's base period;

(3) is seeking part-time work consistent with the limitations imposed by the individual's disability; and

(4) is receiving disability insurance benefits under 42 U.S.C. Section 423.

SECTION 2. Section 204.022, Labor Code, is amended by adding Subsection (f) to read as follows:

(f) Benefits may not be charged to the account of an employer based on wage credits earned by an employee who is eligible for benefits under Section 207.0211.

SECTION 3. The change in law made by this Act applies only to a claim for unemployment compensation benefits that is filed with the Texas Workforce Commission on or after the effective date of this Act. A claim filed before that date is governed by the law in effect on the date the claim was filed, and the former law is continued in effect for that purpose.

SECTION 4. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2005.

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

Amend **CSHB 481** (Senate committee printing) as follows:

(1) Strike SECTION 2 of the bill, added Section 204.022(f), Labor Code (page 1, lines 27-31).

(2) Add the following appropriately numbered SECTION to the bill and renumber subsequent SECTIONS of the bill appropriately:

SECTION \_\_\_\_\_. Section 204.022(a), Labor Code, as amended by Chapters 77, 526, and 817, Acts of the 78th Legislature, Regular Session, 2003, is reenacted and amended to read as follows:

(a) Benefits computed on benefit wage credits of an employee or former employee may not be charged to the account of an employer if the employee's last separation from the employer's employment before the employee's benefit year:

(1) was required by a federal statute;

(2) was required by a statute of this state or an ordinance of a municipality of this state;

(3) would have disqualified the employee under Section 207.044, 207.045, 207.051, or 207.053 if the employment had been the employee's last work;

(4) imposes a disqualification under Section 207.044, 207.045, 207.051, or 207.053;

(5) was caused by a medically verifiable illness of the employee or the employee's minor child;

(6) was based on a natural disaster that results in a disaster declaration by the president of the United States under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. Section 5121 et seq.), if the employee would have been entitled to unemployment assistance benefits under Section 410 of that act (42 U.S.C. Section 5177) had the employee not received state unemployment compensation benefits;

(7) was caused by a natural disaster, fire, flood, or explosion that causes employees to be separated from one employer's employment;

(8) was based on a disaster that results in a disaster declaration by the governor under Section 418.014, Government Code;

(9) resulted from the employee's resigning from partial employment to accept other employment that the employee reasonably believed would increase the employee's weekly wage; [✗]

(10) [~~(9)~~] was caused by the employer being called to active military service in any branch of the United States armed forces on or after January 1, 2003;

(11) [~~(9)~~] resulted from the employee leaving the employee's workplace to protect the employee from family violence or stalking as evidenced by:

(A) an active or recently issued protective order documenting family violence against, or the stalking of, the employee or the potential for family violence against, or the stalking of, the employee;

(B) a police record documenting family violence against, or the stalking of, the employee; and

(C) a physician's statement or other medical documentation of family violence against the employee; or

(12) was caused by the employee being unable to perform the work as a result of a disability for which the employee is receiving disability insurance benefits under 42 U.S.C. Section 423.

(3) Add the following appropriately numbered SECTION to the bill and renumber subsequent SECTIONS of the bill appropriately:

SECTION \_\_\_\_\_. (a) The Texas Workforce Commission shall conduct a study on unemployment compensation benefits paid to persons who are eligible under Section 207.0211, Labor Code, as added by this Act. The study must include a statistical analysis of persons who are qualified for benefits under Section 207.0211, the number of persons who receive benefits under that section, the average length of time that the benefits are paid, the amounts of the benefits, and any other information relevant to an analysis of the change in law made by this Act.

(b) The Texas Workforce Commission shall report the results of the study under this section to the Lieutenant Governor, the Speaker of the House of Representatives, and the legislature not later than December 1, 2006.

### **HB 872 - MOTION TO CALL UP SENATE AMENDMENTS**

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

**HB 872**, A bill to be entitled An Act relating to the imposition of the pipeline safety annual inspection fee by the Railroad Commission of Texas.

### **HB 872 - POINT OF ORDER**

Representative Martinez Fischer raised a point of order against further consideration of **HB 872** under Rule 11, Section 2 of the House Rules on the grounds that the senate amendments are not germane to the bill.

(Hill in the chair)

The chair sustained the point of order.

The ruling precluded further consideration of **HB 872**.

**HB 969 - HOUSE REFUSES TO CONCUR  
IN SENATE AMENDMENTS  
CONFERENCE COMMITTEE APPOINTED**

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

**HB 969**, A bill to be entitled An Act relating to court orders for discovery in a criminal case.

Representative Keel moved that the house not concur in the senate amendments and that a conference committee be requested to adjust the differences between the two houses on **HB 969**.

The motion prevailed.

The chair announced the appointment of the following conference committee, on the part of the house, on **HB 969**: Keel, chair; Gattis; Bonnen; Escobar; and Peña.

**HB 1225 - HOUSE REFUSES TO CONCUR  
IN SENATE AMENDMENTS  
CONFERENCE COMMITTEE APPOINTED**

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

**HB 1225**, A bill to be entitled An Act relating to the grounds for an exemption from cancellation of a water right for nonuse.

Representative Puente moved that the house not concur in the senate amendments and that a conference committee be requested to adjust the differences between the two houses on **HB 1225**.

The motion prevailed.

The chair announced the appointment of the following conference committee, on the part of the house, on **HB 1225**: Puente, chair; Turner; Geren; Campbell; and Bonnen.

**HB 1833 - HOUSE CONCURS IN SENATE AMENDMENTS  
TEXT OF SENATE AMENDMENTS**

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

**HB 1833**, A bill to be entitled An Act relating to disclosures required for the creation of certain consumer contracts solicited by mail; providing a civil penalty.

Representative Chisum moved to concur in the senate amendments to **HB 1833**.

The motion to concur in senate amendments prevailed. (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.)

**Senate Committee Substitute**

**HB 1833**, A bill to be entitled An Act relating to disclosures required for the creation of certain consumer contracts solicited by mail; providing a civil penalty.

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

SECTION 1. Subchapter D, Chapter 35, Business & Commerce Code, is amended by adding Section 35.455 to read as follows:

Sec. 35.455. DISCLOSURES REQUIRED FOR CERTAIN CONSUMER CONTRACTS SOLICITED BY MAIL. (a) Unless the context requires a different definition, the definitions of Chapter 3 apply to this section.

(b) This section applies only to a person that solicits business in this state by mailing an individual a check or draft payable to the individual. This section does not apply to a financial institution as defined in Section 201.101, Finance Code, or an authorized lender as defined in Section 341.001, Finance Code, that sends a check or draft to an existing or prospective account holder authorizing the existing or prospective account holder to access an extension of credit.

(c) A person that makes an offer that the recipient may accept by endorsing and negotiating the check or draft shall clearly and conspicuously disclose on the check or draft, next to the place for endorsement, that by signing and negotiating the document the depositor agrees to pay for future goods or services as a result of this contract.

(d) If a person makes an offer under Subsection (c) that includes a free membership period, trial period, or other incentive with a time limit, and if the offer results in a contract unless the recipient cancels, rescinds, or revokes the offer by the end of the time period, the offeror shall send notice to the recipient, at least two weeks before debiting any account, of the recipient's obligation to cancel, rescind, revoke, or otherwise terminate the recipient's acceptance. The notice must be clear and conspicuous. If the offeror bills the consumer by mailing an invoice, notice may be included with the invoice.

(e) An offer is void if the offeror:

(1) does not make the disclosure required by Subsection (c);  
(2) does not give notice as required by Subsection (d), if applicable; or  
(3) provides an incentive with a time limit, including a free trial or membership period, that is less than two weeks.

(f) If an offer described by Subsection (c) does not contain the required disclosure, or is not followed by any notice required by Subsection (d), or if the offeror fails to honor the recipient's request to cancel made under the terms of the offer or as required by Subsection (d), the delivery of any goods or services to the recipient does not operate to form a contract between the offeror and the recipient.

(g) A violation of this section is a deceptive trade practice in addition to the practices described by Subchapter E, Chapter 17, and is actionable under that subchapter.

SECTION 2. Section 35.455, Business & Commerce Code, as added by this Act, applies only to a solicitation that is mailed on or after September 1, 2005. A solicitation that is mailed before September 1, 2005, is covered by the law in effect on the date the solicitation was mailed, and the former law is continued in effect for that purpose.

SECTION 3. This Act takes effect September 1, 2005.

### **HB 1098 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS**

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

**HB 1098**, A bill to be entitled An Act relating to using the Internet to obtain identifying information of another person for a fraudulent purpose; providing penalties.

Representative McCall moved to concur in the senate amendments to **HB 1098**.

The motion to concur in senate amendments prevailed. (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.)

#### **Senate Committee Substitute**

**HB 1098**, relating to using the Internet to obtain identifying information of another person for a fraudulent purpose; providing a penalty.

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

SECTION 1. Title 4, Business & Commerce Code, is amended by adding Chapter 48 to read as follows:

#### CHAPTER 48. INTERNET FRAUD

Sec. 48.001. SHORT TITLE. This chapter may be cited as the Anti-Phishing Act.

Sec. 48.002. DEFINITIONS. In this chapter:

(1) "Electronic mail" means a message, file, or other information that is transmitted through a local, regional, or global computer network, regardless of whether the message, file, or other information is viewed, stored for retrieval at a later time, printed, or filtered by a computer program that is designed or intended to filter or screen those items.

(2) "Electronic mail address" means a destination, commonly expressed as a string of characters, to which electronic mail may be sent or delivered.

(3) "Identifying information" has the meaning assigned by Section 32.51, Penal Code.

(4) "Internet domain name" refers to a globally unique, hierarchical reference to an Internet host or service, assigned through a centralized Internet naming authority and composed of a series of character strings separated by periods with the right-most string specifying the top of the hierarchy.

(5) "Web page" means a location that has a single uniform resource locator (URL) with respect to the world wide web or another location that can be accessed on the Internet.

Sec. 48.003. CREATION OF WEB PAGE OR DOMAIN NAME FOR FRAUDULENT PURPOSES. A person may not, with the intent to engage in conduct involving the fraudulent use or possession of another person's identifying information:

(1) create a web page or Internet domain name that is represented as a legitimate online business without the authorization of the registered owner of the business; and

(2) use that web page or a link to the web page, that domain name, or another site on the Internet to induce, request, or solicit another person to provide identifying information for a purpose that the other person believes is legitimate.

Sec. 48.004. ELECTRONIC MAIL FRAUD. A person may not, with the intent to engage in conduct involving the fraudulent use or possession of identifying information, send or cause to be sent to an electronic mail address held by a resident of this state an electronic mail message that:

(1) is falsely represented as being sent by a legitimate online business;

(2) refers or links the recipient of the message to a web page that is represented as being associated with the legitimate online business; and

(3) directly or indirectly induces, requests, or solicits the recipient of the electronic mail message to provide identifying information for a purpose that the recipient believes is legitimate.

Sec. 48.005. CIVIL RELIEF. (a) The following persons may bring a civil action against a person who violates this chapter:

(1) a person engaged in the business of providing Internet access service to the public who is adversely affected by the violation;

(2) an owner of a web page or trademark who is adversely affected by the violation; or

(3) the attorney general.

(b) A person bringing an action under this section may:

(1) seek injunctive relief to restrain the violator from continuing the violation;

(2) recover damages in an amount equal to the greater of:

(A) actual damages arising from the violation; or

(B) \$100,000 for each violation of the same nature; or

(3) both seek injunctive relief and recover damages as provided by this subsection.

(c) The court may increase an award of actual damages in an action brought under this section to an amount not to exceed three times the actual damages sustained if the court finds that the violations have occurred with a frequency as to constitute a pattern or practice.

(d) A plaintiff who prevails in an action filed under this section is entitled to recover reasonable attorney's fees and court costs.

(e) For purposes of this section, violations are of the same nature if the violations consist of the same course of conduct or action, regardless of the number of times the conduct or act occurred.

Sec. 48.006. APPLICABILITY OF CHAPTER. This chapter does not apply to a telecommunications provider's or Internet service provider's good faith transmission or routing of, or intermediate temporary storing or caching of, identifying information.

SECTION 2. Section 48.004, Business & Commerce Code, as added by this Act, applies only to an electronic mail message that is sent on or after September 1, 2005.

SECTION 3. This Act takes effect September 1, 2005.

**HB 905 - HOUSE REFUSES TO CONCUR  
IN SENATE AMENDMENTS  
CONFERENCE COMMITTEE APPOINTED**

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

**HB 905**, A bill to be entitled An Act relating to the powers and duties of the state auditor in connection with state contracts.

Representative Delisi moved that the house not concur in the senate amendments and that a conference committee be requested to adjust the differences between the two houses on **HB 905**.

The motion prevailed.

The chair announced the appointment of the following conference committee, on the part of the house, on **HB 905**: Delisi, chair; Swinford; B. Cook; Villarreal; and Wong.

**HB 1095 - HOUSE CONCURS IN SENATE AMENDMENTS  
TEXT OF SENATE AMENDMENTS**

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

**HB 1095**, A bill to be entitled An Act relating to the offense of harassment by persons in certain correctional facilities and to creating the offense of harassment of public servant.

Representative Menendez moved to concur in the senate amendments to **HB 1095**.

The motion to concur in senate amendments prevailed.

**Senate Committee Substitute**

**HB 1095**, A bill to be entitled An Act relating to the offense of harassment by persons in certain correctional facilities and to creating the offense of harassment of public servant.

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

SECTION 1. The heading to Section 22.11, Penal Code, is amended to read as follows:



Sec. 22.11. HARASSMENT BY PERSONS IN CERTAIN CORRECTIONAL FACILITIES; HARASSMENT OF PUBLIC SERVANT.

SECTION 2. Section 22.11, Penal Code, is amended by amending Subsection (a) and adding Subsection (e) to read as follows:

(a) A person commits an offense if, with the intent to assault, harass, or alarm, the person:

(1) ~~[7]~~ while imprisoned or confined in a correctional or detention facility ~~[and with intent to harass, alarm, or annoy another person]~~, causes another ~~[the other]~~ person to contact the blood, seminal fluid, vaginal fluid, saliva, urine, or feces of the actor, any other person, or an animal; or

(2) causes another person the actor knows to be a public servant to contact the blood, seminal fluid, vaginal fluid, saliva, urine, or feces of the actor, any other person, or an animal while the public servant is lawfully discharging an official duty or in retaliation or on account of an exercise of the public servant's official power or performance of an official duty.

(e) For purposes of Subsection (a)(2), the actor is presumed to have known the person was a public servant if the person was wearing a distinctive uniform or badge indicating the person's employment as a public servant.

SECTION 3. Article 21.31, Code of Criminal Procedure, is amended to read as follows:

Art. 21.31. ~~[AIDS]~~ TESTING FOR AIDS AND CERTAIN OTHER DISEASES.

(a) A person who is indicted for or who waives indictment for an offense under Section 21.11(a)(1), 22.011, or 22.021, Penal Code, shall, at the direction of the court, undergo a medical procedure or test designed to show or help show whether the person has a sexually transmitted disease or has acquired immune deficiency syndrome (AIDS) or human immunodeficiency virus (HIV) infection, antibodies to HIV, or infection with any other probable causative agent of AIDS. The court may direct the person to undergo the procedure or test on its own motion or on the request of the victim of the alleged offense. If the person refuses to submit voluntarily to the procedure or test, the court shall require the person to submit to the procedure or test. The court may require a defendant previously required under this article to undergo a medical procedure or test on indictment for an offense to undergo a subsequent medical procedure or test following conviction of the offense. The person performing the procedure or test shall make the test results available to the local health authority, and the local health authority shall be required to make the notification of the test result to the victim of the alleged offense and to the defendant.

(b) The court shall order a person who is charged with an offense under Section 22.11, Penal Code, to undergo in the manner provided by Subsection (a) a medical procedure or test designed to show or help show whether the person has HIV, hepatitis A, hepatitis B, tuberculosis, or any other disease designated as a reportable disease under Section 81.048, Health and Safety Code. The person charged with the offense shall pay the costs of testing under this subsection.

(c) The state may not use the fact that a medical procedure or test was performed on a person under Subsection (a) [this subsection] or use the results of a ~~[the]~~ procedure or test conducted under Subsection (a) in any criminal proceeding arising out of the alleged offense.

(d) ~~(b)~~ Testing under this article [section] shall be conducted in accordance with written infectious disease control protocols adopted by the Texas Board of Health that clearly establish procedural guidelines that provide criteria for testing and that respect the rights of the person accused and any victim [the victims] of the alleged offense.

(e) This article does not permit ~~[(e) Nothing in this section would allow]~~ a court to release a test result to anyone other than those ~~[specifically]~~ authorized by ~~[this]~~ law, and the provisions of Section 81.103(d), Health and Safety Code, may [shall] not be construed to allow that ~~[such]~~ disclosure.

SECTION 4. Article 42.037, Code of Criminal Procedure, is amended by adding Subsection (p) to read as follows:

(p) The court shall order a defendant convicted of an offense under Section 22.11, Penal Code, to make restitution to the victim of the offense or the victim's employer in an amount equal to the sum of any expenses incurred by the victim or employer to:

(1) test the victim for HIV, hepatitis A, hepatitis B, tuberculosis, or any other disease designated as a reportable disease under Section 81.048, Health and Safety Code; or

(2) treat the victim for HIV, hepatitis A, hepatitis B, tuberculosis, or any other disease designated as a reportable disease under Section 81.048, Health and Safety Code, the victim contracts as a result of the offense.

SECTION 5. The changes in law made by this Act apply only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is covered by the law in effect at the time the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense was committed before that date.

SECTION 6. This Act takes effect September 1, 2005.

### **HB 167 - HOUSE REFUSES TO CONCUR IN SENATE AMENDMENTS CONFERENCE COMMITTEE APPOINTED**

Representative W. Smith called up with senate amendments for consideration at this time,

**HB 167**, A bill to be entitled An Act relating to the use of the development project fund by a municipal development district.

Representative W. Smith moved that the house not concur in the senate amendments and that a conference committee be requested to adjust the differences between the two houses on **HB 167**.

The motion prevailed.

The chair announced the appointment of the following conference committee, on the part of the house, on **HB 167**: W. Smith, chair; West; Howard; McReynolds; and Frost.

**HB 57 - HOUSE CONCURS IN SENATE AMENDMENTS  
TEXT OF SENATE AMENDMENTS**

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

**HB 57**, A bill to be entitled An Act relating to the dates on which elections may be held and certain procedures involving the uniform election held in May.

Representative Denny moved to concur in the senate amendments to **HB 57**.

The motion to concur in senate amendments prevailed. (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.)

**Senate Amendment No. 1 (Senate Committee Amendment No. 1)**

Amend **HB 57** as follows:

On page 4, line 24, insert new SECTION 11 as follows, and renumber subsequent sections:

"SECTION 11. When used in Section 49.103(e), Water Code, the phrase "prior statutory enactments" refers to statutory enactments occurring prior to May 25, 1995."

**HR 2073 - ADOPTED  
(by Escobar, Flores, Martinez Fischer, and Solis)**

Representative Escobar moved to suspend all necessary rules to take up and consider at this time **HR 2073**.

The motion prevailed.

The following resolution was laid before the house:

**HR 2073**, Congratulating Eric Daniel Flores on his second place win at the ExxonMobil Texas State Science and Engineering Fair.

**HR 2073** was read and was adopted.

On motion of Representative Martinez Fischer, the names of all the members of the house were added to **HR 2073** as signers thereof.

**INTRODUCTION OF GUEST**

The chair recognized Representative Escobar who introduced Eric Flores.

**HB 182 - HOUSE REFUSES TO CONCUR  
IN SENATE AMENDMENTS  
CONFERENCE COMMITTEE APPOINTED**

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

**HB 182**, A bill to be entitled An Act relating to the determination through binding arbitration of certain ad valorem tax protests brought by property owners.

Representative Mowery moved that the house not concur in the senate amendments and that a conference committee be requested to adjust the differences between the two houses on **HB 182**.

The motion prevailed.

The chair announced the appointment of the following conference committee, on the part of the house, on **HB 182**: Mowery, chair; Truitt; Wong; Veasey; and Gonzales.

### **HB 93 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS**

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

**HB 93**, A bill to be entitled An Act relating to showing the manner of death on the death certificate of an inmate of the Texas Department of Criminal Justice who is lawfully executed.

Representative Riddle moved to concur in the senate amendments to **HB 93**.

The motion to concur in senate amendments prevailed. (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.)

#### **Senate Amendment No. 1 (Senate Committee Amendment No. 1)**

Amend **HB 93** on page 1, line 11, strike "legally authorized execution" and substitute "judicially ordered execution".

### **HB 1170 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS**

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

**HB 1170**, A bill to be entitled An Act relating to readmission to a public institution of higher education of students who withdraw to perform active military service.

Representative Miller moved to concur in the senate amendments to **HB 1170**.

The motion to concur in senate amendments prevailed. (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.)

**Senate Committee Substitute**

**HB 1170**, A bill to be entitled An Act relating to readmission to a public institution of higher education of students who withdraw to perform active military service.

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

SECTION 1. (a) Subchapter Z, Chapter 51, Education Code, is amended by adding Section 51.9242 to read as follows:

Sec. 51.9242. READMISSION OF STUDENT WHO WITHDRAWS TO PERFORM ACTIVE MILITARY SERVICE. (a) This section applies only to a student who withdraws from an institution of higher education to perform active military service as a member of the United States armed forces or the Texas National Guard, except that this section does not apply to a student who withdraws from an institution solely to perform one or more training exercises as a member of the Texas National Guard.

(b) For any academic term that begins after the date a student described by Subsection (a) is released from active military service but not later than the first anniversary of that date, the institution of higher education from which the student withdrew shall readmit the student, without requiring reapplication or charging a fee for readmission, if the student is otherwise eligible to register for classes at the institution. On readmission of the student under this subsection, the institution shall:

(1) provide to the student any financial assistance previously provided by the institution to the student before the student's withdrawal if the student meets current eligibility requirements for the assistance, other than any requirement directly affected by the student's service, such as continuous enrollment or another similar timing requirement; and

(2) allow the student the same academic status that the student had before the student's withdrawal, including any course credit awarded to the student by the institution.

(c) An institution of higher education may adopt rules requiring reasonable proof from a student of the fact and duration of the student's active military service.

(b) Section 51.9242, Education Code, as added by this Act, applies beginning with readmissions to a public institution of higher education for the first semester or other academic term that begins after this Act takes effect.

SECTION 2. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2005.

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

**CSHB 1170** (committee printing) is amended by adding new SECTION 1 to the bill to read as follows and renumbering subsequent SECTIONS of the bill accordingly:

SECTION 1. Subchapter F, Chapter 51, Education Code, is amended by adding Section 51.3041 to read as follows:

Sec. 51.3041. AWARD OF COURSE CREDIT FOR MILITARY TRAINING. (a) In this section, "institution of higher education" has the meaning assigned by Section 61.003.

(b) An institution of higher education shall consider, in determining whether to award to a student course credit toward a degree offered by the institution for the student's completion of certain military training:

(1) any official military record presented to the institution by the student that:

(A) describes the substance of the training completed by the student; and

(B) verifies the student's successful completion of that training;  
and

(2) whether the substance of that training satisfies the purpose of the course for which the student seeks credit as described in the institution's course catalog.

(c) This section applies to a student who has completed certain military training and is admitted to the institution, including a student who is readmitted under Section 51.9242.

**HB 2438 - HOUSE REFUSES TO CONCUR  
IN SENATE AMENDMENTS  
CONFERENCE COMMITTEE APPOINTED**

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

**HB 2438**, A bill to be entitled An Act relating to the acquisition and regulation of manufactured homes.

Representative Haggerty moved that the house not concur in the senate amendments and that a conference committee be requested to adjust the differences between the two houses on **HB 2438**.

The motion prevailed.

The chair announced the appointment of the following conference committee, on the part of the house, on **HB 2438**: Haggerty, chair; Hamilton; Quintanilla; Guillen; and D. Jones.

**HJR 87 - HOUSE CONCURS IN SENATE AMENDMENTS  
TEXT OF SENATE AMENDMENTS**

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

**HJR 87**, A joint resolution proposing a constitutional amendment relating to the membership of the State Commission on Judicial Conduct.

Representative Farabee moved to concur in the senate amendments to **HJR 87**.

A record vote was requested.

The motion to concur in senate amendments prevailed by (Record 786): 143 Yeas, 0 Nays, 2 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; Denny; Deshotel; Dukes; Dunnam; Dutton; Edwards; Eiland; Eissler; Elkins; Escobar; Farabee; Farrar; Flores; Flynn; Frost; Gallego; Gattis; Geren; Giddings; Gonzales; Gonzalez Toureilles; Goodman; Goolsby; Griggs; Grusendorf; Guillen; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Hegar; Herrero; Hilderbran; Hochberg; 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; Pitts; 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.

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

Absent, Excused — Bailey; Bonnen; Driver; Hodge.

### Senate Committee Substitute

**HJR 87**, A joint resolution proposing a constitutional amendment relating to the membership of the State Commission on Judicial Conduct.

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

SECTION 1. Sections 1-a(2) and (5), Article V, Texas Constitution, are amended to read as follows:

(2) The State Commission on Judicial Conduct consists of thirteen (13) ~~eleven (11)~~ members, to wit: (i) one (1) Justice of a Court of Appeals; (ii) one (1) District Judge; (iii) two (2) members of the State Bar, who have respectively practiced as such for over ten (10) consecutive years next preceding their selection; (iv) five (5) ~~(iiii) four (4)~~ citizens, at least thirty (30) years of age, not licensed to practice law nor holding any salaried public office or employment; (v) one (1) Justice of the Peace; (vi) one (1) Judge of a Municipal Court; ~~and;~~ (vii) one (1) Judge of a County Court at Law; and (viii) one (1) Judge of a Constitutional County Court; provided that no person shall be or remain a member of the Commission, who does not maintain physical residence within this State, ~~[or who resides in, or holds a judgeship within or for, the same Supreme Judicial District as another member of the Commission,]~~ or who shall have ceased to retain the qualifications above specified for that person's [his] respective class of membership, and provided that a Commissioner of class (i), (ii), (iii), (vii), or (viii) may not ~~[except that the Justice of the Peace and the~~

Judges of a Municipal Court and or a County Court at Law shall be selected at large without regard to whether they] reside or hold a judgeship in the same court of appeals district [~~Supreme Judicial District~~] as another member of the Commission. Commissioners of classes (i), (ii), [~~and~~] (vii), and (viii) above shall be chosen by the Supreme Court with advice and consent of the Senate, those of class (iii) by the Board of Directors of the State Bar under regulations to be prescribed by the Supreme Court with advice and consent of the Senate, those of class (iv) [~~(iiii)~~] by appointment of the Governor with advice and consent of the Senate, and the commissioners of classes (v) and (vi) by appointment of the Supreme Court as provided by law, with the advice and consent of the Senate.

(5) The Commission may hold its meetings, hearings and other proceedings at such times and places as it shall determine but shall meet at Austin at least once each year. It shall annually select one of its members as Chairman. A quorum shall consist of seven (7) [~~six (6)~~] members. Proceedings shall be by majority vote of those present, except that recommendations for retirement, censure, suspension, or removal of any person holding an office named in Paragraph A of Subsection (6) of this Section shall be by affirmative vote of at least seven (7) [~~six (6)~~] members.

SECTION 2. This proposed constitutional amendment shall be submitted to the voters at an election to be held November 8, 2005. The ballot shall be printed to provide for voting for or against the proposition: "The constitutional amendment to include one additional public member and a constitutional county court judge in the membership of the State Commission on Judicial Conduct."

**HB 468 - HOUSE REFUSES TO CONCUR  
IN SENATE AMENDMENTS  
CONFERENCE COMMITTEE APPOINTED**

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

**HB 468**, A bill to be entitled An Act relating to driver and traffic safety education courses.

Representative Hegar moved that the house not concur in the senate amendments and that a conference committee be requested to adjust the differences between the two houses on **HB 468**.

The motion prevailed.

The chair announced the appointment of the following conference committee, on the part of the house, on **HB 468**: Hegar, chair; Hill; Driver; Frost; and Veasey.

**HB 1599 - HOUSE CONCURS IN SENATE AMENDMENTS  
TEXT OF SENATE AMENDMENTS**

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

**HB 1599**, A bill to be entitled An Act relating to a conservation and reclamation district's use of money received under a contract with a municipality.



Representative Callegari moved to concur in the senate amendments to **HB 1599**.

The motion to concur in senate amendments prevailed. (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.)

### **Senate Committee Substitute**

**HB 1599**, A bill to be entitled An Act relating to certain conservation and reclamation districts' use of money received under a contract with a municipality.

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

SECTION 1. Subchapter H, Chapter 49, Water Code, is amended by adding Section 49.2145 to read as follows:

Sec. 49.2145. USE OF MONEY RECEIVED UNDER CERTAIN CONTRACTS. (a) This section applies only to a district located in:

(1) a county included in the Harris-Galveston Coastal Subsidence District; or

(2) a county included in the Fort Bend Subsidence District.

(b) A district that receives money from a municipality under the terms of a contract with the municipality, including a strategic partnership agreement authorized by Section 43.0751, Local Government Code, may use the money for any purpose of the district or the municipality, unless the contract requires the district to use the money for a specified purpose. For purposes of this chapter, a district purpose includes a municipal purpose for which money is used under this section.

SECTION 2. The change in law made by this Act applies to a contract between a municipality and a conservation and reclamation district entered into before, on, or after the effective date of this Act.

SECTION 3. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2005.

### **HB 2902 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS**

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

**HB 2902**, A bill to be entitled An Act relating to the maintenance and preservation of historical courthouses and records.

Representative Hilderbran moved to concur in the senate amendments to **HB 2902**.

The motion to concur in senate amendments prevailed. (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.)

**Senate Committee Substitute**

**HB 2902**, A bill to be entitled An Act relating to the maintenance and preservation of historic courthouses and records.

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

SECTION 1. The heading to Section 442.0081, Government Code, is amended to read as follows:

Sec. 442.0081. HISTORIC COURTHOUSE PRESERVATION AND MAINTENANCE PROGRAMS ~~[PROGRAM]~~; GRANTS AND LOANS.

SECTION 2. Section 442.0081, Government Code, is amended by adding Subsection (g-1) and amending Subsection (h) to read as follows:

(g-1) To help protect courthouses that have benefited from the historic courthouse preservation program, the commission shall develop and implement a maintenance program to assist counties receiving money under the preservation program in continuing to maintain, repair, and preserve the courthouses. The maintenance program may include offering to periodically inspect the courthouses and offering counties technical assistance and information on best practices in maintaining the courthouses.

(h) The commission shall adopt rules necessary to implement the historic courthouse preservation and maintenance programs ~~[program]~~.

SECTION 3. Section 442.0083(f), Government Code, is amended to read as follows:

(f) Biennial appropriations to the commission for administering the historic courthouse preservation and maintenance programs ~~[program]~~ during a state fiscal biennium, including providing oversight for historic courthouse projects, may not exceed 2-1/2 ~~[one]~~ percent of the amount appropriated for implementing the historic courthouse preservation and maintenance programs ~~[program]~~ during the state fiscal biennium.

SECTION 4. Section 441.157, Government Code, is repealed.

SECTION 5. This Act takes effect September 1, 2005.

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

Amend **HB 2902** (Senate committee printing) by striking SECTION 4 (page 1, line 40) and re-number existing SECTIONS accordingly.

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

Amend **HB 2902** (Senate committee printing) as follows:

(1) Strike the recital to SECTION 3 of the bill (page 1, lines 31 and 32) and substitute "SECTION 3. Subsections (e) and (f), Section 442.0083, Government Code, are amended to read as follows:

(2) Between the recital to SECTION 3 and amended Subsection (f), Section 442.0083, Government Code (page 1, between lines 32 and 33, insert the following:

(e) A grant for a historic courthouse project may not exceed the greater of \$6 ~~[\$4]~~ million or two percent of the amount appropriated for implementing the historic courthouse preservation program during the state fiscal biennium.

**HB 3547 - HOUSE CONCURS IN SENATE AMENDMENTS  
TEXT OF SENATE AMENDMENTS**

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

**HB 3547**, A bill to be entitled An Act relating to the creation of an additional county court at law in Kaufman County.

Representative B. Brown moved to concur in the senate amendments to **HB 3547**.

The motion to concur in senate amendments prevailed. (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.)

**Senate Committee Substitute**

**HB 3547**, A bill to be entitled An Act relating to the creation of an additional county court at law in Kaufman County.

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

SECTION 1. Section 25.1311, Government Code, is amended to read as follows:

Sec. 25.1311. KAUFMAN COUNTY. Kaufman County has the following ~~[one]~~ statutory county courts:

- (1) ~~[court,]~~ the County Court at Law of Kaufman County; and
- (2) the County Court at Law No. 2 of Kaufman County.

SECTION 2. Section 25.1312, Government Code, is amended by amending Subsection (a) and adding Subsection (b-1) to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a statutory county court in Kaufman County has, except as limited by Subsections ~~[Subsection]~~ (b) and (b-1), the jurisdiction provided by the constitution and general law for district courts.

(b-1) The County Court at Law No. 2 of Kaufman County does not have jurisdiction of civil cases in which the amount in controversy exceeds the limit prescribed by Section 25.0003(c)(1).

SECTION 3. Section 152.1351(a), Human Resources Code, is amended to read as follows:

(a) The Kaufman County Juvenile Board is composed of the county judge, the judges ~~[judge]~~ of the county courts at law ~~[County Court at Law]~~ of Kaufman County, the district judges in Kaufman County, and the criminal district attorney.

SECTION 4. Notwithstanding Section 25.1311, Government Code, as amended by this Act, the County Court at Law No. 2 of Kaufman County is created September 1, 2007, or on an earlier date determined by the Commissioners Court of Kaufman County by an order entered in its minutes.

SECTION 5. This Act takes effect September 1, 2005.

**HB 2465 - HOUSE REFUSES TO CONCUR  
IN SENATE AMENDMENTS  
CONFERENCE COMMITTEE APPOINTED**

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

**HB 2465**, A bill to be entitled An Act 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.

Representative Denny moved that the house not concur in the senate amendments and that a conference committee be requested to adjust the differences between the two houses on **HB 2465**.

The motion prevailed.

The chair announced the appointment of the following conference committee, on the part of the house, on **HB 2465**: Denny, chair; Pickett; Bohac; Anderson; and Chisum.

**HB 2481 - HOUSE REFUSES TO CONCUR  
IN SENATE AMENDMENTS  
CONFERENCE COMMITTEE APPOINTED**

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

**HB 2481**, A bill to be entitled An Act 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, and to the making of accommodations in certain highway rights-of-way for certain entities.

Representative Homer moved that the house not concur in the senate amendments and that a conference committee be requested to adjust the differences between the two houses on **HB 2481**.

The motion prevailed.

The chair announced the appointment of the following conference committee, on the part of the house, on **HB 2481**: Bonnen, chair; Hamric; Homer; Kuempel; and Branch.

**HB 2760 - HOUSE REFUSES TO CONCUR  
IN SENATE AMENDMENTS  
CONFERENCE COMMITTEE APPOINTED**

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

**HB 2760**, A bill to be entitled An Act relating to regulation of rates for personal automobile and fire and allied lines insurance policies issued by a county mutual insurance company.

Representative Taylor moved that the house not concur in the senate amendments and that a conference committee be requested to adjust the differences between the two houses on **HB 2760**.

The motion prevailed.

The chair announced the appointment of the following conference committee, on the part of the house, on **HB 2760**: Taylor, chair; Seaman; Thompson; Oliveira; and B. Keffer.

### **HB 1630 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS**

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

**HB 1630**, A bill to be entitled An Act relating to an excused absence from a public institution of higher education for a person called to active military service.

Representative McReynolds moved to concur in the senate amendments to **HB 1630**.

A record vote was requested.

The motion to concur in senate amendments prevailed by (Record 787): 143 Yeas, 0 Nays, 2 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; Denny; Deshotel; Dukes; Dunnam; Dutton; Edwards; Eiland; Eissler; Elkins; Escobar; Farabee; Farrar; Flores; Flynn; Frost; Gallego; Gattis; Geren; Giddings; Gonzales; Gonzalez Tourelles; Goodman; Goolsby; Griggs; Grusendorf; Guillen; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Hegar; Herrero; Hilderbran; Hochberg; 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; Pitts; 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.

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

Absent, Excused — Bailey; Bonnen; Driver; Hodge.

### Senate Committee Substitute

**HB 1630**, A bill to be entitled An Act relating to an excused absence from a public institution of higher education for a person called to active military service.

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

SECTION 1. Subchapter Z, Chapter 51, Education Code, is amended by adding Section 51.9111 to read as follows:

Sec. 51.9111. EXCUSED ABSENCE FOR ACTIVE MILITARY SERVICE. (a) In this section:

(1) "Institution of higher education" has the meaning assigned by Section 61.003.

(2) "Active military service" includes active military service performed by a member of the Texas National Guard or the Texas State Guard.

(b) This section applies only if:

(1) a student enrolled in an institution of higher education fails to attend classes or engage in other required activities because the student is called to active military service that is of a reasonably brief duration, as determined by rule adopted under Subsection (d); and

(2) the student chooses not to withdraw as authorized by Section 54.006(f).

(c) An institution of higher education shall excuse a student from attending classes or engaging in other required activities, including examinations, in order for the student to participate in active military service to which the student is called, including travel associated with the service. A student whose absence is excused under this subsection may not be penalized for that absence and shall be allowed to complete an assignment or take an examination from which the student is excused within a reasonable time after the absence. An instructor may appropriately respond if the student fails to satisfactorily complete the assignment or examination within a reasonable time after the absence.

(d) The Texas Higher Education Coordinating Board, in consultation with institutions of higher education, shall adopt rules as necessary to administer this section. The rules must establish a maximum period for which a student may be excused under this section. In establishing that period, the board shall consider the maximum period a student may be absent without significantly interfering with the student's ability to learn the course material, complete course assignments, and succeed academically during the applicable semester or other academic period.

SECTION 2. (a) This Act applies beginning with the 2005 fall semester.

(b) The Texas Higher Education Coordinating Board shall adopt rules for administering Section 51.9111, Education Code, as added by this Act, as soon as practicable after this Act takes effect. For that purpose, the coordinating board may adopt the initial rules in the manner provided by law for adoption of emergency rules.

SECTION 3. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2005.

**HB 2587 - HOUSE CONCURS IN SENATE AMENDMENTS**  
**TEXT OF SENATE AMENDMENTS**

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

**HB 2587**, A bill to be entitled An Act relating to the Schleicher County Hospital District.

Representative Hilderbran moved to concur in the senate amendments to **HB 2587**.

A record vote was requested.

The motion to concur in senate amendments prevailed by (Record 788): 143 Yeas, 0 Nays, 2 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; Denny; Deshotel; Dukes; Dunnam; Dutton; Edwards; Eiland; Eissler; Elkins; Escobar; Farabee; Farrar; Flores; Flynn; Frost; Gallego; Gattis; Geren; Giddings; Gonzales; Gonzalez Toureilles; Goodman; Goolsby; Griggs; Grusendorf; Guillen; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Hegar; Herrero; Hilderbran; Hochberg; 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; Pitts; 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.

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

Absent, Excused — Bailey; Bonnen; Driver; Hodge.

**Senate Committee Substitute**

**HB 2587**, A bill to be entitled An Act relating to the Schleicher County Hospital District.

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

SECTION 1. Section 1, Chapter 38, Acts of the 60th Legislature, Regular Session, 1967, is amended to read as follows:

Sec. 1. In accordance with the provisions of Section 9, Article IX, Constitution of the State of Texas, this Act shall be operative so as to authorize the creation, establishment, maintenance and operation of a hospital district within the State of Texas, such district to have boundaries coextensive with the boundaries of Schleicher County; and said district shall have the powers and responsibilities provided by the aforesaid constitutional provision. On approval

of the board of directors, the district may provide primary care, emergency services, preventive medical services, and other health-related services outside the boundaries of the district if the services provided serve the purpose of the district.

SECTION 2. Section 3, Chapter 38, Acts of the 60th Legislature, Regular Session, 1967, is amended to read as follows:

Sec. 3. (a) Except as provided by Section 3A of this Act, the board of directors consists of seven directors elected from the district at large who serve staggered two-year terms. A director shall continue to serve until a [Within 10 days after such election is held, the Commissioners Court of Schleicher County shall convene and canvass the returns of the election, and if a majority of the persons voting at the election vote against the creation of the district, this does not prevent the holding of other elections for the same purpose, and if a majority of the legally qualified property taxpaying electors voting at said election voted in favor of the proposition, the court shall so find and declare the hospital district established and created and appoint seven persons as directors of the hospital district to serve until the first Saturday in April 1968, at which time seven directors shall be elected. The four directors receiving the highest vote at such first election shall serve for two years, the other three directors shall serve for one year. Thereafter, all directors shall serve for a period of two years and until their] successor has been duly elected or appointed and qualified. No person shall be appointed or elected as a member of the board of directors of said hospital district unless he is a resident thereof [and owns property subject to taxation therein] and unless at the time of such election or appointment he shall be more than 21 years of age. Each member of the board of directors shall qualify by executing the constitutional oath of office and shall execute a good and sufficient bond for \$1,000 payable to said district conditioned upon the faithful performance of his duties, and such oaths and bonds shall be deposited with the depository bank of the district for safekeeping.

(b) The board of directors shall organize by electing one of their number as president and one of their number as secretary. A majority [Any four members] of the board of directors shall constitute a quorum and a concurrence of a majority [four] shall be sufficient in all matters pertaining to the business of the district. A meeting of the board of directors may be called by the president or a majority of the [any four] directors. Notice of the time and place of any meeting must be given to all the directors not less than seven days prior to the time of the meeting. Nothing herein shall prevent the board of directors from establishing by resolution a regular time and place for meetings, for which no special notice need be given. All vacancies in the office of director shall be filled for the unexpired term by appointment of the remainder of the board of directors. In the event the number of directors shall be reduced to less than four for any reason, the remaining directors shall immediately call a special election to fill said vacancies, and upon failure to do so a district court may, upon application of any voter or taxpayer of the district, issue a mandate requiring that such election be ordered by the remaining directors.



(c) A regular election of directors shall be held on a date authorized by Chapter 41, Election Code, [on the first Saturday in April of each year] and notice of such election shall be published in a newspaper of general circulation in the county one time at least 10 days prior to the date of the election. Any person desiring his name to be printed on the ballot as a candidate for director shall file a petition, signed by not less than 10 legally qualified voters asking that such name be printed on the ballot, with the secretary of the board of directors of the district. The petition and an application for a place on the ballot that meets the requirements of the Election Code must be filed in the manner provided by Chapter 144, Election Code. [Such petition shall be filed with such secretary at least 25 days prior to the date of election.]

SECTION 3. Chapter 38, Acts of the 60th Legislature, Regular Session, 1967, is amended by adding Section 3A to read as follows:

Sec. 3A. (a) The board of directors may adopt an order providing for the election of directors from five districts according to the commissioners precinct method.

(b) If the board adopts an order under Subsection (a) of this section, one director shall be elected by the voters of the entire district at large, and one director shall be elected from each county commissioners precinct by the voters of that precinct.

(c) Except as provided by Subsection (e) of this section, to be eligible to be a candidate for or to serve as director at large, a person must be a resident of the district. To be a candidate for or to serve as director from a county commissioners precinct, a person must be a resident of that precinct.

(d) A person shall indicate on the application for a place on the ballot:

(1) the precinct that the person seeks to represent; or

(2) that the person seeks to represent the district at large.

(e) When the boundaries of the county commissioners precincts are redrawn after each federal decennial census to reflect population changes, a director in office on the effective date of the change, or a director elected or appointed before the effective date of the change whose term of office begins on or after the effective date of the change, shall serve in the precinct to which elected or appointed even though the change in boundaries places the person's residence outside the precinct for which the person was elected or appointed.

(f) At the first election for directors that occurs following the adoption of an order under Subsection (a) of this section, all five positions on the board shall be filled. After the canvass of the returns of the election, the terms of all members serving on the board at the time of the election expire. At the first meeting of the directors elected to the board under this section, the directors shall draw lots to determine which three shall serve terms lasting two years and which two shall serve terms lasting one year. After the terms of directors initially elected to the board under this section expire, each director serves a term of two years.

SECTION 4. Section 5(a), Chapter 38, Acts of the 60th Legislature, Regular Session, 1967, is amended to read as follows:

(a) Upon the creation of such hospital district, the board of directors shall have the power and authority and it shall be their duty to levy on all property subject to hospital district taxation for the benefit of the district at the same time taxes are levied for county purposes, using the county values and the county tax rolls, a tax of not to exceed 75 cents on the \$100 valuation of all taxable property within the hospital district, for the purpose of: (1) paying the interest on and creating a sinking fund for bonds which may be issued by the hospital district for hospital purposes as herein provided; (2) providing for the operation and maintenance of the hospital, ~~or~~ hospital system, or related facilities; and (3) for the purpose of making further improvements and additions to the hospital system, and for the acquisition of necessary sites therefor, by purchase, lease, or condemnation.

SECTION 5. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2005.

**HB 1747 - HOUSE CONCURS IN SENATE AMENDMENTS  
TEXT OF SENATE AMENDMENTS**

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

**HB 1747**, A bill to be entitled An Act relating to the creation of and funding for the Texas Entrepreneurship Network.

Representative J. Keffer moved to concur in the senate amendments to **HB 1747**.

The motion to concur in senate amendments prevailed. (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.)

**Senate Committee Substitute**

**HB 1747**, A bill to be entitled An Act relating to the creation of and funding for the Texas Entrepreneurship Network.

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

SECTION 1. Subtitle F, Title 4, Government Code, is amended by adding Chapter 490 to read as follows:

CHAPTER 490. TEXAS ENTREPRENEURSHIP NETWORK

Sec. 490.001. DEFINITIONS. In this chapter:

(1) "Entrepreneur participant" means an individual who has a business or an idea for a business and registers with the network.

(2) "Fund" means the Texas Entrepreneurship Network fund.

(3) "Network" means the Texas Entrepreneurship Network.

Sec. 490.002. ESTABLISHMENT OF NETWORK. (a) The Texas Entrepreneurship Network is established to develop and diversify the economy of this state through:

(1) the provision of programs and services to facilitate the growth and success of entrepreneurs; and

(2) the statewide, results-driven collaboration of public and private entities to create jobs and energize sustainable local economies through the development of entrepreneurs in this state.

(b) The Texas Center for Rural Entrepreneurship shall:

(1) operate the network under an agreement with the Department of Agriculture and as provided by this chapter; and

(2) comply with all reasonable and customary oversight measures required by the Department of Agriculture.

Sec. 490.003. MEMBERS OF NETWORK. (a) The founding members of the network are:

(1) the Texas Cooperative Extension of The Texas A&M University System;

(2) the IC2 Institute at The University of Texas at Austin;

(3) the College of Agricultural Sciences and Natural Resources at Texas Tech University;

(4) the Department of Agriculture;

(5) the Texas Workforce Commission;

(6) the Office of Rural Community Affairs;

(7) the Texas Center for Rural Entrepreneurship;

(8) the Texas Economic Development Council;

(9) CoSERVE at The University of Texas–Pan American;

(10) the office of external affairs at Texas Southern University; and

(11) the John F. Baugh Center for Entrepreneurship at Baylor University.

(b) An institution of higher education, chamber of commerce, economic development corporation, business, or organization with an interest in promoting entrepreneurship may join the network.

Sec. 490.004. ADVISORY BOARD. (a) The Texas Center for Rural Entrepreneurship shall establish an advisory board to guide and advise the operations of the network.

(b) The advisory board consists of one representative from each of the founding members of the network under Section 490.003(a), and at least one member from the private sector. An organization other than a founding member of the network under Section 490.003(a) may have a representative on the advisory board only if the creation of an additional seat on the board is authorized by a two-thirds majority vote of the existing board.

(c) The initial advisory board shall adopt provisions to determine the terms of board members and stagger the members' terms, and other provisions necessary to administer the board.

(d) Advisory board members serve without compensation but are entitled to reimbursement for reasonable expenses incurred in traveling to meetings related to the network.

Sec. 490.005. GENERAL DUTIES AND GOALS. (a) The network shall train and refocus existing state and local resources to build a more prosperous, dynamic, and sustainable economy throughout this state by:

(1) providing coordinated training and services that enhance the value of the state's existing infrastructure investments and make the investments available to entrepreneur participants;

(2) developing a statewide network of entrepreneurship developers and entrepreneurship centers as provided by Section 490.006;

(3) developing a comprehensive network of knowledge, leadership, and financial capital resources accessible through the network's entrepreneurship developers and entrepreneurship centers;

(4) educating entrepreneur participants and generating awareness of the network and its programs;

(5) identifying the most promising ventures through activities, including business-plan competitions, and assisting the ventures' potential for job and wealth creation;

(6) developing evaluation methods to measure the effectiveness of the network and the impact of entrepreneurship on local and regional economies;

(7) developing best practices for successful entrepreneurship and applied research regarding critical success factors for entrepreneurial businesses to provide a strategic competitive advantage for businesses in this state; and

(8) collaborating with existing local, state, and federal agencies and economic development professionals to use the strengths and assets of the agencies and professionals.

(b) The network shall work locally, regionally, and statewide with educators, agencies, organizations, networks, businesses, economic developers, consultants, communities, researchers, or other persons to develop and support strategies to assist entrepreneur participants and improve the environment for entrepreneurial development in this state.

Sec. 490.006. ENTREPRENEURSHIP SERVICES. (a) The network shall develop a statewide association of local individuals who are entrepreneurship developers trained to analyze, evaluate, and develop business plans and help local entrepreneur participants start, grow, or develop their businesses.

(b) The network may establish local entrepreneurship centers in every county practicable, at which an entrepreneur participant may access programs, necessary support, and online resources provided and developed by the network. In establishing the entrepreneurship centers, the network shall use existing infrastructure, public and private organizations, and other resources, including chambers of commerce, universities and community colleges, county extension offices, Texas Workforce Commission offices, and local business offices.

(c) The network shall adopt requirements for entrepreneurship centers. An organization must meet the requirements adopted under this subsection before hosting an entrepreneurship center.

(d) A group of individuals who have services, resources, or expertise to offer entrepreneur participants may agree to provide services through the network as an entrepreneurship force.

Sec. 490.007. NETWORK PROGRAMS. The network may develop:(1) programs for:(A) business plan development, competitive enhancement, and management skills development;(B) entrepreneurship best practices training;(C) entrepreneurship education in primary and secondary schools and community colleges;(D) expanding entrepreneurship in workforce development programs;(E) accessing sources of start-up and growth capital;(F) training and assisting entrepreneurship agents who facilitate and assist entrepreneurial efforts; and(G) community readiness preparation and evaluation, and community planning;(2) methods for helping entrepreneur participants access other loan, guarantee, and grant programs;(3) necessary policies and regulations; and(4) collaborations with other entities.Sec. 490.008. TEXAS ENTREPRENEURSHIP NETWORK FUND.(a) The Texas Entrepreneurship Network fund is an account in the general revenue fund. The Department of Agriculture shall administer the fund.(b) The following amounts shall be deposited in the fund:(1) any amounts appropriated by the legislature for the fund; and(2) gifts, grants, and other donations received for the fund.(c) The fund may be used only for network purposes, subject to Section 490.009.(d) The network may solicit and accept gifts and grants for the fund from public and private universities and all other public and private entities.Sec. 490.009. USE OF FUND. Money appropriated to the fund by the legislature shall be used for:(1) programs related to local entrepreneurship centers, training, and entrepreneurship developers;(2) curriculum development, infrastructure, data management, and research;(3) technology and economic development research centers of excellence;(4) the network's overhead expenses; and(5) other activities necessary to accomplish the mission of this chapter.SECTION 2. This Act takes effect September 1, 2005.

**HB 1358 - HOUSE REFUSES TO CONCUR  
IN SENATE AMENDMENTS  
CONFERENCE COMMITTEE APPOINTED**

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

**HB 1358**, A bill to be entitled An Act relating to the jurisdiction of the Texas Commission on Environmental Quality over certain water supply or sewer service corporations.

Representative McClendon moved that the house not concur in the senate amendments and that a conference committee be requested to adjust the differences between the two houses on **HB 1358**.

The motion prevailed.

The chair announced the appointment of the following conference committee, on the part of the house, on **HB 1358**: Flores, chair; Puente; Geren; Homer; and Hardcastle.

**HB 1835 - HOUSE REFUSES TO CONCUR  
IN SENATE AMENDMENTS  
CONFERENCE COMMITTEE APPOINTED**

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

**HB 1835**, A bill to be entitled An Act relating to the apportionment of municipal infrastructure costs in regard to certain property development projects.

Representative Talton moved that the house not concur in the senate amendments and that a conference committee be requested to adjust the differences between the two houses on **HB 1835**.

The motion prevailed.

The chair announced the appointment of the following conference committee, on the part of the house, on **HB 1835**: Talton, chair; Blake; Bailey; R. Cook; and Howard.

**HB 2039 - HOUSE CONCURS IN SENATE AMENDMENTS  
TEXT OF SENATE AMENDMENTS**

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

**HB 2039**, A bill to be entitled An Act relating to the adjudication of claims arising under written contracts with local governmental entities.

Representative Nixon moved to concur in the senate amendments to **HB 2039**.

The motion to concur in senate amendments prevailed.

**Senate Committee Substitute**

**HB 2039**, A bill to be entitled An Act relating to the adjudication of claims arising under written contracts with local governmental entities.

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

SECTION 1. Chapter 271, Local Government Code, is amended by adding Subchapter I to read as follows:

SUBCHAPTER I. ADJUDICATION OF CLAIMS ARISING UNDER  
WRITTEN  
CONTRACTS WITH LOCAL GOVERNMENTAL ENTITIES

Sec. 271.151. DEFINITIONS. In this subchapter:

(1) "Adjudication" of a claim means the bringing of a civil suit and prosecution to final judgment in county or state court and includes the bringing of an arbitration proceeding and prosecution to final resolution in accordance with any mandatory procedures established in the contract subject to this subchapter for the arbitration proceedings.

(2) "Contract subject to this subchapter" means a written contract stating the essential terms of the agreement for providing goods or services to the local governmental entity that is properly executed on behalf of the local governmental entity.

(3) "Local governmental entity" means a political subdivision of this state, other than a county or a unit of state government, as that term is defined by Section 2260.001, Government Code, including a:

(A) municipality;

(B) public school district and junior college district; and

(C) special-purpose district or authority, including any levee improvement district, drainage district, irrigation district, water improvement district, water control and improvement district, water control and preservation district, freshwater supply district, navigation district, conservation and reclamation district, soil conservation district, communication district, public health district, emergency service organization, and river authority.

Sec. 271.152. WAIVER OF IMMUNITY TO SUIT FOR CERTAIN CLAIMS. A local governmental entity that is authorized by statute or the constitution to enter into a contract and that enters into a contract subject to this subchapter waives sovereign immunity to suit for the purpose of adjudicating a claim for breach of an express or implied provision of the contract, subject to the terms and conditions of this subchapter.

Sec. 271.153. LIMITATIONS ON ADJUDICATION AWARDS. (a) The total amount of money awarded in an adjudication brought against a local governmental entity for breach of an express or implied provision of a contract subject to this subchapter is limited to the following:

(1) the balance due and owed by the local governmental entity under the contract as it may have been amended, including any amount owed as compensation for the increased cost to perform the work as a direct result of owner-caused delays or acceleration;

(2) the amount owed for change orders or additional work required to carry out the contract; and

(3) interest as allowed by law.

(b) Damages awarded in an adjudication brought against a local governmental entity arising under a contract subject to this subchapter may not include:

(1) consequential damages, except as allowed under Subsection (a)(1);

(2) exemplary damages; or

(3) damages for unabsorbed home office overhead.

Sec. 271.154. CONTRACTUAL ADJUDICATION PROCEDURES ENFORCEABLE. Adjudication procedures, including requirements for serving notices or engaging in alternative dispute resolution proceedings before bringing a suit or an arbitration proceeding, that are stated in the contract subject to this subchapter or that are established by the local governmental entity and expressly incorporated into the contract are enforceable except to the extent those procedures conflict with the terms of this subchapter.

Sec. 271.155. NO WAIVER OF OTHER DEFENSES. This subchapter does not waive a defense or a limitation on damages available to a party to a contract, other than a bar against suit based on sovereign immunity.

Sec. 271.156. NO WAIVER OF IMMUNITY TO SUIT IN FEDERAL COURT. This subchapter does not waive sovereign immunity to suit in federal court.

Sec. 271.157. NO WAIVER OF IMMUNITY TO SUIT FOR TORT LIABILITY. This subchapter does not waive sovereign immunity to a claim arising from a cause of action for negligence.

Sec. 271.158. NO GRANT OF IMMUNITY TO SUIT. Nothing in this subchapter shall constitute a grant of immunity to suit to a local governmental entity.

Sec. 271.159. NO RECOVERY OF ATTORNEY'S FEES. Attorney's fees incurred by a local governmental entity or any other party in the adjudication of a claim by or against a local governmental entity shall not be awarded to any party in the adjudication unless the local governmental entity has entered into a written agreement that expressly authorizes the prevailing party in the adjudication to recover its reasonable and necessary attorney's fees.

SECTION 2. (a) Subchapter I, Chapter 271, Local Government Code, as added by this Act, applies only to a claim arising under a contract executed on or after September 1, 2005. A claim that arises under a contract executed before September 1, 2005, is governed by the law as it existed on the date the contract is executed, and the former law is continued in effect for that purpose.

(b) Nothing in this Act is intended to create, rescind, expand, or limit any waiver of sovereign immunity to suit applicable to a contract executed before September 1, 2005.

SECTION 3. This Act takes effect September 1, 2005.

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

Amend **HB 2039** (Senate Committee Report) as follows:

(1) In SECTION 1 of the bill, Section 271.151, Local Government Code, page 1, line 20, between "bringing of an" and "arbitration proceeding", insert "authorized".

(2) In SECTION 1 of the bill, Section 271.152, Local Government Code, page 1, lines 47-48, strike "an express or implied provision of".

(3) In SECTION 1 of the bill, Section 271.152, Local Government Code, page 1, line 52, strike "an express or implied provision of".



(4) In SECTION 1 of the bill, Section 271.153, Local Government Code, page 1, line 60, strike "required to carry out" and substitute "the contractor is directed to perform by a local governmental entity in connection with".

(5) In SECTION 1 of the bill, Section 271.153, Local Government Code, page 2, line 2, between "except as" and "allowed", insert "expressly".

(6) In SECTION 1 of the bill, Section 271.154, Local Government Code, page 2, line 12, between "into the contract" and "are enforceable", insert "or incorporated by reference".

(7) In SECTION 1 of the bill, strike Section 271.157, and substitute a new Section 217.157 as follows:

Section 271.157. NO WAIVER OF IMMUNITY TO SUIT FOR TORT LIABILITY. This subchapter does not waive sovereign immunity to suit for a cause of action for a negligent or intentional tort.

(8) In SECTION 1 of the bill, Section 271.159, Local Government Code, page 2, line 33, after "fees", insert "by specific reference to this section".

(9) In SECTION 1 of the bill, add a Section 217.160 as follows:

Sec. 271.160. JOINT ENTERPRISE. A contract entered into by a local government entity is not a joint enterprise for liability purposes.

### **Senate Amendment No. 2 (Senate Floor Amendment No. 2)**

Amend **HB 2039** (Senate Committee Report) by striking SECTION 2 of the bill (page 2, lines 34-43), and substituting the following:

SECTION 2. Sections 271.152, 251.153, and 251.154, as added by this Act, apply to a claim that arises under a contract executed before the effective date of this Act only if sovereign immunity has not been waived with respect to the claim before the effective date of this Act. A claim that arises under a contract executed before the effective date of this Act and with respect to which sovereign immunity has been waived is governed by the law in effect on the date the contract was executed, and the former law is continued in effect for that purpose.

### **SB 368 - REQUEST OF SENATE GRANTED CONFERENCE COMMITTEE APPOINTED**

On motion of Representative Hartnett, the house granted the request of the senate for the appointment of a conference committee on **SB 368**.

The chair announced the appointment of the following conference committee, on the part of the house, on **SB 368**: Hartnett, chair; Luna; Dutton; Keel; and Crabb. (The house appointed new conferees May 24)

### **HCR 215 - ADOPTED (by Dawson)**

The following privileged resolution was laid before the house:

#### **HCR 215**

WHEREAS, **HB 1544** has been adopted by the house of representatives and the senate; and

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

RESOLVED by the 79th Legislature of the State of Texas, That the enrolling clerk of the house of representatives be instructed to correct **HB 1544** in SECTION 3 of the bill, by striking "Subchapter B, Section 521.405" and substituting "Section 521.405".

**HCR 215** was adopted.

**HR 2015 - ADOPTED**  
**(by Hopson)**

Representative Phillips moved to suspend all necessary rules to take up and consider at this time **HR 2015**.

The motion prevailed.

The following resolution was laid before the house:

**HR 2015**, Honoring Larry Delbert Jacobs and Dorothy Jean LeMarie Jacobs of Beaumont on their 50th anniversary.

**HR 2015** was adopted.

**HR 2056 - ADOPTED**  
**(by Goodman and T. Smith)**

Representative Phillips moved to suspend all necessary rules to take up and consider at this time **HR 2056**.

The motion prevailed.

The following resolution was laid before the house:

**HR 2056**, Honoring U.S. Marine Lance Corporal Clinton Willis Barkley of Bedford for his service to his country.

**HR 2056** was adopted.

**HB 2702 - HOUSE REFUSES TO CONCUR**  
**IN SENATE AMENDMENTS**  
**CONFERENCE COMMITTEE APPOINTED**

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

**HB 2702**, A bill to be entitled An Act relating to the construction, acquisition, financing, maintenance, management, operation, ownership, and control of rail and highway transportation facilities in this state and to the operation of pocket bikes and minimotorbikes.

Representative Krusee moved that the house not concur in the senate amendments and that a conference committee be requested to adjust the differences between the two houses on **HB 2702**.

The motion prevailed.

The chair announced the appointment of the following conference committee, on the part of the house, on **HB 2702**: Krusee, chair; Hill; Hegar; Phillips; and R. Cook.

(Nixon in the chair)

### **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. tomorrow in memory of Tommie Grace La Motta.

The motion prevailed.

### **RESOLUTIONS REFERRED TO COMMITTEES**

Resolutions were at this time laid before the house and referred to committees. (See the addendum to the daily journal, Referred to Committees, List No. 1.)

### **ADJOURNMENT**

In accordance with a previous motion, the house, at 11:43 p.m., adjourned until 10 a.m. tomorrow.

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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**

**HCR 209** (By R. Allen), Expressing legislative support for the United States of America PATRIOT Act.

To State Affairs.

**HCR 210** (By Frost), Memorializing the U.S. Congress, in its upcoming base realignment and closure deliberations, to ensure continuation of the Red River Army Depot and the Lone Star Army Ammunition Plant in Bowie County.

To Defense Affairs and State-Federal Relations.

**HCR 212** (By Nixon), Memorializing Congress not to override or preempt Texas' recent asbestos legislation.

To Civil Practices.

**HCR 213** (By Dunnam), Honoring Carroll Hall Shelby for his lifetime achievements.

To Rules and Resolutions.

**HCR 214** (By Hilderbran), Recognizing the 2005 and 2006 appointments of State Poet Laureate, State Musician, and State Visual Artists.

To Rules and Resolutions.

**HR 1794** (By B. Cook), Honoring Gioia Keeney of Corsicana on the occasion of her 80th birthday for her significant contributions to the community.

To Rules and Resolutions.

**HR 1796** (By Hopson), Honoring the 55th anniversary of the oldest operating Dairy Queen in Texas.

To Rules and Resolutions.

**HR 1798** (By Giddings), Congratulating the Texas Department of Licensing and Regulation on receiving the 2004 Texas State Agency Safety Excellence Award.

To Rules and Resolutions.

**HR 1800** (By Baxter), In memory of Cherie Shelton Von Dohlen of Austin and Goliad.

To Rules and Resolutions.

**HR 1801** (By Paxton), Congratulating the Visual Arts Guild of Frisco on the grand opening of its new headquarters.

To Rules and Resolutions.

**HR 1802** (By Paxton), Honoring the Texas Tornado Hockey Club for winning back-to-back national championship titles.

To Rules and Resolutions.

**HR 1803** (By West), Honoring Jim Schaefer on his retirement from CenterPoint Energy.

To Rules and Resolutions.

**HR 1804** (By Menendez), Congratulating Brigadier General Charles G. Rodriguez of San Antonio on his appointment as Texas adjutant general.

To Rules and Resolutions.

**HR 1805** (By Flynn), Honoring Prairie Grove Missionary Baptist Church in Rains County on its 126th anniversary.

To Rules and Resolutions.

**HR 1806** (By Hughes), Honoring William Hampton of Hawkins on being named a Distinguished Alumnus of Jarvis Christian College.

To Rules and Resolutions.

**HR 1807** (By Hughes), Honoring Clements Realtors of Winnsboro on the occasion of its 50th anniversary.

To Rules and Resolutions.

**HR 1808** (By Hughes), Honoring The Winnsboro News as it begins its 98th year of publication in 2005.

To Rules and Resolutions.

**HR 1810** (By Nixon), Congratulating Christina Lee Angelo on her graduation from The University of Texas at Austin.

To Rules and Resolutions.

**HR 1811** (By Madden), Honoring Murry K. and Gwendolyn I. Nance of San Antonio on the occasion of their 50th wedding anniversary.

To Rules and Resolutions.

**HR 1814** (By Ritter), In memory of Evan H. "Slats" Wathen of Beaumont.

To Rules and Resolutions.

**HR 1815** (By Ritter), In memory of Tom Jackson of Beaumont.

To Rules and Resolutions.

**HR 1816** (By Hopson), Honoring Rodney Williams of Carthage for his work with the March of Dimes WalkAmerica event.

To Rules and Resolutions.

**HR 1818** (By Escobar), Honoring Zeke Cavazos of Raymondville on being named Fire Fighter of the Year by the Rio Grande Valley Fire Fighters/Fire Marshals Association.

To Rules and Resolutions.

**HR 1819** (By Escobar), Honoring Anna Bernice Owens of La Feria for her contributions as a journalist.

To Rules and Resolutions.

**HR 1820** (By Wong), Congratulating Klotz Associates, Inc., on the firm's 20th anniversary.

To Rules and Resolutions.

**HR 1822** (By Merritt and M. Noriega), Honoring Lieutenant General Wayne D. Marty on the occasion of his retirement as Texas adjutant general.

To Rules and Resolutions.

**HR 1825** (By Talton, et al.), Honoring Whitney Smith-Nelson on her college graduation.

To Rules and Resolutions.

**HR 1826** (By B. Brown), Honoring Judge Jack H. Holland of Henderson County on the occasion of his retirement from the 173rd Judicial District Court of the State of Texas.

To Rules and Resolutions.

**HR 1827** (By Naishtat), Commemorating the 2005 Memorial Day observance being held by the Travis County Council of the VFW.

To Rules and Resolutions.

**HR 1828** (By Naishtat), Congratulating Nina Cheyenne Janes and Charles Matthew Embry of Austin on the occasion of their wedding.

To Rules and Resolutions.

**HR 1829** (By Harper-Brown), Commending Irving for its efforts to promote transportation awareness and for hosting the Eighth Annual Texas Transportation Summit.

To Rules and Resolutions.

**HR 1830** (By Harper-Brown), Honoring M. C. Lively Elementary School in Irving on the occasion of its 50th anniversary.

To Rules and Resolutions.

**HR 1831** (By Harper-Brown), Honoring Ebby Halliday of Dallas on being named a 2005 Distinguished American by the Horatio Alger Association.

To Rules and Resolutions.

**HR 1832** (By Hughes), Honoring the Winnsboro Post Office on the occasion of its 150th anniversary.

To Rules and Resolutions.

**HR 1833** (By Laney), In memory of Staff Sergeant Jimmie Doyle of Lamesa, who gave his life in service to this country during World War II.

To Rules and Resolutions.

**HR 1834** (By Hunter), Congratulating Betty-Erle and Wesley Lee Rhodes on their 50th anniversary.

To Rules and Resolutions.

**HR 1835** (By Hunter), Paying tribute to the accomplishments of Dr. Charles Runnels in his work in Texas and at Pepperdine University in Malibu, California.

To Rules and Resolutions.

**HR 1836** (By Hunter), Congratulating Abilene Christian University on its 100th Anniversary.

To Rules and Resolutions.

**HR 1837** (By McCall), Honoring Nancy Boyd on the occasion of her retirement from the Plano Independent School District.

To Rules and Resolutions.

**HR 1838** (By McCall), Congratulating Abby Robinson Kratz on receiving her doctorate in education leadership from Texas A&M University—Corpus Christi.

To Rules and Resolutions.

**HR 1840** (By Hilderbran), In memory of Patricia Lewis Zoch Tate.

To Rules and Resolutions.

**HR 1841** (By Flynn), Congratulating Bob Adkisson of Wills Point on his 90th birthday.

To Rules and Resolutions.

**HR 1842** (By Riddle and Hamric), In memory of Curtis J. Cook of Harris County.

To Rules and Resolutions.

**HR 1843** (By Gonzalez Toureilles, Herrero, and Escobar), Paying tribute to the life of U.S. Army Private Felix Longoria of Three Rivers for his heroism in World War II.

To Rules and Resolutions.

**HR 1844** (By Solis), Honoring Siria G. Sierra of Los Fresnos on her retirement from Palmer-Laakso Elementary School.

To Rules and Resolutions.

**HR 1845** (By Escobar), Honoring U.S. Army veteran Cruz Mata of Kingsville.

To Rules and Resolutions.

**HR 1846** (By Escobar), Congratulating Sergio Munoz for his educational achievement as a graduate of The University of Texas at Austin.

To Rules and Resolutions.

**HR 1849** (By Y. Davis), Honoring Mariah Willis of Odessa for her academic, athletic, and community achievements.

To Rules and Resolutions.

**HR 1850** (By Quintanilla), Honoring the grand opening of the AARP Information Center in El Paso on May 21, 2005.

To Rules and Resolutions.

**HR 1851** (By Quintanilla), Honoring Lewis Wright on his achievements in scouting.

To Rules and Resolutions.

**HR 1852** (By Quintanilla), In memory of Agustin "A. J." Bosquez III of Austin.

To Rules and Resolutions.

**HR 1853** (By Quintanilla), Congratulating Aaron Silva for attaining the rank of Eagle Scout.

To Rules and Resolutions.

**HR 1854** (By Quintanilla), Honoring Emelia Ramirez on her receipt of the Socorro High School Naval Junior ROTC Top Dawg award.

To Rules and Resolutions.

**HR 1855** (By Quintanilla), Honoring Sal Mena, Jr., on his election as trustee of the El Paso ISD.

To Rules and Resolutions.

**HR 1856** (By Quintanilla), Honoring Sergio Lewis on his election as trustee of the El Paso ISD.

To Rules and Resolutions.

**HR 1857** (By Quintanilla), Honoring Martha Reyes on her election as trustee of the Ysleta ISD.

To Rules and Resolutions.

**HR 1858** (By Quintanilla), Honoring Charlie E. Garcia on his election as trustee of the Socorro ISD.

To Rules and Resolutions.

**HR 1859** (By Quintanilla), Honoring Barbara Perez Pena on her election as trustee of the Socorro ISD.

To Rules and Resolutions.

**HR 1860** (By Quintanilla), Honoring Craig Patton on his election as trustee of the Socorro ISD.

To Rules and Resolutions.

**HR 1861** (By Quintanilla), Honoring Janice Armstrong on her election as trustee of the Clint ISD.

To Rules and Resolutions.

**HR 1862** (By Quintanilla), Honoring Jim Pendell on his election as trustee of the Clint ISD.

To Rules and Resolutions.

**HR 1863** (By Quintanilla), Honoring Raymond Morales on his election as mayor of Horizon City.

To Rules and Resolutions.

**HR 1864** (By Quintanilla), Honoring Luis Najera on his election as alderman of Horizon City.

To Rules and Resolutions.

**HR 1865** (By Quintanilla), Honoring Bethani C. Shilladay on her election as alderman of Horizon City.

To Rules and Resolutions.

**HR 1866** (By Quintanilla), Honoring Keith J. McClellan on his election as alderman of Horizon City.

To Rules and Resolutions.

**HR 1867** (By Quintanilla), Honoring Ramon Holguin on his election as trustee of the San Elizario ISD.

To Rules and Resolutions.

**HR 1868** (By Quintanilla), Honoring Armando Martinez on his election as trustee of the San Elizario ISD.

To Rules and Resolutions.

**HR 1869** (By Quintanilla), Honoring Fernie Madrid on her election as trustee of the San Elizario ISD.

To Rules and Resolutions.

**HR 1870** (By Quintanilla), Honoring Jose Ramirez on his election as trustee of the Fabens ISD.

To Rules and Resolutions.

**HR 1871** (By Quintanilla), Honoring Adan Escobar on his election as trustee of the Fabens ISD.

To Rules and Resolutions.



**HR 1872** (By Quintanilla), Honoring Greg Spence on his election as trustee of the Fabens ISD.

To Rules and Resolutions.

**HR 1874** (By Quintanilla), Recognizing the establishment of the Tornillo Wellness Center in El Paso County.

To Rules and Resolutions.

**HR 1875** (By Castro), Honoring Jennifer Elswood of San Antonio on receiving the Girl Scout Gold Award.

To Rules and Resolutions.

**HR 1877** (By Oliveira), Commending the Texas Foreign Language Association.

To Rules and Resolutions.

**HR 1878** (By Farrar), Honoring social work students from the University of Houston and The University of Texas for their service throughout the 79th Legislature.

To Rules and Resolutions.

**HR 1880** (By Escobar), Recognizing Mikail Davenport and the Capitol Ride '05.

To Rules and Resolutions.

**HR 1881** (By B. Brown), Congratulating Amanda Blakely of Crandall on winning a Robert F. Kennedy Memorial Journalism Award.

To Rules and Resolutions.

**HR 1882** (By B. Brown), Congratulating the Trinity Valley Community College Cardinal cheerleaders on winning the 2005 National Cheerleaders Association Junior College Division championship.

To Rules and Resolutions.

**HR 1886** (By Peña), In memory of Canuto Garcia, Jr., of Edinburg.

To Rules and Resolutions.

**HR 1887** (By Peña), Honoring Aguilar's Meat Market for its service to the Edinburg community.

To Rules and Resolutions.

**HR 1888** (By Escobar), Commending the Texas Association of Addiction Professionals and the recipient of the first John Austin Pena Scholarship Award.

To Rules and Resolutions.

**HR 1889** (By T. Smith), Honoring Nathan Benjamin Brooks as a top 10 graduate of Trinity High School for 2005.

To Rules and Resolutions.

**HR 1890** (By T. Smith), Honoring Kirby Don Jacobson as a top 10 graduate of Trinity High School for 2005.

To Rules and Resolutions.

**HR 1891** (By T. Smith), Honoring Faizan Anwar Ali as a top 10 graduate of Trinity High School for 2005.

To Rules and Resolutions.

**HR 1892** (By T. Smith), Honoring Michael Steven Horstmeyer as a top 10 graduate of Trinity High School for 2005.

To Rules and Resolutions.

**HR 1893** (By T. Smith), Honoring Brandon James Beberwyck as a top 10 graduate of Trinity High School for 2005.

To Rules and Resolutions.

**HR 1894** (By T. Smith), Honoring Nickolas Boutris as a top 10 graduate of Trinity High School for 2005.

To Rules and Resolutions.

**HR 1895** (By T. Smith), Honoring Brian David Burton as a top 10 graduate of Trinity High School for 2005.

To Rules and Resolutions.

**HR 1896** (By T. Smith), Honoring Adam Wayne Jaster as a top 10 graduate of Trinity High School for 2005.

To Rules and Resolutions.

**HR 1897** (By T. Smith), Honoring Brett Ryan Pinholster as a top 10 graduate of Trinity High School for 2005.

To Rules and Resolutions.

**HR 1898** (By T. Smith), Honoring Melissa Ann Bro as a top 10 graduate of Trinity High School for 2005.

To Rules and Resolutions.

**HR 1899** (By Bohac), Honoring Carol Bunte of Houston on her 25 years as a teacher at Clay Road Baptist School.

To Rules and Resolutions.

**HR 1900** (By Escobar), Honoring Connie James of Harlingen for her many contributions to the community.

To Rules and Resolutions.

**HR 1901** (By Wong), Congratulating the R Club of Houston on its 10th anniversary.

To Rules and Resolutions.

**HR 1902** (By Branch), Congratulating Highland Park High School in Dallas on its national recognition for academics and athletics.

To Rules and Resolutions.

**HR 1903** (By Swinford), Congratulating Bell Helicopter Textron in Amarillo on achieving the National Leader level of the Clean Texas, Cleaner World program of the Texas Commission on Environmental Quality.

To Rules and Resolutions.

**HR 1904** (By Baxter), Congratulating Jennifer and Michael Aragon on the birth of their daughter, Tatum.

To Rules and Resolutions.

**HR 1905** (By Baxter), Congratulating Julie Salmon on being named Miss Austin USA.

To Rules and Resolutions.

**HR 1906** (By Dunnam), Honoring former State Representative Miguel David Wise and Erin Duffy Wise of Weslaco on their 20th wedding anniversary.

To Rules and Resolutions.

**HR 1907** (By Woolley), In memory of Cheryl Courrege Burguieres of Houston.

To Rules and Resolutions.

**HR 1908** (By Dutton), In memory of Willie Hall of Houston.

To Rules and Resolutions.

**HR 1909** (By Hunter), Commending Wayne James on his retirement from the association management profession.

To Rules and Resolutions.

**HR 1910** (By Hughes), Congratulating Deborah Bell of Gilmer on being named a winner in the 2005 Johnson & Johnson Remarkable Women awards.

To Rules and Resolutions.

**HR 1911** (By Hughes), Congratulating Mr. and Mrs. Horace Cantrell of Mineola on their 55th wedding anniversary.

To Rules and Resolutions.

**HR 1912** (By Naishtat), Recognizing the Speed and Fitness Camp to be held in Austin from May 31 to June 3, 2005.

To Rules and Resolutions.

**HR 1913** (By Y. Davis), Congratulating Daryl Jerome Burton II of Grand Prairie on receiving the Future African American Leadership Award from the Texas Legislative Black Caucus.

To Rules and Resolutions.

**HR 1914** (By Y. Davis), Congratulating Ophelia Hines of Dallas on her selection as a 2005 Outstanding Texan by the Texas Legislative Black Caucus.

To Rules and Resolutions.

**HR 1915** (By Y. Davis), Congratulating Edna Pemberton on being named an Outstanding Texan by the Texas Legislative Black Caucus.

To Rules and Resolutions.

**HR 1916** (By Y. Davis), Congratulating Jennifer Joy Medlock of Dallas on being named an Outstanding Texan by the Texas Legislative Black Caucus.

To Rules and Resolutions.

**HR 1917** (By Y. Davis), Congratulating Mariah L. Willis of Odessa on her receipt of the 2005 Future African American Leadership Award from the Texas Legislative Black Caucus.

To Rules and Resolutions.

**HR 1918** (By Wong), Honoring C. C. and Elsie Huang of Houston on their 50th wedding anniversary.

To Rules and Resolutions.

**HR 1919** (By Escobar), Honoring Roberto A. Hernandez of Raymondville on attaining the rank of Eagle Scout.

To Rules and Resolutions.

**HR 1920** (By Escobar), Congratulating Adam Hernandez of Raymondville High School for winning gold in the 800-meter event at the 2005 state track and field championships.

To Rules and Resolutions.

**HR 1921** (By Frost), In memory of U.S. Army Staff Sergeant Samuel Tyrone Castle of Naples.

To Rules and Resolutions.

**HR 1922** (By Taylor), Honoring James Truman Taylor and Arlene Weyer Taylor of Friendswood on the occasion of their 50th wedding anniversary.

To Rules and Resolutions.

**HR 1923** (By Woolley), In memory of Billie Maurine King Ramsey of Houston.

To Rules and Resolutions.

**HR 1924** (By Rodriguez), In memory of Ashlyn Leigh Shoemaker.

To Rules and Resolutions.

**HR 1925** (By Rodriguez), Honoring Shelbi McNew on her graduation from the Texas School for the Deaf.

To Rules and Resolutions.

**HR 1926** (By Bohac), Honoring Josh Elton Cribbs of Houston on attaining the rank of Eagle Scout.

To Rules and Resolutions.

**HR 1927** (By Rodriguez), Congratulating Jeffrey Wesley on his graduation from the Texas School for the Deaf.

To Rules and Resolutions.

**HR 1928** (By Rodriguez), Congratulating Rosario Perez on her graduation from the Texas School for the Deaf.

To Rules and Resolutions.

**HR 1929** (By Denny), In memory of Marion Allen Groff, Jr., of Pilot Point.

To Rules and Resolutions.

**HR 1930** (By Farabee), Congratulating Clayton Cotton and Travis Stegner for winning the 2005 UIL Class 4A boys' doubles tennis championship.

To Rules and Resolutions.

**HR 1931** (By Chisum), In memory of Fred Brook of Pampa.

To Rules and Resolutions.

**HR 1932** (By Alonzo), Congratulating Lupita Colmenero of El Hispano News in Dallas on her election as president of the National Association of Hispanic Publications, Inc., in March 2005.

To Rules and Resolutions.

**HR 1933** (By Alonzo), Commemorating Cinco de Mayo, 2006.

To Rules and Resolutions.

**HR 1934** (By Alonzo), Commemorating February 2, 1848, the date the Treaty of Guadalupe Hidalgo was signed, ending the Mexican War.

To Rules and Resolutions.

**HR 1935** (By Alonzo), Honoring the life of Cesar E. Chavez on March 31, 2006, the 79th anniversary of his birth.

To Rules and Resolutions.

**HR 1936** (By Alonzo), Honoring Oak Cliff on the occasion of the 103rd anniversary of its annexation to Dallas.

To Rules and Resolutions.

**HR 1937** (By Alonzo), Honoring the life of Benito Juarez on March 21, 2006, the 200th anniversary of his birth.

To Rules and Resolutions.

**HR 1938** (By Alonzo), Recognizing Diez y Seiz de Septiembre (Mexican Independence Day).

To Rules and Resolutions.

**HR 1939** (By Elkins), Congratulating Uchenna and Joyce Ekemezie of Houston on winning The Amazing Race 7.

To Rules and Resolutions.

**HR 1941** (By Gallego), In memory of Carol Dacus of Brewster County.

To Rules and Resolutions.

**HR 1942** (By McCall), Congratulating the Plano West High School lacrosse team on winning the Division II state championship crown.

To Rules and Resolutions.

**HR 1943** (By Dunnam), Honoring Carroll Hall Shelby for his lifetime achievements.

To Rules and Resolutions.

**HR 1944** (By Y. Davis), Congratulating Sergeant Rosalind Perry of Garland on her receipt of an Outstanding Texan Award in the area of public safety/law enforcement from the Texas Legislative Black Caucus.

To Rules and Resolutions.

**HR 1945** (By Y. Davis), Honoring Robert Medlock as a 2005 Texas Legislative Black Caucus Outstanding Texan.

To Rules and Resolutions.

**HR 1946** (By J. Jones), Honoring the members of the Miller-King Sunday School Class of the Good Street Baptist Church in Dallas for their service to their congregation and their community.

To Rules and Resolutions.

**HR 1947** (By Dawson), Recognizing October 15, 2005, as Pregnancy and Infant Loss Remembrance Day in Texas.

To Rules and Resolutions.

**HR 1948** (By Martinez Fischer), Honoring Consuelo D. Rocha for her service to the citizens of San Antonio.

To Rules and Resolutions.

**HR 1949** (By Farrar), Commemorating the 75th anniversary of Theodore Roosevelt Elementary School in Houston.

To Rules and Resolutions.

### **SIGNED BY THE SPEAKER**

The following bills and resolutions were today signed in the presence of the house by the speaker:

#### **House List No. 49**

**HB 812, HB 1141, HB 1262, HB 1382, HB 1587, HB 1901, HB 2025, HB 2037, HB 2079, HB 2174, HB 2322, HB 2336, HB 2374, HB 2410, HB 2451, HB 2685, HB 3486, HB 3517, HJR 6**

#### **Senate List No. 26**

**SB 50, SB 53, SB 114, SB 143, SB 144, SB 171, SB 200, SB 212, SB 224, SB 241, SB 264, SB 276, SB 318, SB 347, SB 381, SB 382, SB 399, SB 433, SB 436, SB 439, SB 443, SB 468, SB 480, SB 500, SB 554, SB 668, SB 672, SB 678, SB 886, SCR 39**

#### **Senate List No. 27**

**SB 255, SB 310, SB 396, SB 555, SB 579, SB 611, SB 619, SB 665, SB 690, SB 709, SB 792, SB 804, SB 812, SB 828, SB 839, SB 883, SB 884, SB 885, SB 887, SB 889, SB 891, SB 1017, SB 1018, SB 1026, SB 1032, SB 1193, SB 1203, SB 1258, SB 1354, SB 1424, SB 1425, SB 1434, SB 1435, SB 1437, SB 1469, SB 1480, SB 1485, SB 1518, SB 1555, SB 1587, SB 1713, SB 1786, SB 1799, SB 1806, SB 1813, SB 1847, SB 1848, SB 1851, SCR 2, SCR 6, SCR 8, SCR 9, SCR 22**

### **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  
Monday, May 23, 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 137** Paxton SPONSOR: Nelson  
Relating to "Welcome to Texas" signs.  
(COMMITTEE SUBSTITUTE)

**HB 283** Hope SPONSOR: Zaffirini  
Relating to admission, assignment, and conduct of certain public school students.  
(AMENDED)

**HB 535** Madden SPONSOR: Williams  
Relating to the offense of using a sound amplification device near a polling place.

**HB 719** Jones, Jesse SPONSOR: West, Royce  
Relating to publicizing a list of voters' rights.

**HB 833** Gattis SPONSOR: Ogden  
Relating to hours of sale for certain alcoholic beverages in certain areas.  
(COMMITTEE SUBSTITUTE)

**HB 1186** Hartnett SPONSOR: West, Royce  
Relating to testamentary and nontestamentary transfers of property and other benefits and to jurisdiction of courts over certain probate matters.

**HB 1409** Coleman SPONSOR: Ellis  
Relating to the authority to change the name of component institutions of The Texas A&M University System.

**HB 1428** Isett SPONSOR: Seliger  
Relating to injury leave and related benefits for certain state peace officers injured in the course of performance of duty.

**HB 1609** Chisum SPONSOR: Seliger  
Relating to the allowed wastes and exemptions applicable to certain municipal solid waste landfill units in arid areas.  
(AMENDED)

**HB 1997** Keffer, Jim SPONSOR: Estes  
Relating to the creation of an appellate judicial system for the Eleventh Court of Appeals District.

**HB 2420** Chavez SPONSOR: Lucio

Relating to the allocation of federal funds directed to be used to support graduate medical education in connection with the state Medicaid program.

**HB 3147** Turner SPONSOR: Van de Putte  
Relating to authorizing the Texas Building and Procurement Commission to enter into more favorable lease with option to purchase agreements with regards to certain space currently occupied under lease with option to purchase agreements.  
(AMENDED)

**HCR 93** Cook, Robby SPONSOR: Armbrister  
Designating Schulenburg the Official Home of the Painted Churches of Texas.

**HCR 131** Gallego SPONSOR: Madla  
Honoring the Friends of Monahans Sandhills State Park for its efforts to promote and sustain this important geological treasure throughout the past half-century.

**HCR 159** King, Phil SPONSOR: Staples  
Welcoming the World Congress on Information Technology to Austin in May 2006.

**HCR 202** Gallego SPONSOR: Madla  
Congratulating U.S. Ambassador Tony Garza and Mariasun Aramburuzabala on their marriage.

**HCR 211** Jackson, Jim SPONSOR: Shapiro  
Congratulating Addison police officer Brad Freis on his selection to carry the torch for the 2005 Special Olympics World Winter Games in Japan.

Respectfully,  
Patsy Spaw  
Secretary of the Senate

**Message No. 2**

MESSAGE FROM THE SENATE  
SENATE CHAMBER  
Austin, Texas  
Monday, May 23, 2005 - 2

The Honorable Speaker of the House  
House Chamber  
Austin, Texas

Mr. Speaker:

I am directed by the senate to inform the house that the senate has taken the following action:

THE SENATE HAS PASSED THE FOLLOWING MEASURES:

**HB 268** Keel SPONSOR: Hinojosa  
Relating to the qualifications and appointment of counsel for indigent defendants in capital cases.  
(AMENDED)



**HB 628** Giddings SPONSOR: Ellis  
Relating to debt collection after a consumer has filed a report with a law enforcement agency.

**HB 813** Flynn SPONSOR: Deuell  
Relating to the creation of the Union Valley Ranch Municipal Utility District of Hunt County; providing authority to impose a tax and issue bonds; granting the power of eminent domain.

**HB 839** Riddle SPONSOR: Williams  
Relating to the disposition of certain obscene material and child pornography.

**HB 904** Gattis SPONSOR: Ogden  
Relating to the sentencing of defendants convicted of multiple counts of intoxication assault, improper photography or visual recording, or possession or promotion of child pornography.

**HB 960** Smith, Wayne SPONSOR: Jackson  
Relating to the authority of a political subdivision to regulate construction and renovation of structures owned by certain counties.

**HB 1038** Isett SPONSOR: Brimer  
Relating to certain reduced fees for a license to carry a concealed handgun.  
(COMMITTEE SUBSTITUTE)

**HB 1044** Eiland SPONSOR: Williams  
Relating to an optional procedure for the issuance of a permit by a certain county for the movement of oversize or overweight vehicles.  
(COMMITTEE SUBSTITUTE)

**HB 1474** Eiland SPONSOR: Janek  
Relating to certain information contained in records about members, retirees, annuitants, or beneficiaries of the Texas County and District Retirement System.

**HB 1480** Gattis SPONSOR: Staples  
Relating to the issuance of special license plates to benefit certain programs.  
(AMENDED)

**HB 1558** Davis, John SPONSOR: Janek  
Relating to an alternative method of satisfying certain licensing and program participation requirements for assisted living facilities.

**HB 1577** Nixon SPONSOR: Janek  
Relating to the provision of health care services by a physician assistant during a disaster.

**HB 1708** Baxter SPONSOR: Wentworth  
Relating to the applicability of state ethics laws to and indemnification of directors of regional mobility authorities; providing penalties.  
(AMENDED)

**HB 1763** Cook, Robby SPONSOR: Duncan  
Relating to the notice, hearing, rulemaking, and permitting procedures for groundwater conservation districts.  
(AMENDED)

**HB 1863** Uresti SPONSOR: Van de Putte  
Relating to the termination of a campaign treasurer appointment.

**HB 2619** Hegar SPONSOR: Zaffirini  
Relating to a program by the Office of Rural Community Affairs to assist rural areas with the establishment of emergency services districts.

**HB 2678** Smithee SPONSOR: Seliger  
Relating to the use of certain information to underwrite professional liability insurance for physicians and health care providers.  
(AMENDED)

**HB 3485** Oliveira SPONSOR: Lucio  
Relating to the establishment of criminal law hearing officers in Cameron County.  
(AMENDED)

**HB 3525** King, Phil SPONSOR: Estes  
Relating to the creation, administration, powers, duties, functions, operations, and financing of the Parker County Special Utility District; providing authority to issue bonds.

Respectfully,  
Patsy Spaw  
Secretary of the Senate

**Message No. 3**

MESSAGE FROM THE SENATE  
SENATE CHAMBER  
Austin, Texas  
Monday, May 23, 2005 - 3

The Honorable Speaker of the House  
House Chamber  
Austin, Texas

Mr. Speaker:

I am directed by the senate to inform the house that the senate has taken the following action:

THE SENATE HAS PASSED THE FOLLOWING MEASURES:

**HB 495** Miller SPONSOR: Fraser  
Relating to the student enrollment required for the operation of Texas A&M University–Central Texas as an independent general academic teaching institution.  
(COMMITTEE SUBSTITUTE/AMENDED)

**HB 541** Krusee SPONSOR: Jackson  
Relating to the types of nonprofit organizations that may conduct raffles.  
(AMENDED)

**HB 873** Dukes SPONSOR: Lucio  
Relating to regulation by a property owners' association of certain displays on property in a residential subdivision.

(AMENDED)

**HB 914** Woolley SPONSOR: Williams  
Relating to disclosure of certain business or financial relationships with certain local government officers; providing criminal penalties.

(AMENDED)

**HB 984** Reyna SPONSOR: Duncan  
Relating to the care of elementary and secondary school students with diabetes.

(AMENDED)

**HB 1208** Gattis SPONSOR: Ogden  
Relating to a limitation on the use of eminent domain by certain conservation and reclamation districts.

(COMMITTEE SUBSTITUTE)

**HB 1209** Gattis SPONSOR: Ogden  
Relating to using county election precincts for any election held on the November uniform election date.

(AMENDED)

**HB 1232** Castro SPONSOR: Van de Putte  
Relating to the payment of certain expenses of a public project financed by certificates of obligation.

**HB 1252** Guillen SPONSOR: Zaffirini  
Relating to providing services for persons with chronic kidney disease under the medical assistance program.

(AMENDED)

**HB 1318** Dawson SPONSOR: Jackson  
Relating to the state providing grave markers for certain members of the state military forces.

**HB 1346** Gattis SPONSOR: Ogden  
Relating to the creation of the CLL Municipal Utility District No. 1; providing authority to impose a tax and issue bonds.

**HB 1403** Deshotel SPONSOR: Janek  
Relating to the board of port commissioners of the Port of Beaumont Navigation District of Jefferson County.

**HB 1690** Keel SPONSOR: West, Royce  
Relating to common nuisance.

(COMMITTEE SUBSTITUTE/AMENDED)

**HB 1830** Wong SPONSOR: Ellis  
Relating to the notice provided for the establishment of municipal management districts.

(AMENDED)

**HB 1855** Giddings SPONSOR: Ellis  
Relating to the deletion of certain electronic records concerning a customer who issues a check; providing a civil penalty.

(AMENDED)

**HB 2080** Paxton SPONSOR: Fraser  
Relating to the ad valorem tax status of a license to occupy a dwelling unit in a tax-exempt retirement community.

**HB 2223** Giddings SPONSOR: Ellis  
Relating to the making of a notation on and the processing of a forged check by a financial institution.

**HB 2337** Corte SPONSOR: Staples  
Relating to the use of information provided by an applicant for a driver's license or personal identification certificate in an image verification system.  
(AMENDED)

**HB 2371** King, Tracy SPONSOR: Madla  
Relating to the use of acupuncturists as health care providers under certain health benefit plans.

**HB 2382** Hegar SPONSOR: Staples  
Relating to training requirements for certain chief appraisers of appraisal districts.  
(AMENDED)

**HB 2390** Harper-Brown SPONSOR: Carona  
Relating to the establishment of an employee welfare benefit plan by certain private educational institutions.

**HB 2423** Puente SPONSOR: Armbrister  
Relating to the consideration of historic or existing use in the regulation of pumping and discrimination by a groundwater conservation district against landowners whose land is enrolled or participating in a federal conservation program.  
(COMMITTEE SUBSTITUTE/AMENDED)

**HB 2510** Bonnen SPONSOR: Jackson  
Relating to the regulation of on-site sewage disposal systems and the maintenance of those systems; imposing administrative and criminal penalties.  
(AMENDED)

**HB 2569** Eiland SPONSOR: Williams  
Relating to the office of district attorney for the 253rd Judicial District and to the creation of the office of district attorney for the 344th Judicial District.  
(AMENDED)

**HB 2593** Baxter SPONSOR: Janek  
Relating to the TexasOnline project, the TexasOnline Authority, and related powers and fees.  
(AMENDED)

**HB 2604** Guillen SPONSOR: Van de Putte  
Relating to preferences for veterans in state-funded job training or employment assistance programs and services.  
(AMENDED)

**HB 2653** Krusee SPONSOR: Barrientos  
Relating to the use of tax increment financing to pay certain costs associated with certain transportation or transit projects.

(COMMITTEE SUBSTITUTE/AMENDED)

**HB 2680**

Branch

SPONSOR: Nelson

Relating to services provided by health care practitioners to charities and liability insurance for those practitioners.

(COMMITTEE SUBSTITUTE)

**HB 3195**

Smith, Todd

SPONSOR: Seliger

Relating to combined municipal sales tax ballot propositions.

**HCR 6**

Truitt

SPONSOR: Nelson

Designating January 17, 2006, as 112th Cavalry Day on the 60th anniversary of the group's deactivation.

THE SENATE HAS CONCURRED IN HOUSE AMENDMENTS TO THE FOLLOWING MEASURES:

**SB 48** (viva-voce vote)

**SB 316** (viva-voce vote)

**SB 485** (viva-voce vote)

**SB 679** (viva-voce vote)

**SB 898** (viva-voce vote)

**SB 912** (viva-voce vote)

**SB 945** (viva-voce vote)

**SB 1257** (viva-voce vote)

**SB 1330** (viva-voce vote)

**SB 1465** (viva-voce vote)

**SB 1864** (viva-voce vote)

**SB 1865** (viva-voce vote)

**SB 1882** (viva-voce vote)

**SB 1884** (viva-voce vote)

THE SENATE HAS GRANTED THE REQUEST OF THE HOUSE FOR THE APPOINTMENT OF A CONFERENCE COMMITTEE ON THE FOLLOWING MEASURES:

**HB 55**

Senate Conferees: Harris - Chair/Brimer/Jackson, Mike/Madla/West, Royce

**HB 261**

Senate Conferees: Wentworth - Chair/Averitt/Duncan/Hinojosa/West, Royce

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 22**

Environmental Regulation - **SB 1665**

Land and Resource Management - **SB 1104**

Urban Affairs - **SB 1843**

Ways and Means - **SB 1370**

**ENROLLED**

**May 22 - HB 1528**