HOUSE JOURNAL

SEVENTY-NINTH LEGISLATURE, REGULAR SESSION

PROCEEDINGS

EIGHTY-FIRST DAY — SUNDAY, MAY 29, 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 942).

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; Castro; Chavez; Chisum; Coleman; Cook, B.; Cook, R.; Corte; 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; Goolsby; Griggs; Grusendorf; Guillen; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Hegar; Herrero; Hilderbran; Hill; Hochberg; Hodge; Homer; Hope; Hopson; Howard; Hughes; Hunter; Hupp; Isett; Jackson; Jones, D.; Jones, J.; Keel; Keffer, B.; Keffer, J.; King, P.; King, T.; Kolkhorst; Krusee; Kuempel; Laney; Laubenberg; Leibowitz; Luna; 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.

Absent, Excused — Crabb; Goodman.

Absent — Madden.

The invocation was offered by Representative Hunter, as follows:

Our Father, we are grateful that you have given us, yet again, a new day of promise and hope for the future. Help us to be mindful that you have called us to the noble purpose of serving others rather than serving only ourselves or those just within our own circle of life.

You have reminded us again this session that life is brief for each of us and that the moments we have on earth to do your will are fleeting in the grand scheme of time. Strengthen our resolve to do what you have told us that you want us to do in the pages of your Holy Word—to be honest, and just and merciful and to walk humbly with you throughout our lives.

We thank you for blessing each of us with the hope of spending eternity with you in heaven—if we would truly be one of your steadfast followers in this life—as the king of kings, the lord of lords, and the prince of peace. In the name of the Father, the Son, and the Holy Spirit we pray. Amen.

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

LEAVES OF ABSENCE GRANTED

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

Goodman on motion of Nixon.

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

Crabb on motion of Flynn.

(Madden now present)

HR 2234 - NOTICE OF INTRODUCTION

Pursuant to the provisions of Rule 13, Section 9(f), of the House Rules, the speaker announced the introduction of **HR 2234**, suspending the limitations on the conferees for **SB 1**.

HR 2221 - NOTICE OF INTRODUCTION

Pursuant to the provisions of Rule 13, Section 9(f), of the House Rules, the speaker announced the introduction of **HR 2221**, suspending the limitations on the conferees for **HB 3518**.

HR 2212 - NOTICE OF INTRODUCTION

Pursuant to the provisions of Rule 13, Section 9(f), of the House Rules, the speaker announced the introduction of **HR 2212**, suspending the limitations on the conferees for **HB 2027**.

HR 2213 - NOTICE OF INTRODUCTION

Pursuant to the provisions of Rule 13, Section 9(f), of the House Rules, the speaker announced the introduction of **HR 2213**, suspending the limitations on the conferees for **HB 1772**.

HR 2216 - NOTICE OF INTRODUCTION

Pursuant to the provisions of Rule 13, Section 9(f), of the House Rules, the speaker announced the introduction of **HR 2216**, suspending the limitations on the conferees for **HB 2309**.

HR 2222 - NOTICE OF INTRODUCTION

Pursuant to the provisions of Rule 13, Section 9(f), of the House Rules, the speaker announced the introduction of **HR 2222**, suspending the limitations on the conferees for **SB 334**.

HR 2199 - ADOPTED
(by Hunter, B. Keffer, Griggs, McReynolds, and Swinford)

Representative Hunter moved to suspend all necessary rules to take up and consider at this time **HR 2199**.

The motion prevailed.

The following resolution was laid before the house:

HR 2199, Congratulating the Highland Oaks Church of Christ on their 150th Anniversary.

HR 2199 was adopted.

HR 2200 - ADOPTED
(by Hunter)

Representative Hunter moved to suspend all necessary rules to take up and consider at this time **HR 2200**.

The motion prevailed.

The following resolution was laid before the house:

HR 2200, Recognizing the 10th anniversary of Pure Gold and congratulating each of the members for participating in this outstanding group.

HR 2200 was adopted.

HR 2201 - ADOPTED
(by Hunter)

Representative Hunter moved to suspend all necessary rules to take up and consider at this time **HR 2201**.

The motion prevailed.

The following resolution was laid before the house:

HR 2201, Congratulating Jonathan Ardoyno for his graduation from the Texas School for the Blind and Visually Impaired.

HR 2201 was adopted.

HR 2197 - ADOPTED
(by Hupp)

The following privileged resolution was laid before the house:

HR 2197

BE IT RESOLVED by the House of Representatives of the State of Texas, 79th Legislature, Regular Session, 2005, That House Rule 13, Section 9(a), be suspended in part as provided by House Rule 13, Section 9(f), to enable the conference committee appointed to resolve the differences on **SB 6**, (protective services; providing penalties), to consider and take action on the following matters:

(1) House Rule 13, Section 9(a)(1), is suspended to permit the committee to change the text of added Section 261.3032, Family Code, so that Section 261.3032 reads as follows:

Sec. 261.3032. INTERFERENCE WITH INVESTIGATION; CRIMINAL PENALTY. (a) A person commits an offense if, with the intent to interfere with the department's investigation of a report of abuse or neglect of a child, the person relocates the person's residence, either temporarily or permanently, without notifying the department of the address of the person's new residence or conceals the child and the person's relocation or concealment interferes with the department's investigation.

(b) An offense under this section is a Class B misdemeanor.

(c) If conduct that constitutes an offense under this section also constitutes an offense under any other law, the actor may be prosecuted under this section or the other law.

Explanation: The change is necessary to clarify the elements of the offense.

(2) House Rule 13, Section 9(a)(1), is suspended to permit the committee to change the text of added Section 264.0091, Family Code, so that Section 261.0091 reads as follows:

Sec. 264.0091. USE OF TELECONFERENCING AND VIDEOCONFERENCING TECHNOLOGY. Subject to the availability of funds, the department, in cooperation with district and county courts, shall expand the use of teleconferencing and videoconferencing to facilitate participation by medical experts and other individuals in court proceedings.

Explanation: The change is necessary to ensure that the Department of Family and Protective Services is only required to implement the provisions of Section 264.0091, Family Code, if the department has funds to implement the project.

(3) House Rule 13, Section (9)(a)(4), is suspended to permit the committee to add text to Section 266.004(j), Family Code, so that Section 266.004(j) reads as follows:

(j) Nothing in this section requires that the identity of a foster parent be publicly disclosed. Explanation: The change is necessary to clarify that the section does not require public disclosure of the identity of foster parents.

Explanation: The change is necessary to clarify that the section does not require public disclosure of the identity of foster parents.

(4) House Rule 13, Section (9)(a)(1), is suspended to permit the committee to change the text of amended Section 42.056(b), Human Resources Code, so that Section 42.056(b) reads as follows:

(b) The department shall conduct background and criminal history checks using:

(1) the information provided under Subsections [~~Subsection~~] (a) and (a-1);

(2) the information made available by the Department of Public Safety under Section 411.114, Government Code, or by the Federal Bureau of Investigation or other criminal justice agency under Section 411.087, Government Code; and

(3) the department's records of reported abuse and neglect.

Explanation: The changed text is necessary to ensure that under the bill the Department of Family and Protective Services may, but is not required to, complete a background check using information made available by the Federal Bureau of Investigation.

(5) House Rule 13, Sections (9)(a)(1) and (9)(a)(2) are suspended to permit the committee to change and omit text in added Section 42.056(e), Human Resources Code, so that Section 42.056(e) reads as follows:

(e) If the residential child-care facility does not receive the results of the background or criminal history check within two working days, the facility may obtain that information for the facility's employee, subcontractor, or volunteer directly from the Department of Public Safety. If the information obtained verifies that the person does not have a criminal record, the facility may allow the person to have unsupervised client contact until the department has performed the department's own criminal history check and notified the facility.

Explanation: It is necessary to omit the text to remove a proposed requirement that under the bill the Department of Family and Protective Services complete background checks within 24 hours. It is necessary to change the remaining text to clarify a reference to the omitted 24-hour deadline.

(6) House Rule 13, Section 9(a)(2) is suspended to permit the committee to omit the following text in added Section 111.001, Government Code:

(10) "Statutory probate court" has the meaning assigned by Section 601, Texas Probate Code.

Explanation: The change is necessary to conform the language of the bill to the modification made to the provision of the bill relating to the composition of the Guardianship Certification Board.

(7) House Rule 13, Section 9(a)(1) is suspended to permit the committee to change the text of added Section 111.001(b), Government Code, so that Section 111.011(b) reads as follows:

(b) The supreme court shall appoint members under Subsection (a)(1) from the different geographical areas of this state.

Explanation: The change is necessary to conform the language of the bill to the modification made to the provision of the bill relating to the composition of the Guardianship Certification Board.

(8) House Rule 13, Section 9(a)(1) is suspended to permit the committee to change the text of added Section 111.001(g), Government Code, so that Section 111.011(g) reads as follows:

(g) The members of the board serve for staggered six-year terms, with the terms of one-third of the members expiring on February 1 of each odd-numbered year. Board members are not entitled to receive compensation or reimbursement for expenses.

Explanation: The change is necessary to prohibit members of the Guardianship Certification Board from receiving reimbursement for expenses incurred in the performance of their duties.

(9) House Rule 13, Section 9(a)(2), is suspended to permit the committee to omit text in added Subdivision (5), Section 111.013, Government Code, so that Subdivision (5) reads as follows:

(5) uses or receives a substantial amount of tangible goods, services, or funds from the Office of Court Administration.

Explanation: The change is necessary to conform the language of the bill to the provision of the bill prohibiting the members of the Guardianship Certification Board from receiving compensation or reimbursement for expenses.

(10) House Rule 13, Section 9(a)(1), is suspended to permit the committee to change the text of added Section 111.015(c), Government Code, so that Section 111.015(c) reads as follows:

(c) If the director has knowledge that a potential ground for removal exists, the director shall notify the presiding officer of the board of the potential ground. The presiding officer shall then notify the chief justice of the supreme court that a potential ground for removal exists. If the potential ground for removal involves the presiding officer, the director shall notify the next highest ranking officer of the board, who shall then notify the chief justice of the supreme court that a potential ground for removal exists.

Explanation: The change is necessary to enable the director to notify the appropriate appointing official regarding the existence of a potential ground for removal of a board member.

(11) House Rule 13, Section 9(a)(2), is suspended to permit the committee to omit the following text in added Section 111.017, Government Code:

(c) A person appointed to the board is entitled to reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.

Explanation: The change is necessary to conform the language of the bill to the provision of the bill prohibiting the members of the Guardianship Certification Board from receiving compensation or reimbursement for expenses.

(12) House Rule 13, Sections 9(a)(2), is suspended to permit the committee to omit text in added Section 111.023, Government Code, so that Section 111.023 reads as follows:

Sec. 111.023. QUALIFICATIONS AND STANDARDS OF CONDUCT INFORMATION. The director shall provide to members of the board, as often as necessary, information regarding the requirements for office under this chapter, including information regarding a person's responsibilities under applicable laws relating to standards of conduct for state officers.

Explanation: The change is necessary to prohibit the director from delegating to another individual the director's duty under this section to provide information to board members regarding the requirements for holding office and to reflect the removal of references to the hiring of employees, other than the director, that are made throughout added Chapter 111, Government Code.

(13) House Rule 13, Section 9(a)(4), is suspended to permit the committee to add additional text as Subsection (f), Section 111.042, Government Code, to read as follows and to reletter existing Subsection (f) and subsequent subsections appropriately:

(f) An employee of the Department of Aging and Disability Services who is applying for a certificate under this section to provide guardianship services to a ward of the department is exempt from payment of an application fee required by this section.

Explanation: The added text is necessary to provide an exemption from payment of application fees to employees of the Department of Aging and Disability Services applying for a certificate to provide guardianship services on behalf of the department.

Suspending limitations on conference committee jurisdiction, **SB 6**.

(Chisum in the chair)

HR 2197 was adopted.

SB 6 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Hupp submitted the conference committee report on **SB 6**.

Representative Hupp moved to adopt the conference committee report on **SB 6**.

(Speaker in the chair)

A record vote was requested.

The motion to adopt the conference committee report on **SB 6** prevailed by (Record 943): 124 Yeas, 20 Nays, 3 Present, not voting.

Yeas — Allen, A.; Allen, R.; Anderson; Bailey; Baxter; Berman; Blake; Bohac; Bonnen; Branch; Brown, F.; Callegari; Campbell; Casteel; Castro; Chavez; Chisum; Cook, B.; Cook, R.; Corte; Crownover; Davis, J.; Dawson; Delisi; Denny; Deshotel; Driver; Dukes; Dunnam; Edwards; Eiland; Eissler; Elkins; Escobar; Farabee; Flores; Flynn; Gattis; Geren; Giddings; Gonzales; Gonzalez Toureilles; Goolsby; Griggs; Grusendorf; Guillen; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Hegar; Hilderbran; Hill; Hodge; 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 Fischer; McCall; McClendon; McReynolds; Menendez; Miller; Morrison; Mowery; Naishtat; Nixon; 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; Taylor; Truitt; Turner; Uresti; Van Arsdale; Villarreal; Vo; West; Wong; Woolley; Zedler.

Nays — Alonzo; Anchia; Brown, B.; Coleman; Davis, Y.; Dutton; Farrar; Frost; Gallego; Herrero; Hochberg; Jones, J.; Leibowitz; Martinez; Merritt; Noriega, M.; Peña; Talton; Thompson; Veasey.

Present, not voting — Mr. Speaker(C); Burnam; Moreno, P.

Absent, Excused — Crabb; Goodman.

STATEMENT OF VOTE

I was shown voting no on Record No. 943. I intended to vote yes.

Veasey

REASON FOR VOTE

Though **SB 6** contains several improvements to the current system, I disagree with the privatization provisions of the bill.

Gallego

HR 2236 - NOTICE OF INTRODUCTION

Pursuant to the provisions of Rule 13, Section 9(f), of the House Rules, the chair announced the introduction of **HR 2236**, suspending the limitations on the conferees for **HB 3526**.

HCR 231 - ADOPTED
(by Craddick)

Representative West moved to suspend all necessary rules to take up and consider at this time **HCR 231**.

The motion prevailed.

The following resolution was laid before the house:

HCR 231, In memory of the Honorable Pat McKinney Baskin of Midland.

HCR 231 was unanimously adopted by a rising vote.

HB 969 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Keel submitted the following conference committee report on **HB 969** :

Austin, Texas, May 27, 2005

The Honorable David Dewhurst
President of the Senate

The Honorable Tom Craddick
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the senate and the house of representatives on **HB 969** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Hinojosa	Keel
Duncan	Bonnen
Whitmire	Escobar
	Gattis
	Peña
On the part of the senate	On the part of the house

HB 969, A bill to be entitled An Act relating to court orders for discovery in a criminal case and to certain time limits on and the consequences of a delay in the prosecution of a criminal case.

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

SECTION 1. Article 39.14(a), Code of Criminal Procedure, is amended to read as follows:

(a) Upon motion of the defendant showing good cause therefor and upon notice to the other parties, the court in which an action is pending shall [~~may~~] order the State before or during trial of a criminal action therein pending or on trial to produce and permit the inspection and copying or photographing by or on behalf of the defendant of any designated documents, papers, written statement of the defendant, (except written statements of witnesses and except the work product of counsel in the case and their investigators and their notes or report), books, accounts, letters, photographs, objects or tangible things not privileged, which constitute or contain evidence material to any matter involved in the action and which are in the possession, custody or control of the State or any of its agencies. The order shall specify the time, place and manner of making the inspection and taking the copies and photographs of any of the aforementioned documents or tangible evidence; provided, however, that the rights herein granted shall not extend to written communications between the State or any of its agents or representatives or employees. Nothing in this Act shall authorize the removal of such evidence from the possession of the State, and any inspection shall be in the presence of a representative of the State.

SECTION 2. Article 32A.02, Code of Criminal Procedure, is repealed.

SECTION 3. The change in law made by Article 39.14(a), Code of Criminal Procedure, as amended by this Act, applies to a motion for discovery filed on or after the effective date of this Act. A motion for discovery filed before the effective date of this Act is covered by the law in effect on the date the motion is 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.

Representative Keel moved to adopt the conference committee report on **HB 969**.

A record vote was requested.

The motion to adopt the conference committee report on **HB 969** prevailed by (Record 944): 144 Yeas, 0 Nays, 1 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; Coleman; Cook, B.; Corte; 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; Goolsby; Griggs; Grusendorf; Guillen; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Hegar; Herrero; Hilderbran; Hill; Hochberg; Hodge; Homer; Hope; Hopson; Howard; Hughes; Hunter; Hupp; Isett; Jackson; Jones, D.; Jones, J.; Keel; Keffer, B.; Keffer, J.;

King, P.; King, T.; Kolkhorst; Krusee; Kuempel; Laney; Laubenberg; Leibowitz; Luna; Madden; Martinez; 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(C).

Absent, Excused — Crabb; Goodman.

Absent — Cook, R.; Martinez Fischer.

STATEMENTS OF VOTE

When Record No. 944 was taken, I was in the house but away from my desk. I would have voted yes.

R. Cook

When Record No. 944 was taken, my vote failed to register. I would have voted yes.

Martinez Fischer

(Phillips in the chair)

HR 2054 - ADOPTED
(by Hamric)

Representative Hamric moved to suspend all necessary rules to take up and consider at this time **HR 2054**.

The motion prevailed.

The following resolution was laid before the house:

HR 2054, Granting State Representative Mary Denny and Norman Tolpo permission to use the chamber of the Texas House of Representatives on May 6, 2005, for their wedding ceremony.

HR 2054 was read and was adopted.

(Speaker in the chair)

HR 2234 - ADOPTED
(by Pitts)

The following privileged resolution was laid before the house:

HR 2234, suspending the limitations on conference committee jurisdiction for **SB 1**, the general appropriations bill.

Representative Coleman moved to extend speaking time for **HR 2234**.

A record vote was requested.

The motion to extend time prevailed by (Record 945): 138 Yeas, 0 Nays, 1 Present, not voting.

Yeas — Allen, A.; Allen, R.; Alonzo; Anchia; Anderson; Bailey; Baxter; Berman; Blake; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Burnam; Campbell; Casteel; Castro; Chavez; Chisum; Coleman; Cook, B.; Cook, R.; Corte; Crownover; Davis, J.; Davis, Y.; Dawson; Delisi; Denny; Deshotel; Driver; Dukes; Dunnam; Dutton; Edwards; Eiland; Eissler; Elkins; Escobar; Farabee; Farrar; Flores; Flynn; Gattis; Geren; Giddings; Gonzales; Gonzalez Toureilles; Goolsby; Griggs; Guillen; Haggerty; Hamilton; Hamric; 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; Miller; Moreno, P.; Morrison; Mowery; Naishtat; Nixon; Noriega, M.; Oliveira; Olivo; Orr; 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(C).

Absent, Excused — Crabb; Goodman.

Absent — Callegari; Frost; Gallego; Grusendorf; Hardcastle; Hegar; Hodge; Otto.

STATEMENT OF VOTE

When Record No. 945 was taken, my vote failed to register. I would have voted yes.

Gallego

HR 2234 was adopted.

LEAVE OF ABSENCE GRANTED

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

Smithee on motion of Swinford.

SB 1 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Pitts submitted the conference committee report on **SB 1**.

Representative Pitts moved to adopt the conference committee report on **SB 1**.

A record vote was requested.

The motion to adopt the conference committee report on **SB 1** prevailed by (Record 946): 104 Yeas, 40 Nays, 1 Present, not voting.

Yeas — Allen, R.; Anderson; Bailey; Baxter; Berman; Blake; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Callegari; Campbell; Casteel; Chavez; Chisum; Cook, B.; Cook, R.; Corte; Crownover; Davis, J.; Dawson; Delisi; Denny; Deshotel; Driver; Dukes; Dutton; Edwards; Eiland; Eissler; Elkins; Farabee; Flores; Flynn; Gattis; Geren; Giddings; Gonzales; Gonzalez Toureilles; Goolsby; Griggs; Guillen; Haggerty; Hamilton; Hamric; Hardcastle; Hegar; Hill; Homer; Hope; Hopson; Howard; Hunter; Hupp; Isett; Jackson; Jones, D.; Keel; Keffer, J.; King, P.; Kolkhorst; Krusee; Laney; Luna; Madden; Martinez; McCall; McClendon; McReynolds; Menendez; Merritt; Miller; Morrison; Mowery; Nixon; Orr; Otto; Peña; Pickett; Pitts; Puente; Quintanilla; Reyna; Riddle; Ritter; Rose; Smith, T.; Smith, W.; Solis; Solomons; Strama; Straus; Swinford; Taylor; Truitt; Turner; Uresti; Van Arsdale; Villarreal; West; Wong; Woolley; Zedler.

Nays — Allen, A.; Alonzo; Anchia; Burnam; Castro; Coleman; Davis, Y.; Dunnam; Escobar; Farrar; Frost; Gallego; Harper-Brown; Hartnett; Herrero; Hilderbran; Hochberg; Hodge; Hughes; Jones, J.; Keffer, B.; King, T.; Kuempel; Laubenberg; Leibowitz; Martinez Fischer; Moreno, P.; Naishtat; Noriega, M.; Oliveira; Olivo; Paxton; Phillips; Raymond; Rodriguez; Seaman; Talton; Thompson; Veasey; Vo.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Crabb; Goodman; Smithee.

Absent — Grusendorf.

The speaker stated that **SB 1** was passed subject to the provisions of Article III, Section 49a of the Texas Constitution.

STATEMENTS OF VOTE

When Record No. 946 was taken, I was temporarily out of the house chamber. I would have voted yes.

Grusendorf

I was shown voting yes on Record No. 946. I intended to vote no.

Howard

I was shown voting no on Record No. 946. I intended to vote yes.

Kuempel

I was shown voting yes on Record No. 946. I intended to vote no.

Riddle

REASON FOR VOTE

I fully support the budget increases for the Rio Grande College of Sul Ross State University. However, there are too many other areas where **SB 1** falls short: public education and financial aid for college students are two such areas.

Gallego

HR 2237 - NOTICE OF INTRODUCTION

Pursuant to the provisions of Rule 13, Section 9(f), of the House Rules, the speaker announced the introduction of **HR 2237**, suspending the limitations on the conferees for **HB 2510**.

HR 2239 - NOTICE OF INTRODUCTION

Pursuant to the provisions of Rule 13, Section 9(f), of the House Rules, the speaker announced the introduction of **HR 2239**, suspending the limitations on the conferees for **HB 1068**.

HR 2247 - NOTICE OF INTRODUCTION

Pursuant to the provisions of Rule 13, Section 9(f), of the House Rules, the speaker announced the introduction of **HR 2247**, suspending the limitations on the conferees for **SB 14**.

HR 2249 - NOTICE OF INTRODUCTION

Pursuant to the provisions of Rule 13, Section 9(f), of the House Rules, the speaker announced the introduction of **HR 2249**, suspending the limitations on the conferees for **HB 2793**.

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. 55).

HR 2198 - ADOPTED
(by Oliveira)

The following privileged resolution was laid before the house:

HR 2198

BE IT RESOLVED by the House of Representatives of the State of Texas, 79th Legislature, Regular Session, 2005, That House Rule 13, Section 9(a), be suspended in part as provided by House Rule 13, Section 9(f), to enable the conference committee appointed to resolve the differences on **HB 3485** (the establishment of criminal law hearing officers in Cameron County), to consider and take action on the following matter:

House Rule 13, Section 9(a)(2), is suspended to permit the committee to omit text in added Section 54.1352, Government Code, by striking proposed Subsection (c) of that section and relettering the subsequent subsection of that section accordingly.

Explanation: The change is necessary to allow a criminal law hearing officer appointed in Cameron County under Subchapter BB, Chapter 54, Government Code, to engage in the private practice of law and to serve as a mediator or arbitrator or otherwise participate as a neutral party in an alternative dispute resolution proceeding.

HR 2198 was adopted.

HB 3485 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Oliveira submitted the following conference committee report on **HB 3485** :

Austin, Texas, May 29, 2005

The Honorable David Dewhurst
President of the Senate

The Honorable Tom Craddick
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the senate and the house of representatives on **HB 3485** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Lucio	Oliveira
Harris	Escobar
Shapleigh	Solis
Wentworth	F. Brown
On the part of the senate	On the part of the house

HB 3485, A bill to be entitled An Act relating to the establishment of criminal law hearing officers in Cameron County.

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

SECTION 1. Chapter 54, Government Code, is amended by adding Subchapter BB to read as follows:

SUBCHAPTER BB. CRIMINAL LAW HEARING OFFICERS IN CAMERON COUNTY

Sec. 54.1351. APPLICATION OF SUBCHAPTER. This subchapter applies to Cameron County.

Sec. 54.1352. APPOINTMENT. (a) A majority of the members of a board composed of the judges of the district courts and statutory county courts of Cameron County may appoint not more than two criminal law hearing officers to perform the duties authorized by this subchapter.

(b) A criminal law hearing officer appointed under this subchapter serves at the pleasure of the board and may be terminated at any time in the same manner as appointed.

(c) A criminal law hearing officer is subject to proceedings under Section 1-a, Article V, Texas Constitution.

Sec. 54.1353. QUALIFICATIONS. To be eligible for appointment as a criminal law hearing officer under this subchapter, a person must:

(1) be a resident of Cameron County;

(2) be eligible to vote in this state and in Cameron County;

(3) be at least 30 years of age;

(4) be a licensed attorney with at least four years' experience; and

(5) have the other qualifications required by the board.

Sec. 54.1354. COMPENSATION. (a) A criminal law hearing officer is entitled to a salary in the amount set by the commissioners court.

(b) The salary is paid from the county fund available for payment of officers' salaries.

Sec. 54.1355. OATH. A criminal law hearing officer must take the constitutional oath of office required of appointed officers of this state.

Sec. 54.1356. CRIMINAL JURISDICTION. (a) A criminal law hearing officer appointed under this subchapter has limited concurrent jurisdiction over criminal cases filed in the district courts, statutory county courts, and justice courts of the county. The jurisdiction of the criminal law hearing officer is limited to:

(1) determining probable cause for further detention of any person detained on a criminal complaint, information, or indictment filed in the district courts, statutory county courts, or justice courts of the county;

(2) committing the defendant to jail, discharging the defendant from custody, or admitting the defendant to bail, as the law and facts of the case require;

(3) issuing search warrants and arrest warrants as provided by law for magistrates; and

(4) as to criminal cases filed in justice courts, disposing of cases as provided by law, other than by trial, and collecting fines and enforcing judgments and orders of the justice courts in criminal cases.

(b) This section does not limit or impair the jurisdiction of the court in which the complaint, information, or indictment is filed to review or alter the decision of the criminal law hearing officer.

(c) In a felony or misdemeanor case punishable by incarceration in the county jail, a criminal law hearing officer may not dismiss the case, enter a judgment of acquittal or guilt, or pronounce sentence.

Sec. 54.1357. MENTAL HEALTH JURISDICTION. The judges of the statutory county courts of Cameron County may authorize a criminal law hearing officer to serve the probate courts of Cameron County as necessary to hear emergency mental health matters under Chapter 573, Health and Safety Code. A criminal law hearing officer has concurrent limited jurisdiction with the probate courts of the county to hear emergency mental health matters under Chapter 573, Health and Safety Code. This section does not impair the jurisdiction of the probate courts to review or alter the decision of the criminal law hearing officer.

Sec. 54.1358. DUTIES AND POWERS. (a) A criminal law hearing officer shall inform a person arrested of the warnings described by Article 15.17, Code of Criminal Procedure.

(b) A criminal law hearing officer may determine the amount of bail and grant bail under Chapter 17, Code of Criminal Procedure, and as otherwise provided by law.

(c) A criminal law hearing officer may issue a magistrate's order for emergency apprehension and detention under Chapter 573, Health and Safety Code, if authorized by the judges of the statutory county courts of Cameron County and if the criminal law hearing officer makes each finding required by Section 573.012(b), Health and Safety Code.

(d) The criminal law hearing officer shall be available, within the time provided by law following a defendant's arrest, to determine probable cause for further detention, administer warnings, inform the accused of the pending charges, and determine all matters pertaining to bail. Criminal law hearing officers shall be available to review and issue search warrants and arrest warrants as provided by law.

(e) A criminal law hearing officer may dispose of criminal cases filed in the justice courts as provided by law, other than by trial, and collect fines and enforce the judgments and orders of the justice courts in criminal cases.

Sec. 54.1359. JUDICIAL IMMUNITY. A criminal law hearing officer has the same judicial immunity as a district judge, statutory county court judge, and justice of the peace.

Sec. 54.1360. SHERIFF. On request of a criminal law hearing officer appointed under this subchapter, the sheriff, in person or by deputy, shall assist the criminal law hearing officer.

Sec. 54.1361. CLERK. The district clerk shall perform the statutory duties necessary for the criminal law hearing officers appointed under this subchapter in cases filed in a district court or a statutory county court. A person designated to serve as a clerk of a justice court shall perform the statutory duties necessary for cases filed in a justice court.

SECTION 2. Article 2.09, Code of Criminal Procedure, is amended to read as follows:

Art. 2.09. WHO ARE MAGISTRATES. Each of the following officers is a magistrate within the meaning of this Code: The justices of the Supreme Court, the judges of the Court of Criminal Appeals, the justices of the Courts of Appeals, the judges of the District Court, the magistrates appointed by the judges of the district courts of Bexar County, Dallas County, or Tarrant County that give preference to criminal cases, the criminal law hearing officers for Harris County appointed under Subchapter L, Chapter 54, Government Code, the criminal law hearing officers for Cameron County appointed under Subchapter BB, Chapter 54, Government Code, the magistrates appointed by the judges of the district courts of Lubbock County or Webb County, the magistrates appointed by the judges of the criminal district courts of Dallas County or Tarrant County, the masters appointed by the judges of the district courts and the county courts at law that give preference to criminal cases in Jefferson County, the magistrates appointed by the judges of the district courts and the statutory county courts of Williamson County, the magistrates appointed by the judges of the district courts and statutory county courts that give preference to criminal cases in Travis County, the county judges, the judges of the county courts at law, judges of the county criminal courts, the judges of statutory probate courts, the associate judges appointed by the judges of the statutory probate courts under Subchapter G, Chapter 54, Government Code, the justices of the peace, the mayors and recorders and the judges of the municipal courts of incorporated cities or towns.

SECTION 3. This Act takes effect September 1, 2005.

Representative Oliveira moved to adopt the conference committee report on **HB 3485**.

The motion to adopt the conference committee report on **HB 3485** 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.)

HB 2465 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Denny submitted the following conference committee report on **HB 2465** :

Austin, Texas, May 28, 2005

The Honorable David Dewhurst
President of the Senate

The Honorable Tom Craddick
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the senate and the house of representatives on **HB 2465** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Fraser	Denny
Duncan	Anderson
Williams	Bohac
Lucio	Chisum
	Pickett
On the part of the senate	On the part of the house

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.

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

SECTION 1. Subchapter B, Chapter 122, Election Code, is amended by adding Section 122.0371 to read as follows:

Sec. 122.0371. PUBLIC HEARING REQUIRED. (a) After the delivery of the examiners' reports and before the determination of whether the voting system or voting system equipment for which an application has been submitted satisfies the applicable requirements for approval, the secretary of state shall conduct a public hearing to provide interested persons an opportunity to express their views for or against the approval of the voting system or voting system equipment being considered.

(b) Notice of the hearing is given in the manner provided by Chapter 551, Government Code.

(c) Persons attending the hearing may express their views for or against the approval of the voting system or voting system equipment either orally, in writing, or both.

(d) The hearing shall be conducted in accordance with rules adopted by the secretary of state.

SECTION 2. Section 122.038(a), Election Code, is amended to read as follows:

(a) After reviewing the examiners' reports and considering the views expressed at the public hearing, the secretary of state shall determine whether the voting system or voting system equipment for which an application has been submitted satisfies the applicable requirements for approval.

SECTION 3. Subchapter C, Chapter 122, Election Code, is amended by adding Section 122.0691 to read as follows:

Sec. 122.0691. PUBLIC HEARING REQUIRED. (a) This section applies only if an examination of the modified design by independent examiners was conducted.

(b) After the delivery of the examiners' reports and before the determination of whether the modified design satisfies the applicable requirements for approval, the secretary of state shall conduct a public hearing in the same manner as for the initial approval of a system or equipment.

SECTION 4. Section 122.070(a), Election Code, is amended to read as follows:

(a) After reviewing the examiners' reports and considering the views expressed at the public hearing, the secretary of state shall determine whether the modified design satisfies the applicable requirements for approval.

SECTION 5. Subchapter D, Chapter 122, Election Code, is amended by adding Section 122.0941 to read as follows:

Sec. 122.0941. PUBLIC HEARING REQUIRED. After the delivery of the examiners' reports and before the determination of whether the reexamined voting system or voting system equipment satisfies the applicable requirements for approval, the secretary of state shall conduct a public hearing in the same manner as for the initial approval of a system or equipment.

SECTION 6. Section 122.095(a), Election Code, is amended to read as follows:

(a) After reviewing the examiners' reports and considering the views expressed at the public hearing, the secretary of state shall determine whether the voting system or voting system equipment subject to reexamination satisfies the applicable requirements for approval of the system or equipment for use in elections.

SECTION 7. (a) The changes in law made by this Act to Chapter 122, Election Code, apply only to an act or proceeding occurring under that chapter on or after September 1, 2005, and do not affect the status of an examination conducted by the examiners or a determination made by the secretary of state under that chapter before September 1, 2005, in regard to approval of voting systems or equipment.

(b) The acts or proceedings, including all examinations conducted by the examiners and all determinations made by the secretary of state in regard to approval of voting systems or equipment, that occurred under Chapter 122, Election Code, before September 1, 2005, are validated as of the dates the acts or proceedings occurred.

SECTION 8. An examination conducted or determination made under Chapter 122, Election Code, before or after the amendments made by this Act, was and continues to be not subject to Chapter 551, Government Code.

SECTION 9. This Act takes effect September 1, 2005.

Representative Denny moved to adopt the conference committee report on **HB 2465**.

The motion to adopt the conference committee report on **HB 2465** 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.)

SB 1830 - RULES SUSPENDED

Representative Luna moved to suspend all necessary rules to consider the conference committee report on **SB 1830** at this time.

The motion prevailed.

SB 1830 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Luna submitted the conference committee report on **SB 1830**.

Representative Luna moved to adopt the conference committee report on **SB 1830**.

A record vote was requested.

The motion to adopt the conference committee report on **SB 1830** prevailed by (Record 947): 140 Yeas, 0 Nays, 1 Present, not voting.

Yeas — Allen, A.; Allen, R.; Alonzo; Anchia; Anderson; Bailey; Baxter; Berman; Blake; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Callegari; Campbell; Casteel; Chavez; Chisum; Coleman; Cook, B.; Cook, R.; Corte; 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; Goolsby; Griggs; Grusendorf; Guillen; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Hegar; Herrero; Hilderbran; Hill; Hochberg; Hodge; Homer; Hope; Hopson; Howard; Hughes; Hunter; Hupp; Isett; Jackson; Jones, D.; Jones, J.; Keel; Keffer, B.; Keffer, J.; King, P.; King, T.; Kolkhorst; Krusee; Kuempel; Laney; Laubenberg; Leibowitz; Luna; Madden; Martinez; McCall; McClendon; McReynolds; Menendez; Merritt; Miller; Moreno, P.; Morrison; Mowery; Naishtat; Nixon; Noriega, M.; Oliveira; Olivo; Orr; Otto; Paxton; Peña; Phillips; Pickett; Pitts; Quintanilla; Raymond; Reyna; Riddle; Ritter; Rodriguez; Rose; Seaman; Smith, T.; Smith, W.; Solis; Solomons; Strama; Straus; Swinford; Talton; Taylor; Thompson; Truitt; Turner; Uresti; Van Arsdale; Villarreal; Vo; West; Wong; Woolley; Zedler.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Crabb; Goodman; Smithee.

Absent — Burnam; Castro; Martinez Fischer; Puente; Veasey.

STATEMENTS OF VOTE

When Record No. 947 was taken, my vote failed to register. I would have voted yes.

Martinez Fischer

When Record No. 947 was taken, I was in the house but away from my desk. I would have voted yes.

Veasey

HB 268 - RULES SUSPENDED

Representative Keel moved to suspend all necessary rules to consider the conference committee report on **HB 268** at this time.

The motion prevailed.

HB 268 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Keel submitted the following conference committee report on **HB 268** :

Austin, Texas, May 28, 2005

The Honorable David Dewhurst
President of the Senate

The Honorable Tom Craddick
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the senate and the house of representatives on **HB 268** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Hinojosa	Keel
Harris	Denny
Seliger	Hodge
	Peña
	Reyna
On the part of the senate	On the part of the house

HB 268, A bill to be entitled An Act relating to the qualifications and appointment of counsel for indigent defendants in capital cases.

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

SECTION 1. Section 2, Article 11.071, Code of Criminal Procedure, is amended by amending Subsections (c) and (d) and adding Subsection (d-1) to read as follows:

(c) At the earliest practical time, but in no event later than 30 days, after the convicting court makes the findings required under Subsections (a) and (b), the convicting court shall appoint competent counsel from the list of qualified attorneys maintained by the Task Force on Indigent Defense under Subsection (d)(3), unless the applicant elects to proceed pro se or is represented by retained counsel. The convicting court may also appoint an attorney to assist an attorney

appointed as lead counsel in the case. The assisting attorney is not subject to the guidelines applicable to an attorney appointed as lead counsel. On appointing counsel under this section, the convicting court shall immediately notify the court of criminal appeals of the appointment, including in the notice a copy of the judgment and the name, address, and telephone number of the appointed counsel.

(d)(1) The Task Force on Indigent Defense may [~~court of criminal appeals shall~~] adopt guidelines [~~rules~~] for the appointment of attorneys as counsel under this section and may consider the guidelines in determining whether an attorney is qualified for an appointment [~~the convicting court may appoint an attorney as counsel under this section only if the appointment is approved by the court of criminal appeals in any manner provided by those rules~~]. The Task Force on Indigent Defense shall determine whether an attorney is qualified for an appointment on a case-by-case basis.

(2) The guidelines may include that an attorney appointed as lead counsel under this section:

(A) be a member of the State Bar of Texas;

(B) exhibit proficiency and commitment to providing quality representation to defendants in death penalty cases;

(C) have participated in continuing legal education courses or other training relating to criminal defense in death penalty cases;

(D) have at least five years of experience in criminal trial or appellate litigation or habeas corpus practice; and

(E) have participated in the preparation of appellate briefs for the prosecution or defense, or in the drafting of appellate opinions as an attorney for an appellate court, in felony cases, including homicide cases and other cases involving an offense punishable as a capital felony or a felony of the first or second degree.

(3) The Task Force on Indigent Defense shall maintain a list of attorneys qualified for appointment under this section and make that list available to a convicting court for the purpose of assisting that court with the appointment of qualified counsel under this section.

(4) The convicting court may not appoint an attorney as counsel under this section if the attorney:

(A) has been found by a federal or state court to have rendered ineffective assistance of counsel during the trial or appeal of any capital case; or

(B) represented the applicant at trial or on direct appeal, unless:

(i) the applicant and the attorney request the appointment on the record; and

(ii) the court finds good cause to make the appointment.

(d-1) The court of criminal appeals may annually review the list of attorneys qualified for appointment under this section to ensure that the attorneys included on the list are suitably qualified and proficient to be eligible for appointment. The court may determine whether an attorney is eligible for appointment on a case-by-case basis. The court may remove an attorney from the list if the attorney is determined to be ineligible for appointment.

SECTION 2. Article 26.052(d), Code of Criminal Procedure, is amended to read as follows:

(d)(1) The committee shall adopt standards for the qualification of attorneys to be appointed to represent indigent defendants in capital cases in which the death penalty is sought.

(2) The standards must require that a trial [~~an~~] attorney appointed as lead counsel to a death penalty case:

(A) be a member of the State Bar of Texas;

(B) exhibit proficiency and commitment to providing quality representation to defendants in death penalty cases;

(C) have participated in continuing legal education courses or other training related to criminal defense in death penalty cases;

(D) have not been found by a federal or state court to have rendered ineffective assistance of counsel during the trial or appeal of any capital case;

(E) have at least five years of experience in criminal trial or appellate litigation;

(F) [~~(D)~~] have tried felony cases to a verdict as lead prosecutor or lead defense counsel [~~a significant number of felony cases~~], including homicide trials and other trials for offenses punishable as second or first degree felonies or capital felonies; and

(G) [~~(E)~~] have previous [~~trial~~] experience as a member of the prosecution or defense trial counsel team in:

(i) jury selection in a capital case in which the death penalty is sought;

(ii) the direct examination or cross-examination [~~use~~] of [~~and challenges to~~] mental health or forensic expert witnesses; and

(iii) the presentation or cross-examination of [~~(ii) investigating and presenting~~] mitigating evidence at the penalty phase of a homicide [~~death penalty~~] trial[~~; and~~

[~~(F) have participated in continuing legal education courses or other training relating to criminal defense in death penalty cases~~].

(3) The standards must require that an attorney appointed as lead appellate counsel in the direct appeal of a death penalty case:

(A) be a member of the State Bar of Texas;

(B) exhibit proficiency and commitment to providing quality representation to defendants in death penalty cases;

(C) have participated in continuing legal education courses or other training related to criminal defense in death penalty cases;

(D) have not been found by a federal or state court to have rendered ineffective assistance of counsel during the trial or appeal of any capital case;

(E) have at least five years of experience in criminal trial or appellate litigation; and

(F) have participated in the preparation of appellate briefs for the prosecution or defense, or in the drafting of appellate opinions as an attorney for an appellate court, in felony cases, including homicide cases and other cases involving an offense punishable as a capital felony or a felony of the first or second degree.

(4) The committee shall prominently post the standards in each district clerk's office in the region with a list of attorneys qualified for appointment.

(5) [~~(4)~~] Not later than the second anniversary of the date an attorney is placed on the list of attorneys qualified for appointment in death penalty cases and each year following the second anniversary, the attorney must present proof to the committee that the attorney has successfully completed the minimum continuing legal education requirements of the State Bar of Texas, including a course or other form of training relating to the defense of death penalty cases. The committee shall remove the attorney's name from the list of qualified attorneys if the attorney fails to provide the committee with proof of completion of the continuing legal education requirements.

SECTION 3. The Task Force on Indigent Defense shall prepare the list of qualified attorneys required by Section 2(d), Article 11.071, Code of Criminal Procedure, as amended by this Act, not later than March 1, 2006.

SECTION 4. A convicting court that appoints counsel under Section 2, Article 11.071, Code of Criminal Procedure, on or after May 1, 2006, shall appoint the counsel in conformity with this Act. Counsel appointed under Section 2, Article 11.071, Code of Criminal Procedure, before May 1, 2006, must be appointed in conformity with Section 2, Article 11.071, Code of Criminal Procedure, as that section existed immediately before that date, and the former law is continued in effect for that purpose.

SECTION 5. A local selection committee shall amend standards previously adopted by the committee to conform with the requirements of Article 26.052(d), Code of Criminal Procedure, as amended by this Act, not later than the 75th day after the effective date of this Act. An attorney appointed to a death penalty case on or after the 75th day after the effective date of this Act must meet the standards adopted in conformity with amended Article 26.052(d). An attorney appointed to a death penalty case before the 75th day after the effective date of this Act is covered by the law in effect when the attorney was appointed, and the former law is continued in effect for that purpose.

SECTION 6. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2005.

Representative Keel moved to adopt the conference committee report on **HB 268**.

A record vote was requested.

The motion to adopt the conference committee report on **HB 268** prevailed by (Record 948): 143 Yeas, 0 Nays, 1 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; Coleman; Cook, B.; Cook, R.; Corte; 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; Goolsby; Griggs; Grusendorf; Guillen; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Hegar; Herrero; Hilderbran; Hill; Hochberg; Hodge; Homer; Hope; Hopson; Howard; Hughes; Hunter; Hupp; Isett; Jackson; Jones, D.; Jones, J.; Keel; Keffer, B.; Keffer, J.; King, 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; Raymond; Reyna; Riddle; Ritter; Rodriguez; Rose; Seaman; Smith, T.; Smith, W.; 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 — Crabb; Goodman; Smithee.

Absent — King, P.; Quintanilla.

STATEMENTS OF VOTE

I was shown voting yes on Record No. 948. I intended to vote no.

Y. Davis

I was shown voting yes on Record No. 948. I intended to vote no.

Laubenberg

I was shown voting yes on Record No. 948. I intended to vote no.

Thompson

HB 2525 - RULES SUSPENDED

Representative Callegari moved to suspend all necessary rules to consider the conference committee report on **HB 2525** at this time.

The motion prevailed.

(Zedler in the chair)

HB 2525 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Callegari submitted the following conference committee report on **HB 2525** :

Austin, Texas, May 27, 2005

The Honorable David Dewhurst
President of the Senate

The Honorable Tom Craddick
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the senate and the house of representatives on **HB 2525** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Lindsay	Callegari
Eltife	Anderson
Jackson	Rodriguez
Whitmire	W. Smith
On the part of the senate	On the part of the house

HB 2525, A bill to be entitled An Act relating to contracts by governmental entities for construction projects and related professional services and to public works performance and payment bonds.

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

SECTION 1. Section 2253.021, Government Code, is amended by adding Subsection (h) to read as follows:

(h) A reverse auction procedure may not be used to obtain services related to a public work contract for which a bond is required under this section. In this subsection, "reverse auction procedure" has the meaning assigned by Section 2155.062 or a procedure similar to that assigned by Section 2155.062.

SECTION 2. Section 2166.2525, Government Code, is amended to read as follows:

Sec. 2166.2525. DETERMINATION OF CONTRACTING METHOD. The [~~commission shall adopt rules that determine the circumstances for use of each~~] method of contracting allowed under this subchapter for design and construction services is any method provided by Chapter 2264. [~~In developing the rules, the commission shall solicit advice and comment from design and construction professionals regarding the criteria the commission will use in determining which contracting method is best suited for a project.~~]

SECTION 3. Subtitle F, Title 10, Government Code, is amended by adding Chapter 2264 to read as follows:

CHAPTER 2264. CONTRACTING AND DELIVERY PROCEDURES FOR CONSTRUCTION PROJECTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2264.001. DEFINITIONS. In this chapter:

(1) "Architect" means an individual registered as an architect under Chapter 1051, Occupations Code.

(2) "Engineer" means an individual licensed as an engineer under Chapter 1001, Occupations Code.

(3) "Facility" means an improvement to real property.

(4) "General conditions" in the context of a contract for the construction, rehabilitation, alteration, or repair of a facility means on-site management, administrative personnel, insurance, bonds, equipment, utilities, and incidental work, including minor field labor and materials.

Sec. 2264.002. APPLICABILITY OF CHAPTER TO GOVERNMENTAL ENTITIES AND QUASI-GOVERNMENTAL ENTITIES ENGAGED IN PUBLIC WORKS. This chapter applies to a governmental entity or quasi-governmental entity authorized by state law to make a public work contract, including:

(1) a state agency as defined by Section 2151.002, including the Texas Building and Procurement Commission;

(2) a local government, including:

(A) a county;

(B) a municipality;

(C) a special district or authority, including a school district, a hospital district, a river authority or any other type of water district, and a defense base development authority established under Chapter 379B, Local Government Code; and

(D) any other political subdivision of this state; and

(3) a public junior college as defined by Section 61.003, Education Code.

Sec. 2264.003. CONFLICT OF LAWS; REQUIREMENT TO FOLLOW PROCEDURES OF THIS CHAPTER. (a) Except as provided by this section, this chapter prevails over any other law relating to public works contracts.

(b) This chapter does not prevail over a conflicting provision in a law relating to contracting with a historically underutilized business.

(c) This chapter does not prevail over a conflicting provision in:

(1) a charter of a home-rule municipality; or

(2) a rule of a county, river authority or any other type of water district, or defense base development authority that requires the use of competitive bidding.

(d) The governing body of a municipality, county, river authority, or defense base development authority to which Subsection (c) applies may elect to have this chapter overrule the conflicting provision in the charter or rule.

Sec. 2264.004. EXEMPTION: TEXAS DEPARTMENT OF TRANSPORTATION. This chapter does not apply to a contract entered into by the Texas Department of Transportation.

[Sections 2264.005-2264.050 reserved for expansion]

SUBCHAPTER B. GENERAL POWERS AND DUTIES

Sec. 2264.051. RULES. A governmental entity may adopt rules as necessary to implement this chapter.

Sec. 2264.052. DELEGATION OF AUTHORITY. (a) The governing body of a governmental entity may delegate its authority under this chapter regarding an action authorized or required by this chapter to a designated representative, committee, or other person.

(b) The entity shall provide notice of the delegation and the limits of the delegation in the request for bids, proposals, or qualifications or in an addendum to the request.

(c) If the entity fails to provide notice under Subsection (b), a ranking, selection, or evaluation of bids, proposals, or qualifications for construction services other than by the entity's governing body in an open public meeting is advisory only.

Sec. 2264.053. RIGHT TO WORK. (a) This section applies to a governmental entity when the governmental entity is engaged in:

(1) procuring goods or services under this chapter;

(2) awarding a contract under this chapter; or

(3) overseeing procurement or construction for a public work or public improvement under this chapter.

(b) In engaging in an activity to which this section applies, a governmental entity:

(1) may not consider whether a person is a member of or has another relationship with any organization; and

(2) shall ensure that its bid specifications and any subsequent contract or other agreement do not deny or diminish the right of a person to work because of the person's membership or other relationship status with respect to an organization.

[Sections 2264.054-2264.100 reserved for expansion]

SUBCHAPTER C. GENERAL CONTRACTING PROCEDURES

Sec. 2264.101. CRITERIA TO CONSIDER. In determining the award of a contract under this chapter, the governmental entity may consider:

(1) the purchase price;

(2) the reputation of the offeror and the offeror's goods or services;

(3) the quality of the offeror's goods or services;

(4) the extent to which the goods or services meet the governmental entity's needs;

(5) the offeror's past relationship with the governmental entity;

(6) the impact on the ability of the governmental entity to comply with rules relating to historically underutilized businesses;

(7) the total long-term cost to the governmental entity to acquire the offeror's goods or services; and

(8) any other relevant factor specifically listed in the request for bids, proposals, or qualifications.

Sec. 2264.102. USING METHOD OTHER THAN COMPETITIVE BIDDING FOR CONSTRUCTION SERVICES; EVALUATION OF PROPOSALS. (a) The governing body of a governmental entity that considers a construction contract using a method authorized by this chapter other than competitive bidding must, before advertising, determine which method provides the best value for the governmental entity.

(b) The governmental entity shall base its selection among offerors on applicable criteria listed in Section 2264.101. The governmental entity shall publish in the request for proposals or qualifications the criteria that will be used to evaluate the offerors.

(c) The governmental entity shall document the basis of its selection and shall make the evaluations public not later than the seventh day after the date the contract is awarded.

Sec. 2264.103. ARCHITECT OR ENGINEER SERVICES. (a) An architect or engineer required to be selected or designated under this chapter has full responsibility for complying with Chapter 1001 or 1051, Occupations Code, as applicable.

(b) If the selected or designated architect or engineer is not a full-time employee of the governmental entity, the governmental entity shall select the architect or engineer on the basis of demonstrated competence and qualifications as provided by Section 2254.004.

Sec. 2264.104. RESPONSIBILITIES OF CONTRACTORS. In the context of a contract for the construction, rehabilitation, alteration, or repair of a facility under this chapter, a contractor is a sole proprietorship, partnership, corporation, or other legal entity that assumes the risk for constructing, rehabilitating, altering, or repairing all or part of the facility at the contracted price.

Sec. 2264.105. COMPETITIVE BIDDING. (a) Except as otherwise provided by this chapter or other law, a governmental entity may contract for the construction, alteration, rehabilitation, or repair of a facility only after the entity advertises for bids for the contract in a manner prescribed by law, receives sealed competitive bids, and awards the contract to:

(1) the lowest responsible bidder; or

(2) the bidder offering the best value to the governmental entity according to the selection criteria established by the governmental entity in the request for bids.

(b) The governmental entity shall document the basis of its selection and shall make the evaluations public not later than the seventh day after the date the contract is awarded.

Sec. 2264.106. APPLICABILITY OF OTHER COMPETITIVE BIDDING LAW TO CERTAIN LOCAL GOVERNMENTAL ENTITIES. Except as otherwise specifically provided by this section, Subchapter B, Chapter 271, Local Government Code, does not apply to a competitive bidding process made under this chapter. Sections 271.026, 271.027(a), and 271.0275, Local Government Code, apply to a competitive bidding process made under this chapter by a governmental entity as defined by Section 271.021, Local Government Code.

Sec. 2264.107. USE OF ARCHITECT OR ENGINEER. The governmental entity shall select or designate an architect or engineer in accordance with Chapter 1001 or 1051, Occupations Code, as applicable, to prepare the construction documents required for a project to be awarded by competitive bidding.

Sec. 2264.108. USE OF OTHER PROFESSIONAL SERVICES. (a) The governmental entity shall provide or contract for, independently of the contractor, the construction materials engineering, testing, and inspection services and the verification testing services necessary for acceptance of the facility by the governmental entity under this subchapter.

(b) The governmental entity shall select the services for which it contracts under this section in accordance with Section 2254.004.

[Sections 2264.109-2264.150 reserved for expansion]

SUBCHAPTER D. COMPETITIVE SEALED PROPOSAL METHOD

Sec. 2264.151. SELECTING CONTRACTOR FOR CONSTRUCTION SERVICES THROUGH COMPETITIVE SEALED PROPOSALS. A governmental entity may use the competitive sealed proposal method to select a contractor for the construction, rehabilitation, alteration, or repair of a facility. In selecting a contractor through competitive sealed proposals, a governmental entity shall follow the procedures provided by this subchapter.

Sec. 2264.152. USE OF ARCHITECT OR ENGINEER. The governmental entity shall select or designate an architect or engineer to prepare construction documents for the project.

Sec. 2264.153. USE OF OTHER PROFESSIONAL SERVICES. (a) The governmental entity shall provide or contract for, independently of the contractor, the construction materials engineering, testing, and inspection services and the verification testing services necessary for acceptance of the facility by the governmental entity.

(b) The governmental entity shall select the services for which it contracts under this section in accordance with Section 2254.004.

Sec. 2264.154. PREPARATION OF REQUEST. (a) The governmental entity shall prepare a request for competitive sealed proposals that includes construction documents, selection criteria, estimated budget, project scope, estimated project completion date, and other information that a contractor may require to respond to the request.

(b) The governmental entity shall state in the request for proposals the selection criteria that will be used in selecting the successful offeror.

Sec. 2264.155. EVALUATION OF OFFERORS. (a) The governmental entity shall receive, publicly open, and read aloud the names of the offerors.

(b) Not later than the 45th day after the date of opening the proposals, the governmental entity shall evaluate and rank each proposal submitted in relation to the published selection criteria.

Sec. 2264.156. SELECTION OF OFFEROR. (a) The governmental entity shall select the offeror that offers the best value for the governmental entity based on the published selection criteria and on its ranking evaluation. In determining best value for the governmental entity, the governmental entity is not restricted to considering price alone but may consider any other factor stated in the selection criteria.

(b) The governmental entity shall first attempt to negotiate a contract with the selected offeror. The governmental entity and its engineer or architect may discuss with the selected offeror options for a scope or time modification and any price change associated with the modification.

(c) If the governmental entity is unable to negotiate a contract with the selected offeror, the governmental entity shall, formally and in writing, end negotiations with that offeror and proceed to the next offeror in the order of the selection ranking until a contract is reached or all proposals are rejected.

[Sections 2264.157-2264.200 reserved for expansion]

SUBCHAPTER E. CONSTRUCTION MANAGER-AGENT METHOD

Sec. 2264.201. CONTRACTS FOR FACILITIES: CONSTRUCTION MANAGER-AGENT SERVICES. (a) A construction manager-agent is a sole proprietorship, partnership, corporation, or other legal entity that provides consultation services to the governmental entity regarding construction, rehabilitation, alteration, or repair of a facility.

(b) A governmental entity may retain a construction manager-agent for assistance in the construction, rehabilitation, alteration, or repair of a facility only as provided by this subchapter.

Sec. 2264.202. CONTRACT PROVISIONS OF CONSTRUCTION MANAGER-AGENT. (a) The contract between the governmental entity and the construction manager-agent may require the construction manager-agent to provide:

(1) administrative personnel;

(2) equipment necessary to perform duties under this subchapter;

(3) on-site management; and

(4) other services specified in the contract.

(b) A construction manager-agent may not self-perform any aspect of the construction, rehabilitation, alteration, or repair of the facility.

Sec. 2264.203. FIDUCIARY CAPACITY OF CONSTRUCTION MANAGER-AGENT. A construction manager-agent represents the governmental entity in a fiduciary capacity.

Sec. 2264.204. USE OF ARCHITECT OR ENGINEER. (a) On or before the selection of a construction manager-agent, the governmental entity shall select or designate an architect or engineer to prepare the construction documents for the project.

(b) The governmental entity's architect or engineer may not serve, alone or in combination with another person, as the construction manager-agent unless the architect or engineer is hired to serve as the construction manager-agent under a separate or concurrent selection process conducted in accordance with this subchapter. This subsection does not prohibit the governmental entity's architect or engineer from providing customary construction phase services under the architect's or engineer's original professional service agreement in accordance with applicable licensing laws.

(c) To the extent that the construction manager-agent's services are defined as part of the practice of engineering or architecture under Chapter 1001 or 1051, Occupations Code, those services must be conducted by a person licensed under the applicable chapter.

Sec. 2264.205. USE OF OTHER PROFESSIONAL SERVICES. (a) The governmental entity or the construction manager-agent shall procure, independently of the contractor, the construction materials engineering, testing, and inspection services and the verification testing services necessary for acceptance of the facility by the governmental entity.

(b) The governmental entity or the construction manager-agent shall select the services for which it contracts under this section in accordance with Section 2254.004.

Sec. 2264.206. SELECTION OF CONSTRUCTION MANAGER-AGENT. A governmental entity shall select a construction manager-agent on the basis of demonstrated competence and qualifications in the same manner as provided for the selection of engineers or architects under Section 2254.004.

Sec. 2264.207. SELECTION OF CONTRACTORS. A governmental entity using the construction manager-agent method shall procure, in accordance with applicable law and in any manner authorized by this chapter, a general contractor, trade contractors, or subcontractors who will serve as the prime contractor for their specific portion of the work.

[Sections 2264.208-2264.250 reserved for expansion]

SUBCHAPTER F. CONSTRUCTION MANAGER-AT-RISK METHOD

Sec. 2264.251. CONTRACTS FOR FACILITIES: CONSTRUCTION MANAGER-AT-RISK. (a) A construction manager-at-risk is a sole proprietorship, partnership, corporation, or other legal entity that assumes the risk for construction, rehabilitation, alteration, or repair of a facility at the contracted price as a general contractor and provides consultation to the governmental entity regarding construction during and after the design of the facility.

(b) A governmental entity may use the construction manager-at-risk method in selecting a general contractor for the construction, rehabilitation, alteration, or repair of a facility only as provided by this subchapter.

Sec. 2264.252. USE OF ARCHITECT OR ENGINEER. (a) On or before the selection of a construction manager-at-risk, the governmental entity shall select or designate an architect or engineer to prepare the construction documents for the project.

(b) The governmental entity's engineer or architect for a project may not serve, alone or in combination with another person, as the construction manager-at-risk unless the architect or engineer is hired to serve as the construction manager-at-risk under a separate or concurrent selection process conducted in accordance with this subchapter. This subsection does not prohibit the governmental entity's architect or engineer from providing customary construction phase services under the architect's or engineer's original professional service agreement in accordance with applicable licensing laws.

Sec. 2264.253. USE OF OTHER PROFESSIONAL SERVICES. (a) The governmental entity shall provide or contract for, independently of the construction manager-at-risk, the construction materials engineering, testing, and inspection services and the verification testing services necessary for acceptance of the facility by the governmental entity.

(b) The governmental entity shall select the services for which it contracts under this section in accordance with Section 2254.004.

Sec. 2264.254. SELECTION PROCESS. (a) The governmental entity shall select the construction manager-at-risk in a one-step or two-step process.

(b) The governmental entity shall prepare a single request for proposals, in the case of a one-step process, and an initial request for qualifications, in the case of a two-step process, that includes:

(1) general information on the project site, project scope, schedule, selection criteria, estimated budget, and the time and place for receipt of the proposals or qualifications;

(2) a statement as to whether the selection process is a one-step or two-step process; and

(3) other information that may assist the governmental entity in its selection of a construction manager-at-risk.

(c) The governmental entity shall state the selection criteria in the request for proposals or qualifications. The selection criteria may include the offeror's experience, past performance, safety record, proposed personnel and methodology, and other appropriate factors that demonstrate the capability of the construction manager-at-risk.

(d) If a one-step process is used, the governmental entity may request, as part of the offeror's proposal, proposed fees and prices for fulfilling the general conditions.

(e) If a two-step process is used, the governmental entity may not request fees or prices in step one. In step two, the governmental entity may request that five or fewer offerors, selected solely on the basis of qualifications, provide additional information, including the construction manager-at-risk's proposed fee and price for fulfilling the general conditions.

(f) At each step, the governmental entity shall receive, publicly open, and read aloud the names of the offerors. At the appropriate step, the governmental entity shall also read aloud the fees and prices, if any, stated in each proposal as the proposal is opened.

(g) Not later than the 45th day after the date of opening the final proposals, the governmental entity shall evaluate and rank each proposal submitted in relation to the criteria set forth in the request for proposals.

Sec. 2264.255. SELECTION OF OFFEROR. (a) The governmental entity shall select the offeror that submits the proposal that offers the best value for the governmental entity based on the published selection criteria and on its ranking evaluation.

(b) The governmental entity shall first attempt to negotiate a contract with the selected offeror.

(c) If the governmental entity is unable to negotiate a satisfactory contract with the selected offeror, the governmental entity shall, formally and in writing, end negotiations with that offeror and proceed to negotiate with the next offeror in the order of the selection ranking until a contract is reached or negotiations with all ranked offerors end.

Sec. 2264.256. PERFORMANCE OF WORK. (a) A construction manager-at-risk shall publicly advertise for bids or proposals and receive bids or proposals from trade contractors or subcontractors for the performance of all major elements of the work other than the minor work that may be included in the general conditions.

(b) A construction manager-at-risk may seek to perform portions of the work itself if:

(1) the construction manager-at-risk submits its bid or proposal for those portions of the work in the same manner as all other trade contractors or subcontractors; and

(2) the governmental entity determines that the construction manager-at-risk's bid or proposal provides the best value for the governmental entity.

Sec. 2264.257. REVIEW OF BIDS OR PROPOSALS. (a) The construction manager-at-risk and the governmental entity shall review all trade contractor or subcontractor bids or proposals in a manner that does not disclose the contents of the bid or proposal during the selection process to a person not employed by the construction manager-at-risk, engineer, architect, or governmental entity. All bids or proposals shall be made public after the later of the award of the contract or the seventh day after the date of final selection of bids or proposals.

(b) If the construction manager-at-risk reviews, evaluates, and recommends to the governmental entity a bid or proposal from a trade contractor or subcontractor but the governmental entity requires another bid or proposal to be accepted, the governmental entity shall compensate the construction manager-at-risk by a change in price, time, or guaranteed maximum cost for any additional cost and risk that the construction manager-at-risk incurs because of the governmental entity's requirement that another bid or proposal be accepted.

Sec. 2264.258. DEFAULT; PERFORMANCE OF WORK. If a selected trade contractor or subcontractor defaults in the performance of its work or fails to execute a subcontract after being selected in accordance with this subchapter, the construction manager-at-risk may itself fulfill the contract requirements or select a replacement trade contractor or subcontractor to fulfill the contract requirements.

Sec. 2264.259. PERFORMANCE OR PAYMENT BOND. (a) If a fixed contract amount or guaranteed maximum price has not been determined at the time the contract is awarded, the penal sums of the performance and payment bonds delivered to the governmental entity must each be in an amount equal to the project budget, as specified in the request for proposals or qualifications.

(b) The construction manager-at-risk shall deliver the bonds not later than the 10th day after the date the construction manager-at-risk executes the contract unless the construction manager-at-risk furnishes a bid bond or other financial security acceptable to the governmental entity to ensure that the construction manager will furnish the required performance and payment bonds when a guaranteed maximum price is established.

[Sections 2264.260-2264.300 reserved for expansion]

SUBCHAPTER G. DESIGN-BUILD METHOD

Sec. 2264.301. APPLICABILITY OF SUBCHAPTER TO BUILDINGS; EXCEPTIONS. This subchapter applies only to a facility that is a building or an associated structure. This subchapter does not apply to:

(1) a highway, road, street, bridge, utility, water supply project, water plant, wastewater plant, water and wastewater distribution or conveyance facility, wharf, dock, airport runway or taxiway, drainage project, or related type of project associated with civil engineering construction; or

(2) a building or structure that is incidental to a project that is primarily a civil engineering construction project.

Sec. 2264.302. CONTRACTS FOR BUILDINGS: DESIGN-BUILD. A governmental entity may use the design-build method for the construction, rehabilitation, alteration, or repair of a building or associated structure only as provided by this subchapter. In using that method, the governmental entity shall enter into a single contract with a design-build firm for the design and construction of the building or associated structure.

Sec. 2264.303. DESIGN-BUILD FIRMS. A design-build firm under this subchapter must be a partnership, corporation, or other legal entity or team that includes an engineer or architect and a construction contractor.

Sec. 2264.304. USE OF ARCHITECT OR ENGINEER. The governmental entity shall select or designate an architect or engineer independent of the design-build firm to act as the governmental entity's representative for the duration of the work on the facility.

Sec. 2264.305. USE OF OTHER PROFESSIONAL SERVICES. (a) The governmental entity shall provide or contract for, independently of the design-build firm, the construction materials engineering, testing, and inspection services and the verification testing services necessary for acceptance of the facility by the governmental entity.

(b) The governmental entity shall select the services for which it contracts under this section in accordance with Section 2254.004.

Sec. 2264.306. PREPARATION OF REQUEST. (a) The governmental entity shall prepare a request for qualifications that includes general information on the project site, project scope, budget, special systems, selection criteria, and other information that may assist potential design-build firms in submitting proposals for the project.

(b) The governmental entity shall also prepare the design criteria package that includes more detailed information on the project. If the preparation of the design criteria package requires engineering or architectural services that constitute the practice of engineering within the meaning of Chapter 1001, Occupations Code, or the practice of architecture within the meaning of Chapter 1051, Occupations Code, those services shall be provided in accordance with the applicable law.

(c) The design criteria package must include a set of documents that provides sufficient information, including criteria for selection, to permit a design-build firm to prepare a response to the governmental entity's request for qualifications and to provide any additional information requested. The design criteria package must specify criteria the governmental entity considers necessary to describe the project and may include, as appropriate, the legal description of the site, survey information concerning the site, interior space requirements, special material requirements, material quality standards, conceptual criteria for

the project, special equipment requirements, cost or budget estimates, time schedules, quality assurance and quality control requirements, site development requirements, applicable codes and ordinances, provisions for utilities, parking requirements, and any other requirement.

(d) The governmental entity may not require offerors to submit detailed engineering or architectural designs as part of a proposal or a response to a request for qualifications.

Sec. 2264.307. EVALUATION OF DESIGN-BUILD FIRMS. (a) For each design-build firm that responded to the request for qualifications, the governmental entity shall evaluate the firm's experience, technical competence, and capability to perform, the past performance of the firm and members of the firm, and other appropriate factors submitted by the firm in response to the request for qualifications, except that cost-related or price-related evaluation factors are not permitted.

(b) Each firm must certify to the governmental entity that each engineer or architect that is a member of the firm was selected based on demonstrated competence and qualifications, in the manner provided by Section 2254.004.

(c) The governmental entity shall qualify a maximum of five responders to submit proposals that contain additional information and, if the governmental entity chooses, to interview for final selection.

(d) The governmental entity shall evaluate the additional information submitted by the offerors on the basis of the selection criteria stated in the request for qualifications and the results of any interview.

(e) The governmental entity may request additional information regarding demonstrated competence and qualifications, considerations of the safety and long-term durability of the project, the feasibility of implementing the project as proposed, the ability of the offeror to meet schedules, or costing methodology. As used in this subsection, "costing methodology" means an offeror's policies on subcontractor markup, definition of general conditions, range of cost for general conditions, policies on retainage, policies on contingencies, discount for prompt payment, and expected staffing for administrative duties. The term does not include a guaranteed maximum price or bid for overall design or construction.

(f) The governmental entity shall rank each proposal submitted on the basis of the criteria set forth in the request for qualifications.

Sec. 2264.308. SELECTION OF DESIGN-BUILD FIRM. (a) The governmental entity shall select the design-build firm that submits the proposal offering the best value for the governmental entity on the basis of the published selection criteria and on its ranking evaluations.

(b) The governmental entity shall first attempt to negotiate a contract with the selected firm.

(c) If the governmental entity is unable to negotiate a satisfactory contract with the selected firm, the governmental entity shall, formally and in writing, end all negotiations with that firm and proceed to negotiate with the next firm in the order of the selection ranking until a contract is reached or negotiations with all ranked firms end.

Sec. 2264.309. COMPLETION OF DESIGN AFTER SELECTION. After selection of the design-build firm, that firm's architects or engineers shall complete the design and submit all design elements for review and determination of scope compliance to the governmental entity or governmental entity's architect or engineer before or concurrently with construction.

Sec. 2264.310. FINAL CONSTRUCTION DOCUMENTS. The design-build firm shall supply a signed and sealed set of construction documents for the project to the governmental entity at the conclusion of construction.

Sec. 2264.311. PERFORMANCE OR PAYMENT BOND. (a) A payment or performance bond is not required and may not provide coverage for the portion of the design-build contract with the design-build firm under this subchapter that includes design services only.

(b) If a fixed contract amount or guaranteed maximum price has not been determined at the time the design-build contract is awarded, the penal sums of the performance and payment bonds delivered to the governmental entity must each be in an amount equal to the project budget, as specified in the design criteria package.

(c) The design-build firm shall deliver the bonds not later than the 10th day after the date the design-build firm executes the contract unless the design-build firm furnishes a bid bond or other financial security acceptable to the governmental entity to ensure that the design-build firm will furnish the required performance and payment bonds when a guaranteed maximum price is established.

[Sections 2264.312-2264.350 reserved for expansion]

SUBCHAPTER H. JOB ORDER CONTRACTS METHOD

Sec. 2264.351. JOB ORDER CONTRACTS FOR FACILITIES CONSTRUCTION OR REPAIR. A governmental entity may award job order contracts for the minor construction, repair, rehabilitation, or alteration of a facility if:

(1) the work is of a recurring nature but the delivery times are indefinite; and

(2) indefinite quantities and orders are awarded substantially on the basis of predescribed and prepriced tasks.

Sec. 2264.352. CONTRACTUAL UNIT PRICES. The governmental entity may establish contractual unit prices for a job order contract by:

(1) specifying one or more published construction unit price books and the applicable divisions or line items; or

(2) providing a list of prepriced work items and requiring the offerors to propose one or more coefficients or multipliers to be applied to the price book or prepriced work items as the price proposal.

Sec. 2264.353. COMPETITIVE SEALED PROPOSAL METHOD. (a) A governmental entity may use the competitive sealed proposal method under Subchapter D for job order contracts or may award a contract through the use of an interlocal contract.

(b) The governmental entity shall advertise for, receive, and publicly open sealed proposals for job order contracts.

(c) The governmental entity may require offerors to submit information in addition to rates, including experience, past performance, and proposed personnel and methodology.

(d) Unless required by Section 2264.355, a request for a competitive sealed proposal under this subchapter is not required to include the information required by Section 2264.154(a).

Sec. 2264.354. AWARDING OF JOB CONTRACTS. The governmental entity may award job order contracts to one or more job order contractors in connection with each solicitation of proposals.

Sec. 2264.355. USE OF ARCHITECT OR ENGINEER. If a job order contract or an order issued under the contract requires architectural or engineering services that constitute the practice of engineering within the meaning of Chapter 1001, Occupations Code, or the practice of architecture within the meaning of Chapter 1051, Occupations Code, those services shall be provided in accordance with applicable law.

Sec. 2264.356. JOB ORDER CONTRACT TERM. (a) A job order contract is for the base term and with any renewal options that the governmental entity sets forth in the request for proposals.

(b) If the governmental entity fails to advertise the base term, the base term may not exceed two years and is not renewable without further advertisement and solicitation of proposals.

Sec. 2264.357. JOB ORDERS. (a) An order for a job or project under a job order contract must be signed by the governmental entity's representative and the contractor.

(b) The order may be:

(1) a fixed price, lump-sum contract based substantially on contractual unit pricing applied to estimated quantities; or

(2) a unit price order based on the quantities and line items delivered.

Sec. 2264.358. PAYMENT AND PERFORMANCE BONDS. The contractor shall provide payment and performance bonds, if required by law, based on the amount or estimated amount of any order.

[Sections 2264.359-2264.400 reserved for expansion]

SUBCHAPTER I. NOTICE REQUIREMENTS FOR LOCAL GOVERNMENTS

Sec. 2264.401. NOTICE REQUIREMENTS FOR CERTAIN LOCAL GOVERNMENTS. (a) For a contract entered into by a defense base development authority, municipality, or river authority under a method provided by this chapter, the municipality or authority shall publish notice of the time and place the bids or proposals or the responses to a request for qualifications will be received and opened.

(b) The notice must be published in a newspaper of general circulation in the county in which the defense base development authority's or municipality's central administrative office is located or in the county in which the greatest amount of the river authority's territory is located. If there is not a newspaper of general circulation in that county, the notice shall be published in a newspaper of general circulation in the county nearest the county seat of the county in which

the defense base development authority's or municipality's central administrative office is located or the county seat of the county in which the greatest amount of the river authority's territory is located.

(c) The notice must be published once each week for at least two weeks before the deadline for receiving bids, proposals, or responses.

(d) In a two-step procurement process, the time and place the second step bids, proposals, or responses will be received are not required to be published separately.

Sec. 2264.402. NOTICE REQUIREMENTS FOR COUNTIES. (a) For a contract entered into by a county under a method provided by this chapter, the county shall publish notice of the time and place the bids or proposals or request for qualifications will be received and opened.

(b) The notice must be published in a newspaper of general circulation in the county once each week for at least two weeks before the deadline for receiving bids, proposals, or responses. If there is not a newspaper of general circulation in the county, the notice shall be:

(1) posted at the courthouse door of the county; and

(2) published in a newspaper of general circulation in the county nearest the county seat of the county publishing the notice.

[Sections 2264.403-2264.425 reserved for expansion]

SUBCHAPTER J. ENFORCEMENT

Sec. 2264.426. VOID CONTRACT. A contract entered into in violation of this chapter is void as against public policy.

Sec. 2264.427. DECLARATORY OR INJUNCTIVE RELIEF. (a) This chapter may be enforced through an action for declaratory or injunctive relief filed not later than the 30th day after the date on which the contract is awarded.

(b) The injunctive relief provided by this section does not apply to enforcement of a contract entered into by a state agency that has a formal administrative appeals process regarding the award of the contract.

SECTION 4. Subchapter D, Chapter 11, Education Code, is amended by adding Section 11.168 to read as follows:

Sec. 11.168. USE OF DISTRICT RESOURCES PROHIBITED FOR CERTAIN PURPOSES. The board of trustees of a school district may not enter into an agreement authorizing the use of school district employees, property, or resources for the provision of materials or labor for the design, construction, or renovation of improvements to real property not owned or leased by the district.

SECTION 5. Sections 44.031(a) and (f), Education Code, are amended to read as follows:

(a) Except as provided by this subchapter, all school district contracts, except contracts for the purchase of produce or vehicle fuel or a contract made under Chapter 2264, Government Code, valued at $25,000 or more in the aggregate for each 12-month period shall be made by the method, of the following methods, that provides the best value for the district:

(1) competitive bidding;

(2) competitive sealed proposals;

(3) a request for proposals, for services other than construction services;

(4) a catalogue purchase as provided by Subchapter B, Chapter 2157, Government Code;

(5) an interlocal contract;

(6) a method provided by Chapter 2264, Government Code;

(7) [~~a design/build contract;~~

[~~(7) a contract to construct, rehabilitate, alter, or repair facilities that involves using a construction manager;~~

[~~(8) a job order contract for the minor construction, repair, rehabilitation, or alteration of a facility;~~

[~~(9)~~] the reverse auction procedure as defined by Section 2155.062(d), Government Code; or

(8) [~~(10)~~] the formation of a political subdivision corporation under Section 304.001, Local Government Code.

(f) This section does not apply to a contract for professional services rendered, including services of an architect, attorney, engineer, or fiscal agent. A school district may, at its option, contract for professional services rendered by a financial consultant or a technology consultant in the manner provided by Section 2254.003, Government Code, in lieu of the methods provided by this section.

SECTION 6. Section 44.901, Education Code, is amended by adding Subsection (j) to read as follows:

(j) Chapter 2264, Government Code, does not apply to this section.

SECTION 7. Section 51.927, Education Code, is amended by adding Subsection (k) to read as follows:

(k) Chapter 2264, Government Code, does not apply to this section.

SECTION 8. Section 2166.406, Government Code, is amended by adding Subsection (k) to read as follows:

(k) Chapter 2264 does not apply to this section.

SECTION 9. Subchapter A, Chapter 2254, Government Code, is amended by adding Section 2254.007 to read as follows:

Sec. 2254.007. DECLARATORY OR INJUNCTIVE RELIEF. (a) This subchapter may be enforced through an action for declaratory or injunctive relief filed not later than the 30th day after the date on which the contract is awarded.

(b) The injunctive relief provided by this section does not apply to enforcement of a contract entered into by a state agency that has a formal administrative appeals process regarding the award of the contract.

SECTION 10. Section 252.021(a), Local Government Code, is amended to read as follows:

(a) Before a municipality may enter into a contract that requires an expenditure of more than $25,000 from one or more municipal funds, the municipality must:

(1) comply with the procedure prescribed by this subchapter and Subchapter C for competitive sealed bidding or competitive sealed proposals;

(2) use the reverse auction procedure, as defined by Section 2155.062(d), Government Code, for purchasing; or

(3) comply with a method described by Chapter 2264, Government Code [~~Subchapter H, Chapter 271~~].

SECTION 11. Chapter 302, Local Government Code, is amended by adding Section 302.006 to read as follows:

Sec. 302.006. EXEMPTION FROM OTHER CONTRACTING LAW. Chapter 2264, Government Code, does not apply to this chapter.

SECTION 12. Subchapter E, Chapter 335, Local Government Code, is amended by adding Section 335.077 to read as follows:

Sec. 335.077. EXEMPTION FROM CONSTRUCTION CONTRACTING LAW. Chapter 2264, Government Code, does not apply to this chapter.

SECTION 13. Section 22.074, Transportation Code, is amended by adding Subsection (f) to read as follows:

(f) Chapter 2264, Government Code, does not apply to a joint board whose constituent agencies are populous home-rule municipalities.

SECTION 14. Section 370.305, Transportation Code, is amended by adding Subsection (e) to read as follows:

(e) Chapter 2264, Government Code, does not apply to agreements entered into pursuant to this section.

SECTION 15. Section 431.101(g), Transportation Code, is amended to read as follows:

(g) A local government corporation [~~created by a navigation district~~] must comply with all state law related to the design and construction of projects, including the procurement of design and construction services, that applies to the local government [~~navigation district~~] that created the corporation.

SECTION 16. Chapter 451, Transportation Code, is amended by adding Section 451.813 to read as follows:

Sec. 451.813. EXEMPTION FROM OTHER CONTRACTING LAW. Chapter 2264, Government Code, does not apply to this subchapter, as added by H.B. No. 2300, Acts of the 79th Legislature, Regular Session, 2005.

SECTION 17. Subchapter C, Chapter 452, Transportation Code, is amended by adding Section 452.1095 to read as follows:

Sec. 452.1095. EXEMPTION FROM OTHER CONTRACTING LAW FOR CERTAIN AUTHORITIES. Chapter 2264, Government Code, does not apply to an authority consisting of one subregion governed by a subregional board created under Subchapter O.

SECTION 18. Section 60.452, Water Code, as added by Chapter 307, Acts of the 78th Legislature, Regular Session, 2003, is amended by adding Subsection (c) to read as follows:

(c) Chapter 2264, Government Code, does not apply to this subchapter.

SECTION 19. The following are repealed:

(1) Sections 44.0312, 44.0315, 44.035-44.041, and 44.043, Education Code;

(2) Subchapter T, Chapter 51, Education Code;

(3) Sections 2166.2511, 2166.2526, 2166.2531, 2166.2532, 2166.2533, and 2166.2535, Government Code;

(4) Subchapter H, Chapter 271, Local Government Code; and

(5) Section 431.101(e), Transportation Code.

SECTION 20. (a) The changes in law made by this Act apply only to a contract or construction project for which a governmental entity first advertises or otherwise requests bids, proposals, offers, or qualifications, or makes a similar solicitation, on or after the effective date of this Act.

(b) A contract or construction project for which a governmental entity first advertises or otherwise requests bids, proposals, offers, or qualifications, or makes a similar solicitation, before the effective date of this Act is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 21. This Act takes effect September 1, 2005.

Representative Callegari moved to adopt the conference committee report on **HB 2525**.

The motion to adopt the conference committee report on **HB 2525** 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.)

SB 1604 - RULES SUSPENDED

Representative B. Cook moved to suspend all necessary rules to consider the conference committee report on **SB 1604** at this time.

The motion prevailed.

SB 1604 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative B. Cook submitted the following conference committee report on **SB 1604** :

Representative B. Cook moved to adopt the conference committee report on **SB 1604**.

The motion to adopt the conference committee report on **SB 1604** 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.)

HB 873 - RULES SUSPENDED

Representative Dukes moved to suspend all necessary rules to consider the conference committee report on **HB 873** at this time.

The motion prevailed.

HB 873 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Dukes submitted the following conference committee report on **HB 873** :

Austin, Texas, May 27, 2005

The Honorable David Dewhurst
President of the Senate

The Honorable Tom Craddick
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the senate and the house of representatives on **HB 873** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Lucio	Dukes
Ellis, Rodney	Giddings
Harris	Zedler
Madla	Solomons
	Elkins
On the part of the senate	On the part of the house

HB 873, A bill to be entitled An Act relating to regulation by a property owners' association of certain displays on property in a residential subdivision.

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

SECTION 1. Chapter 202, Property Code, is amended by adding Section 202.009 to read as follows:

Sec. 202.009. REGULATION OF DISPLAY OF POLITICAL SIGNS. (a) Except as otherwise provided by this section, a property owners' association may not enforce or adopt a restrictive covenant that prohibits a property owner from displaying on the owner's property one or more signs advertising a political candidate or ballot item for an election:

(1) on or after the 90th day before the date of the election to which the sign relates; or

(2) before the 10th day after that election date.

(b) This section does not prohibit the enforcement or adoption of a covenant that:

(1) requires a sign to be ground-mounted; or

(2) limits a property owner to displaying only one sign for each candidate or ballot item.

(c) This section does not prohibit the enforcement or adoption of a covenant that prohibits a sign that:

(1) contains roofing material, siding, paving materials, flora, one or more balloons or lights, or any other similar building, landscaping, or nonstandard decorative component;

(2) is attached in any way to plant material, a traffic control device, a light, a trailer, a vehicle, or any other existing structure or object;

(3) includes the painting of architectural surfaces;

(4) threatens the public health or safety;

(5) is larger than four feet by six feet;

(6) violates a law;

(7) contains language, graphics, or any display that would be offensive to the ordinary person; or

(8) is accompanied by music or other sounds or by streamers or is otherwise distracting to motorists.

(d) A property owners' association may remove a sign displayed in violation of a restrictive covenant permitted by this section.

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.

Representative Dukes moved to adopt the conference committee report on **HB 873**.

A record vote was requested.

The motion to adopt the conference committee report on **HB 873** prevailed by (Record 949): 138 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.; Callegari; Campbell; Casteel; Castro; Chavez; Chisum; Coleman; Cook, B.; Cook, R.; Corte; Crownover; Davis, J.; Davis, Y.; Dawson; Delisi; Denny; Deshotel; Driver; Dukes; Dunnam; Dutton; Edwards; Eiland; Eissler; Elkins; Escobar; Farabee; Farrar; Flores; Flynn; Frost; Gallego; Geren; Giddings; Gonzales; Gonzalez Toureilles; Goolsby; Griggs; Grusendorf; Guillen; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Hegar; Herrero; Hilderbran; Hill; Hochberg; Hodge; Homer; Hope; Hopson; 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; McClendon; McReynolds; Menendez; Merritt; Miller; Moreno, P.; Morrison; Mowery; Naishtat; Nixon; Oliveira; Olivo; Orr; Otto; Paxton; Peña; Phillips; Pickett; Pitts; Puente; Quintanilla; Raymond; Reyna; Riddle; Ritter; Rodriguez; Rose; Seaman; Smith, T.; Smith, W.; Solis; Solomons; Strama; Straus; Swinford; Talton; Taylor; Thompson; Truitt; Turner; Uresti; Van Arsdale; Veasey; Villarreal; Vo; West; Wong; Woolley.

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

Absent, Excused — Crabb; Goodman; Smithee.

Absent — Burnam; Gattis; Howard; Hughes; Jones, J.; Noriega, M.

STATEMENT OF VOTE

I was shown voting yes on Record No. 949. I intended to vote no.

Hope

HR 2250 - NOTICE OF INTRODUCTION

Pursuant to the provisions of Rule 13, Section 9(f), of the House Rules, the chair announced the introduction of **HR 2250**, suspending the limitations on the conferees for **HB 2481**.

HB 1357 - RULES SUSPENDED

Representative Flores moved to suspend all necessary rules to consider the conference committee report on **HB 1357** at this time.

The motion prevailed.

HB 1357 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Flores submitted the following conference committee report on **HB 1357** :

Austin, Texas, May 27, 2005

The Honorable David Dewhurst
President of the Senate

The Honorable Tom Craddick
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the senate and the house of representatives on **HB 1357** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Seliger	Flores
Ellis, Rodney	Chisum
Hinojosa	Morrison
Lindsay	Solis
Williams	Homer
On the part of the senate	On the part of the house

HB 1357, A bill to be entitled An Act relating to the civil consequences of certain alcohol-related offenses.

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

SECTION 1. Section 106.115(d), Alcoholic Beverage Code, is amended to read as follows:

(d) If the defendant does not present the required evidence within the prescribed period, the court:

(1) shall order the Department of Public Safety to:

(A) suspend the defendant's driver's license or permit for a period not to exceed six months or, if the defendant does not have a license or permit, to deny the issuance of a license or permit to the defendant for that period; or

(B) if the defendant has been previously convicted of an offense under one or more of the sections listed in Subsection (a), suspend the defendant's driver's license or permit for a period not to exceed one year or, if the defendant does not have a license or permit, to deny the issuance of a license or permit to the defendant for that period; and

(2) may order the defendant or the parent, managing conservator, or guardian of the defendant to do any act or refrain from doing any act if the court determines that doing the act or refraining from doing the act will increase the likelihood that the defendant will present evidence to the court that the defendant has satisfactorily completed an alcohol awareness program or performed the required hours of community service.

SECTION 2. Section 521.343(a), Transportation Code, is amended to read as follows:

(a) Except as provided by Sections 521.342(b), 521.344(a), (b), (d), (e), (f), (g), (h), and (i), 521.345, 521.346, [~~and~~] 521.3465, and 521.351, a suspension under this subchapter is for one year.

SECTION 3. Subchapter O, Chapter 521, Transportation Code, is amended by adding Section 521.351 to read as follows:

Sec. 521.351. PURCHASE OF ALCOHOL FOR MINOR OR FURNISHING ALCOHOL TO MINOR: AUTOMATIC SUSPENSION; LICENSE DENIAL. (a) A person's driver's license is automatically suspended on final conviction of an offense under Section 106.06, Alcoholic Beverage Code.

(b) The department may not issue a driver's license to a person convicted of an offense under Section 106.06, Alcoholic Beverage Code, who, on the date of the conviction, did not hold a driver's license.

(c) The period of suspension under this section is the 180 days after the date of a final conviction, and the period of license denial is the 180 days after the date the person applies to the department for reinstatement or issuance of a driver's license, unless the person has previously been denied a license under this section or had a license suspended, in which event the period of suspension is one year after the date of a final conviction, and the period of license denial is one year after the date the person applies to the department for reinstatement or issuance of a driver's license.

SECTION 4. (a) The change in law made by this Act applies only to an offense committed on or after September 1, 2005.

(b) An offense committed before September 1, 2005, is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before September 1, 2005, if any element of the offense was committed before that date.

SECTION 5. This Act takes effect September 1, 2005.

Representative Flores moved to adopt the conference committee report on **HB 1357**.

The motion to adopt the conference committee report on **HB 1357** 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.)

RESOLUTIONS ADOPTED

Representative Edwards moved to suspend all necessary rules in order to take up and consider at this time **HR 2155 - HR 2171**.

The motion prevailed.

The following resolutions were laid before the house:

HR 2155 (by Alonzo), Recognizing Diez y Seiz de Septiembre (Mexican Independence Day).

HR 2156 (by Alonzo), Congratulating Rocio Beltran, the 2005 valedictorian of Sunset High School.

HR 2157 (by Alonzo), Congratulating Julio Cesar Lopez, the 2005 salutatorian of Sunset High School.

HR 2158 (by Alonzo), Congratulating Candyce D. Dotsy, the 2005 valedictorian of Kimball High School.

HR 2159 (by Alonzo), Congratulating Michele L. Mitchell, the 2005 salutatorian of Kimball High School.

HR 2160 (by Alonzo), Congratulating Amitbhai Patel, the 2005 valedictorian of Adamson High School.

HR 2161 (by Alonzo), Congratulating Priteshkum Patel, the 2005 salutatorian of Adamson High School.

HR 2162 (by Alonzo), Congratulating Sarah Maria Baldazo, the 2005 valedictorian of Molina High School.

HR 2163 (by Alonzo), Congratulating Roxanna Elideth Lara, the 2005 salutatorian of Molina High School.

HR 2164 (by Alonzo), Congratulating Ashton M. Jeter, the 2005 valedictorian of Grand Prairie High School.

HR 2165 (by Alonzo), Congratulating Brittany R. Hein, the 2005 salutatorian of Grand Prairie High School.

HR 2166 (by P. King), Congratulating Earl King of Weatherford on his 74th birthday and commending him for his community service.

HR 2167 (by Anchia), Honoring Dr. Joseph L. LaManna of Oak Cliff on his 20th anniversary as chairman of Dallas Southwest Osteopathic Physicians, Inc.

HR 2168 (by Anchia), Honoring Colleen C. Barrett of Dallas for her receipt of the Horatio Alger Award.

HR 2169 (by Anchia), Honoring James W. Keyes of Dallas for his receipt of the Horatio Alger Award.

HR 2170 (by Quintanilla), Honoring Jeffrey Justin Ivey on attaining the rank of Eagle Scout.

HR 2171 (by Quintanilla), Honoring James A. Bonneau on attaining the rank of Eagle Scout.

The resolutions were adopted.

RESOLUTIONS ADOPTED

Representative Edwards moved to suspend all necessary rules in order to take up and consider at this time **HR 2174**, **HR 2176**, **HR 2182**, **HR 2183**, **HR 2185**, **HR 2190 - HR 2192**, **HR 2195**, and **HR 2202**.

The motion prevailed.

The following resolutions were laid before the house:

HR 2174 (by Harper-Brown), Congratulating Michael Weaver, Lily Martinez, and Christina Fiallos for winning third place at the 2005 DECA International Career and Development Conference.

HR 2176 (by Bailey), Honoring Shirley Reed of Aldine for her many civic contributions.

HR 2182 (by Craddick), Honoring the Stephenson family of Midland for three generations of Eagle Scouts.

HR 2183 (by Craddick), Honoring Mary Alice Sims of Lamesa on her retirement in May 2005 after 38 years as a teacher.

HR 2185 (by Merritt), Congratulating the Lindale High School academic team on its success at the 2005 UIL state academic meet.

HR 2190 (by Hughes), Honoring Lottie Davison on her 100th birthday.

HR 2191 (by Hughes), Congratulating Robroy Industries on its 100th anniversary.

HR 2192 (by Wong), Commemorating the completion of the Karl Young Park Renovation Project.

HR 2195 (by Bohac), Recognizing October 29, 2005, as Spring Branch Day.

HR 2202 (by Laubenberg, Hughes, Paxton, and J. Davis), Commending all those associated with the Shared Vision for Health Care in Texas Project of the Texas Institute for Health Policy Research and extending to the project leaders and participants sincere best wishes for success with their important work.

The resolutions were adopted.

HR 2248 - ADOPTED
(by McReynolds)

Representative McReynolds moved to suspend all necessary rules to take up and consider at this time **HR 2248**.

The motion prevailed.

The following resolution was laid before the house:

HR 2248, In memory of Johnnie Upsher Goodman of Arlington.

HR 2248 was read and was unanimously adopted by a rising vote.

On motion of Representative McReynolds, the names of all the members of the house were added to **HR 2248** as signers thereof.

RESOLUTIONS ADOPTED

Representative Edwards moved to suspend all necessary rules in order to take up and consider at this time **HR 993**, **HR 1216**, **HR 1376**, **HR 2137**, **HR 2203 - HR 2207**, **HR 2209 - HR 2211**, **HR 2218**, **HR 2219**, **HR 2223 - HR 2231**, and **HR 2233**.

The motion prevailed.

The following resolutions were laid before the house:

HR 993 (by Dukes), Commending the Travis County foster care system and area foster families.

HR 1216 (by Laubenberg), Honoring Wylie ISD superintendent Dr. John Fuller on being named the 2004 Superintendent of the Year for Region 10.

HR 1376 (by Grusendorf), Commending the Texas Education Agency and the Ministry of Education in Spain.

HR 2137 (by Gallego), Congratulating Julio Cesar Dovalina of Del Rio on his receipt of the St. Edward's University Presidential Award in 2005.

HR 2203 (by Guillen), Honoring Hortencia Hinojosa Saenz of Rio Grande City on her 107th birthday.

HR 2204 (by Flores), Honoring Cynthia Renee Cantu as valedictorian and Sandra Elise Acevedo as salutatorian of the Class of 2005 at Mission Veterans Memorial High School.

HR 2205 (by Flores), Honoring Cesar Garza as valedictorian and Judy Ann Anzaldua as salutatorian of the Class of 2005 at La Joya High School.

HR 2206 (by Flores), Honoring Eduardo Perez as valedictorian and Yvonne Denise Gonzalez as salutatorian of the Class of 2005 at Mission High School.

HR 2207 (by Flores), Honoring Susana A. Alaniz as valedictorian and Jesus Mares as salutatorian of the Class of 2005 at Hidalgo High School.

HR 2209 (by Uresti), Commending the Honorable Nelson William Wolff for his outstanding contributions in behalf of the citizens of Bexar County and the State of Texas.

HR 2210 (by Dutton), Commending the members of the Young Adult Ministry of Blessed Hope Baptist Church in Houston for hosting a walk-a-thon fund-raiser benefiting area residents in June 2005.

HR 2211 (by Dutton), Honoring Destiny's Child for their accomplishments in the music industry.

HR 2218 (by Flores), Commending the fifth-grade students of Hidalgo Elementary School for their interest in learning more about Texas state government.

HR 2219 (by Chisum), Expressing findings of the House of Representatives regarding cooperative agreements between the Texas Commission on Environmental Quality and local governments under the Texas Clean Air Act.

HR 2223 (by Alonzo), Honoring former presidents of the Mexican-American Democrats of Texas.

HR 2224 (by Alonzo), Honoring former presidents of the Mexican-American Democrats of Texas.

HR 2225 (by Alonzo), Honoring Representative Irma Rangel and the Irma Lerma Rangel Young Women's Leadership School in Dallas.

HR 2226 (by Alonzo), Commemorating the 36th anniversary of the 1969 Crystal City student walkout.

HR 2227 (by Alonzo), Honoring Oak Cliff on the occasion of the 102nd anniversary of its annexation to Dallas.

HR 2228 (by Alonzo), Honoring the Dallas Association for Bilingual Education on its outstanding record of service to the community.

HR 2229 (by Alonzo), Honoring the Dallas Association for Bilingual Education on its outstanding record of service to the community.

HR 2230 (by Alonzo), Recognizing the week of April 24 through May 1, 2006, as National Crime Victims' Rights Week.

HR 2231 (by Alonzo), Expressing legislative intent that the University of North Texas establish a Center for Mexican-American Studies.

HR 2233 (by Alonzo), Expressing legislative intent that the University of North Texas establish a Center for Mexican-American Studies.

The resolutions were adopted.

RESOLUTIONS ADOPTED

Representative Edwards moved to suspend all necessary rules in order to take up and consider at this time **HR 2217**, **HR 2220**, and **HR 2232**.

The motion prevailed.

The following resolutions were laid before the house:

HR 2217 (by Flores), In memory of Ramiro Bourbois of Mission.

HR 2220 (by Chisum), In memory of G. Bradley Bourland of Austin.

HR 2232 (by Alonzo), Honoring the life of Selena Quintanilla Perez on the 11th anniversary of her passing.

The resolutions were unanimously adopted by a rising vote.

RESOLUTIONS ADOPTED

Representative Edwards moved to suspend all necessary rules in order to take up and consider at this time **HR 277**, **HR 981**, **HR 2187**, **HR 2193**, **HR 2215**, **HCR 232**.

The motion prevailed.

The following resolutions were laid before the house:

HR 277 (by Dukes), In memory of Roy Evans.

HR 981 (by Hilderbran), In memory of Richard Alan Reeder, Lieutenant Colonel USAF (Ret.), of Ballinger.

HR 2187 (by Giddings), In memory of Samuel William Hudson, Jr., of Dallas.

HR 2193 (by Hilderbran), In memory of Stan Reinhard of Brady.

HR 2215 (by Flynn), In memory of Howard and Edith Borgeson of Ben Wheeler.

HCR 232 (by Homer), In memory of U.S. Army Specialist Michael Greg Karr, Jr., of Mount Vernon.

The resolutions were unanimously adopted by a rising vote.

RESOLUTIONS ADOPTED

Representative Edwards moved to suspend all necessary rules in order to take up and consider at this time **HR 2235** and **HR 2238**.

The motion prevailed.

The following resolutions were laid before the house:

HR 2235 (by Peña), Honoring Raymundo S. Perez for his community service in the Rio Grande Valley.

HR 2238 (by Escobar), Congratulating the 2004-2005 science team from Academy High School in Kingsville on winning the Class 1A state championship at the UIL State Academic Meet.

The resolutions were adopted.

(Geren in the chair)

HB 2217 - RULES SUSPENDED

Representative McCall moved to suspend all necessary rules to consider the conference committee report on **HB 2217** at this time.

The motion prevailed.

HB 2217 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative McCall submitted the following conference committee report on **HB 2217** :

Austin, Texas, May 27, 2005

The Honorable David Dewhurst
President of the Senate

The Honorable Tom Craddick
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the senate and the house of representatives on **HB 2217** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Staples	McCall
Ogden	Hamric
Shapleigh	Eiland
Williams	Ritter
	Woolley
On the part of the senate	On the part of the house

HB 2217, A bill to be entitled An Act relating to the management of public school land and the permanent school fund.

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

SECTION 1. Section 51.001(11), Natural Resources Code, is amended to read as follows:

(11) "Market value" has the meaning assigned by Section 1.04, Tax Code [~~means the value of real property determined by an appraisal performed by an appraiser~~].

SECTION 2. The heading to Subchapter B, Chapter 51, Natural Resources Code, is amended to read as follows:

SUBCHAPTER B. PROVISIONS GENERALLY APPLICABLE TO THE MANAGEMENT [~~SALE AND LEASE~~] OF PUBLIC SCHOOL AND ASYLUM LAND

SECTION 3. The heading to Section 51.011, Natural Resources Code, is amended to read as follows:

Sec. 51.011. MANAGEMENT [~~SALE AND LEASE~~] OF PUBLIC SCHOOL LAND.

SECTION 4. Section 51.011, Natural Resources Code, is amended by amending Subsection (a) and adding Subsections (a-1) and (a-2) to read as follows:

(a) Any land that is set apart to the permanent school fund under the constitution and laws of this state together with the mineral estate in riverbeds, channels, and the tidelands, including islands, shall be subject to the sole and exclusive management and control of [~~controlled, sold, and leased by~~] the school land board and the commissioner under the provisions of this chapter and other applicable law.

(a-1) The board may acquire, sell, lease, trade, improve, or otherwise manage, control, or use land that is set apart to the permanent school fund in any manner, at such prices, and under such terms and conditions as the board finds to be in the best interest of the fund.

(a-2) Not later than October 15 of each year, the board shall report to the Legislative Budget Board the sale of any land that is set apart to the permanent school fund for less than appraised value or the purchase of any land that is set apart to the permanent school fund for more than appraised value during the preceding state fiscal year.

SECTION 5. Section 51.051, Natural Resources Code, is amended to read as follows:

Sec. 51.051. SALE OF LAND. All [~~Subject to the provisions of Section 32.109 of this code, all~~] sales of land described in Section 51.011 [~~of this code~~] shall be made by or under the direction of the school land board [~~to the applicant who submits the highest bid for the land at a price that is not less than the price set by the board for purchase of the land~~].

SECTION 6. Section 51.052, Natural Resources Code, is amended by amending Subsections (d), (e), and (i) and adding Subsection (l) to read as follows:

(d) Before the land under this chapter is sold, the appraiser must appraise the land at its market value and file a copy of the appraisal with the commissioner. [~~No land covered by this chapter may be sold for less than the market value that appears in the appraisal made under this subsection.~~]

(e) The owner of land that surrounds land in a tract shall have a preference right to purchase the tract before the land is made available for sale to any other person, provided the person having the preference right pays not less than the market value for the land as determined by the board and the board finds use of the preference to be in the best interest of the state. The board shall adopt rules to implement this preference right.

(i) If no bid meeting minimum requirements is received for a tract of land offered at a sealed bid sale under Subchapter D of Chapter 32 [~~of this code~~], or if the transaction involves commercial real estate and the board determines that it is in the best interest of the permanent school fund, the asset management division of the land office may solicit proposals or negotiate a sale, exchange, or lease of the land to any person. The asset management division may [~~also~~] contract for the services of a real estate broker or of a private brokerage or real estate firm to assist in a [~~the real estate~~] transaction under this subsection. [~~The sale price may not be less than the market value.~~] The board must approve any negotiated sale, exchange, or lease of any land under this section.

(l) If the board leases land under this subchapter and the lease includes the right to produce groundwater from the land, the lessee shall comply with the statutory provisions governing and the rules adopted by the groundwater conservation district, if any, in which the land is located, including the statutory provisions and rules governing the production and use of groundwater and the transfer of groundwater out of the district.

SECTION 7. Sections 51.401(a) and (c), Natural Resources Code, are amended to read as follows:

(a) The board may designate funds received from the sale of permanent school fund land under this chapter and the proceeds of future mineral leases and royalties generated from existing and future [~~active~~] leases of permanent school fund mineral interests received under Chapters 52 and 53 [~~of this code~~] for deposit in a special fund account of the permanent school fund in the State Treasury to be used by the board [~~to acquire fee or lesser interests in real property, including mineral and royalty interests, for the use and benefit of the permanent school fund,~~] as provided by [~~Section 51.402 of~~] this subchapter.

(c) Money received from the sale of a particular piece of land [~~and designated for the acquisition of interests in real property~~] under this subchapter must be used by the board as provided by this subchapter not later than two years after the date of the sale of land from which the money is derived. Money received from the lease of minerals and royalties derived from [~~active~~] leases and designated for use by the board as provided by [~~the acquisition of interests in real property under~~] this subchapter must be used by the board not later than two years after the date the money is deposited in the special fund account.

SECTION 8. Section 51.402, Natural Resources Code, is amended to read as follows:

Sec. 51.402. USE OF DESIGNATED FUNDS [~~ACQUISITION OF INTEREST IN REAL PROPERTY~~]. (a) The board may use the money designated under Section 51.401 [~~of this subchapter to acquire real property and to pay the expenses of acquisitions and sales~~] for any of the following purposes:

(1) to add to a tract of public school land to form a tract of sufficient size to be manageable;

(2) to add contiguous land to public school land;

(3) to acquire, as public school land, interests in real property for [~~of unique~~] biological, commercial, geological, cultural, or recreational purposes [~~value~~]; [~~or~~]

(4) to acquire mineral and royalty interests for the use and benefit of the permanent school fund;

(5) to protect, maintain, or enhance the value of public school land;

(6) to acquire interests in real estate; or

(7) to pay reasonable fees for professional services related to a permanent school fund investment.

(b) Before using funds [~~acquiring real property~~] under Subsection (a) [~~of this section~~], the board must determine, using the prudent investor standard, that the use of the funds for the intended purpose [~~acquisition~~] is in the best interest of the permanent school fund.

(c) Notwithstanding Subsection (a), the market value of the investments in real estate under this section on January 1 of each even-numbered year may not exceed an amount that is equal to 15 percent of the market value of the permanent school fund on that date.

SECTION 9. Subchapter I, Chapter 51, Natural Resources Code, is amended by adding Sections 51.4021 and 51.408-51.412 to read as follows:

Sec. 51.4021. APPOINTMENT OF SPECIAL FUND MANAGERS. (a) The board may appoint investment managers to invest the money designated under Section 51.401 by contracting for professional investment management services with one or more organizations that are in the business of managing real estate investments.

(b) To be eligible for appointment under this section, an investment manager must be:

(1) registered under the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-1 et seq.);

(2) a bank as defined by that Act; or

(3) an insurance company qualified to perform real estate investment services under the laws of more than one state.

(c) In a contract under this section, the board shall specify any policies, requirements, or restrictions, including ethical standards and disclosure policies and criteria for determining the quality of investments and for the use of standard rating services, that the board adopts for real estate investments of the permanent school fund. Money designated under Section 51.401 may not be invested in a real estate investment trust, as defined by Section 200.001, Business Organizations Code.

(d) Compensation paid to an investment manager by the board must be consistent with the compensation standards of the investment industry and compensation paid by similarly situated institutional investors.

(e) Chapter 2263, Government Code, applies to investment managers appointed under this section. The board by rule shall adopt standards of conduct for investment managers appointed under this section as required by Section 2263.004, Government Code, and shall implement the disclosure requirements of Section 2263.005 of that code.

Sec. 51.408. ETHICS POLICY AND TRAINING. (a) In addition to any other requirements provided by law, the board shall adopt and enforce an ethics policy that provides standards of conduct relating to the management and investment of the funds designated under Section 51.401. The ethics policy must include provisions that address the following issues as they apply to the management and investment of the funds and to persons responsible for managing and investing the funds:

(1) general ethical standards;

(2) conflicts of interest;

(3) prohibited transactions and interests;

(4) the acceptance of gifts and entertainment;

(5) compliance with applicable professional standards;

(6) ethics training; and

(7) compliance with and enforcement of the ethics policy.

(b) The ethics policy must include provisions applicable to:

(1) members of the board;

(2) the commissioner;

(3) employees of the board; and

(4) any person who provides services to the board relating to the management or investment of the funds designated under Section 51.401.

(c) Not later than the 45th day before the date on which the board intends to adopt a proposed ethics policy or an amendment to or revision of an adopted ethics policy, the board shall submit a copy of the proposed policy, amendment, or revision to the Texas Ethics Commission and the state auditor for review and comments. The board shall consider any comments from the commission or state auditor before adopting the proposed policy.

(d) The provisions of the ethics policy that apply to a person who provides services to the board relating to the management or investment of the funds designated under Section 51.401 must be based on the Code of Ethics and the Standards of Professional Conduct prescribed by the Association for Investment Management and Research or other ethics standards adopted by another appropriate professionally recognized entity.

(e) The board shall ensure that applicable provisions of the ethics policy are included in any contract under which a person provides services to the board relating to the management and investment of the funds designated under Section 51.401.

Sec. 51.409. DISCLOSURE OF CONFLICTS OF INTEREST AND FINANCES. (a) A member of the board, the commissioner, an employee of the board, or a person who provides services to the board that relate to the management or investment of the funds designated under Section 51.401 who has a business, commercial, or other relationship that could reasonably be expected to diminish the person's independence of judgment in the performance of the person's responsibilities relating to the management or investment of the funds shall disclose the relationship in writing to the board.

(b) The board or the board's designee shall, in the ethics policy adopted under Section 51.408, define the kinds of relationships that may create a possible conflict of interest.

(c) A person who is required to file a disclosure statement under Subsection (a) shall refrain from giving advice or making decisions about matters affected by the conflict of interest unless the board, after consultation with the general counsel of the board, expressly waives this prohibition. The board shall maintain a written record of each waiver and the reasons for it. The board may delegate the authority to waive prohibitions under this subsection to one or more designated employees of the land office on a vote of a majority of the members of the board at an open meeting called and held in compliance with Chapter 551, Government Code. The board shall have any order delegating authority to waive prohibitions under this section entered into the minutes of the meeting. The board may adopt criteria for designated employees to use to determine the kinds of relationships that do not constitute a material conflict of interest for purposes of this subsection.

(d) Each employee of the board who exercises significant decision-making or fiduciary authority, as determined by the board, shall file financial disclosure statements with a person designated by the board. The content of a financial disclosure statement must comply substantially with the requirements of Subchapter B, Chapter 572, Government Code. A statement must be filed not later than the 30th day after the date a person is employed in a significant decision-making or fiduciary position and annually after employment not later than April 30. The filing deadline may be postponed by the board for not more than 60 days on written request or for an additional period for good cause, as determined by the chairman of the board. The board shall maintain a financial disclosure statement for at least five years after the date of its filing.

Sec. 51.410. REPORTS OF EXPENDITURES. A consultant, advisor, broker, or other person providing services to the board relating to the management and investment of the funds designated under Section 51.401 shall file with the board regularly, as determined by the board, a report that describes in detail any expenditure of more than $50 made by the person on behalf of:

(1) a member of the board;

(2) the commissioner; or

(3) an employee of the board.

Sec. 51.411. FORMS; PUBLIC INFORMATION. (a) The board shall prescribe forms for:

(1) statements of possible conflicts of interest and waivers of possible conflicts of interest under Section 51.409; and

(2) reports of expenditures under Section 51.410.

(b) A statement, waiver, or report described by Subsection (a) is public information.

(c) The board shall designate an employee of the board to act as custodian of statements, waivers, and reports described by Subsection (a) for purposes of public disclosure.

Sec. 51.412. REPORTS TO LEGISLATURE. (a) Not later than September 1 of each even-numbered year, the board shall submit to the legislature a report that, specifically and in detail, assesses the direct and indirect economic impact, as anticipated by the board, of the investment of funds designated under Section 51.401 for deposit in the special fund account of the permanent school fund. The board may not disclose information under this section that is confidential under applicable state or federal law. The report must include the following information:

(1) the total amount of money designated by Section 51.401 for deposit in the special fund account of the permanent school fund that the board intends to invest;

(2) the rate of return the board expects to attain on the investment;

(3) the amount of money the board expects to distribute to the permanent school fund after making the investments;

(4) the distribution of the board's investments by county;

(5) the effect of the board's investments on the level of employment, personal income, and capital investment in the state; and

(6) any other information the board considers necessary to include in the report.

(b) Not later than January 1 of each odd-numbered year, the board shall submit to the legislature a report that assesses the return and economic impact of the investments reported to the legislature before the preceding regular legislative session.

SECTION 10. Sections 32.254 and 51.403, Natural Resources Code, are repealed.

SECTION 11. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2005.

Representative McCall moved to adopt the conference committee report on **HB 2217**.

A record vote was requested.

The motion to adopt the conference committee report on **HB 2217** prevailed by (Record 950): 140 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; Coleman; Cook, B.; Cook, R.; Corte; Crownover; Davis, J.; Davis, Y.; Dawson; Delisi; Denny;

Deshotel; Driver; Dukes; Dunnam; Dutton; Eiland; Eissler; Elkins; Escobar; Farabee; Farrar; Flores; Flynn; Frost; Gallego; Gattis; Giddings; Gonzales; Gonzalez Toureilles; Goolsby; Griggs; Guillen; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Hegar; Herrero; Hilderbran; Hill; Hochberg; Hodge; Homer; Hope; Hopson; Howard; Hughes; Hunter; Hupp; Isett; Jackson; Jones, D.; Jones, J.; Keel; Keffer, B.; Keffer, J.; King, P.; King, T.; Kolkhorst; Krusee; Kuempel; Laney; Laubenberg; Leibowitz; Luna; Madden; Martinez; Martinez Fischer; McCall; McClendon; McReynolds; Menendez; Merritt; Miller; Moreno, P.; Morrison; Mowery; Naishtat; Nixon; Noriega, M.; Oliveira; Olivo; Orr; Otto; Paxton; Peña; Phillips; Pickett; Pitts; Puente; Quintanilla; Raymond; Reyna; Riddle; Ritter; Rodriguez; Rose; Seaman; Smith, T.; Smith, W.; Solis; Solomons; Straus; Swinford; Talton; Taylor; Thompson; Truitt; Turner; Uresti; Van Arsdale; Veasey; Villarreal; Vo; West; Woolley; Zedler.

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

Absent, Excused — Crabb; Goodman; Smithee.

Absent — Edwards; Grusendorf; Strama; Wong.

HB 2217 - STATEMENT OF LEGISLATIVE INTENT

The senate added the Madla amendment. The amendment was removed in conference committee at the request of the Speaker's office.

McCall

HB 2668 - RULES SUSPENDED

Representative Dutton moved to suspend all necessary rules to consider the conference committee report on **HB 2668** at this time.

The motion prevailed.

HB 2668 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Dutton submitted the following conference committee report on **HB 2668** :

Austin, Texas, May 28, 2005

The Honorable David Dewhurst
President of the Senate

The Honorable Tom Craddick
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the senate and the house of representatives on **HB 2668** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Wentworth	Nixon
Harris	Paxton
Hinojosa	Strama
On the part of the senate	On the part of the house

HB 2668, A bill to be entitled An Act relating to the performance by a private entity of the functions of a local child support registry.

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

SECTION 1. Section 101.018, Family Code, is amended to read as follows:

Sec. 101.018. LOCAL REGISTRY. "Local registry" means a county [~~an~~] agency or public entity operated under the authority of a district clerk, county government, juvenile board, juvenile probation office, domestic relations office, or other county agency or public entity that serves a county or a court that has jurisdiction under this title and that:

(1) receives child support payments;

(2) maintains records of child support payments;

(3) distributes child support payments as required by law; and

(4) maintains custody of official child support payment records.

SECTION 2. Section 154.241, Family Code, is amended by adding Subsection (g) to read as follows:

(g) Notwithstanding any other law, a private entity may perform the duties and functions of a local registry under this section either under a contract with a county commissioners court or domestic relations office executed under Section 204.002 or under an appointment by a court.

SECTION 3. Section 204.001, Family Code, is amended to read as follows:

Sec. 204.001. APPLICABILITY. This chapter applies only to a commissioners court or domestic relations office of a county that did not have the authority to contract with a private entity to receive, disburse, and record payments or restitution of child support on January 1, 1997.

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.

Representative Dutton moved to adopt the conference committee report on **HB 2668**.

A record vote was requested.

The motion to adopt the conference committee report on **HB 2668** prevailed by (Record 951): 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; Coleman; Cook, B.; Cook, R.; Corte; Crownover; Davis, J.; Davis, Y.; Dawson; Delisi; Denny; Deshotel; Driver; Dukes; Dunnam; Dutton; Eiland; Eissler; Elkins; Escobar; Farabee; Farrar; Flores; Flynn; Frost; Gallego; Gattis; Giddings; Gonzales; Gonzalez Toureilles; Goolsby; Griggs; Grusendorf; Guillen; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Hegar; Herrero; Hilderbran; Hill; Hochberg; Hodge; Homer; Hope; Hopson; Howard; Hughes; Hunter; Hupp; Isett; Jackson; Jones, D.; Jones, J.; Keel; Keffer, B.; Keffer, J.; King, P.; King, T.; 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.; Solis; Solomons; Strama; Straus; Swinford; Talton; Taylor; Thompson; Truitt; Uresti; Van Arsdale; Veasey; Villarreal; Vo; West; Wong; Woolley; Zedler.

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

Absent, Excused — Crabb; Goodman; Smithee.

Absent — Edwards; Kolkhorst; Turner.

STATEMENT OF VOTE

When Record No. 951 was taken, I was temporarily out of the house chamber. I would have voted yes.

Kolkhorst

SB 982 - RULES SUSPENDED

Representative Puente moved to suspend all necessary rules to consider the conference committee report on **SB 982** at this time.

The motion prevailed.

SB 982 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Puente submitted the conference committee report on **SB 982**.

Representative Puente moved to adopt the conference committee report on **SB 982**.

A record vote was requested.

The motion to adopt the conference committee report on **SB 982** prevailed by (Record 952): 137 Yeas, 0 Nays, 3 Present, not voting.

Yeas — Allen, A.; Allen, R.; Alonzo; Anchia; Anderson; Baxter; Berman; Blake; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Burnam; Campbell; Casteel; Castro; Chavez; Chisum; Coleman; Cook, B.; Cook, R.; Corte; 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; Giddings; Gonzales; Gonzalez Toureilles; Goolsby; Griggs; Grusendorf; Guillen; Haggerty; Hamric; Hardcastle; Harper-Brown; Hartnett; Hegar; Herrero; Hilderbran; Hill; Hochberg; Hodge; Homer; Hope; Hopson; Howard; Hunter; Hupp; Isett; Jackson; Jones, D.; Jones, J.; Keel; Keffer, B.; Keffer, J.; King, P.; King, T.; Kolkhorst; Krusee; Kuempel; Laney; Laubenberg; Leibowitz; Luna; Martinez; Martinez Fischer; McCall; McClendon; McReynolds; Menendez; Merritt; Moreno, P.; Morrison; Mowery; 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.; 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; Geren(C); Miller.

Absent, Excused — Crabb; Goodman; Smithee.

Absent — Bailey; Callegari; Hamilton; Hughes; Madden; Phillips.

HB 872 - RULES SUSPENDED

Representative West moved to suspend all necessary rules to consider the conference committee report on **HB 872** at this time.

The motion prevailed.

HB 872 - POINT OF ORDER

Representative Y. Davis 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.

The point of order was withdrawn.

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).

HB 1800 - RULES SUSPENDED

Representative Denny moved to suspend all necessary rules to consider the conference committee report on **HB 1800** at this time.

The motion prevailed.

HB 1800 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Denny submitted the following conference committee report on **HB 1800** :

Austin, Texas, May 28, 2005

The Honorable David Dewhurst
President of the Senate

The Honorable Tom Craddick
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the senate and the house of representatives on **HB 1800** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Harris	Denny
Brimer	Hughes
Van de Putte	J. Jones
	Keel
	Madden
On the part of the senate	On the part of the house

HB 1800, A bill to be entitled An Act relating to corrected reports, registrations, and statements filed with the Texas Ethics Commission.

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

SECTION 1. Section 305.033, Government Code, is amended by adding Subsection (f) to read as follows:

(f) A registration or report other than an activities report filed by a registrant is not considered to be late for purposes of this section if the registrant files a corrected or amended registration or report not later than the 14th business day after the date the registrant becomes aware of the error or omission in the registration or report originally filed.

SECTION 2. Section 571.0771, Government Code, is amended by amending Subsection (a) and adding Subsections (b-1) and (b-2) to read as follows:

(a) A statement, registration, or report required that is filed with the commission is not considered to be late for purposes of any applicable civil penalty for late filing of the statement, registration, or report if:

(1) the statement, registration, or report as originally filed substantially complies with the applicable law; [~~and~~]

(2) any error or omission in the statement, registration, or report as originally filed was made in good faith; and

(3) the person filing the statement, registration, or report files a corrected or amended statement, registration, or report not later than the 14th business day after the date the person learns that the statement, registration, or report as originally filed is inaccurate or incomplete.

(b-1) For purposes of Subsection (a)(1), a report, other than a report required to be filed under Section 254.038, 254.039, 254.064(c), 254.124(c), or 254.154(c), Election Code, does not substantially comply with the applicable law if it contains an error or omission other than one of the following:

(1) an obvious typographical error;

(2) the omission of information required for the commission's administrative purposes;

(3) one or more instances of an incorrectly reported contribution or an unreported contribution, if the total of incorrectly reported or unreported contributions does not exceed the lesser of:

(A) 10 percent of the total contributions reported on the corrected report; or

(B) $10,000;

(4) one or more instances of an incorrectly reported contribution or an unreported contribution, if the total of incorrectly reported or unreported contributions does not exceed $2,000;

(5) one or more instances of an incorrectly reported expenditure or an unreported expenditure, if the total of incorrectly reported or unreported expenditures does not exceed the lesser of:

(A) 10 percent of the total expenditures reported on the corrected report; or

(B) $10,000;

(6) one or more instances of an incorrectly reported expenditure or an unreported expenditure, if the total of incorrectly reported or unreported expenditures does not exceed $2,000;

(7) an error in the amount reported under Section 254.031(a)(8), Election Code, if the correct amount:

(A) does not vary by more than 10 percent from the amount originally reported; and

(B) does not exceed $10,000;

(8) an error in the amount reported under Section 254.031(a)(8), Election Code, if the error in the amount originally reported does not exceed $2,000; or

(9) a reporting error or omission that the commission determines is, in context, minor.

(b-2) For purposes of Subsection (a)(1), the commission shall determine whether a report required to be filed under Section 254.038, 254.039, 254.064(c), 254.124(c), or 254.154(c), Election Code, substantially complies with Chapter 254, Election Code.

SECTION 3. Section 305.033(f), Government Code, as added by this Act, applies only to a registration or report required to be filed under Chapter 305, Government Code, that is due on or after September 1, 2005. A registration or report required to be filed under Chapter 305, Government Code, that is due before September 1, 2005, is governed by the law in effect on the date the registration or report is due, and the former law is continued in effect for that purpose.

SECTION 4. Section 571.0771, Government Code, as amended by this Act, applies only to a report, registration, or statement required to be filed with the Texas Ethics Commission that is due on or after September 1, 2005. A report, registration, or statement required to be filed with the Texas Ethics Commission that is due before September 1, 2005, is governed by the law in effect on the date the report, registration, or statement is due, and the former law is continued in effect for that purpose.

SECTION 5. This Act takes effect September 1, 2005.

Representative Denny moved to adopt the conference committee report on **HB 1800**.

The motion to adopt the conference committee report on **HB 1800** 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.)

HB 2604 - RULES SUSPENDED

Representative Guillen moved to suspend all necessary rules to consider the conference committee report on **HB 2604** at this time.

The motion prevailed.

HB 2604 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Guillen submitted the following conference committee report on **HB 2604** :

Austin, Texas, May 27, 2005

The Honorable David Dewhurst
President of the Senate

The Honorable Tom Craddick
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the senate and the house of representatives on **HB 2604** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Van de Putte	Guillen
Shapleigh	Berman
Fraser	Peña
Estes	Hughes
Seliger	
On the part of the senate	On the part of the house

HB 2604, A bill to be entitled An Act relating to state-funded job training or employment assistance programs, services, and preferences available to veterans.

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

SECTION 1. Subchapter A, Chapter 302, Labor Code, is amended by adding Section 302.014 to read as follows:

Sec. 302.014. JOB TRAINING OR EMPLOYMENT ASSISTANCE PROGRAMS, SERVICES, AND PREFERENCES AVAILABLE TO VETERANS. (a) In this section, "veteran" has the meaning assigned by Section 657.002(c), Government Code.

(b) A veteran qualifies for a preference under this section if the veteran qualifies for a veteran's employment preference under Section 657.002(a), Government Code.

(c) In selecting applicants to receive training or assistance under a job training or employment assistance program or service that is funded wholly or partly with state money, preference must be given to a veteran who:

(1) qualifies for a preference under Subsection (b); and

(2) meets any minimum eligibility requirements to participate or enroll in the program or receive the service.

(d) The Texas Veterans Commission shall operate programs in this state to enhance the employment opportunities of veterans of the armed forces of the United States, including the employment program funded under 38 U.S.C. Chapters 41 and 42. The programs must exclusively enhance the employment opportunities of eligible veterans, and the services provided under those programs must be provided by state employees. A state employee providing services under a program may only provide services to veterans.

SECTION 2. Section 302.021(b), Labor Code, is amended to read as follows:

(b) In addition to the programs consolidated under the authority of the commission under Subsection (a), the commission shall administer:

(1) [~~programs in this state to enhance the employment opportunities of veterans of the armed services of the United States, including the employment program funded under Chapters 41 and 42, Title 38, United States Code;~~

[~~(2)~~] child-care services provided under Chapter 44, Human Resources Code; and

(2) [~~(3)~~] programs established in this state through federal funding to conduct full service career development centers and school-to-work transition services.

SECTION 3. Section 302.062(g), Labor Code, is amended to read as follows:

(g) Block grant funding under this section does not apply to:

(1) the work and family policies program under Chapter 81;

(2) a program under the skills development fund created under Chapter 303;

(3) the job counseling program for displaced homemakers under Chapter 304;

(4) the Communities In Schools program under Subchapter E, Chapter 33, Education Code, to the extent that funds are available to the commission for that program;

(5) the reintegration of offenders program under Chapter 306;

(6) apprenticeship programs under Chapter 133, Education Code;

(7) the continuity of care program under Section 501.095, Government Code;

(8) employment programs under Chapter 31, Human Resources Code;

(9) the senior citizens employment program under Chapter 101, Human Resources Code;

(10) the programs described by Section 302.021(b)(2) [~~302.021(b)(3)~~];

(11) the community service program under the National and Community Service Act of 1990 (42 U.S.C. Section 12501 et seq.);

(12) the trade adjustment assistance program under Part 2, Subchapter II, Trade Act of 1974 (19 U.S.C. Section 2271 et seq.);

(13) the programs to enhance the employment opportunities of veterans; and

(14) the functions of the State Occupational Information Coordinating Committee.

SECTION 4. If Sections 302.014(b) and (c), Labor Code, as added by this Act, conflict with federal law or a limitation provided by a federal grant, Sections 302.014(b) and (c), Labor Code, as added by this Act, are void and have no effect.

SECTION 5. (a) Not later than October 1, 2005, the Texas Veterans Commission and the Texas Workforce Commission shall establish a transition team to transfer the veterans employment programs from the Texas Workforce

Commission to the Texas Veterans Commission. The transition team shall consist of a commissioner and an employee of each agency and representatives from other agencies that the veterans commission and workforce commission determine are necessary to accomplish the transition of the veterans employment programs.

(b) The Texas Veterans Commission and the Texas Workforce Commission shall enter into a memorandum of understanding to transfer the veterans employment programs of the Texas Workforce Commission to the Texas Veterans Commission. The memorandum of understanding must provide for the transfer of all powers, duties, obligations, rights, contracts, leases, records, employees, real or personal property, and unspent and unobligated appropriations and other funds of the Texas Workforce Commission that are necessary to accomplish the transfer of the veterans employment programs under this Act to the Texas Veterans Commission. The transition shall be completed not later than October 1, 2006.

(c) The transfer of the veterans employment programs from the Texas Workforce Commission to the Texas Veterans Commission does not affect the validity of a right, privilege, or obligation accrued, a contract or acquisition made, any liability incurred, a permit or license issued, a penalty, forfeiture, or punishment assessed, a rule adopted, a proceeding, investigation, or remedy begun, a decision made, or other action taken by the Texas Workforce Commission in connection with the veterans employment programs.

(d) All rules, policies, procedures, and decisions of the Texas Workforce Commission relating to the veterans employment programs transferred to the Texas Veterans Commission by this Act are continued in effect as rules, policies, procedures, and decisions of the Texas Veterans Commission until superseded by a rule or other appropriate action of the Texas Veterans Commission.

(e) Until the date the veterans employment programs are transferred to the Texas Veterans Commission as provided by this Act, the Texas Workforce Commission shall continue to exercise the powers and perform the duties relating to the veterans employment programs assigned to the Texas Workforce Commission under the law as it existed immediately before the effective date of this Act or, if applicable, as modified by another Act of the 79th Legislature that becomes law, and the former law is continued in effect for that purpose.

SECTION 6. This Act takes effect September 1, 2005.

Representative Guillen moved to adopt the conference committee report on **HB 2604**.

The motion to adopt the conference committee report on **HB 2604** 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.)

HB 2928 - RULES SUSPENDED

Representative Kolkhorst moved to suspend all necessary rules to consider the conference committee report on **HB 2928** at this time.

The motion prevailed.

HB 2928 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Kolkhorst submitted the following conference committee report on **HB 2928** :

Austin, Texas, May 27, 2005

The Honorable David Dewhurst
President of the Senate

The Honorable Tom Craddick
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the senate and the house of representatives on **HB 2928** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Seliger	Kolkhorst
Carona	B. Cook
Eltife	Chisum
	McReynolds
On the part of the senate	On the part of the house

HB 2928, A bill to be entitled An Act relating to projects that may be undertaken by certain development corporations with respect to business enterprises or business development.

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

SECTION 1. Section 2(11), Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes), is amended to read as follows:

(11) [~~(A)~~] "Project" shall mean:

(A) the land, buildings, equipment, facilities, expenditures, targeted infrastructure, and improvements (one or more) that are for the creation or retention of primary jobs and that are found by the board of directors to be required or suitable for the development, retention, or expansion of manufacturing and industrial facilities, research and development facilities, transportation facilities (including but not limited to airports, ports, mass commuting facilities, and parking facilities), sewage or solid waste disposal facilities, recycling facilities, air or water pollution control facilities, facilities for the furnishing of water to the general public, distribution centers, small warehouse facilities capable of serving as decentralized storage and distribution centers, primary job training facilities for use by institutions of higher education, and regional or national corporate headquarters facilities;[~~,~~]

(B) [~~"Project" also includes~~] job training required or suitable for the promotion of development and expansion of business enterprises and other enterprises described by this Act, as provided by Section 38 of this Act;[~~,~~]

(C) [~~"Project" also includes~~] expenditures found by the board of directors to be required or suitable for infrastructure necessary to promote or develop new or expanded business enterprises limited to streets and roads, rail

spurs, water and sewer utilities, electric utilities, gas utilities, drainage, site improvements, and related improvements, [~~and~~] telecommunications and Internet improvements, and beach remediation along the Gulf of Mexico;

(D) for a corporation created by a city any part of which is located within 25 miles of an international border, the land, buildings, facilities, infrastructure, and improvements that:

(i) the board of directors finds are required or suitable for the development or expansion of airport facilities; or

(ii) are undertaken by the corporation if the city that created the corporation has, at the time the project is approved by the corporation as provided by this Act:

(a) a population of less than 50,000; or

(b) an average rate of unemployment that is greater than the state average rate of unemployment during the 12-month period for which data is available that immediately precedes the date the project is approved; or

(E) expenditures found by the board of directors to be required or suitable for infrastructure necessary to promote or develop new or expanded business enterprises, including airports, ports, and sewer or solid waste disposal facilities, if the corporation:

(i) is created by a city wholly or partly located in a county that is bordered by the Rio Grande, has a population of at least 500,000, and has wholly or partly within its boundaries at least four cities that each have a population of at least 25,000; and

(ii) does not support a project, as defined by this subdivision, with sales and use tax revenue collected under Section 4A or 4B of this Act.

SECTION 2. Section 4A(i), Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes), is amended to read as follows:

(i) Except as provided by this subsection, the corporation may not undertake a project the primary purpose of which is to provide transportation facilities, solid waste disposal facilities, sewage facilities, facilities for furnishing water to the general public, or air or water pollution control facilities. However, the corporation may provide those facilities to benefit property acquired for a project having another primary purpose. The corporation may undertake a project the primary purpose of which is to provide:

(1) a general aviation business service airport that is an integral part of an industrial park; [~~or~~]

(2) port-related facilities to support waterborne commerce; or

(3) airport-related facilities, if the corporation is created by a city that is wholly or partly located within 25 miles of an international border and has, at the time the project is approved by the corporation as provided by this Act:

(A) a population of less than 50,000; or

(B) an average rate of unemployment that is greater than the state average rate of unemployment during the 12-month period for which data is available that immediately precedes the date the project is approved.

SECTION 3. Section 4B(a), Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes), is amended by adding Subdivisions (3) and (4) to read as follows:

(3) For a corporation created by an eligible city with a population of 20,000 or less, "project" shall also include the land, buildings, equipment, facilities, expenditures, targeted infrastructure, and improvements found by the board of directors to promote new or expanded business development. A corporation may not undertake a project authorized by this subdivision that requires an expenditure of more than $10,000 until the governing body of the eligible city creating the corporation adopts a resolution authorizing the project after giving the resolution at least two separate readings.

(4)(A) In this subdivision, "landlocked community" means a city that is wholly or partly located in a county with a population of 2 million or more and has within its city limits and extraterritorial jurisdiction less than 100 acres that can be used for the development of manufacturing or industrial facilities in accordance with the zoning laws or land use restrictions of the city.

(B) For a landlocked community that creates or has created a corporation governed by this section, "project" also includes expenditures found by the board of directors to be required for the promotion of new or expanded business enterprises within the landlocked community.

SECTION 4. Section 40(a), Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) A corporation created under this Act may not provide a direct incentive to or make an expenditure on behalf of a business enterprise under a project as defined by Section 2 or 4B(a)(2), (3), or (4) of this Act unless the corporation enters into a performance agreement with the business enterprise.

SECTION 5. This Act takes effect September 1, 2005.

Representative Kolkhorst moved to adopt the conference committee report on **HB 2928**.

The motion to adopt the conference committee report on **HB 2928** 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: Homer and Swinford recorded voting no.)

HB 3539 - RULES SUSPENDED

Representative Hupp moved to suspend all necessary rules to consider the conference committee report on **HB 3539** at this time.

The motion prevailed.

HB 3539 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Hupp submitted the following conference committee report on **HB 3539** :

Austin, Texas, May 28, 2005

The Honorable David Dewhurst

President of the Senate

The Honorable Tom Craddick
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the senate and the house of representatives on **HB 3539** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Fraser	Hupp
Estes	Miller
Averitt	Callegari
Armbrister	Bonnen
On the part of the senate	On the part of the house

HB 3539, A bill to be entitled An Act relating to the composition of the board of directors of the Saratoga Underground Water Conservation District.

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

SECTION 1. Section 7, Chapter 519, Acts of the 71st Legislature, Regular Session, 1989, is amended to read as follows:

Sec. 7. BOARD OF DIRECTORS; ELECTION OF DIRECTORS. (a) The district is governed by a board of five directors to be elected according to the commissioners precinct method as provided by this section [~~composed of the county judge and the county commissioners of Lampasas County~~].

(b) Directors serve staggered four-year terms [~~The county judge is the chairman of the board of directors~~].

(c) On the uniform election date in November of each even-numbered year, the appropriate number of directors shall be elected [~~The county judge and each county commissioner serves as a director as an additional duty of service on the commissioners court~~].

(d) One director shall be elected by the voters of the entire district, and one director shall be elected from each county commissioners precinct by the voters of that precinct.

(e) Except as provided by Subsection (g) of this section, to be eligible to be a candidate for or to serve as director at large, a person must be a registered voter in the district. To be a candidate for or to serve as director from a county commissioners precinct, a person must be a registered voter of that precinct.

(f) 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.

(g) When the boundaries of the county commissioners precincts are redrawn under Section 18, Article V, Texas Constitution, a director in office on the effective date of the change, or elected or appointed before the effective date of the change to a term of office beginning on or after the effective date of the change, shall serve the term or the remainder of the term 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.

SECTION 2. (a) As soon as practicable after the effective date of this Act, the Lampasas County Commissioners Court shall appoint five temporary directors to the board of directors of the Saratoga Underground Water Conservation District. The temporary directors appointed under this section replace the persons serving as directors immediately before the effective date of this Act.

(b) The commissioners court shall appoint one person to represent the district at large and one person from each county commissioners precinct. To be eligible to be appointed as director at large, a person must be a registered voter in the district. To be eligible to be appointed from a county commissioners precinct, a person must be a registered voter of that precinct.

(c) The director appointed to represent the district at large and the directors appointed from precincts two and four shall serve until the November uniform election date in 2006. The directors appointed from precincts one and three shall serve until the November uniform election date in 2008.

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.

Representative Hupp moved to adopt the conference committee report on **HB 3539**.

A record vote was requested.

The motion to adopt the conference committee report on **HB 3539** prevailed by (Record 953): 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; Coleman; Cook, B.; Cook, R.; Corte; 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; Giddings; Gonzales; Gonzalez Toureilles; Goolsby; Griggs; Grusendorf; Guillen; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Hegar; Herrero; Hilderbran; Hill; Hochberg; Hodge; Homer; Hope; Hopson; Howard; Hughes; Hunter; Hupp; Isett; Jackson; Jones, 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; Oliveira; Olivo; Orr; Otto; Paxton; Peña; Phillips; Pickett; Pitts; Puente; Quintanilla; Raymond; Reyna; Riddle; Rodriguez; Rose; Seaman; Smith, T.; Smith, W.; 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; Geren(C).

Absent, Excused — Crabb; Goodman; Smithee.

Absent — Jones, D.; Noriega, M.; Ritter.

HB 880 - RULES SUSPENDED

Representative Delisi moved to suspend all necessary rules to consider the conference committee report on **HB 880** at this time.

The motion prevailed.

HB 880 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Delisi submitted the following conference committee report on **HB 880** :

Austin, Texas, May 28, 2005

The Honorable David Dewhurst
President of the Senate

The Honorable Tom Craddick
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the senate and the house of representatives on **HB 880** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Zaffirini	Delisi
Deuell	J. Davis
Barrientos	McReynolds
Janek	
Nelson	
On the part of the senate	On the part of the house

HB 880, A bill to be entitled An Act relating to attorney general review of certain contracts for health care purposes.

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

SECTION 1. Subchapter A, Chapter 531, Government Code, is amended by adding Section 531.018 to read as follows:

Sec. 531.018. CERTAIN CONTRACTS FOR HEALTH CARE PURPOSES; REVIEW BY ATTORNEY GENERAL. (a) This section applies to any contract with a contract amount of $250 million or more:

(1) under which a person provides goods or services in connection with the provision of medical or health care services, coverage, or benefits; and

(2) entered into by the person and:

(A) the commission;

(B) a health and human services agency; or

(C) any other state agency under the jurisdiction of the commission.

(b) Notwithstanding any other law, before a contract described by Subsection (a) may be entered into by the agency, a representative of the office of the attorney general shall review the form and terms of the contract and may

make recommendations to the agency for changes to the contract if the attorney general determines that the office of the attorney general has sufficient subject matter expertise and resources available to provide this service.

(c) An agency described by Subsection (a)(2) must notify the office of the attorney general at the time the agency initiates the planning phase of the contracting process. A representative of the office of the attorney general or another attorney advising the agency under Subsection (d) may participate in negotiations or discussions with proposed contractors and may be physically present during those negotiations or discussions.

(d) If the attorney general determines that the office of the attorney general does not have sufficient subject matter expertise or resources available to provide the services described by this section, the office of the attorney general may require the state agency to enter into an interagency agreement or to obtain outside legal services under Section 402.0212 for the provision of services described by this section.

(e) The state agency shall provide to the office of the attorney general any information the office of the attorney general determines is necessary to administer this section.

SECTION 2. Subchapter A, Chapter 811, Government Code, is amended by adding Section 811.009 to read as follows:

Sec. 811.009. CERTAIN CONTRACTS FOR HEALTH CARE PURPOSES; REVIEW BY ATTORNEY GENERAL. (a) This section applies to any contract with a contract amount of $250 million or more:

(1) under which a person provides goods or services in connection with the provision of medical or health care services, coverage, or benefits; and

(2) entered into by the person and the retirement system.

(b) Notwithstanding any other law, before a contract described by Subsection (a) may be entered into by the retirement system, a representative of the office of the attorney general shall review the form and terms of the contract and may make recommendations to the retirement system for changes to the contract if the attorney general determines that the office of the attorney general has sufficient subject matter expertise and resources available to provide this service.

(c) The retirement system must notify the office of the attorney general at the time the system initiates the planning phase of the contracting process. A representative of the office of the attorney general or another attorney advising the agency under Subsection (d) may participate in negotiations or discussions with proposed contractors and may be physically present during those negotiations or discussions.

(d) If the attorney general determines that the office of the attorney general does not have sufficient subject matter expertise or resources available to provide the services described by this section, the office of the attorney general may require the retirement system to enter into an interagency agreement or to obtain outside legal services under Section 402.0212 for the provision of services described by this section.

(e) The retirement system shall provide to the office of the attorney general any information the office of the attorney general determines is necessary to administer this section.

SECTION 3. Subchapter A, Chapter 821, Government Code, is amended by adding Section 821.009 to read as follows:

Sec. 821.009. CERTAIN CONTRACTS FOR HEALTH CARE PURPOSES; REVIEW BY ATTORNEY GENERAL. (a) This section applies to any contract with a contract amount of $250 million or more:

(1) under which a person provides goods or services in connection with the provision of medical or health care services, coverage, or benefits; and

(2) entered into by the person and the retirement system.

(b) Notwithstanding any other law, before a contract described by Subsection (a) may be entered into by the retirement system, a representative of the office of the attorney general shall review the form and terms of the contract and may make recommendations to the retirement system for changes to the contract if the attorney general determines that the office of the attorney general has sufficient subject matter expertise and resources available to provide this service.

(c) The retirement system must notify the office of the attorney general at the time the system initiates the planning phase of the contracting process. A representative of the office of the attorney general or another attorney advising the agency under Subsection (d) may participate in negotiations or discussions with proposed contractors and may be physically present during those negotiations or discussions.

(d) If the attorney general determines that the office of the attorney general does not have sufficient subject matter expertise or resources available to provide the services described by this section, the office of the attorney general may require the retirement system to enter into an interagency agreement or to obtain outside legal services under Section 402.0212 for the provision of services described by this section.

(e) The retirement system shall provide to the office of the attorney general any information the office of the attorney general determines is necessary to administer this section.

SECTION 4. Sections 531.018, 811.009, and 821.009, Government Code, as added by this Act, apply only to a contract described by those sections that is entered into on or after November 1, 2005.

SECTION 5. This Act takes effect September 1, 2005.

Representative Delisi moved to adopt the conference committee report on **HB 880**.

The motion to adopt the conference committee report on **HB 880** 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.)

HB 2572 - RULES SUSPENDED

Representative Truitt moved to suspend all necessary rules to consider the conference committee report on **HB 2572** at this time.

The motion prevailed.

HB 2572 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Truitt submitted the following conference committee report on **HB 2572** :

Austin, Texas, May 28, 2005

The Honorable David Dewhurst
President of the Senate

The Honorable Tom Craddick
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the senate and the house of representatives on **HB 2572** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Armbrister	Hupp
Deuell	Isett
Lucio	Farabee
Janek	Truitt
On the part of the senate	On the part of the house

HB 2572, A bill to be entitled An Act relating to the functions of local mental health and mental retardation authorities.

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

SECTION 1. Section 533.031, Health and Safety Code, is amended by adding Subdivisions (4), (5), (6), and (7) to read as follows:

(4) "Commission" means the Health and Human Services Commission.

(5) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(6) "ICF-MR and related waiver programs" includes ICF-MR programs, home and community-based services, Texas home living waiver services, or another Medicaid program serving persons with mental retardation.

(7) "Qualified service provider" means an entity that meets requirements for service providers established by the executive commissioner.

SECTION 2. Section 533.035, Health and Safety Code, is amended by amending Subsections (a) and (e) and adding Subsections (b-1), (b-2), (d-1), and (e-1) to read as follows:

(a) The executive commissioner shall designate a local mental health authority and a local mental retardation authority in one or more local service areas. The executive commissioner [~~board~~] may delegate to the local authorities the [~~board's~~] authority and responsibility of the executive commissioner, the commission, or a department of the commission related to [~~for the~~] planning, policy development, coordination, including coordination with criminal justice

entities, resource allocation, and resource development for and oversight of mental health and mental retardation services in the most appropriate and available setting to meet individual needs in that service area. The executive commissioner may designate a single entity as the local mental health authority and the local mental retardation authority for a service area. In designating local authorities, the executive commissioner may not decrease the number of local mental health authorities or local mental retardation authorities from the number that existed on January 1, 2005, except on:

(1) a request from two or more local authorities; or

(2) a determination by the executive commissioner that a local authority has substantially failed to meet the terms and conditions of the performance contract.

(b-1) This subsection expires September 1, 2007, and does not apply to rate setting or the payment rates for intermediate care facilities for the mentally retarded, home and community-based services, Texas home living, and mental retardation service coordination. Before the department institutes a change in payment methodology, the department shall:

(1) evaluate various forms of payment for services including fee-for-service, case rate, capitation, and other appropriate payment methods to determine the most cost-effective and efficient form of payment for services;

(2) evaluate the effect of each proposed payment methodology on:

(A) the availability of services in urban and rural service areas;

(B) the availability of services for persons who are indigent; and

(C) the cost certainty of the delivery of Medicaid rehabilitation services;

(3) develop an implementation plan for the new payment methodology that integrates the department's findings under Subdivisions (1) and (2); and

(4) report the department's findings and the implementation plan for a new payment methodology to the legislature not later than January 1, 2007.

~~(b-2) The department shall disburse federal and state funds, by contract and by any method of allocation, to a local mental health or mental retardation authority, to be spent in the local service area for community mental health and mental retardation services. The allocation method used by the department shall meet established state and federal standards and ensure that:~~

~~(1) payment is made only for meeting performance expectations;~~

~~(2) costs for administrative functions are minimized;~~

~~(3) resources are dedicated to direct service delivery; and~~

~~(4) accountability is met for state and federal funds.~~

~~(d-1) The department must ensure financial, programmatic, and administrative accountability in performance contracts with local mental health and mental retardation authorities. The performance contracts must ensure that:~~

~~(1) sufficient information is reported to allow oversight activities to confirm efficiency and effectiveness;~~

~~(2) programmatic accountability is in accordance with department standards, statutory requirements, and disease management practices for adults and children;~~

~~(3) administrative accountability is in accordance with requirements established for allowable general and administrative expenses; and~~

~~(4) the authority successfully coordinates with appropriate community partners in providing streamlined access to services for consumers.~~

(e) In assembling a network of service providers, a local mental health [~~(e) In assembling a network of service providers, a local mental health [and mental retardation~~] authority may serve as a qualified service provider only in accordance with Subsection (c) and [~~of services only as a provider of last resort and only if the authority demonstrates to the department that:~~

[~~(1)~~] the authority shall make [~~has made~~] every reasonable attempt to solicit the development of an available and appropriate provider base that is sufficient to meet the needs of consumers in its service area[~~; and~~

[~~(2) there is not a willing provider of the relevant services in the authority's service area or in the county where the provision of the services is needed~~].

(e-1) A local mental retardation authority may serve as a provider of ICF-MR and related waiver services only if:

(1) the authority complies with the limitations prescribed by Section 533.0355(c); or

(2) the ICF-MR and related waiver services are necessary to ensure the availability of services and the authority demonstrates to the commission that there is not a willing ICF-MR and related waiver service qualified service provider in the authority's service area where the service is needed.

SECTION 3. Section 533.0355, Health and Safety Code, is amended to read as follows:

Sec. 533.0355. LOCAL MENTAL RETARDATION AUTHORITY RESPONSIBILITIES [~~ALLOCATION OF DUTIES~~] UNDER CERTAIN MEDICAID [~~WAIVER~~] PROGRAMS. (a) The executive commissioner shall adopt rules establishing the roles and responsibilities of local mental retardation authorities [~~In this section, "waiver program" means the local mental retardation authority waiver program established under the state Medicaid program~~].

(b) In adopting rules under this section, the executive commissioner must include rules regarding:

(1) access;

(2) intake;

(3) eligibility functions;

(4) enrollment, initial assessment, and service authorization;

(5) utilization management;

(6) safety net functions, including crisis management services and assistance in accessing facility–based care;

(7) service coordination functions;

(8) provision and oversight of state general revenue services;

(9) local planning functions, including stakeholder involvement, technical assistance and training, and provider complaint and resolution processes; and

(10) processes to assure accountability in performance, compliance, and monitoring. [~~A provider of services under the waiver program shall:~~

[~~(1) develop a person-directed plan and an individual program plan for each person who receives services from the provider under the waiver program;~~

[~~(2) perform justification and implementation functions for the plans described by Subdivision (1);~~

[~~(3) conduct case management under the waiver program, other than case management under Subsection (e)(3), in accordance with applicable state and federal laws; and~~

[~~(4) plan, coordinate, and review the provision of services to all persons who receive services from the service provider under the waiver program.~~]

(c) In determining eligibility under Subsection (b)(3), an authority must offer a state school as an option among the residential services available to an individual who is eligible for those services and who meets the department's criteria for state school admission, regardless of whether other residential services are available to the individual. The community mental health and mental retardation centers must document the number of individuals who are eligible for state school services under the department's criteria, the number of individuals who meet eligibility who are requesting state school admissions, and the number of individuals who meet eligibility criteria who are referred for state school services. The Health and Human Services Commission will adopt rules related to the performance criteria required of the community mental health and mental retardation centers regarding the provision of information related to services and referral for services.

(d) In establishing a local mental retardation authority's role as a qualified service provider of ICF-MR and related waiver programs under Section 533.035(e-1), the executive commissioner by rule shall require the local mental retardation authority to:

(1) base the authority's provider capacity on the authority's August 2004 enrollment levels for the waiver programs the authority operates and, if the authority's enrollment levels exceed those levels, to reduce the levels by voluntary attrition; and

(2) base any increase in the authority's provider capacity on:

(A) the authority's state-mandated conversion from one Medicaid program to another Medicaid program allowing for a permanent increase in the authority's provider capacity in accordance with the number of persons who choose the authority as their provider;

(B) the authority's voluntary conversion from one Medicaid program to another Medicaid program allowing for a temporary increase in the authority's provider capacity in accordance with the number of persons who choose the authority as their provider; or

(C) other extenuating circumstances that:

(i) are clearly defined in rules adopted by the executive commissioner;

(ii) are monitored and approved by the department; and

(iii) do not include increases resulting from refinancing and do not include increases that unnecessarily promote the authority's provider role over its role as a local mental retardation authority [~~A local mental retardation authority shall:~~

[~~(1) manage any waiting lists for services under the waiver program;~~

[~~(2) perform functions relating to consumer choice and enrollment for persons who receive services under the waiver program; and~~

[~~(3) conduct case management under the waiver program relating to funding disputes between a service provider and the local mental retardation authority~~].

(e) In adopting a rule under this section, the executive commissioner shall seek the participation of and comments from local mental retardation authorities, providers, advocates, and other interested stakeholders [~~(d) The department shall perform all administrative functions under the waiver program that are not assigned to a service provider under Subsection (b) or to a local mental retardation authority under Subsection (c). Administrative functions performed by the department include:~~

[~~(1) any surveying, certification, and utilization review functions required under the waiver program; and~~

[~~(2) managing an appeals process relating to decisions that affect a person receiving services under the waiver program~~].

(f) Any increase based on extenuating circumstances under Subsection (d)(2)(C) is considered a temporary increase in the local mental retardation authority's provider capacity [~~(e) The department shall review:~~

[~~(1) screening and assessment of levels of care;~~

[~~(2) case management fees paid under the waiver program to a community center; and~~

[~~(3) administrative fees paid under the waiver program to a service provider~~].

(g) At least biennially, the department shall review and determine the local mental retardation authority's status as a qualified service provider in accordance with criteria that includes the consideration of the authority's ability to assure the availability of services in its area, including:

(1) program stability and viability;

(2) the number of other qualified service providers in the area; and

(3) the geographical area in which the authority is located [~~(f) The department shall perform any function relating to inventory for persons who receive services under the waiver program and agency planning assessments~~].

(h) The Department of Aging and Disability Services shall ensure that local services delivered further the following goals:

(1) to provide individuals with the information, skills, opportunities, and support to make informed decisions regarding the services for which the individual is eligible;

(2) to respect the rights, needs, and preferences of an individual receiving services; and

(3) to integrate individuals with mental retardation and developmental disabilities into the community in accordance with relevant independence promotion plans and permanency planning laws.

[~~(g) The review required under Subsection (e) must include a comparison of fees paid before the implementation of this section with fees paid after the implementation of this section. The department may adjust fees paid based on that review.~~

[~~(h) The department shall allocate the portion of the gross reimbursement funds paid to a local authority and a service provider for client services for the case management function in accordance with this section and to the extent allowed by law.~~

[~~(i) The department may adopt rules governing the functions of a local mental retardation authority or service provider under this section.~~]

SECTION 4. Section 535.002(b), Health and Safety Code, is amended to read as follows:

(b) If feasible and economical, the commission shall [~~department may~~] use local mental health and mental retardation authorities to implement this chapter. [~~However, the department may not designate those local mental health and mental retardation authorities as the sole providers of services if other providers are available.~~]

SECTION 5. (a) Sections 533.035(f) and (g), Health and Safety Code, are repealed.

(b) Section 2.82A, Chapter 198, Acts of the 78th Legislature, Regular Session, 2003, is repealed.

SECTION 6. Not later than January 1, 2007, the Health and Human Services Commission shall submit a report to the governor, lieutenant governor, and speaker of the house of representatives that includes any information the commission finds relevant regarding the implementation of Sections 535.035 and 535.0355, Health and Safety Code, as amended by this Act, by local mental retardation authorities.

SECTION 7. (a) The legislature shall establish a joint interim committee to study the local mental health and mental retardation services delivery system and to develop recommendations for improving the provision of services and increasing the accountability for funds management in the system.

(b) The committee should consider whether the current local system meets the following goals:

(1) improving ~~the integration of~~ services to persons who have physical illness as well as mental illness or chemical dependency and developing a continuum of services to all persons who are aging or who have physical or cognitive disabilities; and

(2) allowing the appropriate level of flexibility needed to meet unique community needs, while addressing state requirements and ensuring an appropriate level of budget certainty for the state.

(c) In developing recommendations for the improvement of services delivery the committee should consider:

(1) the role of a community center and whether a community center should be designated as a provider of public safety net services for jail diversion services, crisis services, certain community-oriented services, community hospital services, or other services necessary to ensure the statewide availability of services; and

(2) the findings and recommendations of the mental health services task force as reported to the Senate Health and Human Services interim committee of the 77th Legislature in March 2002 and the **HB 1734** committee report from the 75th Legislature, Regular Session, 1997.

(d) Not later than January 1, 2007, the committee shall report its findings and recommendations to the governor, the lieutenant governor, and the speaker of the house of representatives.

(e) The lieutenant governor and the speaker of the house of representatives shall determine the composition of the committee. The committee must be composed of five members of the senate and five members of the house of representatives. The presiding officer of the committee must be a member designated from the senate.

(f) This section expires September 1, 2007.

SECTION 8. This Act takes effect September 1, 2005.

Representative Truitt moved to adopt the conference committee report on **HB 2572**.

The motion to adopt the conference committee report on **HB 2572** 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: J. Davis, Reyna, and Riddle recorded voting no.)

HR 2258 - NOTICE OF INTRODUCTION

Pursuant to the provisions of Rule 13, Section 9(f), of the House Rules, the chair announced the introduction of **HR 2258**, suspending the limitations on the conferees for **HB 1690**.

HR 2251 - NOTICE OF INTRODUCTION

Pursuant to the provisions of Rule 13, Section 9(f), of the House Rules, the chair announced the introduction of **HR 2251**, suspending the limitations on the conferees for **HB 1126**.

HR 2221 - ADOPTED
(by Coleman)

The following privileged resolution was laid before the house:

HR 2221

BE IT RESOLVED by the House of Representatives of the State of Texas, 79th Legislature, Regular Session, 2005, That House Rule 13, Section 9(a), be suspended in part as provided by House Rule 13, Section 9(f), to enable the

conference committee appointed to resolve the differences on **HB 3518** (creation of the Harris County Improvement District No. 6; providing authority to impose a tax and issue bonds) to consider and take action on the following matters:

(1) House Rule 13, Section 9(a)(1), is suspended to permit the committee to amend the recital of Section 1 of the bill to read as follows:

SECTION 1. HARRIS COUNTY IMPROVEMENT DISTRICT NO. 6. Subtitle C, Title 4, Special District Local Laws Code, is amended by adding Chapter 3843 to read as follows:

Explanation: The change is necessary to conform a citation.

(2) House Rule 13, Section 9(a)(1), is suspended to permit the committee to amend the text of added Section 3843.005(b), Special District Local Laws Code, to read as follows:

(b) The boundaries and field notes of the district contained in Section 2 of the Act enacting this chapter form a closure. A mistake in the field notes or in copying the field notes in the legislative process does not in any way affect:

(1) the district's organization, existence, and validity;

(2) the district's right to issue any type of bond, including a refunding bond, for a purpose for which the district is created or to pay the principal of and interest on the bond;

(3) the district's right to impose and collect an assessment or tax; or

(4) the legality or operation of the district or the board.

Explanation: The change is necessary to conform a citation.

(3) House Rule 13, Section 9(a)(1), is suspended to permit the committee to change the names of the initial directors in added Section 3843.053(a), Special District Local Laws Code, to read as follows:

Pos. No.	Name of Director
1	Kathy Hubbard
2	James McDermaid
3	Charles Armstrong
4	Tom Fricke
5	Greg Jew
6	Jerry Simoneaux
7	Tammy Manning
8	Dale Harger
9	Marisol Rodriguez
10	Patti Thompson
11	Jack Rose

Explanation: The change is necessary to ensure that the district has the proper initial directors.

HR 2221 was adopted.

HB 3518 - RULES SUSPENDED

Representative Coleman moved to suspend all necessary rules to consider the conference committee report on **HB 3518** at this time.

The motion prevailed.

HB 3518 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Coleman submitted the following conference committee report on **HB 3518** :

Austin, Texas, May 27, 2005

The Honorable David Dewhurst
President of the Senate

The Honorable Tom Craddick
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the senate and the house of representatives on **HB 3518** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Ellis	Coleman
Madla	R. Allen
Wentworth	W. Smith
Lindsay	Talton
	Olivo
On the part of the senate	On the part of the house

HB 3518, A bill entitled to be An Act relating to the creation of the Harris County Improvement District No. 6; providing authority to impose a tax and issue bonds.

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

SECTION 1. HARRIS COUNTY IMPROVEMENT DISTRICT NO. 6. Subtitle C, Title 4, Special District Local Laws Code, is amended by adding Chapter 3843 to read as follows:

CHAPTER 3843. HARRIS COUNTY IMPROVEMENT DISTRICT NO. 6

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 3843.001. DEFINITIONS. In this chapter:

(1) "Board" means the board of directors of the district.

(2) "District" means the Harris County Improvement District No. 6.

Sec. 3843.002. HARRIS COUNTY IMPROVEMENT DISTRICT NO. 6. A special district known as the "Harris County Improvement District No. 6" is a governmental agency and political subdivision of this state.

Sec. 3843.003. PURPOSE; DECLARATION OF INTENT. (a) The creation of the district is essential to accomplish the purposes of Sections 52 and 52-a, Article III, and Section 59, Article XVI, Texas Constitution, and other public purposes stated in this chapter. By creating the district and in authorizing Harris County, the City of Houston, and other political subdivisions to contract with the district, the legislature has established a program to accomplish the public purposes set out in Section 52-a, Article III, Texas Constitution.

(b) The creation of the district is necessary to promote, develop, encourage, and maintain employment, commerce, transportation, housing, tourism, recreation, the arts, entertainment, economic development, safety, and the public welfare in the area of the district.

(c) This chapter and the creation of the district may not be interpreted to relieve Harris County or the City of Houston from providing the level of services provided as of September 1, 2005, to the area in the district or to release the county or the city from the obligations of each entity to provide services to that area. The district is created to supplement and not to supplant the county or city services provided in the area in the district.

Sec. 3843.004. FINDINGS OF BENEFIT AND PUBLIC PURPOSE. (a) The district is created to serve a public use and benefit.

(b) All land and other property included in the district will benefit from the improvements and services to be provided by the district under powers conferred by Sections 52 and 52-a, Article III, and Section 59, Article XVI, Texas Constitution, and other powers granted under this chapter.

(c) Each improvement project or service authorized by this chapter is essential to carry out a public purpose.

(d) The creation of the district is in the public interest and is essential to:

(1) further the public purposes of developing and diversifying the economy of the state;

(2) eliminate unemployment and underemployment; and

(3) develop or expand transportation and commerce.

(e) The district will:

(1) promote the health, safety, and general welfare of residents, employers, employees, visitors, and consumers in the district, and of the public;

(2) provide needed funding for the district to preserve, maintain, and enhance the economic health and vitality of the area as a community and business center;

(3) promote the health, safety, welfare, and enjoyment of the public by providing public art and pedestrian ways and by landscaping and developing certain areas in the district, which are necessary for the restoration, preservation, and enhancement of scenic and aesthetic beauty;

(4) promote and benefit commercial development and commercial areas in the district; and

(5) promote and develop public transportation and pedestrian facilities and systems using new and alternative means that are attractive, safe, and convenient, including securing expanded and improved transportation and pedestrian facilities and systems, to:

(A) address the problem of traffic congestion in the district, the need to control traffic and improve pedestrian safety, and the limited availability of money; and

(B) benefit the land and other property in the district and the residents, employers, employees, visitors, and consumers in the district and the public.

(f) Pedestrian ways along or across a street, whether at grade or above or below the surface, and street lighting, street landscaping, and street art objects are parts of and necessary components of a street and are considered to be a street or road improvement.

(g) The district will not act as the agent or instrumentality of any private interest even though the district will benefit many private interests as well as the public.

Sec. 3843.005. DISTRICT TERRITORY. (a) The district is composed of the territory described by Section 2 of the Act enacting this chapter, as that territory may have been modified under:

(1) Section 3843.105;

(2) Subchapter J, Chapter 49, Water Code; or

(3) other law.

(b) The boundaries and field notes of the district contained in Section 2 of the Act enacting this chapter form a closure. A mistake in the field notes or in copying the field notes in the legislative process does not in any way affect:

(1) the district's organization, existence, and validity;

(2) the district's right to issue any type of bond, including a refunding bond, for a purpose for which the district is created or to pay the principal of and interest on the bond;

(3) the district's right to impose and collect an assessment or tax; or

(4) the legality or operation of the district or the board.

(c) A description of the district's boundaries shall be filed with the Texas Commission on Environmental Quality. The commission by order may correct a mistake in the description of the district's boundaries.

Sec. 3843.006. TORT LIABILITY. The district is a governmental unit under Chapter 101, Civil Practice and Remedies Code, and the operations of the district are essential government functions and are not proprietary functions for any purpose, including the application of Chapter 101, Civil Practice and Remedies Code.

Sec. 3843.007. ELIGIBILITY FOR REINVESTMENT ZONES. All or any part of the area of the district is eligible to be included in a tax increment reinvestment zone created by the City of Houston under Chapter 311, Tax Code.

Sec. 3843.008. LIBERAL CONSTRUCTION OF CHAPTER. This chapter shall be liberally construed in conformity with the findings and purposes stated in this chapter.

[Sections 3843.009-3843.050 reserved for expansion]

SUBCHAPTER B. BOARD OF DIRECTORS

Sec. 3843.051. BOARD OF DIRECTORS; TERMS. (a) The district is governed by a board of 11 directors who serve staggered terms of four years with five or six directors' terms expiring June 1 of each odd-numbered year.

(b) The board by resolution may increase or decrease the number of directors on the board, but only if a majority of the board finds that it is in the best interest of the district to do so. The board may not:

(1) increase the number of directors to more than 15; or

(2) decrease the number of directors to fewer than five.

(c) Sections 49.053, 49.054, 49.056, 49.057, 49.058, and 49.060, Water Code, apply to the board.

(d) Subchapter D, Chapter 375, Local Government Code, applies to the board to the extent that subchapter does not conflict with this chapter.

Sec. 3843.052. APPOINTMENT OF DIRECTORS ON INCREASE IN BOARD SIZE. If the board increases the number of directors under Section 3843.051, the board shall appoint qualified persons to fill the new director positions and shall provide for staggering the terms of the directors serving in the new positions. On expiration of the term of a director appointed under this section, a succeeding director shall be appointed and qualified as provided by Subchapter D, Chapter 375, Local Government Code.

Sec. 3843.053. INITIAL DIRECTORS. (a) The initial board consists of:

Pos. No.	Name of Director
1	Kathy Hubbard
2	James McDermaid
3	Charles Armstrong
4	Tom Fricke
5	Greg Jew
6	Jerry Simoneaux
7	Tammy Manning
8	Dale Harger
9	Marisol Rodriguez
10	Patti Thompson
11	Jack Rose

(b) Of the initial directors, the terms of directors appointed for positions 1 through 6 expire June 1, 2009, and the terms of directors appointed for positions 7 through 11 expire June 1, 2007.

(c) Section 3843.051 does not apply to this section.

(d) This section expires September 1, 2009.

[Sections 3843.054-3843.100 reserved for expansion]

SUBCHAPTER C. POWERS AND DUTIES

Sec. 3843.101. DISTRICT POWERS. The district has:

(1) all powers necessary to accomplish the purposes for which the district was created;

(2) the rights, powers, privileges, authority, and functions of a district created under Chapter 375, Local Government Code;

(3) the powers, duties, and contracting authority specified by Subchapters H and I, Chapter 49, Water Code;

(4) the powers given to a corporation under Section 4B, Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes), including the power to own, operate, acquire, construct, lease, improve, and maintain the projects described by that section; and

(5) the powers of a housing finance corporation created under Chapter 394, Local Government Code.

Sec. 3843.102. NONPROFIT CORPORATION. (a) The board by resolution may authorize the creation of a nonprofit corporation to assist and act for the district in implementing a project or providing a service authorized by this chapter.

(b) The nonprofit corporation:

(1) has each power of and is considered for purposes of this chapter to be a local government corporation created under Chapter 431, Transportation Code; and

(2) may implement any project and provide any service authorized by this chapter.

(c) The board shall appoint the board of directors of the nonprofit corporation. The board of directors of the nonprofit corporation shall serve in the same manner as, for the same term as, and on the same conditions as the board of directors of a local government corporation created under Chapter 431, Transportation Code.

Sec. 3843.103. ELECTIONS. (a) District elections must be held in the manner provided by Subchapter L, Chapter 375, Local Government Code.

(b) The board may submit multiple purposes in a single proposition at an election.

Sec. 3843.104. CONTRACT FOR LAW ENFORCEMENT AND SECURITY SERVICES. The district may contract with:

(1) Harris County or the City of Houston for the county or city to provide law enforcement and security services for a fee; and

(2) a private entity for the private entity to provide supplemental security services.

Sec. 3843.105. ANNEXATION OR EXCLUSION OF TERRITORY. The district may annex or exclude land from the district in the manner provided by Subchapter C, Chapter 375, Local Government Code.

Sec. 3843.106. NO EMINENT DOMAIN POWER. The district may not exercise the power of eminent domain.

[Sections 3843.107-3843.150 reserved for expansion]

SUBCHAPTER D. PUBLIC TRANSIT SYSTEM AND PARKING FACILITIES

Sec. 3843.151. PUBLIC TRANSIT SYSTEM; PETITION REQUIRED. (a) The district may acquire, lease as lessor or lessee, construct, develop, own, operate, and maintain a public transit system to serve the area within the boundaries of the district.

(b) Before the district may act under Subsection (a), a petition must be filed with the district requesting the action with regard to a public transit system. The petition must be signed by owners of property representing a majority of either the total assessed value or the area of the real property in the district that abuts the right-of-way in which the public transit system is proposed to be located. The determination of a majority is based on the property owners along the entire right-of-way of the proposed transit project and may not be calculated on a block-by-block basis.

Sec. 3843.152. PARKING FACILITIES AUTHORIZED; OPERATION BY PRIVATE ENTITY; TAX EXEMPTION. (a) The district may acquire, lease as lessor or lessee, construct, develop, own, operate, and maintain parking facilities, including:

(1) lots, garages, parking terminals, or other structures or accommodations for the parking of motor vehicles; and

(2) equipment, entrances, exits, fencing, and other accessories necessary for safety and convenience in the parking of vehicles.

(b) A parking facility of the district must be either leased to or operated on behalf of the district by a private entity or an entity other than the district. The district's parking facilities are a program authorized by the legislature under Section 52-a, Article III, Texas Constitution, and accomplish a public purpose under that section even if leased or operated by a private entity for a term of years.

(c) The district's public parking facilities and any lease to a private entity are exempt from the payment of ad valorem taxes and state and local sales and use taxes.

Sec. 3843.153. RULES. The district may adopt rules covering its public transit system or its public parking facilities, except that a rule relating to or affecting the use of the public right-of-way or a requirement for off-street parking is subject to all applicable municipal charter, code, or ordinance requirements.

Sec. 3843.154. FINANCING OF PUBLIC TRANSIT SYSTEM OR PARKING FACILITIES. (a) The district may use any of its resources, including revenue, assessments, taxes, and grant or contract proceeds, to pay the cost of acquiring and operating a public transit system or public parking facilities.

(b) The district may set and impose fees, charges, or tolls for the use of the public transit system or the public parking facilities and may issue bonds or notes to finance the cost of these facilities.

(c) Except as provided by Section 3843.151, if the district pays for or finances the cost of acquiring or operating a public transit system or public parking facilities with resources other than assessments, a petition of property owners or a public hearing is not required.

Sec. 3843.155. PAYMENT IN LIEU OF TAXES TO OTHER TAXING UNIT. If the district's acquisition of property for a parking facility that is leased to or operated by a private entity results in the removal from a taxing unit's tax rolls of real property otherwise subject to ad valorem taxation, the district shall pay to the taxing unit in which the property is located, on or before January 1 of each year, as a payment in lieu of taxes, an amount equal to the ad valorem taxes that otherwise would have been imposed for the preceding tax year on that real property by the taxing unit, without including the value of any improvements constructed on the property.

[Sections 3843.156-3843.200 reserved for expansion]

SUBCHAPTER E. FINANCIAL PROVISIONS

Sec. 3843.201. AUTHORITY TO IMPOSE ASSESSMENTS, AD VALOREM TAXES, AND IMPACT FEES. The district may impose, assess, charge, or collect an assessment, an ad valorem tax, an impact fee, or another fee in accordance with Chapter 49, Water Code, for a purpose specified by Chapter 375, Local Government Code, or as needed to exercise a power or function or to accomplish a purpose or duty for which the district was created.

Sec. 3843.202. MAINTENANCE TAX. (a) If authorized at an election held in accordance with Section 3843.103, the district may impose an annual ad valorem tax on taxable property in the district to maintain, restore, replace, or operate the district and improvements that the district constructs or acquires or the district's facilities, works, or services.

(b) The board shall determine the tax rate.

Sec. 3843.203. ASSESSMENT IN PART OF DISTRICT. An assessment may be imposed on only a part of the district if only that part will benefit from the service or improvement.

Sec. 3843.204. PETITION REQUIRED FOR ASSESSMENT AND FOR FINANCING SERVICES AND IMPROVEMENTS. (a) The board may not impose an assessment or finance a service or improvement project under this chapter unless a written petition requesting the improvement or service has been filed with the board.

(b) The petition must be signed by:

(1) the owners of a majority of the assessed value of real property in the district or in the area of the district that will be subject to the assessment as determined by the most recent certified tax appraisal roll for Harris County; or

(2) at least 25 persons who own real property in the district or the area of the district that will be subject to the assessment, if more than 25 persons own real property in the district or area that will be subject to the assessment as determined by the most recent certified tax appraisal roll for Harris County.

Sec. 3843.205. ASSESSMENTS CONSIDERED TAXES. For purposes of a title insurance policy issued under Chapter 9, Insurance Code, an assessment is a tax.

Sec. 3843.206. LIENS FOR ASSESSMENTS; SUITS TO RECOVER ASSESSMENTS. (a) An assessment imposed on property under this chapter is a personal obligation of the person who owns the property on January 1 of the year for which the assessment is imposed. If the person transfers title to the property, the person is not relieved of the obligation.

(b) On January 1 of the year for which an assessment is imposed on a property, a lien attaches to the property to secure the payment of the assessment and any interest accrued on the assessment. The lien has the same priority as a lien for district taxes.

(c) Not later than the fourth anniversary of the date on which a delinquent assessment became due, the district may file suit to foreclose the lien or to enforce the obligation for the assessment, or both, and for any interest accrued.

(d) In addition to recovering the amount of the assessment and any accrued interest, the district may recover reasonable costs, including attorney's fees, that the district incurs in foreclosing the lien or enforcing the obligation. The costs may not exceed an amount equal to 20 percent of the assessment and interest.

(e) If the district does not file a suit in connection with a delinquent assessment on or before the last date on which the district may file suit under Subsection (c), the assessment and any interest accrued is considered paid.

Sec. 3843.207. PROPERTY OF CERTAIN UTILITIES EXEMPT FROM ASSESSMENT AND IMPACT FEES. The district may not impose an impact fee or assessment on the property, including equipment or facilities, of:

(1) an electric utility as defined by Section 31.002, Utilities Code;

(2) a gas utility as defined by Section 101.003 or 121.001, Utilities Code;

(3) a telecommunications provider as defined by Section 51.002, Utilities Code; or

(4) a cable operator as defined by 47 U.S.C. Section 522, as amended.

Sec. 3843.208. USE OF ELECTRICAL OR OPTICAL LINES. (a) The district may impose an assessment to pay the cost of:

(1) burying or removing electrical power lines, telephone lines, cable or fiber optic lines, or any other type of electrical or optical line;

(2) removing poles and any elevated lines using the poles; and

(3) reconnecting the lines described by Subdivision (2) to the buildings or other improvements to which the lines were connected.

(b) The district may acquire, operate, or charge fees for the use of the district conduits for:

(1) another person's:

(A) telecommunications network;

(B) fiber-optic cable; or

(C) electronic transmission line; or

(2) any other type of transmission line or supporting facility.

(c) The district may not require a person to use a district conduit.

Sec. 3843.209. DEBT. The district may issue bonds, notes, or other debt obligations in accordance with Subchapters I and J, Chapter 375, Local Government Code, for a purpose specified by that chapter or as required to exercise a power or function or to accomplish a purpose or duty for which the district was created.

[Sections 3843.210-3843.250 reserved for expansion]

SUBCHAPTER F. DISSOLUTION

Sec. 3843.251. DISSOLUTION OF DISTRICT WITH OUTSTANDING DEBT. (a) The district may be dissolved as provided by Subchapter M, Chapter 375, Local Government Code, except that Section 375.264, Local Government Code, does not apply to the district.

(b) If the district has debt when it is dissolved, the district shall remain in existence solely for the purpose of discharging its bonds or other obligations according to their terms.

SECTION 2. BOUNDARIES. As of the effective date of this Act, the Harris County Improvement District No. 6 includes all territory contained in the following described area:

UNLESS otherwise specified, the boundaries of this district will travel along the centerline of each street included, and each intersection will be the intersection of the centerlines of the streets mentioned.

BEGINNING at the intersection of West Dallas and Monstrose Boulevard.

Then in a southerly direction along Montrose Boulevard to its intersection with Sul Ross.
Then in a westerly direction along Sul Ross to its intersection with Mulberry.
Then in a southerly direction along Mulberry to its intersection with Branard, then east along Branard to its intersection with Yupon.
Then in a southerly direction along Yupon to where Yupon corners into Colquitt.
Then in an easterly direction along Colquitt to its intersection with Graustark.
Then in a southerly direction along Graustark to the south boundary line of U.S. Highway 59.
Then in an easterly direction from said intersection along the south boundary line of U.S. Highway 59 proceeding in a northeasterly direction along Spur 527, then following Spur 527 in a northeasterly direction to its intersection with the easterly line of Milam Street.
Then in a northeasterly direction along Milam Street to its intersection with the easterly line of Spur 527.
Then in a northerly direction along the easterly line of Spur 527 to Brazos Street.
Then in a northeasterly direction along Brazos Street to its intersection with Tuam Avenue.
Then in a northwesterly direction along Tuam Avenue to Bagby Street.
Then in a northeasterly direction along Bagby Street to McGowen Avenue.
Then in a northwesterly direction along the McGowen Avenue to the southerly projection of Bailey Street.
Then following the southerly projection of Bailey Street in a northerly direction to Bailey Street.
Then in a northerly direction along Bailey Street to the southeast corner of Lot 10 Block 78 of the W.R. Baker Subdivision, Unrecorded.
Then in a westerly direction along the south line of said W.R. Baker Unrecorded Subdivision, crossing Gillette Street and continuing to Genesee Street.
Then westerly along Welch Street to its intersection with Taft Street.
Then in a northerly direction along Taft Street to its intersection with West Dallas Street.
Then in a westerly direction along West Dallas Street to its intersection with Montrose Boulevard at the point of BEGINNING.

SECTION 3. LEGISLATIVE FINDINGS. The legislature finds that:

(1) proper and legal notice of the intention to introduce this Act, setting forth the general substance of this Act, has been published as provided by law, and the notice and a copy of this Act have been furnished to all persons, agencies, officials, or entities to which they are required to be furnished by the constitution and laws of this state, including the governor, who has submitted the notice and Act to the Texas Commission on Environmental Quality;

(2) the Texas Commission on Environmental Quality has filed its recommendations relating to this Act with the governor, lieutenant governor, and speaker of the house of representatives within the required time;

(3) the general law relating to consent by political subdivisions to the creation of districts with conservation, reclamation, and road powers and the inclusion of land in those districts has been complied with; and

(4) all requirements of the constitution and laws of this state and the rules and procedures of the legislature with respect to the notice, introduction, and passage of this Act have been fulfilled and accomplished.

SECTION 4. EFFECTIVE DATE. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2005.

Representative Coleman moved to adopt the conference committee report on **HB 3518**.

A record vote was requested.

The motion to adopt the conference committee report on **HB 3518** prevailed by (Record 954): 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; Coleman; Cook, B.; Cook, R.; Corte; 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; Giddings; Gonzales; Gonzalez Toureilles; 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; Pitts; Puente; Quintanilla; Raymond; Reyna; Riddle; Ritter; Rodriguez; Rose; Seaman; Smith, T.; Smith, W.; Solis; Solomons; Straus; Swinford; Talton; Taylor; Thompson; Truitt; Turner; Uresti; Van Arsdale; Veasey; Villarreal; Vo; West; Wong; Woolley; Zedler.

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

Absent, Excused — Crabb; Goodman; Smithee.

Absent — Hodge; Pickett; Strama.

STATEMENT OF VOTE

I was shown voting yes on Record No. 954. I intended to vote no.

Hope

(Speaker in the chair)

HB 2876 - RULES SUSPENDED

Representative Callegari moved to suspend all necessary rules to consider the conference committee report on **HB 2876** at this time.

The motion prevailed.

HB 2876 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Callegari submitted the following conference committee report on **HB 2876** :

Austin, Texas, May 27, 2005

The Honorable David Dewhurst
President of the Senate

The Honorable Tom Craddick
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the senate and the house of representatives on **HB 2876** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Armbrister	Callegari
Madla	Puente
Estes	Geren
Barrientos	Hardcastle
Lindsay	
On the part of the senate	On the part of the house

HB 2876, A bill to be entitled An Act relating to certificates of public convenience and necessity for water service and sewer service.

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

SECTION 1. Section 13.002, Water Code, is amended by amending Subdivision (1) and adding Subdivision (1-a) to read as follows:

(1) "Affected person" means any landowner within an area for which a certificate of public convenience and necessity is filed, any retail public utility affected by any action of the regulatory authority, any person or corporation whose utility service or rates are affected by any proceeding before the regulatory authority, or any person or corporation that is a competitor of a retail public utility with respect to any service performed by the retail public utility or that desires to enter into competition.

(1-a) "Landowner," "owner of a tract of land," and "owners of each tract of land" include multiple owners of a single deeded tract of land.

SECTION 2. Section 13.241(a), Water Code, is amended to read as follows:

(a) In determining whether to grant or amend a certificate of public convenience and necessity, the commission shall ensure that the applicant possesses the financial, managerial, and technical capability to provide continuous and adequate service.

SECTION 3. Section 13.242, Water Code, is amended by adding Subsection (d) to read as follows:

(d) A supplier of wholesale water or sewer service may not require a purchaser to obtain a certificate of public convenience and necessity if the purchaser is not otherwise required by this chapter to obtain the certificate.

SECTION 4. Section 13.244, Water Code, is amended to read as follows:

Sec. 13.244. APPLICATION; MAPS AND OTHER INFORMATION; EVIDENCE AND CONSENT. (a) To obtain a certificate of public convenience and necessity or an amendment to a certificate, a [~~A~~] public utility or water supply or sewer service corporation shall submit to the commission an application for [~~to obtain~~] a certificate [~~of public convenience and necessity~~] or for an amendment as provided by this section [~~of a certificate~~].

(b) Each [~~On request by the commission, each~~] public utility and water supply or sewer service corporation shall file with the commission a map or maps showing all its facilities and illustrating separately facilities for production, transmission, and distribution of its services, and each certificated retail public utility shall file with the commission a map or maps showing any facilities, customers, or area currently being served outside its certificated areas.

(c) Each applicant for a certificate or for an amendment shall file with the commission evidence required by the commission to show that the applicant has received the required consent, franchise, or permit of the proper municipality or other public authority.

(d) An application for a certificate of public convenience and necessity or for an amendment to a certificate must contain:

(1) a description of the proposed service area by:

(A) a metes and bounds survey certified by a licensed state land surveyor or a registered professional land surveyor;

(B) the Texas State Plane Coordinate System;

(C) verifiable landmarks, including a road, creek, or railroad line; or

(D) if a recorded plat of the area exists, lot and block number;

(2) a description of any requests for service in the proposed service area;

(3) a capital improvements plan, including a budget and estimated timeline for construction of all facilities necessary to provide full service to the entire proposed service area;

(4) a description of the sources of funding for all facilities;

(5) to the extent known, a description of current and projected land uses, including densities;

(6) a current financial statement of the applicant;

(7) according to the tax roll of the central appraisal district for each county in which the proposed service area is located, a list of the owners of each tract of land that is:

(A) at least 50 acres; and

(B) wholly or partially located within the proposed service area; and

(8) any other item required by the commission.

SECTION 5. Subchapter G, Chapter 13, Water Code, is amended by adding Sections 13.245 and 13.2451 to read as follows:

Sec. 13.245. MUNICIPAL BOUNDARIES OR EXTRATERRITORIAL JURISDICTION OF CERTAIN MUNICIPALITIES. (a) This section applies only to a municipality with a population of 500,000 or more.

(b) Except as provided by Subsection (c), the commission may not grant to a retail public utility a certificate of public convenience and necessity for a service area within the boundaries or extraterritorial jurisdiction of a municipality without the consent of the municipality. The municipality may not unreasonably withhold the consent. As a condition of the consent, a municipality may require that all water and sewer facilities be designed and constructed in accordance with the municipality's standards for facilities.

(c) If a municipality has not consented under Subsection (b) before the 180th day after the date the municipality receives the retail public utility's application, the commission shall grant the certificate of public convenience and necessity without the consent of the municipality if the commission finds that the municipality:

(1) does not have the ability to provide service; or

(2) has failed to make a good faith effort to provide service on reasonable terms and conditions.

(d) A commitment described by Subsection (c)(2) must provide that the construction of service facilities will begin within one year and will be substantially completed within two years after the date the retail public utility's application was filed with the municipality.

(e) If the commission makes a decision under Subsection (d) regarding the grant of a certificate of public convenience and necessity without the consent of the municipality, the municipality or the retail public utility may appeal the decision to the appropriate state district court. The court shall hear the petition within 120 days after the date the petition is filed. On final disposition, the court may award reasonable fees to the prevailing party.

Sec. 13.2451. EXTENSION BEYOND EXTRATERRITORIAL JURISDICTION. (a) Except as provided by Subsection (b), if a municipality extends its extraterritorial jurisdiction to include an area certificated to a retail public utility, the retail public utility may continue and extend service in its area of public convenience and necessity under the rights granted by its certificate and this chapter.

(b) The commission may not extend a municipality's certificate of public convenience and necessity beyond its extraterritorial jurisdiction without the written consent of the landowner who owns the property in which the certificate is to be extended. The portion of any certificate of public convenience and necessity that extends beyond the extraterritorial jurisdiction of the municipality without the consent of the landowner is void.

SECTION 6. Section 13.246, Water Code, is amended by amending Subsections (a), (b), (c), and (d) and adding Subsections (a-1), (h), and (i) to read as follows:

(a) If an application for a certificate of public convenience and necessity or for an amendment to a certificate is filed, the commission shall cause notice of the application to be given to affected parties and, if requested, shall fix a time and place for a hearing and give notice of the hearing. Any person affected by the application may intervene at the hearing.

(a-1) Except as otherwise provided by this subsection, in addition to the notice required by Subsection (a), the commission shall require notice to be mailed to each owner of a tract of land that is at least 50 acres and is wholly or partially included in the area proposed to be certified. Notice required under this subsection must be mailed by first class mail to the owner of the tract according to the most current tax appraisal rolls of the applicable central appraisal district at the time the commission received the application for the certificate or amendment. Good faith efforts to comply with the requirements of this subsection shall be considered adequate notice to landowners. Notice under this subsection is not required for a matter filed with the commission under:

(1) Section 13.248 or 13.255; or

(2) Chapter 65.

(b) The commission may grant applications and issue certificates and amendments to certificates only if the commission finds that a certificate or amendment is necessary for the service, accommodation, convenience, or safety of the public. The commission may issue a certificate or amendment as requested, or refuse to issue it, or issue it for the construction of only a portion of the contemplated system or facility or extension, or for the partial exercise only of the right or privilege and may impose special conditions necessary to ensure that continuous and adequate service is provided.

(c) Certificates of public convenience and necessity and amendments to certificates shall be granted on a nondiscriminatory basis after consideration by the commission of:

(1) the adequacy of service currently provided to the requested area;

(2) [~~,~~] the need for additional service in the requested area, including whether any landowners, prospective landowners, tenants, or residents have requested service;

(3) [~~,~~] the effect of the granting of a certificate or of an amendment on the recipient of the certificate or amendment, on the landowners in the area, and on any retail public utility of the same kind already serving the proximate area;

(4) [~~,~~] the ability of the applicant to provide adequate service, including meeting the standards of the commission, taking into consideration the current and projected density and land use of the area;

(5) the feasibility of obtaining service from an adjacent retail public utility;

(6) the financial ability of the applicant to pay for the facilities necessary to provide continuous and adequate service and [~~,~~] the financial stability of the applicant, including, if applicable, the adequacy of the applicant's debt-equity ratio;

(7) [~~,~~] environmental integrity;

(8) [~~, and~~] the probable improvement of service or lowering of cost to consumers in that area resulting from the granting of the certificate or amendment; and

(9) the effect on the land to be included in the certificated area.

(d) The commission may require an applicant for a certificate or for an amendment [~~utility~~] to provide a bond or other financial assurance in a form and amount specified by the commission to ensure that continuous and adequate utility service is provided.

(h) Except as provided by Subsection (i), a landowner who owns a tract of land that is at least 25 acres and that is wholly or partially located within the proposed service area may elect to exclude some or all of the landowner's property from the proposed service area by providing written notice to the commission before the 30th day after the date the landowner receives notice of a new application for a certificate of public convenience and necessity or for an amendment to an existing certificate of public convenience and necessity. The landowner's election is effective without a further hearing or other process by the commission. If a landowner makes an election under this subsection, the application shall be modified so that the electing landowner's property is not included in the proposed service area.

(i) A landowner is not entitled to make an election under Subsection (h) but is entitled to contest the inclusion of the landowner's property in the proposed service area at a hearing held by the commission regarding the application if the proposed service area is located within the boundaries or extraterritorial jurisdiction of a municipality with a population of more than 500,000 and the municipality or a utility owned by the municipality is the applicant.

SECTION 7. The heading to Section 13.247, Water Code, is amended to read as follows:

Sec. 13.247. AREA [~~INCLUDED~~] WITHIN MUNICIPALITY [~~CITY, TOWN, OR VILLAGE~~].

SECTION 8. Section 13.247, Water Code, is amended by amending Subsections (a) and (c) and adding Subsection (d) to read as follows:

(a) If an area [~~has been or~~] is [~~included~~] within the boundaries of a municipality [~~city as the result of annexation, incorporation, or otherwise~~], all retail public utilities certified or entitled to certification under this chapter to provide service or operate facilities in that area [~~before the inclusion~~] may continue and extend service in its area of public convenience and necessity within the [~~annexed or incorporated~~] area pursuant to the rights granted by its certificate and this chapter, unless the municipality exercises its power of eminent domain to acquire the property of the retail public utility under Subsection (d). Except as provided by Section 13.255 [~~of this code~~], a municipally owned or operated utility may not provide retail water and sewer utility service within the area certificated to another retail public utility without first having obtained from the commission a certificate of public convenience and necessity that includes the areas to be served.

(c) This section may not be construed as limiting the power of municipalities [~~cities~~] to incorporate or extend their boundaries by annexation, or as prohibiting any municipality [~~city~~] from levying taxes and other special charges for the use of the streets as are authorized by Section 182.025, Tax Code.

(d) In addition to any other rights provided by law, a municipality with a population of more than 500,000 may exercise the power of eminent domain in the manner provided by Chapter 21, Property Code, to acquire a substandard water or sewer system if all the facilities of the system are located entirely within the municipality's boundaries. The municipality shall pay just and adequate compensation for the property. In this subsection, "substandard water or sewer system" means a system that is not in compliance with the municipality's standards for water and wastewater service.

SECTION 9. Section 13.254, Water Code, is amended by amending Subsections (a), (e), and (g) and adding Subsections (a-1) through (a-4) and (g-1) to read as follows:

(a) The commission at any time after notice and hearing may, on its own motion or on receipt of a petition described by Subsection (a-1), revoke or amend any certificate of public convenience and necessity with the written consent of the certificate holder or if it finds that:

(1) the certificate holder has never provided, is no longer providing, is incapable of providing, or has failed to provide continuous and adequate service in the area, or part of the area, covered by the certificate;

(2) in an affected county as defined in Section 16.341, the cost of providing service by the certificate holder is so prohibitively expensive as to constitute denial of service, provided that, for commercial developments or for residential developments started after September 1, 1997, in an affected county as defined in Section 16.341, the fact that the cost of obtaining service from the currently certificated retail public utility makes the development economically unfeasible does not render such cost prohibitively expensive in the absence of other relevant factors;

(3) the certificate holder has agreed in writing to allow another retail public utility to provide service within its service area, except for an interim period, without amending its certificate; or

(4) the certificate holder has failed to file a cease and desist action pursuant to Section 13.252 within 180 days of the date that it became aware that another retail public utility was providing service within its service area, unless the certificate holder demonstrates good cause for its failure to file such action within the 180 days.

(a-1) As an alternative to decertification under Subsection (a), the owner of a tract of land that is at least 50 acres and that is not in a platted subdivision actually receiving water or sewer service may petition the commission under this subsection for expedited release of the area from a certificate of public convenience and necessity so that the area may receive service from another retail public utility. The petitioner shall deliver, via certified mail, a copy of the petition to the certificate holder, who may submit information to the commission to controvert information submitted by the petitioner. The petitioner must demonstrate that:

(1) a written request for service, other than a request for standard residential or commercial service, has been submitted to the certificate holder, identifying:

(A) the area for which service is sought;

(B) the timeframe within which service is needed for current and projected service demands in the area;

(C) the level and manner of service needed for current and projected service demands in the area; and

(D) any additional information requested by the certificate holder that is reasonably related to determination of the capacity or cost for providing the service;

(2) the certificate holder has been allowed at least 90 calendar days to review and respond to the written request and the information it contains;

(3) the certificate holder:

(A) has refused to provide the service;

(B) is not capable of providing the service on a continuous and adequate basis within the timeframe, at the level, or in the manner reasonably needed or requested by current and projected service demands in the area; or

(C) conditions the provision of service on the payment of costs not properly allocable directly to the petitioner's service request, as determined by the commission; and

(4) the alternate retail public utility from which the petitioner will be requesting service is capable of providing continuous and adequate service within the timeframe, at the level, and in the manner reasonably needed or requested by current and projected service demands in the area.

(a-2) A landowner is not entitled to make the election described in Subsection (a-1) but is entitled to contest the involuntary certification of its property in a hearing held by the commission if the landowner's property is located:

(1) within the boundaries of any municipality or the extraterritorial jurisdiction of a municipality with a population of more than 500,000 and the municipality or retail public utility owned by the municipality is the holder of the certificate; or

(2) in a platted subdivision actually receiving water or sewer service.

(a-3) Within 90 calendar days from the date the commission determines the petition filed pursuant to Subsection (a-1) to be administratively complete, the commission shall grant the petition unless the commission makes an express finding that the petitioner failed to satisfy the elements required in Subsection (a-1) and supports its finding with separate findings and conclusions for each element based solely on the information provided by the petitioner and the certificate holder. The commission may grant or deny a petition subject to terms and conditions specifically related to the service request of the petitioner and all relevant information submitted by the petitioner and the certificate holder. In addition, the commission may require an award of compensation as otherwise provided by this section.

(a-4) Chapter 2001, Government Code, does not apply to any petition filed under Subsection (a-1). The decision of the commission on the petition is final after any reconsideration authorized by the commission's rules and may not be appealed.

(e) The determination of the monetary amount of compensation, if any, shall be determined at the time another retail public utility seeks to provide service in the previously decertified area and before service is actually provided. The commission shall ensure that the monetary amount of compensation is determined not later than the 90th calendar day after the date on which a retail public utility notifies the commission of its intent to provide service to the decertified area.

(g) For the purpose of implementing this section, the value of real property owned and utilized by the retail public utility for its facilities shall be determined according to the standards set forth in Chapter 21, Property Code, governing actions in eminent domain and the value of personal property shall be determined according to the factors in this subsection. The factors ensuring that the compensation to a retail public utility [~~for the taking, damaging, or loss of personal property, including the retail public utility's business,~~] is just and adequate shall [~~at a minimum~~] include: the amount of the retail public utility's debt allocable for service to the area in question [~~the impact on the existing indebtedness of the retail public utility and its ability to repay that debt~~]; the value of the service facilities of the retail public utility located within the area in question; the amount of any expenditures for planning, design, or construction of service facilities that are allocable to service to the area in question; the amount of the retail public utility's contractual obligations allocable to the area in question; any demonstrated impairment of service or increase of cost to consumers of the retail public utility remaining after the decertification; the impact on future revenues lost from existing customers [~~and expenses of the retail public utility~~]; necessary and reasonable legal expenses and professional fees; [~~factors relevant to maintaining the current financial integrity of the retail public utility;~~] and other relevant factors. The commission shall adopt rules governing the evaluation of these factors.

(g-1) If the retail public utilities cannot agree on an independent appraiser within 10 calendar days after the date on which the retail public utility notifies the commission of its intent to provide service to the decertified area, each retail public utility shall engage its own appraiser at its own expense, and each appraisal shall be submitted to the commission within 60 calendar days. After receiving the appraisals, the commission shall appoint a third appraiser who shall make a determination of the compensation within 30 days. The determination may not be less than the lower appraisal or more than the higher appraisal. Each retail public utility shall pay half the cost of the third appraisal.

SECTION 10. Section 13.255, Water Code, is amended by amending Subsection (g) and by adding Subsection (g-1) to read as follows:

(g) For the purpose of implementing this section, the value of real property owned and utilized by the retail public utility for its facilities shall be determined according to the standards set forth in Chapter 21, Property Code, governing actions in eminent domain; the value of personal property shall be determined according to the factors in this subsection. The factors ensuring that the compensation to a retail public utility [~~for the taking, damaging, and/or loss of personal property, including the retail public utility's business,~~] is just and

adequate, shall, at a minimum, include: impact on the existing indebtedness of the retail public utility and its ability to repay that debt, the value of the service facilities of the retail public utility located within the area in question, the amount of any expenditures for planning, design, or construction of service facilities outside the incorporated or annexed area that are allocable to service to the area in question, the amount of the retail public utility's contractual obligations allocable to the area in question, any demonstrated impairment of service or increase of cost to consumers of the retail public utility remaining after the single certification, the impact on future revenues lost from existing customers [~~and expenses of the retail public utility~~], necessary and reasonable legal expenses and professional fees, factors relevant to maintaining the current financial integrity of the retail public utility, and other relevant factors.

(g-1) The commission shall adopt rules governing the evaluation of the factors to be considered in determining the monetary compensation under Subsection (g). The commission by rule shall adopt procedures to ensure that the total compensation to be paid to a retail public utility under Subsection (g) is determined not later than the 90th calendar day after the date on which the commission determines that the municipality's application is administratively complete.

SECTION 11. Subchapter G, Chapter 13, Water Code, is amended by adding Section 13.2551 to read as follows:

Sec. 13.2551. COMPLETION OF DECERTIFICATION. (a) As a condition to decertification or single certification under Section 13.254 or 13.255, and on request by an affected retail public utility, the commission may order:

(1) the retail public utility seeking to provide service to a decertified area to serve the entire service area of the retail public utility that is being decertified; and

(2) the transfer of the entire certificate of public convenience and necessity of a partially decertified retail public utility to the retail public utility seeking to provide service to the decertified area.

(b) The commission shall order service to the entire area under Subsection (a) if the commission finds that the decertified retail public utility will be unable to provide continuous and adequate service at an affordable cost to the remaining customers.

(c) The commission shall require the retail public utility seeking to provide service to the decertified area to provide continuous and adequate service to the remaining customers at a cost comparable to the cost of that service to its other customers and shall establish the terms under which the service must be provided. The terms may include:

(1) transferring debt and other contract obligations;

(2) transferring real and personal property;

(3) establishing interim service rates for affected customers during specified times; and

(4) other provisions necessary for the just and reasonable allocation of assets and liabilities.

(d) The retail public utility seeking decertification shall not charge the affected customers any transfer fee or other fee to obtain service other than the retail public utility's usual and customary rates for monthly service or the interim rates set by the commission, if applicable.

(e) The commission shall not order compensation to the decertificated retail utility if service to the entire service area is ordered under this section.

SECTION 12. Section 13.257, Water Code, is amended by amending Subsections (a), (b), and (d) and adding Subsections (r) and (s) to read as follows:

(a) In this section, "utility service provider" means a retail public utility other than a district subject to Section 49.452 of this code[~~, a water supply or sewer service corporation, or a special utility district organized and operating under Chapter 65~~].

(b) If a person proposes to sell or convey [~~unimproved~~] real property located in a certificated service area of a utility service provider, the person must give to the purchaser written notice as prescribed by this section. An executory contract for the purchase and sale of real property that has a performance period of more than six months is considered a sale of real property under this section.

(d) The notice must be executed by the seller and read as follows: "The real property, described below, that you are about to purchase may be [~~is~~] located in a certificated [~~the~~] water or sewer service area [~~of _____~~] , which is [~~the utility service provider~~] authorized by law to provide water or sewer service to the properties in the certificated area. If your property is located in a certificated area there [~~. No other retail public utility is authorized to provide water or sewer service to your property. There~~] may be special costs or charges that you will be required to pay before you can receive water or sewer service. There may be a period required to construct lines or other facilities necessary to provide water or sewer service to your property. You are advised to determine if the property is in a certificated area and contact the utility service provider to determine the cost that you will be required to pay and the period, if any, that is required to provide water or sewer service to your property.

"The undersigned purchaser hereby acknowledges receipt of the foregoing notice at or before the execution of a binding contract for the purchase of the real property described in the notice or at closing of purchase of the real property.

_____

Date

_____

Signature of Purchaser

"[~~(Note: Correct name of utility service provider is to be placed in the appropriate space.)~~] Except for notices included as an addendum to or paragraph of a purchase contract, the notice must be executed by the seller and purchaser, as indicated."

(r) A utility service provider shall:

(1) record in the real property records of each county in which the service area or a portion of the service area is located a certified copy of the map of the certificate of public convenience and necessity and of any amendment to the certificate as contained in the commission's records, and a boundary description of the service area by:

(A) a metes and bounds survey certified by a licensed state land surveyor or a registered professional land surveyor;

(B) the Texas State Plane Coordinate System;

(C) verifiable landmarks, including a road, creek, or railroad line; or

(D) if a recorded plat of the area exists, lot and block number; and

(2) submit to the executive director evidence of the recording.

(s) Each county shall accept and file in its real property records a utility service provider's map presented to the county clerk under this section if the map meets filing requirements, does not exceed 11 inches by 17 inches in size, and is accompanied by the appropriate fee. The recording required by this section must be completed not later than the 31st day after the date a utility service provider receives a final order from the commission granting an application for a new certificate or for an amendment to a certificate that results in a change in the utility service provider's service area.

SECTION 13. The following provisions of the Water Code are repealed:

(1) Section 13.254(h); and

(2) Section 13.2541.

SECTION 14. A holder of a certificate of public convenience and necessity on the effective date of this Act must comply with Section 13.257, Water Code, as amended by this Act, not later than January 1, 2007.

SECTION 15. The changes in law made by this Act apply only to:

(1) an application for a certificate of public convenience and necessity or for an amendment to a certificate of public convenience and necessity submitted to the Texas Commission on Environmental Quality on or after January 1, 2006; and

(2) a proceeding to amend or revoke a certificate of public convenience and necessity initiated on or after January 1, 2006.

SECTION 16. The Texas Commission on Environmental Quality shall promulgate rules implementing the changes in law effected by this Act by January 1, 2006, or shall report to the governor, lieutenant governor, and speaker of the house any failure to comply with this deadline.

SECTION 17. This Act takes effect September 1, 2005.

Representative Callegari moved to adopt the conference committee report on **HB 2876**.

The motion to adopt the conference committee report on **HB 2876** 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.)

HB 3563 - RULES SUSPENDED

Representative P. King moved to suspend all necessary rules to consider the conference committee report on **HB 3563** at this time.

The motion prevailed.

HB 3563 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative P. King submitted the following conference committee report on **HB 3563** :

Austin, Texas, May 27, 2005

The Honorable David Dewhurst
President of the Senate

The Honorable Tom Craddick
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the senate and the house of representatives on **HB 3563** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Staples	P. King
Averitt	Bailey
Eltife	Luna
	Swinford
On the part of the senate	On the part of the house

HB 3563, A bill to be entitled An Act relating to the use of anabolic steriods by public school students.

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

SECTION 1. Subchapter D, Chapter 33, Education Code, is amended by adding Section 33.091 to read as follows:

Sec. 33.091. PREVENTION OF ILLEGAL STEROID USE. (a) In this section:

(1) "League" means the University Interscholastic League.

(2) "Parent" includes a guardian or other person standing in parental relation.

(3) "Steroid" means an anabolic steroid as described by Section 481.104, Health and Safety Code.

(b) The league shall adopt rules prohibiting a student from participating in an athletic competition sponsored or sanctioned by the league unless:

(1) the student agrees not to use steroids; and

(2) the league obtains from the student's parent a statement signed by the parent and acknowledging that:

(A) state law prohibits possessing, dispensing, delivering, or administering a steroid in a manner not allowed by state law;

(B) state law provides that bodybuilding, muscle enhancement, or the increase of muscle bulk or strength through the use of a steroid by a person who is in good health is not a valid medical purpose;

(C) only a medical doctor may prescribe a steroid for a person; and

(D) a violation of state law concerning steroids is a criminal offense punishable by confinement in jail or imprisonment in the Texas Department of Criminal Justice.

(c) The league shall:

(1) develop an educational program for students engaged in extracurricular athletic activities sponsored or sanctioned by the league, parents of those students, and coaches of those activities regarding the health effects of steroid use; and

(2) make the program available to school districts.

(d) During the 2005-2006 school year, the league shall conduct a survey regarding the extent of illegal steroid use by high school students, including students engaged in extracurricular athletic activities sponsored or sanctioned by the league. The survey must be designed to determine:

(1) the number of high school students found by school districts to have possessed or used illegal steroids;

(2) the number of school districts that test high school students, including students engaged in extracurricular athletic activities, for the presence of illegal steroids in the students' bodies; and

(3) any other information the league considers indicative of illegal steroid use by high school students engaged in extracurricular athletic activities.

(e) The league shall:

(1) cooperate with an appropriate public or private entity to study the effectiveness of the educational program required by Subsection (c);

(2) develop a plan for testing students engaged in extracurricular athletic activities sponsored or sanctioned by the league for the presence of illegal steroids in the students' bodies; and

(3) not later than December 1, 2006, file a written report with the legislature regarding:

(A) the results of the survey required by Subsection (d);

(B) the results of the study required by Subdivision (1); and

(C) the plan for testing students required by Subdivision (2).

(f) If, based on the report required under Subsection (e)(3), the legislature determines that the educational program required by Subsection (c) has not significantly reduced the use of illegal steroids by students engaged in extracurricular athletic activities, the legislature may require the league to implement the steroid testing plan developed under Subsection (e)(2).

(g) The league may increase the membership fees required of school districts that participate in athletic competitions sponsored or sanctioned by the league in an amount necessary to offset the cost of league activities under this section.

(h) Subsection (b)(1) does not apply to the use by a student of a steroid that is dispensed, prescribed, delivered, and administered by a medical practitioner for a valid medical purpose and in the course of professional practice.

(i) The league shall develop the educational program required by Subsection (c) not later than September 1, 2005. This subsection and Subsections (d), (e), and (f) expire January 15, 2007.

SECTION 2. Subchapter A, Chapter 38, Education Code, is amended by adding Section 38.0081 to read as follows:

Sec. 38.0081. INFORMATION ABOUT STEROIDS. (a) The agency, in conjunction with the Department of State Health Services, shall:

(1) develop information about the use of anabolic steroids and the health risks involved with such use; and

(2) distribute the information to school districts.

(b) Each school district shall, at appropriate grade levels as determined by the State Board of Education, provide the information developed under Subsection (a) to district students, particularly to those students involved in extracurricular athletic activities.

SECTION 3. Sections 33.091 and 38.0081, Education Code, as added by this Act, apply beginning with the 2005-2006 school year.

SECTION 4. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2005.

Representative P. King moved to adopt the conference committee report on **HB 3563**.

A record vote was requested.

The motion to adopt the conference committee report on **HB 3563** prevailed by (Record 955): 140 Yeas, 0 Nays, 1 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; Crownover; Davis, J.; Davis, Y.; Dawson; Delisi; Denny; Deshotel; Driver; Dukes; Dutton; 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; Hegar; Herrero; Hilderbran; Hill; Hochberg; Hodge; Homer; Hope; Hopson; Howard; Hughes; Hunter; Hupp; Isett; Jackson; Jones, D.; Jones, J.; Keel; Keffer, B.; Keffer, J.; King, P.; King, T.; Kolkhorst; 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; Raymond; Reyna; Riddle; Ritter; Rodriguez; Rose; Smith, T.; Smith, W.; 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 — Crabb; Goodman; Smithee.

Absent — Coleman; Dunnam; Krusee; Quintanilla; Seaman.

STATEMENT OF VOTE

When Record No. 955 was taken, my vote failed to register. I would have voted yes.

Dunnam

(Smithee now present)

HJR 80 - RULES SUSPENDED

Representative Krusee moved to suspend all necessary rules to consider the conference committee report on **HJR 80** at this time.

The motion prevailed.

HJR 80 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Krusee submitted the following conference committee report on **HJR 80** :

Austin, Texas, May 28, 2005

The Honorable David Dewhurst
President of the Senate

The Honorable Tom Craddick
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the senate and the house of representatives on **HJR 80** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Ogden	Krusee
Carona	Geren
Estes	Keel
Madla	Martinez Fischer
Williams	Hartnett
On the part of the senate	On the part of the house

HJR 80, A joint resolution proposing a constitutional amendment clarifying that certain economic development programs do not constitute a debt.

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

SECTION 1. Section 52-a, Article III, Texas Constitution, is amended to read as follows:

Sec. 52-a. Notwithstanding any other provision of this constitution, the legislature may provide for the creation of programs and the making of loans and grants of public money, other than money otherwise dedicated by this constitution to use for a different purpose, for the public purposes of development and diversification of the economy of the state, the elimination of unemployment or underemployment in the state, the stimulation of agricultural innovation, the

fostering of the growth of enterprises based on agriculture, or the development or expansion of transportation or commerce in the state. Any bonds or other obligations of a county, municipality, or other political subdivision of the state that are issued for the purpose of making loans or grants in connection with a program authorized by the legislature under this section and that are payable from ad valorem taxes must be approved by a vote of the majority of the registered voters of the county, municipality, or political subdivision voting on the issue. A program created or a loan or grant made as provided by this section that is not secured by a pledge of ad valorem taxes or financed by the issuance of any bonds or other obligations payable from ad valorem taxes of the political subdivision does not constitute or create a debt for the purpose of any provision of this constitution. An enabling law enacted by the legislature in anticipation of the adoption of this amendment is not void because of its anticipatory character.

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 permit voting for or against the proposition: "The constitutional amendment clarifying that certain economic development programs do not constitute a debt."

Representative Krusee moved to adopt the conference committee report on **HJR 80**.

A record vote was requested.

The motion to adopt the conference committee report on **HJR 80** prevailed by (Record 956): 135 Yeas, 7 Nays, 1 Present, not voting.

Yeas — Allen, R.; Alonzo; Anderson; Bailey; Baxter; Berman; Blake; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Burnam; Callegari; Campbell; Casteel; Chavez; Chisum; Coleman; Cook, R.; Corte; Crownover; Davis, J.; Davis, Y.; Dawson; Delisi; Denny; Deshotel; Driver; Dukes; Dunnam; Dutton; Edwards; Eiland; Eissler; Elkins; Escobar; Farabee; Flores; Flynn; Frost; Gallego; Gattis; Geren; Giddings; Gonzales; Gonzalez Toureilles; Goolsby; Griggs; Grusendorf; Guillen; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Hegar; Hill; Hochberg; Hodge; Homer; Hope; Hopson; Howard; Hughes; Hunter; Hupp; Isett; Jones, D.; Jones, J.; Keel; Keffer, B.; Keffer, J.; King, P.; King, T.; Kolkhorst; Krusee; Kuempel; Laney; Laubenberg; 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; 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.

Nays — Allen, A.; Anchia; Castro; Farrar; Herrero; Leibowitz; Riddle.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Crabb; Goodman.

Absent — Cook, B.; Hilderbran; Jackson; Seaman.

STATEMENTS OF VOTE

I was shown voting no on Record No. 956. I intended to vote yes.

Castro

I was shown voting yes on Record No. 956. I intended to vote no.

Y. Davis

I was shown voting yes on Record No. 956. I intended to vote no.

Dunnam

When Record No. 956 was taken, my vote failed to register. I would have voted yes.

Hilderbran

SB 11 - RULES SUSPENDED

Representative Delisi moved to suspend all necessary rules to consider the conference committee report on **SB 11** at this time.

The motion prevailed.

SB 11 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Delisi submitted the conference committee report on **SB 11**.

Representative Delisi moved to adopt the conference committee report on **SB 11**.

The motion to adopt the conference committee report on **SB 11** 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: Farrar, Hodge, and Leibowitz recorded voting no.)

SB 330 - RULES SUSPENDED

Representative McReynolds moved to suspend all necessary rules to consider the conference committee report on **SB 330** at this time.

The motion prevailed.

SB 330 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative McReynolds submitted the conference committee report on **SB 330**.

Representative McReynolds moved to adopt the conference committee report on **SB 330**.

The motion to adopt the conference committee report on **SB 330** 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: Riddle recorded voting no.)

SB 771 - RULES SUSPENDED

Representative Hartnett moved to suspend all necessary rules to consider the conference committee report on **SB 771** at this time.

The motion prevailed.

SB 771 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Hartnett submitted the conference committee report on **SB 771**.

Representative Hartnett moved to adopt the conference committee report on **SB 771**.

A record vote was requested.

The motion to adopt the conference committee report on **SB 771** prevailed by (Record 957): 142 Yeas, 0 Nays, 1 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; Coleman; Cook, B.; Cook, R.; Corte; Crownover; Davis, J.; Davis, Y.; Dawson; Delisi; Denny; Deshotel; Driver; Dukes; Dunnam; Dutton; Eiland; Eissler; Escobar; Farabee; Farrar; Flores; Flynn; Frost; Gallego; Gattis; Geren; Giddings; Gonzales; Gonzalez Toureilles; Goolsby; Griggs; Grusendorf; Guillen; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Hegar; Herrero; Hilderbran; Hill; Hochberg; Hodge; Homer; Hope; Hopson; Howard; Hughes; Hunter; Hupp; Isett; Jackson; Jones, D.; Jones, J.; Keel; Keffer, B.; Keffer, J.; King, P.; King, T.; Kolkhorst; Krusee; Kuempel; Laney; Laubenberg; Leibowitz; Luna; Madden; Martinez; Martinez Fischer; McCall; McClendon; McReynolds; Menendez; Merritt; Miller; Moreno, P.; Morrison; Mowery; Naishtat; Nixon; Noriega, M.; Oliveira; Olivo; Orr; Otto; Paxton; Peña; Phillips; Pickett; Pitts; Puente; Quintanilla; Raymond; Riddle; Ritter; Rodriguez; Rose; Seaman; Smith, T.; Smith, W.; Smithee; Solis; Solomons; Strama; Straus; Talton; Taylor; Thompson; Truitt; Turner; Uresti; Van Arsdale; Veasey; Villarreal; Vo; West; Wong; Woolley; Zedler.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Crabb; Goodman.

Absent — Edwards; Elkins; Reyna; Swinford.

SB 1670 - RULES SUSPENDED

Representative Callegari moved to suspend all necessary rules to consider the conference committee report on **SB 1670** at this time.

The motion prevailed.

SB 1670 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Callegari submitted the conference committee report on **SB 1670**.

Representative Callegari moved to adopt the conference committee report on **SB 1670**.

The motion to adopt the conference committee report on **SB 1670** 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.)

HB 10 - RULES SUSPENDED

Representative Pitts moved to suspend all necessary rules to consider the conference committee report on **HB 10** at this time.

The motion prevailed.

HB 10 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Pitts submitted the following conference committee report on **HB 10** :

Austin, Texas, May 28, 2005

The Honorable David Dewhurst
President of the Senate

The Honorable Tom Craddick
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the senate and the house of representatives on **HB 10** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Ogden	Pitts
Zaffirini	J. Davis
Whitmire	Guillen
Duncan	
Averitt	
On the part of the senate	On the part of the house

HB 10, A bill to be entitled An Act relating to making supplemental appropriations and reductions in appropriations.

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

SECTION 1. HEALTH AND HUMAN SERVICES COMMISSION: HIGHER THAN EXPECTED MEDICAID COSTS. (a) In addition to amounts previously appropriated for the state fiscal biennium ending August 31, 2005, the following amounts are appropriated to the Health and Human Services Commission for the two-year period beginning on the effective date of this Act for the purpose of providing services under the state Medicaid program, including making supplemental hospital payments and restoring eligibility for Medicaid benefits to pregnant women with incomes of up to 185 percent of the federal poverty level:

(1) $121,800,000 is appropriated out of the general revenue fund;

(2) $92,400,000 is appropriated out of the Economic Stabilization Fund;

(3) $40,000,000 in balances and available revenues is appropriated out of General Revenue Dedicated Account No. 5080 (the Quality Assurance Fund);

(4) $69,100,000 in appropriated receipts match for Medicaid is appropriated; and

(5) $485,000,000 in matching federal funds is appropriated.

(b) The amounts appropriated by Subsection (a) of this section may be expended only if the Health and Human Services Commission has used all revenue available to the Medicaid program, including but not limited to premium credits and vendor drug rebates.

SECTION 2. HEALTH AND HUMAN SERVICES COMMISSION: CHILDREN'S HEALTH INSURANCE PROGRAM. In addition to amounts previously appropriated for the state fiscal biennium ending August 31, 2005, the following amounts are appropriated to the Health and Human Services Commission for the two-year period beginning on the effective date of this Act for the purpose of providing services related to the Children's Health Insurance Program:

(1) $65,700,000 is appropriated out of the general revenue fund; and

(2) $168,900,000 in matching federal funds is appropriated.

SECTION 3. HEALTH AND HUMAN SERVICES COMMISSION: VARIOUS PROGRAMS. In addition to amounts previously appropriated for the state fiscal biennium ending August 31, 2005, the amount of $85,600,000 is appropriated out of the general revenue fund and the amount of $128,400,000 in matching federal funds is appropriated to the Health and Human Services Commission for the two-year period beginning on the effective date of this Act for any necessary purposes for which:

(1) the commission received an appropriation out of the general revenue fund for all or part of the state fiscal biennium ending August 31, 2005; or

(2) a health and human services agency received an appropriation out of the general revenue fund for all or part of the state fiscal biennium ending August 31, 2005, if the commission is now authorized or required by law to spend money for those purposes.

SECTION 4. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES: CHILD PROTECTIVE SERVICES PROGRAM REFORM. In addition to amounts previously appropriated for the state fiscal biennium ending August 31, 2005, the following amounts are appropriated to the Department of Family and Protective Services for the two-year period beginning on the effective date of this Act for the purpose of funding the reforms of the Child Protective Services Program:

(1) the amount of $200,039,844 is appropriated out of the Economic Stabilization Fund and the amount of $48,060,705 in matching federal funds is appropriated; and

(2) the amount of $7,300,000 is appropriated out of the general revenue fund and the additional amount of $2,900,000 in matching federal funds is appropriated.

SECTION 5. DEPARTMENT OF AGING AND DISABILITY SERVICES: PAYMENTS FOR AUGUST 2005 NURSING FACILITY AND MENTAL RETARDATION COMMUNITY CENTER SERVICES. The amount of $62,200,000 is appropriated out of the general revenue fund and the amount of $85,800,000 in matching federal funds is appropriated to the Department of Aging and Disability Services to make payments for nursing facility services and mental retardation community center services delivered in August 2005.

SECTION 6. DEPARTMENT OF AGING AND DISABILITY SERVICES: COMMUNITY CARE CASELOAD AND COSTS. In addition to amounts previously appropriated for the state fiscal biennium ending August 31, 2005, the amount of $22,300,000 is appropriated out of the general revenue fund and the amount of $33,500,000 in matching federal funds is appropriated to the Department of Aging and Disability Services for the two-year period beginning on the effective date of this Act for the purpose of funding the Community Care Caseload and Costs.

SECTION 7. TEXAS DEPARTMENT OF CRIMINAL JUSTICE: OPERATIONS. In addition to amounts previously appropriated for the state fiscal biennium ending August 31, 2005, the amount of $15,900,000 is appropriated out of the general revenue fund to the Texas Department of Criminal Justice for the two-year period beginning on the effective date of this Act for the purpose of providing for contracted temporary capacity, salaries and wages, utilities, and fuel.

SECTION 8. TEXAS DEPARTMENT OF CRIMINAL JUSTICE: CORRECTIONAL MANAGED HEALTH CARE. In addition to amounts previously appropriated for the state fiscal biennium ending August 31, 2005, the amount of $66,300,000 is appropriated out of the general revenue fund to the Texas Department of Criminal Justice for the two-year period beginning on the effective date of this Act for the purpose of providing for correctional managed health care.

SECTION 9. TEACHER RETIREMENT SYSTEM OF TEXAS: EMPLOYEE PASS-THROUGH. In addition to amounts previously appropriated for the state fiscal biennium ending August 31, 2005, the amount of $30,700,000 is appropriated out of the Economic Stabilization Fund to the Teacher Retirement System of Texas for the two-year period beginning on the effective date of this Act for the purpose of funding the employee pass-through program.

SECTION 10. TEXAS EDUCATION AGENCY: JUVENILE JUSTICE ALTERNATIVE EDUCATION PROGRAM. In addition to amounts previously appropriated for the state fiscal biennium ending August 31, 2005, the amount of $400,000 is appropriated out of General Revenue Account No. 193 (the Foundation School Fund) to the Texas Education Agency for the two-year period beginning on the effective date of this Act for the purpose of funding the juvenile justice alternative education program through an interagency agreement with the Texas Juvenile Probation Commission.

SECTION 11. TEXAS EDUCATION AGENCY: FOUNDATION SCHOOL PROGRAM. In addition to amounts previously appropriated for the state fiscal biennium ending August 31, 2005, the amount of $560,000,000 is

appropriated out of the Economic Stabilization Fund to the Texas Education Agency for the two-year period beginning on the effective date of this Act for the purpose of funding the Foundation School Program.

SECTION 12. TEXAS EDUCATION AGENCY: TEXTBOOKS. In addition to amounts previously appropriated for the state fiscal biennium ending August 31, 2005, the amount of $175,000,000 is appropriated out of the Economic Stabilization Fund to the Texas Education Agency for the two-year period beginning on the effective date of this Act for the purpose of funding the purchase of textbooks.

SECTION 13. STATE BOARD FOR EDUCATOR CERTIFICATION: CERTIFICATION EXAMINATION. In addition to amounts previously appropriated for the state fiscal biennium ending August 31, 2005, the amount of $1,900,000 is appropriated out of the general revenue fund to the State Board for Educator Certification for the two-year period beginning on the effective date of this Act for the purpose of funding administration of the board's certification examination.

SECTION 14. SECRETARY OF STATE: HELP AMERICA VOTE ACT. In addition to amounts previously appropriated for the state fiscal biennium ending August 31, 2005, the amount of $1,500,000 is appropriated out of the general revenue fund to the secretary of state for the two-year period beginning on the effective date of this Act to be transferred to General Revenue Dedicated Account No. 5095 (the Election Improvement Fund) and used for the purpose of funding the state matching contribution for the Help America Vote Act.

SECTION 15. PARKS AND WILDLIFE DEPARTMENT: SAN JACINTO MONUMENT. In addition to amounts previously appropriated for the state fiscal biennium ending August 31, 2005, the amount of $2,140,000 is appropriated out of the general revenue fund to the Parks and Wildlife Department for the two-year period beginning on the effective date of this Act for the purpose of funding repairs to the San Jacinto Monument.

SECTION 16. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY: PETROLEUM STORAGE TANK SHORTFALL. In addition to amounts previously appropriated for the state fiscal biennium ending August 31, 2005, the amount of $25,000,000 is appropriated out of General Revenue Dedicated Account No. 655 (the Petroleum Storage Tank Remediation Account) to the Texas Commission on Environment Quality for the two-year period beginning on the effective date of this Act for the purpose of funding cleanup of remediation sites contaminated by petroleum storage tanks.

SECTION 17. CONTINGENCY APPROPRIATION: **HB 1765** (EMERGING TECHNOLOGY FUND). (a) The appropriations made by this section are contingent on the enactment by the 79th Legislature, Regular Session, 2005, of **HB 1765** or similar legislation that becomes law relating to funding emerging technology industries through a Texas Emerging Technology Fund administered as a trusteed program within the office of the governor.

(b) If the actual amounts transferred to the Economic Stabilization Fund during the state fiscal biennium beginning September 1, 2005, exceed the amount that the comptroller estimated would be transferred to the Economic Stabilization

Fund during that biennium, then the first $100,000,000 by which the amounts transferred to the Economic Stabilization Fund during the state fiscal biennium exceed the amount of the comptroller's estimate is appropriated out of the Economic Stabilization Fund during the state fiscal biennium beginning September 1, 2005, to the trusteed program within the office of the governor described by Subsection (a) of this section for deposit into the Texas Emerging Technology Fund in accordance with the legislation creating the technology fund and is appropriated for the biennium for expenditure for the purposes and under the procedures prescribed by the legislation creating the technology fund. The comptroller's estimate described by this subsection is the estimate made by the comptroller under Subsection (h), Section 49-g, Article III, Texas Constitution.

(c) The amount of $100,000,000 is appropriated out of the general revenue fund, for the two-year period beginning on the later of the effective date of this Act or the effective date of the legislation described by Subsection (a) of this section, to the trusteed program within the office of the governor described by Subsection (a) of this section for deposit into the Texas Emerging Technology Fund in accordance with the legislation creating the technology fund and is appropriated for expenditure for the purposes and under the procedures prescribed by that legislation.

SECTION 18. PARTIAL RESTORATION OF APPROPRIATION REDUCTION FOR PROPERTY SALES. (a) The purpose of this section is to restore a portion of the reduction in appropriations made by Section 12.04(d), Article IX, Chapter 1330, Acts of the 78th Legislature, Regular Session, 2003 (the General Appropriations Act), to agencies and institutions that on August 31, 2003, owned real property purchased with general revenue or general revenue dedicated funds and that had appropriations reduced under Section 12.04(d) by an aggregate total of $97,000,000 for the state fiscal biennium ending August 31, 2005.

(b) The amount of $78,928,959 is appropriated out of the general revenue fund to the agencies and institutions described by Subsection (a) of this section for the two-year period beginning on the effective date of this Act for the purpose described by Subsection (a) of this section. An agency or institution that receives a portion of the amount appropriated by this section under Subsection (c) of this section may spend the amount received for the purposes for which the agency or institution was authorized to spend the appropriation that was reduced.

(c) The governor and the Legislative Budget Board, taking into account the reductions and distributions made under Section 12.04(d), Article IX, Chapter 1330, Acts of the 78th Legislature, Regular Session, 2003 (the General Appropriations Act), shall allocate the amount appropriated by this section among the agencies and institutions described by Subsection (a) of this section.

SECTION 19. CONTINGENCY APPROPRIATIONS: **HB 2**; **HB 3**; **HB 3540**; **SB 1863**. (a) Contingent on **HB 2** or similar legislation relating to the public school finance system being enacted by the 79th Legislature, Regular Session, 2005, and becoming law and contingent on **HB 3540** or similar legislation and **SB 1863** or similar legislation relating to certain fiscal matters

affecting governmental entities being enacted by the 79th Legislature, Regular Session, 2005, and becoming law, in addition to other amounts appropriated by the 79th Legislature, Regular Session, 2005, for the Foundation School Program:

(1) the additional amount of $872,000,000 is appropriated out of the Economic Stabilization Fund and the additional amount of $1,528,000,000 is appropriated out of the general revenue fund to the Texas Education Agency for the state fiscal biennium beginning September 1, 2005, to implement the provisions of **HB 2** or of that similar legislation that contemplate an increase in the amount of total state revenue provided under the Foundation School Program for the operation of school districts; and

(2) contingent on **HB 3** or similar legislation relating to the financing of public schools and property tax relief being enacted by the 79th Legislature, Regular Session, 2005, and becoming law, all the additional state revenue that is received during the state fiscal biennium beginning September 1, 2005, that as estimated by the comptroller is attributable to changes in law made by **HB 3** or by that similar legislation and that may be spent for the purposes of the Foundation School Program is appropriated to the Texas Education Agency for the period and for the purpose described by Subdivision (1) of this subsection.

(b)(1) As an alternative to the appropriation made under Subsection (a) of this section, contingent on **HB 2** or similar legislation by the 79th Legislature, Regular Session, 2005, relating to the public school finance system not being enacted and becoming law, the following amounts, totaling $872,000,000, are appropriated out of the Economic Stabilization Fund for the state fiscal biennium beginning September 1, 2005, for the following purposes:

(A) the amount of $164,600,000 is appropriated to the Texas Education Agency for the purchase of textbooks and related continuing contracts;

(B) the amount of $265,300,000 is appropriated to the Department of Family and Protective Services to provide reimbursements for the care and treatment of children who have been placed in foster homes or residential treatment facilities as a result of abuse or neglect allegations;

(C) the amount of $126,000,000 is appropriated to the Department of Family and Protective Services to provide adoption subsidy payments for families that adopt children with disabilities, school-age children, minority children, and children in sibling groups; and

(D) the amount of $316,100,000 is appropriated to the Texas Education Agency for the Student Success Initiative.

(2) Contingent on the alternative appropriations under Subdivision (1) of this subsection being made, appropriations made by **SB 1**, 79th Legislature, Regular Session, 2005 (the General Appropriations Act) from the general revenue fund, general revenue dedicated accounts, and general revenue-related funds for the purposes described by Subdivision (1) of this subsection are reduced by the amounts by which appropriations for the corresponding purpose are made under Subdivision (1) of this subsection.

(c) In the event that the contingent appropriations under Subsection (a) of this section are made, the Texas Education Agency:

(1) shall develop a plan to expend the appropriations in accordance with **HB 2** or similar legislation that includes making adjustments to strategies, methods of finance, performance measures, and riders as necessary to implement the legislation; and

(2) in accordance with Section 69, Article XVI, Texas Constitution, may not expend the appropriations made under Subsection (a) of this section without the prior approval of the governor and the Legislative Budget Board.

SECTION 20. APPROPRIATIONS REDUCTION: CERTAIN UNEXPENDED BALANCES. The unencumbered amounts appropriated under Section 11.28, Article IX, Chapter 1330, Acts of the 78th Legislature, Regular Session, 2003 (the General Appropriations Act), as amended by Article 5, Chapter 10, Acts of the 78th Legislature, 3rd Called Session, 2003, are reduced as follows:

(1) the amount of federal funds appropriated by Section 11.28, as amended, for state fiscal relief and held in the general revenue fund is reduced by $180,472,802;

(2) the amount appropriated by Section 11.28, as amended, that resulted from items of appropriation made by the 78th Legislature that were vetoed under Section 14, Article IV, Texas Constitution, and that is held in the undedicated portion of the general revenue fund is reduced by $24,425,786; and

(3) the amount appropriated by Section 11.28, as amended, that resulted from items of appropriation made by the 78th Legislature that were vetoed under Section 14, Article IV, Texas Constitution, and that is held in the general revenue fund as general revenue dedicated money is reduced by $2,150,657.

SECTION 21. SALARIES: NINTH COURT OF APPEALS, BEAUMONT; APPROPRIATIONS REDUCTION: TENTH COURT OF APPEALS, WACO. (a) In addition to amounts previously appropriated for the state fiscal biennium ending August 31, 2005, the amount of $36,000 is appropriated out of the general revenue fund to the Ninth Court of Appeals, Beaumont, for the two-year period beginning on the effective date of this Act for the purpose of funding salaries.

(b) The unencumbered amounts previously appropriated for the state fiscal biennium ending August 31, 2005, from the general revenue fund to the Tenth Court of Appeals, Waco, are reduced by $36,000.

SECTION 22. APPROPRIATIONS REDUCTION: TEXAS PUBLIC FINANCE AUTHORITY. The unencumbered amount of general revenue funds appropriated to the Texas Public Finance Authority to be used for general obligation bond debt service during the state fiscal biennium ending August 31, 2005, is reduced by $17,500,000.

SECTION 23. APPROPRIATIONS REDUCTION: DEPARTMENT OF AGING AND DISABILITY SERVICES. The unencumbered amount of general revenue dedicated funds appropriated to the Department of Aging and Disability Services from General Revenue Dedicated Account No. 543 (the Texas Capital Trust Fund) for use during the state fiscal biennium ending August 31, 2005, is reduced by $1,943,939. The department shall identify the strategies and objectives out of which the reductions in unencumbered amounts are to be made.

SECTION 24. APPROPRIATIONS REDUCTION: TEXAS LOTTERY COMMISSION. The unencumbered amount of general revenue dedicated funds appropriated to the Texas Lottery Commission from General Revenue Dedicated Account No. 5025 (the State Lottery Account) for use during the state fiscal biennium ending August 31, 2005, is reduced by $1,690,606. The commission shall identify the strategies and objectives out of which the reductions in unencumbered amounts are to be made.

SECTION 25. APPROPRIATIONS REDUCTION: PUBLIC UTILITY COMMISSION OF TEXAS. The unencumbered amount of general revenue dedicated funds appropriated to the Public Utility Commission from General Revenue Dedicated Account No. 5100 (the System Benefit Fund, previously known as the System Benefit Trust Fund) for use during the state fiscal biennium ending August 31, 2005, is reduced by $57,200,000. The commission shall identify the strategies and objectives out of which the reductions in unencumbered amounts are to be made.

SECTION 26. APPROPRIATIONS REDUCTION: TEXAS WORKERS' COMPENSATION COMMISSION. The unencumbered amount of general revenue dedicated funds appropriated to the Texas Workers' Compensation Commission from General Revenue Dedicated Account No. 5101 (the Subsequent Injury Fund) for use during the state fiscal biennium ending August 31, 2005, is reduced by $6,000,000. The commission shall identify the strategies and objectives out of which the reductions in unencumbered amounts are to be made.

SECTION 27. APPROPRIATIONS REDUCTION: EMANCIPATION JUNETEENTH CULTURAL AND HISTORICAL COMMISSION. The amount of general revenue funds appropriated to the Texas Historical Commission for the use of the Emancipation Juneteenth Cultural and Historical Commission during the state fiscal biennium ending August 31, 2005, is reduced by $415,000.

SECTION 28. REPORTING TO LEGISLATIVE BUDGET BOARD. On August 1, 2005, and on such other dates as the Legislative Budget Board considers to be necessary, each entity appropriated money by this Act and each agency for which an amount of appropriations is reduced by this Act shall report to the board, in a format specified by the board, the information requested by the board regarding use of the money appropriated by this Act or the measures taken to reduce appropriations as required by this Act.

SECTION 29. ECONOMIC STABILIZATION FUND APPROPRIATIONS. The provisions of this Act that make appropriations out of the Economic Stabilization Fund or that make appropriations of matching federal funds the receipt of which is dependent on an appropriation out of the Economic Stabilization Fund take effect only if this Act receives the vote required by Section 49-g, Article III, Texas Constitution.

SECTION 30. EFFECTIVE DATE. This Act takes effect immediately.

HB 10 - STATEMENT OF LEGISLATIVE INTENT

REPRESENTATIVE MENENDEZ: Chairman Pitts, first of all let me tell you, I appreciate all the long hours that you and your committee have put in, and I know that work has been extremely difficult, and I want to thank you for a lot of the

things that have gone into this. But, I do have some questions pertaining to the education portion. I am looking on page five of the bill, on line 16, where it says, "teacher retirement system employee pass through." Chairman Pitts, does this bill restore the $1,000 health care supplement that we promised our teachers and support personnel at the end of last session?

REPRESENTATIVE PITTS: The appropriations committee and the conference committee—we were charged to find $3 billion for education, and we found that money. And, we told Kent Grusendorf and his committee to figure out a way to spend it. And so, there were a lot of options that they had to spend the money on our schools.

MENENDEZ: Jim, the short answer is, no, it is not in this bill.

PITTS: It is not in this bill.

MENENDEZ: Mr. Chairman, does this bill provide that the cuts enacted in the health care supplement in 2003 will continue, so that the supplement will be passed through for two more years at the rate of $500 for full-time employees and $250 for part-time employees? Does it provide what we currently have in law?

PITTS: I believe so.

MENENDEZ: It does. Okay.

REMARKS ORDERED PRINTED

Representative Menendez moved to print remarks between Representative Pitts and Representative Menendez.

The motion prevailed.

(Keel in the chair)

Representative Casteel moved to extend speaking time on **HB 10**.

A record vote was requested.

The motion to extend time prevailed by (Record 958): 140 Yeas, 2 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; Coleman; Cook, B.; Cook, R.; Corte; 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; Griggs; Guillen; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Hegar; Herrero; Hilderbran; Hill; Hochberg; Hodge; Homer; Hope; Hopson; Howard; Hughes; Hunter; Hupp; Isett; Jackson; Jones, D.; Jones, J.; 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; Oliveira; Olivo; Orr; Otto; Paxton; Peña; Phillips; 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.

Nays — Noriega, M.; Pickett.

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

Absent, Excused — Crabb; Goodman.

Absent — Goolsby; Grusendorf; McClendon.

(Speaker in the chair)

(Crabb now present)

HR 2268 - NOTICE OF INTRODUCTION

Pursuant to the provisions of Rule 13, Section 9(f), of the House Rules, the speaker announced the introduction of **HR 2268**, suspending the limitations on the conferees for **HB 2201**.

HR 2259 - NOTICE OF INTRODUCTION

Pursuant to the provisions of Rule 13, Section 9(f), of the House Rules, the speaker announced the introduction of **HR 2259**, suspending the limitations on the conferees for **HB 2233**.

HR 2267 - NOTICE OF INTRODUCTION

Pursuant to the provisions of Rule 13, Section 9(f), of the House Rules, the speaker announced the introduction of **HR 2267**, suspending the limitations on the conferees for **SB 1863**.

HR 2270 - NOTICE OF INTRODUCTION

Pursuant to the provisions of Rule 13, Section 9(f), of the House Rules, the speaker announced the introduction of **HR 2270**, suspending the limitations on the conferees for **HB 2702**.

HB 10 - (consideration continued)

Representative Pitts moved to adopt the conference committee report on **HB 10**.

A record vote was requested.

The motion to adopt the conference committee report on **HB 10** prevailed by (Record 959): 126 Yeas, 18 Nays, 1 Present, not voting.

Yeas — Allen, R.; Alonzo; Anchia; Anderson; Bailey; Baxter; Berman; Blake; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Callegari; Campbell; Casteel; Castro; Chisum; Cook, B.; Cook, R.; Corte; Crabb; Crownover; Davis, J.; Dawson; Delisi; Denny; Deshotel; Dukes; Dunnam; Dutton; Edwards; Eiland; Eissler; Elkins; Escobar; Farabee; Flores; Flynn; Gallego; Gattis; Geren; Giddings; Gonzales; Gonzalez Toureilles; Goolsby; Griggs; Grusendorf; Guillen; Haggerty; 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.; King, T.; Kolkhorst; Kuempel; Laney; Laubenberg; Luna; Madden; Martinez; Martinez Fischer; McCall; McClendon; McReynolds; Menendez; Merritt; Miller; Morrison; Mowery; Naishtat; Nixon; Oliveira; Orr; Otto; Paxton; Peña; Phillips; Pitts; Puente; Quintanilla; Raymond; Reyna; Riddle; Ritter; Rodriguez; Rose; Seaman; Smith, T.; Smith, W.; Smithee; Solis; Solomons; Strama; Straus; Swinford; Talton; Taylor; Truitt; Turner; Uresti; Van Arsdale; Villarreal; West; Wong; Woolley; Zedler.

Nays — Allen, A.; Chavez; Coleman; Davis, Y.; Farrar; Frost; Herrero; Hochberg; Hodge; Jones, J.; Leibowitz; Moreno, P.; Noriega, M.; Olivo; Pickett; Thompson; Veasey; Vo.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Goodman.

Absent — Burnam; Driver; Krusee.

The speaker stated that **HB 10** was passed subject to the provisions of Article III, Section 49a of the Texas Constitution.

STATEMENTS OF VOTE

When Record No. 959 was taken, I was in the house but away from my desk. I would have voted yes.

Burnam

When Record No. 959 was taken, I was in the house but away from my desk. I would have voted yes.

Krusee

I was shown voting no on Record No. 959. I intended to vote yes.

Veasey

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).

(Harper-Brown in the chair)

HB 1610 - RULES SUSPENDED

Representative Chisum moved to suspend all necessary rules to consider the conference committee report on **HB 1610** at this time.

The motion prevailed.

HB 1610 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Chisum submitted the following conference committee report on **HB 1610** :

Austin, Texas, May 28, 2005

The Honorable David Dewhurst
President of the Senate

The Honorable Tom Craddick
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the senate and the house of representatives on **HB 1610** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Brimer	Chisum
Harris	W. Smith
Jackson	Olivo
Madla	Farabee
On the part of the senate	On the part of the house

HB 1610, A bill to be entitled An Act relating to a county fee for an activity that excavates or cuts the surface of a county road.

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

SECTION 1. Subchapter Z, Chapter 240, Local Government Code, is amended by adding Section 240.907 to read as follows:

Sec. 240.907. FEE FOR CUTTING COUNTY ROAD. (a) In this section, a cut of a county road means the act of excavating or cutting the surface of a county road.

(b) To provide funds for the future inspection, repair, and maintenance of a cut road, a county may impose a fee on a person or other entity for each cut of a county road during or as an incident to the installation, maintenance, or repair of any facilities or properties of the person or entity.

(c) The fee authorized by this section:

(1) may not exceed $500;

(2) may be imposed either before or after the cutting of the road; and

(3) is in addition to any other charge the county is authorized to impose to repair damage to the road because of the cut.

(d) This section does not apply in relation to a person or other entity that:

(1) has entered into an agreement with the county that provides for fees to be paid by the person or entity for the use of the county roads; or

(2) is a utility that is not required under Chapter 181, Utilities Code, to provide notice to a commissioners court of a county.

SECTION 2. A fee imposed under Section 240.907, Local Government Code, as added by this Act, applies only to a cutting of a county road that occurs 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.

Representative Chisum moved to adopt the conference committee report on **HB 1610**.

A record vote was requested.

The motion to adopt the conference committee report on **HB 1610** prevailed by (Record 960): 144 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; 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; Goolsby; Griggs; Grusendorf; Guillen; Haggerty; Hamilton; Hamric; Hardcastle; Hartnett; Hegar; Herrero; Hilderbran; Hill; Hochberg; Hodge; Homer; Hope; Hopson; Howard; Hughes; Hunter; Hupp; Isett; Jackson; Jones, D.; Jones, J.; Keel; Keffer, B.; Keffer, J.; King, P.; King, T.; Kolkhorst; 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; Harper-Brown(C).

Absent, Excused — Goodman.

Absent — Driver; Krusee.

HB 2481 - HOUSE DISCHARGES CONFEREES
HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS

Representative Bonnen 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 Bonnen moved to discharge the conferees and concur in the senate amendments to **HB 2481**.

The motion to discharge conferees and 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

CSHB 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.

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

SECTION 1. Section 386.002, Health and Safety Code, is amended to read as follows:

Sec. 386.002. EXPIRATION. This chapter expires August 31, 2010 [~~2008~~].

SECTION 2. Section 386.053(c), Health and Safety Code, is amended to read as follows:

(c) The commission shall make draft guidelines and criteria available to the public and the United States Environmental Protection Agency before the 30th [~~45th~~] day preceding the date of final adoption and shall hold at least one public meeting to consider public comments on the draft guidelines and criteria before final adoption. The public meeting shall be held in the affected state implementation plan area, and if the guidelines affect more than one state implementation plan area, a public meeting shall be held in each affected state implementation plan area affected by the guidelines.

SECTION 3. Sections 386.058(b) and (e), Health and Safety Code, are amended to read as follows:

(b) The governor shall appoint to the advisory board:

(1) a representative of the trucking industry;

(2) a representative of the air conditioning manufacturing industry;

(3) a representative of the electric utility industry;

(4) a representative of regional transportation; and

(5) a representative of the nonprofit organization described by Section 386.252(a)(2) [~~the Texas Council on Environmental Technology~~].

(e) Appointed members of the advisory board serve staggered four-year [~~two-year~~] terms, with the [~~. The~~] terms of seven or eight appointed members expiring [~~expire~~] February 1 of each [~~even-numbered year. The terms of eight appointed members expire February 1 of each~~] odd-numbered year. An appointed member may be reappointed to a subsequent term.

SECTION 4. Section 386.102, Health and Safety Code, is amended by adding Subsection (d) to read as follows:

(d) The amount of a grant awarded under the program to an owner or operator of a locomotive or marine vessel, or an affiliate of the owner or operator, may not be disproportionate to the amount the owner, operator, or affiliate contributes to the fund. The ratio of the amount of a grant awarded under the program to an owner or operator of a locomotive or marine vessel, or an affiliate of the owner or operator, to the amount contributed to the fund by the owner, operator, or affiliate may not deviate unreasonably from the overall grant-to-contribution ratio of other grant recipients under the program. In this subsection, "affiliate" has the meaning assigned by Section 382.051866.

SECTION 5. Section 386.111(a), Health and Safety Code, is amended to read as follows:

(a) The commission shall review an application for a grant for a project authorized under this subchapter, including an application for a grant for an infrastructure project, immediately on receipt of the application. If the commission determines that an application is incomplete, the commission shall notify the applicant[~~, not later than the 15th working day after the date on which the commission received the application,~~] with an explanation of what is missing from the application. The commission shall [~~record the date and time of receipt of each application the commission determines to be complete and shall~~] evaluate the completed application according to the appropriate project criteria. Subject to available funding, the commission shall make a final determination on an application as soon as possible [~~and not later than the 60th working day after the date the application is determined to be complete~~].

SECTION 6. Section 386.116(d), Health and Safety Code, is amended to read as follows:

(d) The [~~On or before December 1 of each even-numbered year, the~~] commission shall include in the biennial plan report required by Section 386.057(b) a report of commission actions and results under this section [~~to the governor, lieutenant governor, and speaker of the house of representatives~~].

SECTION 7. Subchapter C, Chapter 386, Health and Safety Code, is amended by adding Section 386.117 to read as follows:

Sec. 386.117. REBATE GRANTS. (a) The commission shall adopt a process for awarding grants under this subchapter in the form of rebates to streamline the grant application, contracting, reimbursement, and reporting processes for certain projects. The process adopted under this section must:

(1) designate certain types of projects, such as repowers, replacements, and retrofits, as eligible for rebates;

(2) project standardized oxides of nitrogen emissions reductions for each designated project type;

(3) assign a standardized rebate amount for each designated project type;

(4) allow for processing rebates on an ongoing first-come, first-served basis; and

(5) consolidate, simplify, and reduce the administrative work for applicants and the commission associated with grant application, contracting, reimbursement, and reporting processes for designated project types.

(b) The commission may limit or expand the designated project types as necessary to further the goals of the program.

(c) The commission may award rebate grants as a pilot project for a specific region or may award the grants statewide.

(d) The commission may administer the rebate grants or may designate another entity to administer the grants.

SECTION 8. Section 386.251(c), Health and Safety Code, is amended to read as follows:

(c) The fund consists of:

(1) the amount of money deposited to the credit of the fund [~~contributions, fees, and surcharges~~] under:

(A) Section 386.056;

(B) Sections 151.0515 and 152.0215, Tax Code; and

(C) Sections 501.138, 502.1675, and 548.5055 [~~and 548.256(e)~~], Transportation Code; and

(2) grant money recaptured under Section 386.111(d).

SECTION 9. Section 386.252(a), Health and Safety Code, is amended to read as follows:

(a) Money in the fund may be used only to implement and administer programs established under the plan and shall be allocated as follows:

(1) for the diesel emissions reduction incentive program, 87.5 percent of the money in the fund, of which not more than 10 percent may be used for on-road diesel purchase or lease incentives;

(2) for the new technology research and development program, 9.5 percent of the money in the fund, of which up to $250,000 is allocated for administration, up to $200,000 is allocated for a health effects study, $500,000 is to be deposited in the state treasury to the credit of the clean air account created under Section 382.0622 to supplement funding for air quality planning activities in affected counties, [~~and~~] not less than 20 percent is to be allocated each year to support research related to air quality for the Houston-Galveston-Brazoria and Dallas-Fort Worth nonattainment areas by a nonprofit organization based in Houston, and the balance is to be allocated each year to that nonprofit organization based in Houston to be used to implement and administer the new technology research and development program under a contract with the commission for the purpose of identifying, testing, and evaluating new emissions-reducing technologies with potential for commercialization in this state and to facilitate their certification or verification; and

(3) for administrative costs incurred by the commission and the laboratory, three percent of the money in the fund.

SECTION 10. Effective September 1, 2008, Section 386.252(a), Health and Safety Code, is amended to read as follows:

(a) Money in the fund may be used only to implement and administer programs established under the plan and shall be allocated as follows:

(1) for the diesel emissions reduction incentive program, 64 [~~87.5~~] percent of the money in the fund, of which not more than 10 percent may be used for on-road diesel purchase or lease incentives;

(2) for the new technology research and development program, 33 [~~9.5~~] percent of the money in the fund, of which up to $250,000 is allocated for administration, up to $200,000 is allocated for a health effects study, $500,000 is to be deposited in the state treasury to the credit of the clean air account created under Section 382.0622 to supplement funding for air quality planning activities in affected counties, [~~and~~] not less than 10 [~~20~~] percent is to be allocated each year to support research related to air quality for the Houston-Galveston-Brazoria and Dallas-Fort Worth nonattainment areas by a nonprofit organization based in Houston, not less than 25.5 percent is to be allocated each year to that nonprofit organization based in Houston to be used to implement and administer the new technology research and development program under a contract with the

commission for the purpose of identifying, testing, and evaluating new emissions-reducing technologies with potential for commercialization in this state and to facilitate their certification or verification, not more than $12,500,000 is to be allocated each year from any excess funds to be administered by the commission to fund a study of regional ozone formation in this state, meteorological and chemical modeling, and issues related to ozone formation by ozone precursors and fine particulate matter formation in this state, and the balance is to be allocated each year to the commission to fund promising new technologies as identified through the new technology research and development program and recommended by that nonprofit organization based in Houston in order to permit obtaining the maximum credits for emissions reductions under the state's air quality state implementation plans; and

(3) for administrative costs incurred by the commission and the laboratory, three percent of the money in the fund.

SECTION 11. Section 387.003(a), Health and Safety Code, is amended to read as follows:

(a) The nonprofit organization described by Section 386.252(a)(2), under a contract with the commission as described by that section[~~, in consultation with the Texas Council on Environmental Technology~~], shall establish and administer a new technology research and development program as provided by this chapter.

SECTION 12. Section 387.005(a), Health and Safety Code, is amended to read as follows:

(a) Grants awarded under this chapter shall be directed toward a balanced mix of:

(1) retrofit and add-on technologies to reduce emissions from the existing stock of vehicles targeted by the Texas emissions reduction plan;

(2) advanced technologies for new engines and vehicles that produce very-low or zero emissions of oxides of nitrogen, including stationary and mobile fuel cells;

(3) studies to improve air quality assessment and modeling; and

(4) [~~advanced technologies that promote increased building and appliance energy performance; and~~

[~~(5)~~] advanced technologies that reduce emissions from other significant sources.

SECTION 13. Section 388.003(e), Health and Safety Code, is amended to read as follows:

(e) Local amendments may not result in less stringent energy efficiency requirements in nonattainment areas and in affected counties than the energy efficiency chapter of the International Residential Code or International Energy Conservation Code. Local amendments must comply with the National Appliance Energy Conservation Act of 1987 (42 U.S.C. Sections 6291-6309), as amended. The laboratory, at the request of a municipality or county, shall determine the relative impact of proposed local amendments to an energy code, including whether proposed amendments are substantially equal to or less stringent than the unamended code. For the purpose of establishing uniform requirements throughout a region, and on request of a council of governments, a county, or a

municipality, the laboratory may recommend a climatically appropriate modification or a climate zone designation for a county or group of counties that is different from the climate zone designation in the unamended code. The laboratory shall:

(1) report its findings to the council, county, or municipality, including an estimate of any energy savings potential above the base code from local amendments; and

(2) annually submit a report to the commission:

(A) identifying the municipalities and counties whose codes are more stringent than the unamended code, and whose codes are equally stringent or less stringent than the unamended code; and

(B) quantifying energy savings and emissions reductions from this program.

SECTION 14. Section 389.003, Health and Safety Code, is amended to read as follows:

Sec. 389.003. COMPUTING ENERGY EFFICIENCY EMISSIONS REDUCTIONS AND ASSOCIATED CREDITS. (a) The commission shall develop a method to use in computing emissions reductions obtained through energy efficiency initiatives, including renewable energy initiatives, and the credits associated with those reductions.

(b) The laboratory shall assist the commission and affected political subdivisions in quantifying, as part of the state implementation plan, credits for emissions reductions attributable to energy efficiency programs, including renewable energy programs.

SECTION 15. Section 151.0515(d), Tax Code, is amended to read as follows:

(d) This section expires September 30, 2010 [~~2008~~].

SECTION 16. Section 152.0215(c), Tax Code, is amended to read as follows:

(c) This section expires September 30, 2010 [~~2008~~].

SECTION 17. Section 501.138, Transportation Code, is amended by amending Subsections (a) and (b) and adding Subsections (b-1), (b-2), and (b-3) to read as follows:

(a) An applicant for a certificate of title, other than the state or a political subdivision of the state, must pay the county assessor-collector a fee of:

(1) $33 if the applicant's residence is a county located within a nonattainment area as defined under Section 107(d) of the federal Clean Air Act (42 U.S.C. Section 7407), as amended, or is an affected county, as defined by Section 386.001, Health and Safety Code;

(2) $28 if the applicant's residence is any other county; or

(3) on or after September 1, 2010 [~~2008~~], $28 regardless of the county in which the applicant resides.

(b) The county assessor-collector shall send:

(1) $5 of the fee to the county treasurer for deposit in the officers' salary fund;

(2) $8 of the fee to the department:

(A) together with the application within the time prescribed by Section 501.023; or

(B) if the fee is deposited in an interest-bearing account or certificate in the county depository or invested in an investment authorized by Subchapter A, Chapter 2256, Government Code, not later than the 35th day after the date on which the fee is received; and

(3) the following amount to the comptroller at the time and in the manner prescribed by the comptroller:

(A) $20 of the fee if the applicant's residence is a county located within a nonattainment area as defined under Section 107(d) of the federal Clean Air Act (42 U.S.C. Section 7407), as amended, or is an affected county, as defined by Section 386.001, Health and Safety Code;

(B) $15 of the fee if the applicant's residence is any other county; or

(C) on or after September 1, 2010, $15 regardless of the county in which the applicant resides.

(b-1) Fees collected under Subsection (b) [~~this subsection~~] to be sent to the comptroller shall be deposited as follows:

(1) [~~(i)~~] before September 1, 2008, to the credit of the Texas emissions reduction plan fund; and

(2) on or [~~(ii)~~] after September 1, 2008, to the credit of the Texas Mobility Fund, except that $5 of each fee imposed under Subsection (a)(1) and deposited on or after September 1, 2008, and before September 1, 2010, shall be deposited to the credit of the Texas emissions reduction plan fund.

(b-2) The comptroller shall establish a record of the amount of the fees deposited to the credit of the Texas Mobility Fund under Subsection (b-1). On or before the fifth workday of each month, the department shall remit to the comptroller for deposit to the credit of the Texas emissions reduction plan fund an amount of money equal to the amount of the fees deposited by the comptroller to the credit of the Texas Mobility Fund under Subsection (b-1) in the preceding month. The department shall use for remittance to the comptroller as required by this subsection money in the state highway fund that is not required to be used for a purpose specified by Section 7-a, Article VIII, Texas Constitution, and may not use for that remittance money received by this state under the congestion mitigation and air quality improvement program established under 23 U.S.C. Section 149.

(b-3) This subsection and Subsection (b-2) expire September 1, 2010.

SECTION 18. Section 502.1675(c), Transportation Code, is amended to read as follows:

(c) This section expires August 31, 2010 [~~2008~~].

SECTION 19. Section 548.5055(c), Transportation Code, is amended to read as follows:

(c) This section expires August 31, 2010 [~~2008~~].

SECTION 20. Sections 386.001(4), 386.057(e), 387.002, and 387.010, Health and Safety Code, and Sections 548.256(c) and (d), Transportation Code, are repealed.

SECTION 21. The Texas Commission on Environmental Quality shall prepare guidance documents for the rebate grants required by Section 386.117, Health and Safety Code, as added by this Act, not later than January 1, 2006.

SECTION 22. (a) As soon as practicable on or after the effective date of this Act, the governor shall appoint to the Texas Emissions Reduction Plan Advisory Board a representative of the nonprofit organization described by Section 386.252(a)(2), Health and Safety Code, as required by Section 386.058(b), Health and Safety Code, as amended by this Act, to replace the representative of the Texas Council on Environmental Technology serving on that board on the effective date of this Act.

(b) As soon as practicable on or after the effective date of this Act, the governor, lieutenant governor, and speaker of the house of representatives, by mutual agreement, shall designate the terms of the appointed members of the Texas Emissions Reduction Plan Advisory Board so that the terms of seven appointed members expire on February 1, 2007, and the terms of eight appointed members expire on February 1, 2009, as provided by Section 386.058(e), Health and Safety Code, as amended by this Act.

SECTION 23. Except as otherwise provided by this Act, this Act takes effect September 1, 2005.

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

Amend **CSHB 2481** by inserting new SECTION 1 as follows (committee printing page 1, between lines 6 and 7) and renumbering the subsequent SECTIONS accordingly:

SECTION 1. Section 382.0172(c), Health and Safety Code, is amended to read as follows:

(c) The commission may authorize or allow substitution of emissions reductions under Subsection (b) only if:

(1) reductions in emissions of one air contaminant for which the area has been designated as nonattainment are substituted for reductions in emissions of another air contaminant for which the area has been designated as nonattainment; or [~~and~~]

(2) the commission finds that the substitution will clearly result in greater health benefits for the community as a whole than would reductions in emissions at the original facility.

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

Amend **CSHB 2481** as follows:

(1) Insert the following appropriately numbered sections:

SECTION ___. Subchapter B, Chapter 382, Health and Safety Code, is amended by adding Section 382.0173 to read as follows:

Sec. 382.0173. ADOPTION OF RULES REGARDING CERTAIN STATE IMPLEMENTATION PLAN REQUIREMENTS AND STANDARDS OF PERFORMANCE FOR CERTAIN SOURCES. (a) The commission shall adopt rules to comply with Sections 110(a)(2)(D) and 111(d) of the federal Clean Air Act (42 U.S.C. Sections 7410 and 7411). In adopting the rules, at a minimum the commission shall adopt and incorporate by reference 40 C.F.R. Subparts AA

through II and Subparts AAA through III of Part 96 and 40 C.F.R. Subpart HHHH of Part 60. The commission shall adopt a state implementation plan in accordance with the rules and submit the plan to the United States Environmental Protection Agency for approval according to the schedules adopted by that agency.

(b) The commission may require emissions reductions in conjunction with implementation of the rules adopted under Subsection (a) only for electric generating units. The commission shall make permanent allocations that are reflective of the allocation requirements of 40 C.F.R. Subparts AA through HH and Subparts AAA through HHH of Part 96 and 40 C.F.R. Subpart HHHH of Part 60, as applicable, at no cost to units as defined in 40 C.F.R. Section 51.123 and 60.4102 using the United States Environmental Protection Agency's allocation method as specified by Section 60.4142(a)(1)(i), as issued by that agency on May 12, 2005, or 40 C.F.R. Section 96.142(a)(1)(i), as issued by that agency on May 18, 2005, as applicable with the exception of nitrogen oxides which shall be allocated according to the additional requirements of subsection (c). The commission shall maintain a special reserve of allocations for new units commencing operation on or after January 1, 2001, as defined by 40 C.F.R. Subparts AA through HH and Subparts AAA through HHH of Part 96 and 40 C.F.R. Subpart HHHH of Part 60, as applicable with the exception of nitrogen oxides which shall be allocated according to the additional requirements of subsection (c).

(c) Additional requirements regarding NOx allocations:

(1) the commission shall maintain a special reserve of allocations for nitrogen oxide of 9.5% for new units. Beginning with the 2015 control period, units shall be considered new for each control period in which they do not have 5 years of operating data reported to the commission prior to the date of allocation for a given control period. Prior to the 2015 control period, units that commenced operation on or after January 1, 2001, will receive NOx allocations from the special reserve only.

(2) Nitrogen oxide allowances shall be established for the 2009-2014 control periods for units commencing operation before January 1, 2001 using the average of the 3 highest amounts of the unit's adjusted control period heat input for 2000 through 2004, with the adjusted control period heat input for each year calculated as follows:

(A) If the unit is coal-fired during the year, the unit's control period heat input for such year is multiplied by 90 percent;

(B) If the unit is natural gas-fired during the year, the unit's control period heat input for such year is multiplied by 50 percent; and

(C) If the unit is not subject to subparagraph (A) or (B) of this paragraph, the unit's control period heat input for such year is multiplied by 30 percent.

(3) Before the allocation date specified by EPA for the control period beginning January 1, 2016, and every five years thereafter, the commission shall adjust the baseline for all affected units using the average of the 3 highest

amounts of the unit's adjusted control period heat input for periods 1 through 5 of the preceding 7 control periods, with the adjusted control period heat input for each year calculated as follows:

(A) For units commencing operation before January 1, 2001:

(i) If the unit is coal-fired during the year, the unit's control period heat input for such year is multiplied by 90 percent;

(ii) If the unit is natural gas-fired during the year, the unit's control period heat input for such year is multiplied by 50 percent; and

(iii) If the fossil fuel fired unit is not subject to (3)(A)(i) or (3)(A)(ii) of this subparagraph, the unit's control period heat input for such year is multiplied by 30 percent.

(B) For units commencing operation on or after January 1, 2001, in accordance with the formulas set forth by USEPA in 40CFR 96.142 with any corrections to this section that may be issued by USEPA prior to the allocation date.

(d) This section applies only while the federal rules cited in this section are enforceable and does not limit the authority of the commission to implement more stringent emissions control requirements.

(e) In adopting rules under Subsection (a), the commission shall incorporate any modifications to the federal rules cited in this section that result from a request for rehearing regarding those rules that is filed with the United States Environmental Protection Agency or from a petition for review of those rules that is filed with a court.

(f) The commission shall take all reasonable and appropriate steps to exclude the West Texas Region and El Paso Region, as defined by Sec. 39.264(g), Utilities Code, from any requirement under, derived from, or associated with 40 Code of Federal Sections 51.123, 51.124 and 51.125, including filing a petition for reconsideration with the United States Environmental Protection Agency requesting that it amend 40 Code of Federal Regulations Sections 51.123, 51.124 and 51.125 to exclude such regions. The commission shall promptly amend the rules it adopts under Subsection (a) of this section to incorporate any exclusions for such regions that result from the petition required under this subsection.

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

Amend **CSHB 2481** in section one as follows:

SECTION 1. Subchapter B, Chapter 382, Health and Safety Code, is amended by adding a new Section 382.0173(g) to read as follows:

(g) The Commission shall study the availability of mercury control technology. The Commission shall also examine the timeline for implementing the reductions required under the federal rules, the cost of additional controls both to the plant owners and consumers, the fiscal impact on the state of higher levels of mercury emissions between 2005 and 2018, and consider of the impact of trading on local communities. The commission shall report is finding by September 1, 2006.

Senate Amendment No. 4 (Senate Floor Amendment No. 4)

Amend **CSHB 2481** by striking Section 4 (page 1, lines 50-60) and inserting the following new language in the appropriately numbered section.

Section __. Section 386.102 Health and Safety Code is amended by adding the a new Subsection (e) as follows:

(e) To improve the success of the program the Commission:

(1) Shall establish cost-effective limits for grants awarded under the program to an owner or operator of a locomotive or marine vessel that are lower than the cost-effectiveness limits applied to other emissions reductions grants;

(2) Shall determine the maximum amount of reductions available from the locomotive and marine sectors and develop strategies to facilitate the maximum amount of reductions in these sectors; and

(3) Shall include in the report required by Section 386.057(b) that is due not later than December 1, 2006 an analysis of the cost-effectiveness of the grants in these sectors.

HB 698 - RULES SUSPENDED

Representative McCall moved to suspend all necessary rules to consider the conference committee report on **HB 698** at this time.

The motion prevailed.

HB 698 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative McCall submitted the following conference committee report on **HB 698** :

Austin, Texas, May 27, 2005

The Honorable David Dewhurst
President of the Senate

The Honorable Tom Craddick
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the senate and the house of representatives on **HB 698** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Averitt	McCall
Fraser	Paxton
Eltife	Keel
	Giddings
	Eiland
On the part of the senate	On the part of the house

HB 698, A bill to be entitled An Act relating to the disposal of certain business records that contain personal identifying information; providing a civil penalty.

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

SECTION 1. The heading to Section 35.48, Business & Commerce Code, is amended to read as follows:

Sec. 35.48. RETENTION AND DISPOSAL OF BUSINESS RECORDS.

SECTION 2. Section 35.48(a), Business & Commerce Code, is amended by adding Subdivisions (1-a) and (3) to read as follows:

(1-a) "Personal identifying information" means an individual's first name or initial and last name in combination with any one or more of the following items:

(A) date of birth;

(B) social security number or other government-issued identification number;

(C) mother's maiden name;

(D) unique biometric data, including the individual's fingerprint, voice print, and retina or iris image;

(E) unique electronic identification number, address, or routing code;

(F) telecommunication access device, including debit and credit card information; or

(G) financial institution account number or any other financial information.

(3) "Telecommunication access device" has the meaning assigned by Section 32.51, Penal Code.

SECTION 3. Section 35.48, Business & Commerce Code, is amended by adding Subsections (d)-(i) to read as follows:

(d) When a business disposes of a business record that contains personal identifying information of a customer of the business, the business shall modify, by shredding, erasing, or other means, the personal identifying information to make it unreadable or undecipherable.

(e) A business is considered to comply with Subsection (d) if the business contracts with a person engaged in the business of disposing of records for the modification of personal identifying information on behalf of the business in accordance with Subsection (d).

(f) A business that does not dispose of a business record of a customer in the manner required by Subsection (d) is liable for a civil penalty of up to $500 for each record. The attorney general may bring an action against the business to:

(1) recover the civil penalty;

(2) obtain any other remedy, including injunctive relief; and

(3) recover costs and reasonable attorney's fees incurred in bringing the action.

(g) A business that modifies a record as required by Subsection (d) in good faith is not liable for a civil penalty under Subsection (f) if the record is reconstructed, in whole or in part, through extraordinary means.

(h) Subsection (d) does not require a business to modify a record if:

(1) the business is required to retain the record under other law; or

(2) the record is historically significant and:

(A) there is no potential for identity theft or fraud while the record is in the custody of the business; or

(B) the record is transferred to a professionally managed historical repository.

(i) Subsection (d) does not apply to:

(1) a financial institution as defined by 15 U.S.C. Section 6809; or

(2) a covered entity as defined by Section 601.001 or 602.001, Insurance Code.

SECTION 4. This Act applies to the disposal of business records without regard to whether the records were created before, on, or after the effective date of this Act.

SECTION 5. This Act takes effect September 1, 2005.

Representative McCall moved to adopt the conference committee report on **HB 698**.

The motion to adopt the conference committee report on **HB 698** 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.)

HR 2237 - ADOPTED
(by Bonnen)

The following privileged resolution was laid before the house:

HR 2237

BE IT RESOLVED by the House of Representatives of the State of Texas, 79th Legislature, Regular Session, 2005, That House Rule 13, Section 9(a), be suspended in part as provided by House Rule 13, Section 9(f), to enable the conference committee appointed to resolve the differences on **HB 2510** (regulation of on-site sewage disposal systems and the maintenance of those systems; imposing administrative and criminal penalties) to consider and take action on the following matters:

(1) House Rule 13, Section 9(a)(4), is suspended to permit the committee to add new Subsections (h), (i), and (j), Section 366.0515, Health and Safety Code, to read as follows:

(h) If the owner of an on-site sewage disposal system using aerobic treatment for a single-family residence elects to maintain the system directly, the owner must obtain from the manufacturer or installer of the system an amount of on-site training specified by commission rule not to exceed six hours, either at the time of acceptance of the system from the installer or at the time of an on-site maintenance visit by a maintenance company under the initial term of the maintenance contract for the system, if applicable. The training must include instruction regarding the importance to public health and safety of proper maintenance of the system and a demonstration of the procedure for performing a scheduled maintenance. On the owner's completion of the training, the manufacturer or installer shall provide the owner with a certificate or letter stating that the owner has received the required training. An owner who elects to maintain the owner's system is subject to any inspection and reporting requirements imposed by an authorized agent or the commission under

Subsection (k) applicable to a maintenance company that contracts to maintain a system. If the residence is sold, the new owner, not later than the 30th day after the date the owner takes possession of the property, must obtain the training required by this subsection from an installer certified by the manufacturer of the system under Subsection (n) or contract with a maintenance company for the maintenance of the system.

(i) An authorized agent or the commission may periodically inspect an on-site sewage disposal system using aerobic treatment for a single-family residence that is maintained directly by the owner of the system. The commission by rule may specify the procedure for conducting the inspections and the frequency with which inspections must be conducted, except that inspections may not be required more often than once every five years.

(j) Notwithstanding Subsections (a) and (b), an authorized agent or the commission may condition the permit or the approval of a permit for an on-site sewage disposal system using aerobic treatment for a single-family residence on the owner's contracting with a maintenance company for the maintenance of the system if:

(1) the authorized agent or commission determines that the system is a nuisance or has failed a periodic inspection under Subsection (i);

(2) the owner fails to timely inspect the system or submit a report on the inspection as required by Subsection (k), if applicable, for three consecutive intervals; or

(3) the owner is notified under Section 366.017 at least three times during a 12-month period that the system is malfunctioning.

Explanation: The change is necessary to require an owner of an on-site sewage disposal system using aerobic treatment for a single-family residence who elects to maintain the system directly to obtain training in system maintenance from the manufacturer or installer of the system, to provide that the owner is subject to the same inspection and reporting requirements as apply to a maintenance company that contracts to maintain a system, to permit an authorized agent or the commission to periodically inspect the system, and to permit an authorized agent or the commission to condition the permit for the system on the owner's contracting with a maintenance company for the maintenance of the system if the system is determined to be a nuisance or fails an inspection, the owner fails to inspect the system or report on inspections, or the owner is notified that the system is malfunctioning.

(2) House Rule 13, Section 9(a)(1), is suspended to permit the committee to change the text of Section 6 of the bill to read as follows:

SECTION 6. The Texas Commission on Environmental Quality shall be prepared to accept applications for licenses or registrations described by Section 366.071(a), Health and Safety Code, as amended by this Act, not later than March 1, 2006.

Explanation: The change is necessary to postpone until March 1, 2006, the deadline by which the Texas Commission on Environmental Quality shall be prepared to accept licenses or registrations for persons who service or maintain on-site sewage disposal systems.

(3) House Rule 13, Section 9(a)(1), is suspended to permit the committee to change the text of Section 7(b) of the bill to read as follows:

(b) Section 2 of this Act takes effect September 1, 2006.

Explanation: The change is necessary to postpone until September 1, 2006, the deadline by which a person must hold a license or registration to service or maintain an on-site sewage disposal system.

HR 2237 was adopted.

HB 2510 - RULES SUSPENDED

Representative Bonnen moved to suspend all necessary rules to consider the conference committee report on **HB 2510** at this time.

The motion prevailed.

HB 2510 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Bonnen submitted the following conference committee report on **HB 2510** :

Austin, Texas, May 28, 2005

The Honorable David Dewhurst
President of the Senate

The Honorable Tom Craddick
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the senate and the house of representatives on **HB 2510** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Jackson	Bonnen
Armbrister	Crownover
Estes	Ritter
	Howard
On the part of the senate	On the part of the house

HB 2510, A bill to be entitled An Act relating to the regulation of on-site sewage disposal systems and the maintenance of those systems; imposing administrative and criminal penalties.

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

SECTION 1. Section 366.0515, Health and Safety Code, is amended by amending Subsections (a) and (g) and adding Subsections (h), (i), (j), (k), (l), (m), (n), and (o) to read as follows:

(a) An authorized agent or the commission may not condition a permit or the approval of a permit for an on-site sewage disposal system using aerobic treatment for a single-family residence [~~located in a county with a population of less than 40,000~~] on the system's owner contracting for the maintenance of the system.

(g) The owner of a single-family residence [~~located in a county with a population of less than 40,000~~] shall maintain the system directly or through a maintenance contract. The commission shall adopt rules governing:

(1) the training in system maintenance to be provided to an owner who elects to maintain the system directly; and

(2) the maintenance of a system by the owner of the system.

(h) If the owner of an on-site sewage disposal system using aerobic treatment for a single-family residence elects to maintain the system directly, the owner must obtain from the manufacturer or installer of the system an amount of on-site training specified by commission rule not to exceed six hours, either at the time of acceptance of the system from the installer or at the time of an on-site maintenance visit by a maintenance company under the initial term of the maintenance contract for the system, if applicable. The training must include instruction regarding the importance to public health and safety of proper maintenance of the system and a demonstration of the procedure for performing a scheduled maintenance. On the owner's completion of the training, the manufacturer or installer shall provide the owner with a certificate or letter stating that the owner has received the required training. An owner who elects to maintain the owner's system is subject to any inspection and reporting requirements imposed by an authorized agent or the commission under Subsection (k) applicable to a maintenance company that contracts to maintain a system. If the residence is sold, the new owner, not later than the 30th day after the date the owner takes possession of the property, must obtain the training required by this subsection from an installer certified by the manufacturer of the system under Subsection (n) or contract with a maintenance company for the maintenance of the system.

(i) An authorized agent or the commission may periodically inspect an on-site sewage disposal system using aerobic treatment for a single-family residence that is maintained directly by the owner of the system. The commission by rule may specify the procedure for conducting the inspections and the frequency with which inspections must be conducted, except that inspections may not be required more often than once every five years.

(j) Notwithstanding Subsections (a) and (b), an authorized agent or the commission may condition the permit or the approval of a permit for an on-site sewage disposal system using aerobic treatment for a single-family residence on the owner's contracting with a maintenance company for the maintenance of the system if:

(1) the authorized agent or commission determines that the system is a nuisance or has failed a periodic inspection under Subsection (i);

(2) the owner fails to timely inspect the system or submit a report on the inspection as required by Subsection (k), if applicable, for three consecutive intervals; or

(3) the owner is notified under Section 366.017 at least three times during a 12-month period that the system is malfunctioning.

(k) If, under Subsection (b), an authorized agent or the commission conditions approval of a permit for an on-site sewage disposal system using aerobic treatment on the system's owner contracting for the maintenance of the system, the order, resolution, or rule may require the maintenance company to:

(1) inspect the system at specified intervals;

(2) submit a report on each inspection to the authorized agent or commission; and

(3) provide a copy of each report submitted under Subdivision (2) to the system's owner.

(l) A maintenance company that violates a provision of an order, resolution, or rule described by Subsection (k) is subject to an administrative penalty. The commission may recover the penalty in a proceeding conducted as provided by Subchapter C, Chapter 7, Water Code, or the authorized agent may recover the penalty in a proceeding conducted under an order or resolution of the agent. Notwithstanding Section 7.052, Water Code, the amount of the penalty for the first violation of that order, resolution, or rule is $200, and the amount of the penalty for each subsequent violation is $500.

(m) If a maintenance company violates an order, resolution, or rule described by Subsection (k) three or more times, the commission, in the manner provided by Subchapter G, Chapter 7, Water Code, may revoke the license or registration of the maintenance company or any person employed by the maintenance company issued under:

(1) Section 26.0301, Water Code;

(2) Chapter 37, Water Code; or

(3) Section 366.071 of this code.

(n) A person must be certified by the manufacturer of an on-site sewage disposal system using aerobic treatment to maintain the system under a maintenance contract with the owner of the system or to provide training to the owner in maintenance of the system. A manufacturer may not unreasonably withhold certification and, except as otherwise provided by this subsection, must offer the certification to persons who are not employees of the manufacturer on the same terms as the manufacturer offers the certification to the manufacturer's employees. To be certified by a manufacturer, a person who is not an employee must:

(1) successfully complete a course approved by the commission that provides up to 32 hours of training in maintenance of on-site sewage disposal systems using aerobic treatment;

(2) be employed by a maintenance company at least one employee of which holds a license as:

(A) an installer, if the commission recognizes only one level of installer; or

(B) the highest level of installer recognized by the commission, if the commission recognizes more than one level of installer;

(3) meet all of the manufacturer's criteria and requirements for entering into a business relationship; and

(4) satisfactorily complete any other reasonable requirements imposed by the manufacturer for certification.

(o) Subsection (n) does not allow the commission or an authorized agent to dictate to the manufacturer of on-site sewage disposal systems using aerobic treatment the person who is authorized to maintain the systems or to provide training in maintenance of the systems in a particular area. That subsection merely facilitates the expansion of the pool of persons who are qualified to maintain or to provide training in maintenance of those systems and protects the rights of owners and manufacturers of those systems. [~~If the owner elects to maintain the system directly, the owner must obtain training in system maintenance from the authorized agent or the installer.~~]

SECTION 2. Section 366.071(a), Health and Safety Code, is amended to read as follows:

(a) A person who constructs, installs, alters, extends, services, maintains, or repairs an on-site sewage disposal system or any part of an on-site sewage disposal system for compensation must hold a license or registration issued by the commission under Chapter 37, Water Code.

SECTION 3. Subchapter E, Chapter 7, Water Code, is amended by adding Section 7.1735 to read as follows:

Sec. 7.1735. VIOLATION RELATING TO MAINTENANCE OF SEWAGE DISPOSAL SYSTEM. (a) A person commits an offense if the person knowingly violates an order or resolution adopted by an authorized agent under Section 366.0515, Health and Safety Code.

(b) An offense under this section is a Class C misdemeanor.

SECTION 4. Section 366.071(d), Health and Safety Code, is repealed.

SECTION 5. (a) The changes in law made by this Act apply only to a violation committed on or after the effective date of this Act. For purposes of this section, a violation is committed before the effective date of this Act if any element of the violation occurs before that date.

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

SECTION 6. The Texas Commission on Environmental Quality shall be prepared to accept applications for licenses or registrations described by Section 366.071(a), Health and Safety Code, as amended by this Act, not later than March 1, 2006.

SECTION 7. (a) Except as provided by Subsection (b) of this section, this Act takes effect September 1, 2005.

(b) Section 2 of this Act takes effect September 1, 2006.

Representative Bonnen moved to adopt the conference committee report on **HB 2510**.

The motion to adopt the conference committee report on **HB 2510** 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: Solomons recorded voting no.)

SB 39 - RULES SUSPENDED

Representative Goolsby moved to suspend all necessary rules to consider the conference committee report on **SB 39** at this time.

The motion prevailed.

SB 39 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Goolsby submitted the conference committee report on **SB 39**.

Representative Goolsby moved to adopt the conference committee report on **SB 39**.

The motion to adopt the conference committee report on **SB 39** 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.)

SB 444 - RULES SUSPENDED

Representative Hopson moved to suspend all necessary rules to consider the conference committee report on **SB 444** at this time.

The motion prevailed.

SB 444 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Hopson submitted the conference committee report on **SB 444**.

Representative Hopson moved to adopt the conference committee report on **SB 444**.

A record vote was requested.

The motion to adopt the conference committee report on **SB 444** prevailed by (Record 961): 140 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; 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; Flores; Flynn; Frost; Gallego; Gattis; Geren; Gonzales; Gonzalez Toureilles; Goolsby; Griggs; Grusendorf; Guillen; Haggerty; Hamilton; Hamric; Hardcastle; Hartnett; Hegar; Herrero; Hilderbran; Hill; Hochberg; Hodge; Homer; Hope; Hopson; Howard; Hughes; Hunter; Hupp; Isett; 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; 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; Harper-Brown(C).

Absent, Excused — Goodman.

Absent — Casteel; Castro; Farrar; Giddings; Jackson; Mowery.

STATEMENT OF VOTE

When Record No. 961 was taken, I was in the house but away from my desk. I would have voted yes.

Giddings

SB 34 - RULES SUSPENDED

Representative Morrison moved to suspend all necessary rules to consider the conference committee report on **SB 34** at this time.

The motion prevailed.

SB 34 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Morrison submitted the conference committee report on **SB 34**.

Representative Morrison moved to adopt the conference committee report on **SB 34**.

A record vote was requested.

The motion to adopt the conference committee report on **SB 34** prevailed by (Record 962): 143 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; 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; Goolsby; Griggs; Grusendorf; Guillen; Haggerty; Hamilton; Hamric; Hardcastle; Hartnett; Hegar; Herrero; Hilderbran; Hill; Hochberg; Hodge; Homer; Hope; Hopson; Hughes; Hunter; Hupp; Isett; Jackson; Jones, D.; Jones, J.; Keel; Keffer, B.; Keffer, J.; King, P.; King, T.; Kolkhorst; Krusee; Kuempel; Laney; Laubenberg; Leibowitz; Luna; Madden; Martinez; Martinez Fischer; McCall; McClendon; McReynolds; Menendez; Merritt; Miller; Moreno, P.; Morrison; Mowery; Naishtat; Nixon; Noriega, M.; Oliveira; Olivo; Orr; Otto; Paxton; Peña; Phillips; Pickett; Puente; Quintanilla; Raymond; Reyna; Riddle; Ritter; Rodriguez; Rose; Seaman; Smith, T.; Smith, W.; Smithee; Solis; Solomons; Strama; Straus; Swinford; Talton; Taylor; Thompson; Turner; Uresti; Van Arsdale; Veasey; Villarreal; Vo; West; Wong; Woolley; Zedler.

Present, not voting — Mr. Speaker; Harper-Brown(C).

Absent, Excused — Goodman.

Absent — Howard; Pitts; Truitt.

HB 266 - RULES SUSPENDED

Representative W. Smith moved to suspend all necessary rules to consider the conference committee report on **HB 266** at this time.

The motion prevailed.

HB 266 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative W. Smith submitted the following conference committee report on **HB 266** :

Austin, Texas, May 28, 2005

The Honorable David Dewhurst
President of the Senate

The Honorable Tom Craddick
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the senate and the house of representatives on **HB 266** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Lindsay	W. Smith
Eltife	Harper-Brown
Seliger	Mowery
On the part of the senate	On the part of the house

HB 266, A bill to be entitled An Act relating to the time for processing a county building permit.

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

SECTION 1. Chapter 233, Local Government Code, is amended by adding Subchapter Z to read as follows:

SUBCHAPTER Z. MISCELLANEOUS PROVISIONS

Sec. 233.901. TIME FOR ISSUANCE OF COUNTY BUILDING PERMIT. (a) This section applies only to a permit required by a county with a population of 3.3 million or more to construct or improve a building or other structure in the county, but does not apply to a permit for an on-site sewage disposal system.

(b) Not later than the 45th day after the date an application for a permit is submitted, the county must:

(1) grant or deny the permit;

(2) provide written notice to the applicant stating the reasons why the county has been unable to act on the permit application; or

(3) reach a written agreement with the applicant providing for a deadline for granting or denying the permit.

(c) For a permit application for which notice is provided under Subsection (b)(2), the county must grant or deny the permit not later than the 30th day after the date the notice is received.

(d) If a county fails to act on a permit application in the time required by Subsection (c) or by an agreement under Subsection (b)(3), the county:

(1) may not collect any permit fees associated with the application; and

(2) shall refund to the applicant any permit fees associated with the application that have been collected.

SECTION 2. Subchapter Z, Chapter 233, Local Government Code, as added by this Act, applies only to an application for a permit submitted on or after September 1, 2005. An application for a permit submitted before that date is governed by the law in effect when the application was submitted, and the former law is continued in effect for that purpose.

SECTION 3. This Act takes effect September 1, 2005.

Representative W. Smith moved to adopt the conference committee report on **HB 266**.

The motion to adopt the conference committee report on **HB 266** 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.)

HB 580 - RULES SUSPENDED

Representative W. Smith moved to suspend all necessary rules to consider the conference committee report on **HB 580** at this time.

The motion prevailed.

HB 580 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative W. Smith submitted the following conference committee report on **HB 580** :

Austin, Texas, May 28, 2005

The Honorable David Dewhurst
President of the Senate

The Honorable Tom Craddick
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the senate and the house of representatives on **HB 580** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Gallegos	W. Smith
Armbrister	R. Allen
Jackson	Bonnen
Lindsay	Howard
Wentworth	
On the part of the senate	On the part of the house

HB 580, A bill to be entitled An Act relating to the authority of a county to provide hazardous materials services.

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

SECTION 1. Subtitle B, Title 11, Local Government Code, is amended by adding Chapter 353 to read as follows:

CHAPTER 353. COUNTY HAZARDOUS MATERIALS SERVICES

Sec. 353.001. DEFINITIONS. In this chapter:

(1) "Concerned party" means a person:

(A) involved in the possession, ownership, or transportation of a hazardous material that is released or abandoned; or

(B) who has legal liability for the causation of an incident resulting in the release or abandonment of a hazardous material.

(2) "Hazardous material" means a flammable material, an explosive, a radioactive material, a hazardous waste, a toxic substance, or related material, including a substance defined as a "hazardous substance," "hazardous material," "toxic substance," or "solid waste" under:

(A) the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. Section 9601 et seq.);

(B) the federal Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et seq.);

(C) the federal Toxic Substances Control Act (15 U.S.C. Section 2601 et seq.);

(D) the federal Hazardous Materials Transportation Act (49 U.S.C. Section 5101 et seq.); or

(E) Chapter 361, Health and Safety Code.

Sec. 353.002. APPLICABILITY. This chapter applies to an incident involving hazardous material that has been leaked, spilled, released, or abandoned on any property.

Sec. 353.003. HAZARDOUS MATERIALS SERVICES. (a) A county may provide hazardous materials services, including a response to an incident involving hazardous material that has been leaked, spilled, released, or abandoned, if:

(1) the county first provides reasonable notice to a concerned party regarding the need for the hazardous materials services so that the concerned party has a reasonable opportunity to respond to the incident involving hazardous material; and

(2) the concerned party fails to respond or fails to respond in a timely and effective manner to the incident.

(b) A county may provide limited control and containment measures that are necessary to protect human health and the environment without first complying with the requirements of Subsection (a) if the county is the first entity to arrive at a site where an incident involving hazardous material has occurred that is prepared to take action in response to the incident.

(c) If the hazardous material is natural gas released from an underground facility as defined by Section 251.002, Utilities Code, the county:

(1) must comply with the requirements of Section 251.159, Utilities Code; and

(2) may not operate any equipment or other controls or devices at the underground facility without the express permission of the operator of the facility.

Sec. 353.004. FEE FOR PROVIDING HAZARDOUS MATERIALS SERVICE; EXCEPTION. (a) A county, or a person authorized by contract on the county's behalf, may charge a reasonable fee, including a fee to offset the cost of providing control and containment measures under Section 353.003(b), to a concerned party for responding to a hazardous materials service call.

(b) A county, or a person authorized by contract on the county's behalf, may charge a fee for providing hazardous materials services under Section 353.003(a) only if the county has complied with the requirements of that subsection. A concerned party is not liable for a fee associated with the county's hazardous materials services under Section 353.003(a) or a fee to offset the cost of providing control and containment measures under Section 353.003(b) if the county provides hazardous materials services under Section 353.003(a) and the county does not provide notice as required by Section 353.003(a)(1).

(c) An individual who is a concerned party does not have to pay a fee under this section if:

(1) the individual is not involved in the possession, ownership, or transportation of the hazardous material as the employee, agent, or servant of another person;

(2) the individual is involved solely for private, noncommercial purposes related to the individual's own property and the individual receives no compensation for any services involving the hazardous materials; and

(3) the hazardous materials possessed, owned, or being transported by the individual are in forms, quantities, and containers ordinarily available for sale as consumer products to members of the general public.

Sec. 353.005. EXEMPTION FOR GOVERNMENTAL ENTITIES. This chapter does not apply to hazardous materials owned or possessed by a governmental entity.

SECTION 2. This Act takes effect September 1, 2005.

HB 580 - STATEMENT OF LEGISLATIVE INTENT

REPRESENTATIVE HOWARD: In this new chapter, the county must provide reasonable notice to a concerned party about the clean-up, removal and disposal of hazardous material, what do you envision as being a reasonable time period for such notice?

REPRESENTATIVE W. SMITH: Well, obviously, the exact timing would depend on the circumstances, but I couldn't imagine it should last anymore than 21 calendar days or three weeks at the most.

HOWARD: If the material at the time of this original leaking, spilling, release, or abandonment was a hazardous waste, am I correct in assuming it was your intent that the final disposal of such material must be a fully licensed hazardous waste management and disposal facility?

W. SMITH: Yes.

HOWARD: Is your answer the same even when the hazardous material has been co-mingled with other non-hazardous material?

W. SMITH: Yes, it is.

HOWARD: Am I also correct in assuming that both the county where the action occurred and where the abandonment of the hazardous material occurred has the authority under the law to take the action contemplated by this new chapter?

W. SMITH: Yes.

REMARKS ORDERED PRINTED

Representative Howard moved to print remarks between Representative W. Smith and Representative Howard.

The motion prevailed.

HB 580 - STATEMENT OF LEGISLATIVE INTENT

REPRESENTATIVE NIXON: Mr. Smith, you knew that you had an amendment in there which I called a point of order on yesterday or the day before, that the amendment would have affected about 8, 9, or 10 pending lawsuits.

REPRESENTATIVE W. SMITH: The amendment was there, whether or not it affected lawsuits I do not know.

NIXON: Is there anything in the conference report that is designed to alter or change the outcome of any pending lawsuit?

W. SMITH: No, the conference committee report is exactly as we passed it from this house. The amendment that was there yesterday has been stripped off of the bill.

NIXON: You can tell us that there is nothing in the conference committee report that is designed to affect any pending lawsuits between parties or to retroactively apply any law to any pending lawsuit?

W. SMITH: No, there is no design by me. The bill was introduced to help counties, and to hazardous waste spills on roadways.

NIXON: Right, what you are saying is that there is nothing in the conference committee report that is designed to affect pending lawsuits? It is not your intent, and it is your understanding that the language—the intent of the language—is to not affect any pending lawsuits?

W. SMITH: I am not addressing whether it affects lawsuits or not. The bill stands on its own. I don't know what lawsuits that might exist anywhere. I wouldn't want to make that statement, but there may be one in Harris County I don't know about.

NIXON: Well, there may be one in Travis County.

W. SMITH: Maybe one in Travis County. Maybe one in El Paso county.

NIXON: But this is certainly not a discipline issue about retroactive activity. It is not your design to make this law apply retroactively to affect the outcome of any lawsuit?

W. SMITH: The law stands on its own. I am not an attorney. I don't know whether it affects lawsuits one way or the other.

NIXON: Do you recall the question that we had in regard to explicability?

W. SMITH: I recall the question yesterday with the explicability of the amendment that was put on by the senate, and that amendment in its entirety has been stripped off the bill. The bill is exactly what was passed by this house a couple weeks ago.

NIXON: Was there any other amendment added to it?

W. SMITH: No.

NIXON: Okay, thank you very much.

REMARKS ORDERED PRINTED

Representative Nixon moved to print remarks between Representative W. Smith and Representative Nixon.

The motion prevailed.

Representative W. Smith moved to adopt the conference committee report on **HB 580**.

The motion to adopt the conference committee report on **HB 580** 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.)

HB 585 - RULES SUSPENDED

Representative Corte moved to suspend all necessary rules to consider the conference committee report on **HB 585** at this time.

The motion prevailed.

HB 585 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Corte submitted the following conference committee report on **HB 585** :

Austin, Texas, May 28, 2005

The Honorable David Dewhurst
President of the Senate

The Honorable Tom Craddick
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the senate and the house of representatives on **HB 585** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Wentworth	Corte
Brimer	R. Cook
Madla	Mowery
On the part of the senate	On the part of the house

HB 585, A bill to be entitled An Act relating to the requirements for the incorporation of a municipality in the extraterritorial jurisdiction of certain existing municipalities.

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

SECTION 1. The heading to Section 42.041, Local Government Code, is amended to read as follows:

Sec. 42.041. MUNICIPAL INCORPORATION IN EXTRATERRITORIAL JURISDICTION GENERALLY.

SECTION 2. Subchapter C, Chapter 42, Local Government Code, is amended by adding Section 42.0411 to read as follows:

Sec. 42.0411. MUNICIPAL INCORPORATION IN EXTRATERRITORIAL JURISDICTION OF CERTAIN MUNICIPALITIES. (a) This section applies only to:

(1) an area located north and east of Interstate Highway 10 that is included in the extraterritorial jurisdiction, or the limited-purpose annexation area, of a municipality with a population of one million or more that has operated under a three-year annexation plan similar to the municipal annexation plan described by Section 43.052 for at least 10 years; or

(2) an area located north and east of Interstate Highway 10:

(A) that is included in the extraterritorial jurisdiction, or the limited-purpose annexation area, of a municipality with a population of one million or more that has operated under a three-year annexation plan similar to the municipal annexation plan described by Section 43.052 for at least 10 years;

(B) that has not been included in the municipality's annexation plan described by Section 43.052 before the 180th day before the date consent for incorporation is requested under Section 42.041(a); and

(C) for which the municipality refused to give its consent to incorporation under Section 42.041(a).

(b) The residents of the area described by Subsection (a)(2) may initiate an attempt to incorporate as a municipality by filing a written petition signed by at least 10 percent of the registered voters of the area of the proposed municipality with the county judge of the county in which the proposed municipality is located. The petition must request the county judge to order an election to determine whether the area of the proposed municipality will incorporate. An incorporation election under this section shall be conducted in the same manner as an incorporation election under Subchapter A, Chapter 8. The consent of the municipality that previously refused to give consent is not required for the incorporation.

(c) In this subsection, "deferred annexation area" means an area that has entered into an agreement with a municipality under which the municipality defers annexation of the area for at least 10 years. An area described by Subsection (a)(1) that is located within 1-1/2 miles of a municipality's deferred

annexation area or adjacent to the corporate boundaries of the municipality may not be annexed for limited or full purposes during the period provided under the agreement. During the period provided under the agreement, the residents of the area may incorporate in accordance with the incorporation proceedings provided by law, except that the consent of the municipality is not required for the incorporation. This subsection expires on the later of:

(1) September 1, 2009; or

(2) the date that all areas entitled to incorporate under this subsection have incorporated.

(d) This subsection applies only to an area that is described by Subsection (a)(1) and removed from a municipality's annexation plan under Section 43.052(e) two times or more. The residents of the area and any adjacent territory that is located within the extraterritorial jurisdiction of the municipality or located within an area annexed for limited purposes by the municipality and that is adjacent to the corporate boundaries of the municipality may incorporate in accordance with the incorporation proceedings provided by law, except that the consent of the municipality is not required for the incorporation. This subsection expires on the later of:

(1) September 1, 2009; or

(2) the date that all areas entitled to incorporate under this subsection have incorporated.

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.

Representative Corte moved to adopt the conference committee report on **HB 585**.

A record vote was requested.

The motion to adopt the conference committee report on **HB 585** prevailed by (Record 963): 145 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; 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; Goolsby; Griggs; Grusendorf; Guillen; Haggerty; Hamilton; Hamric; Hardcastle; Hartnett; Hegar; Herrero; Hilderbran; Hill; Hochberg; Hodge; Homer; Hope; Hopson; Howard; Hughes; Hunter; Hupp; Isett; Jackson; Jones, D.; Jones, J.; Keel; Keffer, B.; Keffer, J.; King, P.; King, T.; Kolkhorst; Krusee; Kuempel; Laney; Laubenberg; Leibowitz; Luna; Madden; Martinez; Martinez Fischer; McCall; McClendon; McReynolds; Menendez; Merritt; Miller; Moreno, P.; Morrison; Mowery; Naishtat; Nixon; Noriega, M.; Oliveira; Olivo; Orr; Otto; Paxton; Peña; Phillips; Pickett; 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; Woolley; Zedler.

Present, not voting — Mr. Speaker; Harper-Brown(C).

Absent, Excused — Goodman.

Absent — Wong.

HB 1634 - RULES SUSPENDED

Representative R. Allen moved to suspend all necessary rules to consider the conference committee report on **HB 1634** at this time.

The motion prevailed.

HB 1634 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative R. Allen submitted the following conference committee report on **HB 1634** :

Austin, Texas, May 27, 2005

The Honorable David Dewhurst
President of the Senate

The Honorable Tom Craddick
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the senate and the house of representatives on **HB 1634** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Gallegos	R. Allen
Ellis	Talton
Hinojosa	Keel
Whitmire	Uresti
On the part of the senate	On the part of the house

HB 1634, A bill to be entitled An Act relating to arson and arson investigation; creating offenses.

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

SECTION 1. Section 28.02, Penal Code, is amended by amending Subsection (d) and adding Subsections (a-1), (e), (f), and (g) to read as follows:

(a-1) A person commits an offense if the person recklessly starts a fire or causes an explosion while manufacturing or attempting to manufacture a controlled substance and the fire or explosion damages any building, habitation, or vehicle.

(d) An offense under Subsection (a) [~~this section~~] is a felony of the second degree, except that the offense is a felony of the first degree if it is shown on the trial of the offense that:

(1) bodily injury or death was suffered by any person by reason of the commission of the offense; or

(2) the property intended to be damaged or destroyed by the actor was a habitation or a place of assembly or worship.

(e) An offense under Subsection (a-1) is a state jail felony, except that the offense is a felony of the third degree if it is shown on the trial of the offense that bodily injury or death was suffered by any person by reason of the commission of the offense.

(f) It is a felony of the third degree if a person commits an offense under Subsection (a)(2) of this section and the person intentionally starts a fire in or on a building, habitation, or vehicle, with intent to damage or destroy property belonging to another, or with intent to injure any person, and in so doing, recklessly causes damage to the building, habitation, or vehicle.

(g) If conduct that constitutes an offense under Subsection (a-1) or that constitutes an offense under Subsection (f) also constitutes an offense under another subsection of this section or another section of this code, the actor may be prosecuted under Subsection (a-1) or Subsection (f), under the other subsection of this section, or under the other section of this code.

SECTION 2. Section 352.021, Local Government Code, is amended by adding Subsection (a-1) to read as follows:

(a-1) A person commits an offense if the person is the owner of property subject to an investigation under Section 352.015 and the person refuses to be sworn, refuses to appear and testify, or fails and refuses to produce before the county fire marshal any book, paper, or other document relating to any matter under investigation if called on by the marshal to do so.

SECTION 3. This Act takes effect September 1, 2005.

Representative R. Allen moved to adopt the conference committee report on **HB 1634**.

The motion to adopt the conference committee report on **HB 1634** 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.)

HB 664 - RULES SUSPENDED

Representative Isett moved to suspend all necessary rules to consider the conference committee report on **HB 664** at this time.

The motion prevailed.

HB 664 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Isett submitted the following conference committee report on **HB 664** :

Austin, Texas, May 27, 2005

The Honorable David Dewhurst
President of the Senate

The Honorable Tom Craddick
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the senate and the house of representatives on **HB 664** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Duncan	Isett
Brimer	Frost
Seliger	Hamilton
	Hopson
	Swinford
On the part of the senate	On the part of the house

HB 664, A bill to be entitled An Act relating to consideration of a bidder's principal place of business in awarding certain municipal and school district contracts.

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

SECTION 1. Subchapter Z, Chapter 271, Local Government Code, is amended by adding Section 271.9051 to read as follows:

Sec. 271.9051. CONSIDERATION OF LOCATION OF BIDDER'S PRINCIPAL PLACE OF BUSINESS IN CERTAIN MUNICIPALITIES. (a) This section applies only to a municipality with a population of less than 250,000 that is authorized under this title to purchase real property or personal property that is not affixed to real property.

(b) In purchasing under this title any real property, personal property that is not affixed to real property, or services, if a municipality receives one or more competitive sealed bids from a bidder whose principal place of business is in the municipality and whose bid is within five percent of the lowest bid price received by the municipality from a bidder who is not a resident of the municipality, the municipality may enter into a contract with:

(1) the lowest bidder; or

(2) the bidder whose principal place of business is in the municipality if the governing body of the municipality determines, in writing, that the local bidder offers the municipality the best combination of contract price and additional economic development opportunities for the municipality created by the contract award, including the employment of residents of the municipality and increased tax revenues to the municipality.

(c) This section does not prohibit a municipality from rejecting all bids.

(d) This section does not apply to the purchase of telecommunications services or information services, as those terms are defined by 47 U.S.C. Section 153.

SECTION 2. Section 44.031, Education Code, is amended by adding Subsection (b-1) to read as follows:

(b-1) In awarding a contract by competitive sealed bid under this section, a school district that has its central administrative office located in a municipality with a population of less than 250,000 may consider a bidder's principal place of business in the manner provided by Section 271.9051, Local Government Code. This subsection does not apply to the purchase of telecommunications services or information services, as those terms are defined by 47 U.S.C. Section 153.

SECTION 3. Section 44.033, Education Code, is amended by amending Subsection (c) and adding Subsection (f) to read as follows:

(c) Before the district makes a purchase from a category of personal property, the district must obtain written or telephone price quotations from at least three vendors from the list for that category. If fewer than three vendors are on the list, the district shall contact each vendor on the list. Whenever possible, telephone quotes should be confirmed in writing by mail or facsimile. The bidding records must be retained with the school's competitive bidding records and are subject to audit. Except as provided by Subsection (f), the [~~The~~] purchase shall be made from the lowest responsible bidder.

(f) In awarding a contract by competitive sealed bid under this section, a school district that has its central administrative office located in a municipality with a population of less than 250,000 may consider a bidder's principal place of business in the manner provided by Section 271.9051, Local Government Code. This subsection does not apply to the purchase of telecommunications services or information services, as those terms are defined by 47 U.S.C. Section 153.

SECTION 4. This Act applies only to a contract for which the initial notice soliciting bids is given on or after the effective date of this Act. A contract for which the initial notice soliciting bids is given before that date is governed by the law in effect when the initial notice is given, and the former law is continued in effect for that purpose.

SECTION 5. This Act takes effect September 1, 2005.

Representative Isett moved to adopt the conference committee report on **HB 664**.

The motion to adopt the conference committee report on **HB 664** 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.)

HB 955 - RULES SUSPENDED

Representative Solomons moved to suspend all necessary rules to consider the conference committee report on **HB 955** at this time.

The motion prevailed.

HB 955 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Solomons submitted the following conference committee report on **HB 955** :

Austin, Texas, May 28, 2005

The Honorable David Dewhurst
President of the Senate

The Honorable Tom Craddick
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the senate and the house of representatives on **HB 955** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Averitt	Solomons
Estes	Elkins
Eltife	Orr
On the part of the senate	On the part of the house

HB 955, A bill to be entitled An Act relating to the regulation of financial businesses and practices; providing civil penalties.

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

ARTICLE 1. CONSUMER PROTECTION

SECTION 1.01. Subtitle A, Title 4, Finance Code, is amended by adding Chapter 308 to read as follows:

CHAPTER 308. CONSUMER CREDIT PROTECTIONS

Sec. 308.001. APPLICABILITY. This chapter applies to a person regularly engaged in the business of extending credit under this subtitle primarily for personal, family, or household use and not for a business, commercial, investment, or agricultural purpose. This chapter does not apply to a transaction primarily for a business, commercial, investment, or agricultural purpose.

Sec. 308.002. FALSE, MISLEADING, OR DECEPTIVE ADVERTISING. (a) A creditor may not, in any manner, advertise or cause to be advertised a false, misleading, or deceptive statement or representation relating to a rate, term, or condition of a credit transaction or advertise credit terms that the person does not intend to offer to consumers who qualify for those terms.

(b) This section does not create a private right of action.

(c) In interpreting this section, an administrative agency or a court shall be guided by the applicable advertising provisions of:

(1) Part C of 15 U.S.C. Chapter 41, Subchapter I (15 U.S.C. Section 1601 et seq.);

(2) 12 C.F.R. Part 226 adopted by the Board of Governors of the Federal Reserve System; and

(3) the Official Staff Commentary and other interpretations of that statute and regulation by the Board of Governors of the Federal Reserve System and its staff.

(d) If a requirement of this section and a requirement of a federal law, including a regulation or an interpretation of federal law, are inconsistent or in conflict, federal law controls and the inconsistent or conflicting requirements of this chapter do not apply.

(e) A creditor who complies with the Truth in Lending Act (15 U.S.C. Section 1601 et seq.) and Federal Reserve Regulation Z (12 C.F.R. Part 226) in advertising a credit transaction is considered to have fully complied with this section.

Sec. 308.003. NO DOUBLE LIABILITY OR ENFORCEMENT FOR SAME ACT OR PRACTICE. A judgment, consent decree, assurance of compliance, or other resolution of a claimed violation asserted by a federal agency under the Consumer Credit Protection Act (15 U.S.C. Section 1601 et seq.) bars a subsequent action or other enforcement under this chapter with respect to the same act or practice.

SECTION 1.02. Section 341.402(c), Finance Code, is amended to read as follows:

(c) In addition to the other liabilities prescribed by this section, a person holding a license issued under this subtitle [~~that is held by a person~~] who violates Section 341.401 is subject to revocation or suspension of the license or the assessment of civil penalties by the commissioner.

SECTION 1.03. Section 341.403(a), Finance Code, is amended to read as follows:

(a) A person may not, in any manner, advertise or cause to be advertised a false, misleading, or deceptive statement or representation relating to a rate, term, or condition of a credit transaction, including a loan, regulated under this subtitle, Subtitle C, or Chapter 394, or advertise credit terms that the person does not intend to offer to consumers who qualify for those terms.

SECTION 1.04. Subtitle B, Title 4, Finance Code, is amended by adding Chapter 350 to read as follows:

CHAPTER 350. REQUIREMENTS AND LIMITATIONS APPLICABLE TO CONSUMER CREDITORS NOT LICENSED OR REGISTERED UNDER THIS TITLE

Sec. 350.001. APPLICABILITY. (a) This chapter applies to a person who extends credit primarily for personal, family, or household use and not for a business, commercial, investment, or agricultural purpose. For the purposes of this chapter, credit means the right granted to a debtor to defer payment of debt or to incur debt and defer its payment. A creditor is subject to this chapter if the creditor charges a finance charge or extends credit payable in one or more installments.

(b) This chapter does not apply to a person who is:

(1) licensed or registered under this title or Title 3; or

(2) exempt from licensing or registration under this title.

Sec. 350.002. PREVENTION OF EVASION. A person may not use any device, subterfuge, or pretense to evade the application of this section.

Sec. 350.003. COMPLIANCE WITH FAIR TRADE PRACTICES ACT. A creditor who is not licensed, registered, or otherwise exempt under this title must comply with the requirements of 15 U.S.C. Section 45. An enforcement action to compel compliance under this section may include an action to enjoin illegal activities or order restitution.

Sec. 350.004. PENALTIES. Chapter 349 applies to violations of this chapter and the rules adopted under this chapter.

ARTICLE 2. USURY REFORM

SECTION 2.01. Section 301.002(4), Finance Code, is amended to read as follows:

(4) "Interest" means compensation for the use, forbearance, or detention of money. The term does not include time price differential, regardless of how it is denominated. The term does not include compensation or other amounts that are determined or stated by this code or other applicable law not to constitute interest or that are permitted to be contracted for, charged, or received in addition to interest in connection with an extension of credit.

SECTION 2.02. Sections 303.009(a)-(d), Finance Code, are amended to read as follows:

(a) If [~~Except as provided by Subsection (c), if~~] the rate computed for the weekly, monthly, quarterly, or annualized ceiling is less than 18 percent a year, the ceiling is 18 percent a year.

(b) Except as provided by Subsection (c), [~~(d), or (c),~~] if the rate computed for the weekly, monthly, quarterly, or annualized ceiling is more than 24 percent a year, the ceiling is 24 percent a year.

(c) For a contract made, extended, or renewed under which credit is extended for a business, commercial, investment, or similar purpose, [~~and the amount of the credit extension is $250,000 or more, the 24 percent limitation on the ceilings in Subsection (b) does not apply, and~~] the limitation on the ceilings determined by those computations is 28 percent a year.

(d) For an open-end account credit agreement that provides for credit card transactions on which a merchant discount is not imposed or received by the creditor, [~~if the rate computed for the weekly ceiling, monthly ceiling, quarterly ceiling, or annualized ceiling is more than 21 percent a year,~~] the ceiling is 21 percent a year.

SECTION 2.03. Subchapter A, Chapter 303, Finance Code, is amended by adding Section 303.017 to read as follows:

Sec. 303.017. VARIOUS CHARGES ON CONSUMER LOANS MADE BY PARTICULAR LENDERS. Notwithstanding Section 342.005, a bank, savings association, savings bank, or credit union making a loan primarily for personal, family, or household use under authority of this chapter may charge all reasonable expenses and fees incurred in connection with making, closing, disbursing, extending, readjusting, or renewing a loan not secured by real property, whether or not those expenses or fees are paid to third parties. Those reasonable expenses and fees paid to third parties are not interest.

SECTION 2.04. Section 303.201, Finance Code, is amended to read as follows:

Sec. 303.201. LICENSE REQUIRED. A person engaged in the business of making loans for personal, family, or household use for which the rate is authorized under this chapter must obtain a license under Chapter 342 unless the person is not required to obtain a license under Section 342.051.

SECTION 2.05. Section 305.001, Finance Code, is amended by amending Subsection (a) and adding Subsection (a-1) to read as follows:

(a) A creditor who contracts for, charges, or receives interest that is greater than the amount authorized by this subtitle in connection with a transaction for personal, family, or household use is liable to the obligor for an amount that is equal to the greater of:

(1) three times the amount computed by subtracting the amount of interest allowed by law from the total amount of interest contracted for, charged, or received; or

(2) $2,000 or 20 percent of the amount of the principal, whichever is less.

(a-1) A creditor who contracts for or receives interest that is greater than the amount authorized by this subtitle in connection with a commercial transaction is liable to the obligor for an amount that is equal to three times the amount computed by subtracting the amount of interest allowed by law from the total amount of interest contracted for or received.

SECTION 2.06. Section 305.002(b), Finance Code, is amended to read as follows:

(b) This section applies only to a contract or transaction for personal, family, or household use subject to this subtitle.

SECTION 2.07. Sections 305.006(b) and (d), Finance Code, are amended to read as follows:

(b) Not later than the 61st day before the date an obligor files a suit seeking penalties for a transaction in which a creditor has contracted for, [~~or~~] charged, or received usurious interest, the obligor shall give the creditor written notice stating in reasonable detail the nature and amount of the violation.

(d) With respect to [~~The notice requirement of Subsection (b) does not apply to~~] a defendant filing a counterclaim action alleging usurious interest in an original action by the creditor, the defendant shall provide notice complying with Subsection (b) at the time of filing the counterclaim and, on application of the creditor to the court, the action is subject to abatement for a period of 60 days from the date of the court order. During the abatement period the creditor may correct a violation. As part of the correction of the violation, the creditor shall offer to pay the obligor's reasonable attorney's fees as determined by the court based on the hours reasonably expended by the obligor's counsel with regard to the alleged violation before the abatement. A creditor who corrects a violation as provided by this subsection is not liable to an obligor for the violation.

SECTION 2.08. Sections 306.001(2) and (8), Finance Code, are amended to read as follows:

(2) "Affiliate of an obligor" means a person who directly or indirectly, or through one or more intermediaries or other entities, owns an interest in, controls, is controlled by, or is under common control with the obligor, or a person in which the obligor directly or indirectly, or through one or more intermediaries or other entities, owns an interest. In this subdivision "control" means the possession, directly or indirectly, or with one or more other persons, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

(8) "Prepayment premium [~~penalty~~]" means compensation paid by or that is or will become due from an obligor to a creditor solely as a result or condition of the payment or maturity of all or a portion of the principal amount of

a loan before its stated maturity or a regularly scheduled date of payment, as a result of the obligor's election to pay all or a portion of the principal amount before its stated maturity or a regularly scheduled date of payment.

SECTION 2.09. Section 306.001, Finance Code, is amended by adding Subdivision (5-a) and amending Subdivision (9) to read as follows:

(5-a) "Exempt commercial loan" means a commercial loan in which one or more persons as part of the same transaction lends, advances, borrows, or receives, or is obligated to lend or advance or entitled to borrow or receive, money or credit with an aggregate value of:

(A) $7 million or more if the commercial loan is primarily secured by real property; or

(B) $500,000 or more if the commercial loan is not primarily secured by real property.

(9) "Qualified commercial loan":

(A) means:

(i) a commercial loan in which one or more persons as part of the same transaction lends, advances, borrows, or receives, or is obligated to lend or advance or entitled to borrow or receive, money or credit with an aggregate value of:

(a) $1 [~~$3~~] million or more but less than $7 million if the commercial loan is primarily secured by real property; or

(b) $100,000 [~~$250,000~~] or more but less than $500,000 if the commercial loan is not primarily secured by real property and[~~, if the aggregate value of the commercial loan is less than $500,000,~~] the loan documents contain a written certification from the borrower that:

(1) the borrower has been advised by the lender to seek the advice of an attorney and an accountant in connection with the commercial loan; and

(2) the borrower has had the opportunity to seek the advice of an attorney and accountant of the borrower's choice in connection with the commercial loan; and

(ii) a renewal or extension of a commercial loan described by this paragraph [~~Paragraph (A)~~], regardless of the principal amount of the loan at the time of the renewal or extension; and

(B) does not include a commercial loan made for the purpose of financing a business licensed by the Motor Vehicle Board of the Texas Department of Transportation under Section 2301.251(a), Occupations Code.

SECTION 2.10. Section 306.002, Finance Code, is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

(a) Except as provided by Section 306.1015, a [~~A~~] creditor may contract for, charge, and receive from an obligor on a commercial loan a rate or amount of interest that does not exceed the applicable ceilings computed in accordance with Chapter 303.

(c) The provisions of this chapter do not affect transactions that are not subject to this chapter nor affect or negatively impact any rule of law applicable to transactions not subject to this chapter.

SECTION 2.11. Subchapter B, Chapter 306, Finance Code, is amended by adding Section 306.1015 to read as follows:

Sec. 306.1015. EXEMPT COMMERCIAL LOAN–RATE CEILINGS INAPPLICABLE. (a) The parties to an exempt commercial loan agreement may contract for, charge, and receive any rate or amount of interest to which the parties agree, however computed.

(b) A rate ceiling provided by this title or another law of this state does not apply to an exempt commercial loan.

SECTION 2.12. Section 306.005, Finance Code, is amended to read as follows:

Sec. 306.005. PREPAYMENT PREMIUMS AND SIMILAR AMOUNTS [~~PENALTY~~]. With respect to a loan subject to this chapter, a [~~A~~] creditor and an obligor may agree to a prepayment premium, make-whole premium, or similar fee or charge, whether payable in the event of voluntary prepayment, involuntary prepayment, acceleration of maturity, or other cause that involves premature termination of the loan, and those amounts do not constitute interest [~~penalty in a loan subject to this chapter. A prepayment penalty is not interest~~].

SECTION 2.13. Section 306.006, Finance Code, is amended to read as follows:

Sec. 306.006. CERTAIN AUTHORIZED CHARGES ON COMMERCIAL LOANS. In addition to the interest authorized by this chapter, the parties to a commercial loan may agree and stipulate for:

(1) a delinquency charge on the amount of any installment or other amount in default for a period of not less than 10 days in an [~~a reasonable~~] amount not to exceed five percent of the total amount of the installment; and

(2) a returned check fee in an amount that does not [~~to~~] exceed the maximum fee authorized in Section 3.506, Business & Commerce Code, [~~$25~~] on any check, draft, order, or other instrument or form of remittance that is returned unpaid or dishonored for any reason.

SECTION 2.14. Subchapter A, Chapter 306, Finance Code, is amended by adding Section 306.007 to read as follows:

Sec. 306.007. GUARANTY, ASSUMPTION, PAYMENT, OR OTHER AGREEMENT. With respect to a commercial loan, an obligor may be required to assume, pay, or provide a guaranty of another person's existing or future obligation as a condition of the obligor's own use, forbearance, or detention of money. The amount of the other person's obligation required to be assumed, paid, or guaranteed does not constitute interest with respect to any obligation of the obligor.

SECTION 2.15. Section 339.001, Finance Code, is amended by adding Subsection (c) to read as follows:

(c) The Finance Commission of Texas shall have exclusive jurisdiction to enforce and adopt rules relating to this section. Rules adopted pursuant to this section shall be consistent with federal laws and regulations governing credit card transactions described by this section. This section does not create a cause of action against an individual for violation of this section.

SECTION 2.16. Section 345.104(a), Finance Code, is amended to read as follows:

(a) As an alternative to the maximum rate or amount authorized for a time price differential under Section 345.103, a retail charge agreement may provide for a rate or amount of time price differential that does not exceed[~~:~~

[~~(1)~~] the rate or amount authorized by Chapter 303[~~; or~~

[~~(2) the rate or amount of the applicable market competitive rate ceiling published under Subchapter D~~]].

SECTION 2.17. Section 346.004, Finance Code, is amended to read as follows:

Sec. 346.004. APPLICATION OF CHAPTER TO REVOLVING CREDIT ACCOUNTS. (a) Unless the contract for the account provides otherwise, this chapter applies to a revolving credit account described by Section 346.003 if the loan or extension of credit is primarily for personal, family, or household use.

(b) Unless the contract for the account provides that this chapter applies [~~otherwise~~], this chapter does not apply [~~applies~~] to a revolving credit account described by Section 346.003 if [~~regardless of whether~~] the loan or extension of credit is for [~~consumer or~~] business, commercial, investment, or similar purposes.

SECTION 2.18. Subchapter A, Chapter 347, Finance Code, is amended by adding Section 347.007 to read as follows:

Sec. 347.007. APPLICATION OF CHAPTER TO COMMERCIAL LOANS. This chapter does not apply to a credit transaction that is entered into primarily for commercial or business purposes.

SECTION 2.19. Section 348.001, Finance Code, is amended by adding Subdivisions (3-a) and (10-a) and amending Subdivision (4) to read as follows:

(3-a) "Motor home" means a motor vehicle that is designed to provide temporary living quarters and that:

(A) is built on a motor vehicle chassis as an integral part of or a permanent attachment to the chassis; and

(B) contains at least four of the following independent life support systems that are permanently installed and designed to be removed only for repair or replacement and that meet the standards of the American National Standards Institute, Standards for Recreational Vehicles:

(i) a cooking facility with an on-board fuel source;

(ii) a gas or electric refrigerator;

(iii) a toilet with exterior evacuation;

(iv) a heating or air-conditioning system with an on-board power or fuel source separate from the vehicle engine;

(v) a potable water supply system that includes at least a sink, a faucet, and a water tank with an exterior service supply connection; or

(vi) a 110-125 volt electric power supply.

(4) "Motor vehicle" means an automobile, motor [~~mobile~~] home, truck, truck tractor, trailer, semitrailer, or bus designed and used primarily to transport persons or property on a highway. The term includes a commercial vehicle or heavy commercial vehicle. The term does not include:

(A) a boat trailer;

(B) a vehicle propelled or drawn exclusively by muscular power;

(C) a vehicle that is designed to run only on rails or tracks; or

(D) machinery that is not designed primarily for highway transportation but may incidentally transport persons or property on a public highway.

(10-a) "Towable recreation vehicle" means a nonmotorized vehicle that:

(A) was originally designed and manufactured primarily to provide temporary human habitation in conjunction with recreational, camping, or seasonal use;

(B) is titled and registered with the Texas Department of Transportation as a travel trailer through a county tax assessor-collector;

(C) is permanently built on a single chassis;

(D) contains at least one life support system; and

(E) is designed to be towable by a motor vehicle.

SECTION 2.20. Section 348.007, Finance Code, is amended by adding Subsection (a-1) to read as follows:

(a-1) A transaction in which a retail buyer purchases a towable recreation vehicle from a retail seller other than principally for the purpose of resale and agrees with the retail seller to pay part or all of the cash price in one or more deferred installments may be subject to this chapter instead of Chapter 345 at the option of the seller.

SECTION 2.21. Section 342.308(a), Finance Code, is amended to read as follows:

(a) A lender or a person who is assigned a secondary mortgage loan may collect on or before the closing of the loan, or include in the principal of the loan:

(1) reasonable fees for:

(A) title examination and preparation of an abstract of title by:

(i) an attorney who is not an employee of the lender; or

(ii) a title company or property search company authorized to do business in this state; or

(B) premiums or fees for title insurance or title search for the benefit of the mortgagee and, at the mortgagor's option, for title insurance or title search for the benefit of the mortgagor;

(2) reasonable fees charged to the lender by an attorney who is not a salaried employee of the lender for preparation of the loan documents in connection with the mortgage loan if the fees are evidenced by a statement for services rendered;

(3) charges prescribed by law that are paid to public officials for determining the existence of a security interest or for perfecting, releasing, or satisfying a security interest;

(4) reasonable fees for an appraisal of real property offered as security for the loan prepared by an [~~a licensed or certified~~] appraiser who is not a salaried employee of the lender;

(5) the reasonable cost of a credit report;

(6) reasonable fees for a survey of real property offered as security for the loan prepared by a registered surveyor who is not a salaried employee of the lender;

(7) the premiums received in connection with the sale of credit life insurance, credit accident and health insurance, or other insurance that protects the mortgagee against default by the mortgagor, the benefits of which are applied in whole or in part to reduce or extinguish the loan balance; or

(8) reasonable fees relating to real property offered as security for the loan that are incurred to comply with a federally mandated program if the collection of the fees or the participation in the program is required by a federal agency; and

(9) an administrative fee, subject to Subsection (c), in an amount not to exceed $25 for a loan of more than $1,000 or $20 for a loan of $1,000 or less.

SECTION 2.22. Section 342.251, Finance Code, is amended to read as follows:

Sec. 342.251. MAXIMUM CASH ADVANCE. The maximum cash advance of a loan made under this subchapter is an amount computed under Subchapter C, Chapter 341, using the reference base amount of $100, except that for loans that are subject to Section 342.259 the reference base amount is $200.

SECTION 2.23. Section 342.257, Finance Code, is amended to read as follows:

Sec. 342.257. DEFAULT CHARGE; DEFERMENT OF PAYMENT. The provisions of Subchapter E relating to additional interest for default and additional interest for the deferment of installments apply to a loan made under this subchapter. Provided, that on a loan contract in which the cash advance is $100 or more, instead of additional interest for default under Subchapter E, the contract may provide for a delinquency charge if any part of an installment remains unpaid after the 10th day after the date on which the installment is due, including Sundays and holidays. The delinquency charge on a loan with a cash advance of $100 or more may not exceed the greater of $10 or five cents for each $1 of the delinquent installment.

SECTION 2.24. Subchapter F, Chapter 342, Finance Code, is amended by adding Section 342.259 to read as follows:

Sec. 342.259. LOANS WITH LARGER ADVANCES. (a) Instead of the charges authorized by Sections 342.201 and 342.252, a loan made under this subchapter with a maximum cash advance computed under Subchapter C, Chapter 341, using a reference base amount that is more than $100 but not more than $200, may provide for:

(1) an acquisition charge that is not more than $10; and

(2) an installment account handling charge that is not more than the ratio of $4 a month for each $100 of cash advance.

(b) An acquisition charge under this section is considered to be earned at the time a loan is made and is not subject to refund. On the prepayment of a loan that is subject to this section, the installment account handling charge is subject to refund in accordance with Subchapter H.

(c) Except as provided by this section, provisions of this chapter applicable to a loan that is subject to Section 342.252 also apply to a loan that is subject to this section.

ARTICLE 3. DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

SECTION 3.01. The legislature finds that:

(1) the Savings and Loan Department regulates state-chartered savings and loan institutions, savings banks, licensed mortgage brokers, and loan officers and registers mortgage bankers;

(2) there is one state-chartered savings and loan institution that has not converted to a state-chartered savings bank or other form of institution; and

(3) the department's name no longer fits the activities and regulatory responsibilities of the department and does not provide sufficient clarity of its functions to the public.

SECTION 3.02. Chapter 13, Finance Code, is amended by adding Section 13.0015 to read as follows:

Sec. 13.0015. NAME CHANGES. (a) The Savings and Loan Department is renamed the Department of Savings and Mortgage Lending and the savings and loan commissioner is renamed the savings and mortgage lending commissioner.

(b) A reference in a statute or rule to the Savings and Loan Department means the Department of Savings and Mortgage Lending.

(c) A reference in a statute or rule to the savings and loan commissioner means the savings and mortgage lending commissioner.

SECTION 3.03. Section 13.008(a), Finance Code, is amended to read as follows:

(a) The finance commission shall establish reasonable and necessary fees for the administration of Subtitles B and C, Title 3, and Chapters 156 and 157, and for the support of the finance commission as provided by Subchapter C, Chapter 11. In establishing the reasonable and necessary fees for the administration of Chapters 156 and 157, the commissioner and the finance commission may not exceed the limit on the fees set forth in those chapters.

SECTION 3.04. Section 119.201(a), Finance Code, is amended to read as follows:

(a) The commissioner may require a savings bank that knowingly violates this subtitle or a rule adopted under this subtitle to pay to the department [~~Savings and Loan Department~~] an administrative penalty not to exceed $10,000 [~~$1,000~~] for each day that the violation occurs after notice of the violation is given by the commissioner.

SECTION 3.05. The savings and mortgage lending commissioner shall study the desirability and feasibility of developing alternative thrift charters, including special purpose charters, and shall issue a report, including findings and legislative recommendations, to the legislature not later than December 31, 2006.

ARTICLE 4. CONSUMER CREDIT COMMISSIONER

SECTION 4.01. Section 14.208, Finance Code, is amended to read as follows:

Sec. 14.208. INJUNCTION; APPEAL. (a) If the commissioner has reasonable cause to believe that a person is violating a statute to which this chapter applies, the commissioner, in addition to any other authorized action, may issue an order [~~the person~~] to cease and desist [~~refrain~~] from the violation or an order to take affirmative action, or both, to enforce compliance. A person may appeal the order to the finance commission as provided by Subsection (d) or directly to district court in accordance with Chapter 2001, Government Code.

(b) If a person against whom an order under this section is made requests a hearing not later than the 30th day after the date the order is served, the commissioner shall set and give notice of a hearing before a hearings officer. The hearing is governed by Chapter 2001, Government Code. Based on the findings of fact, conclusions of law, and recommendations of the hearings officer, the commissioner by order may find whether a violation has occurred.

(c) If a hearing is not timely requested under Subsection (b), the order is considered final and becomes enforceable. The commissioner, after giving notice, may impose against a person who violates a cease and desist order an administrative penalty in an amount not to exceed $1,000 for each day of violation. In addition to any other remedy provided by law, the commissioner on relation of the attorney general may institute in district court a suit for injunctive relief and to collect an administrative penalty. A bond is not required of the commissioner with respect to injunctive relief granted under this section. [~~The commissioner, on relation of the attorney general at the request of the commissioner, may also bring an action in district court to enjoin the person from engaging in or continuing the violation or doing an act that furthers the violation.~~] In the action, the court may enter as proper an order awarding a preliminary or final injunction.

(d) If a party seeks review of the order by the finance commission, the party shall file a petition for review with the finance commission not later than the 30th day after the date of the issuance of the commissioner's decision. The finance commission may affirm, vacate, or modify an order issued by the commissioner. A party aggrieved by a final decision of the finance commission is entitled to judicial review. The party may appeal the decision of the finance commission by the filing of a motion for rehearing with the finance commission and then filing a petition initiating judicial review.

SECTION 4.02. The heading to Subchapter F, Chapter 14, Finance Code, is amended to read as follows:

SUBCHAPTER F. ADMINISTRATIVE PENALTY; RESTITUTION ORDER; ASSURANCE OF VOLUNTARY COMPLIANCE

SECTION 4.03. Section 14.252(b), Finance Code, is amended to read as follows:

(b) The aggregate amount of penalties under this subchapter that the commissioner may assess against a person during one calendar year may not exceed the lesser of:

(1) $100,000 [~~$50,000~~]; or

(2) an amount that is equal to the greater of five percent of the net worth of the creditor or $5,000 [~~for each business location at which an element of a violation occurred~~].

SECTION 4.04. Section 14.258, Finance Code, is amended to read as follows:

Sec. 14.258. STAY OF PENALTY; SUIT BY ATTORNEY GENERAL [~~COURT ORDERS~~]. (a) The enforcement of the penalty may be stayed during the time the order is under judicial review if the person pays the penalty to the clerk of the court or files a supersedeas bond with the court in the amount of the penalty. A person who cannot afford to pay the penalty or file the bond may stay the enforcement by filing an affidavit in the manner required by the Texas Rules of Civil Procedure for a party who cannot afford to file security for costs, subject to the right of the commissioner to contest the affidavit as provided by those rules.

(b) The attorney general may sue to collect the penalty.

(c) A court that sustains the occurrence of a violation may uphold or reduce the amount of the administrative penalty and order the person to pay that amount.

(d) [~~(b)~~] A court that does not sustain the occurrence of a violation shall order that no penalty is owed.

(e) [~~(c)~~] If a person has paid a penalty and a court in a final judgment reduces or does not uphold the amount, the court shall order that the appropriate amount plus accrued interest be remitted to the person. The interest rate is the rate authorized by Chapter 304, and interest shall be paid for the period beginning on the date the penalty was paid and ending on the date the penalty is remitted.

SECTION 4.05. Subchapter F, Chapter 14, Finance Code, is amended by adding Sections 14.261-14.264 to read as follows:

Sec. 14.261. ACCEPTANCE OF ASSURANCE. (a) In administering this chapter, the commissioner may accept assurance of voluntary compliance from a person who is engaging in or has engaged in an act or practice in violation of:

(1) this chapter or a rule adopted under this chapter;

(2) Chapter 394; or

(3) Subtitle B, Title 4, or a rule adopted under Subtitle B, Title 4.

(b) The assurance must be in writing and be filed with the commissioner.

(c) The commissioner may condition acceptance of an assurance of voluntary compliance on the stipulation that the person offering the assurance restore to a person in interest money that may have been acquired by the act or practice described by Subsection (a).

(d) The finance commission may adopt rules to establish the form of the assurance or require certain information be contained in an assurance.

Sec. 14.262. EFFECT OF ASSURANCE. (a) An assurance of voluntary compliance is not an admission of a violation of:

(1) this chapter or a rule adopted under this chapter;

(2) Chapter 394; or

(3) Subtitle B, Title 4, or a rule adopted under Subtitle B, Title 4.

(b) Unless an assurance of voluntary compliance is rescinded by agreement or voided by a court for good cause, a subsequent failure to comply with the assurance is prima facie evidence of a violation of:

(1) this chapter or a rule adopted under this chapter;

(2) Chapter 394; or

(3) Subtitle B, Title 4, or a rule adopted under Subtitle B, Title 4.

Sec. 14.263. REOPENING. A matter closed by the filing of an assurance of voluntary compliance may be reopened at any time.

Sec. 14.264. RIGHT TO BRING ACTION NOT AFFECTED. (a) An assurance of voluntary compliance does not affect the right of an individual to bring an action, except as provided in Chapter 349 and except that the right of an individual in relation to money received according to a stipulation under Section 14.261(c) is governed by the terms of the assurance.

(b) A person entering into an assurance of voluntary compliance may, not later than the 60th day after the date of filing of the assurance, correct the violation under Section 349.201. Amounts paid as restitution and other acts taken in accordance with an assurance of voluntary compliance shall be considered for purposes of determining whether the obligor has made a correction under Subchapter C, Chapter 349. With respect to corrections of violations or possible violations relating to matters addressed in the assurance of voluntary compliance, the date of filing of the assurance is considered to be the date of:

(1) actual discovery of the violation or possible violation;

(2) written notice; and

(3) filing of the action alleging the violation.

SECTION 4.06. Section 371.303(b), Finance Code, is amended to read as follows:

(b) The commissioner may assess the administrative penalty in an amount[~~:~~

[~~(1) equal to the average profit made by the pawnshop on a business day in the six months before the date the violation occurred, not to exceed $1,000; or~~

[~~(2) for a violation of Section 371.304,~~] not to exceed $1,000.

SECTION 4.07. Subchapter B, Chapter 349, Finance Code, is amended by adding Section 349.103 to read as follows:

Sec. 349.103. LIMITATION ON MULTIPLE RECOVERY OF PENALTIES. (a) An administrative penalty, fine, settlement, or assurance of voluntary compliance under this title or federal law that is assessed by or agreed to with an administrative agency or the attorney general shall be considered and applied as a bar or credit to recovery of further fines, penalties, or enhanced damages for substantially the same act, practice, or violation in a suit or other proceeding brought by a private litigant under this title, the Business & Commerce Code, or other applicable law of this state. This section does not apply to a claim for restitution for unreimbursed actual damages.

(b) A suit or other proceeding by a private litigant does not affect or restrict any state or federal agency from pursuing a person for any administrative remedy, including an administrative penalty. An administrative agency of this state, however, shall consider as a mitigating factor any relief recovered in a private suit or proceeding when the agency determines an administrative remedy.

ARTICLE 5. SAVINGS BANKS AND LIMITED SAVINGS BANKS

SECTION 5.01. Subchapter A, Chapter 59, Finance Code, is amended by adding Section 59.011 to read as follows:

Sec. 59.011. LENDER LIABILITY FOR CONSTRUCTION. (a) For purposes of Chapter 27, Property Code, and Title 16, Property Code, a federally insured financial institution regulated under this code is not a builder.

(b) A lender regulated by this code that forecloses on or otherwise acquires a home through the foreclosure process or other legal means when the loan is in default is not liable to a subsequent purchaser for any construction defects of which the lender had no knowledge that were created prior to the acquisition of the home by the lender.

(c) A builder hired by a lender to complete the construction of a foreclosed home is not liable for any construction defects of which the builder had no knowledge that existed prior to the acquisition of the home by the lender, but the builder is subject to Chapter 27, Property Code, and Title 16, Property Code, for work performed for the lender subsequent to the acquisition of the home by the lender.

SECTION 5.02. Section 91.002, Finance Code, is amended by amending Subdivisions (2) and (18) and adding Subdivision (16-a) to read as follows:

(2) "Board" means the board of directors of a savings bank or the managers of a savings bank organized as a limited savings bank.

(16-a) "Limited savings bank" means a savings bank electing to be organized as a limited liability company under this subtitle.

(18) "Member" means:

(A) [~~,~~] with respect to a mutual savings bank, a person:

(i) [~~(A)~~] holding an account with the mutual savings bank;

(ii) [~~(B)~~] assuming or obligated on a loan in which the mutual savings bank has an interest; or

(iii) [~~(C)~~] owning property that secures a loan in which the mutual savings bank has an interest; or

(B) with respect to a savings bank organized as a limited savings bank, a person who owns a membership interest in the limited savings bank.

SECTION 5.03. Section 92.001, Finance Code, is amended to read as follows:

Sec. 92.001. APPLICABILITY OF OTHER LAW. (a) With respect to a savings bank, other than a savings bank organized as a limited savings bank, organized before January 1, 2006, the [~~The~~] Texas Business Corporation Act, the Texas Miscellaneous Corporation Laws Act (Article 1302-1.01 et seq., Vernon's Texas Civil Statutes), and other law relating to general business corporations apply to a savings bank to the extent not inconsistent with this subtitle or the proper business of a savings bank.

(b) With respect to a savings bank organized as a limited savings bank before January 1, 2006, the Texas Limited Liability Company Act (Article 1528n, Vernon's Texas Civil Statutes) and any other law relating to a limited liability company organized in Texas apply to a limited savings bank to the extent not inconsistent with this subtitle or the proper business of a limited savings bank.

(c) With respect to a savings bank, other than a savings bank organized as a limited savings bank, organized on or after January 1, 2006, the provisions of the Business Organizations Code applicable to general business corporations apply to a savings bank to the extent not inconsistent with this subtitle or the proper business of a savings bank.

(d) With respect to a savings bank organized as a limited savings bank on or after January 1, 2006, the provisions of the Business Organizations Code applicable to a limited liability company organized in this state apply to a limited savings bank to the extent not inconsistent with this subtitle or the proper business of a limited savings bank.

(e) With respect to a savings bank or limited savings bank organized before January 1, 2006, the finance commission may establish rules permitting a savings bank or limited savings bank to elect to be governed by the provisions of the Business Organizations Code to the extent not inconsistent with this subtitle or the proper business of a savings bank or limited savings bank.

SECTION 5.04. Section 92.101, Finance Code, is amended to read as follows:

Sec. 92.101. PURPOSE OF INCORPORATION. A person may apply to incorporate a savings bank for the purpose of:

(1) purchasing the assets, assuming the liabilities other than liability to shareholders, and continuing the business of a financial institution the commissioner considers to be in an unsafe condition; [~~or~~]

(2) acquiring an existing financial institution by merger; or

(3) facilitating a reorganization or merger with or into a savings bank under rules adopted by the finance commission.

SECTION 5.05. Section 92.102, Finance Code, is amended by amending Subsection (d) and adding Subsection (e) to read as follows:

(d) Chapter 2001, Government Code, does not apply to the application if:

(1) [~~If~~] the commissioner considers the financial institution to be reorganized or merged to be in an unsafe condition; or

(2) the savings bank incorporated under this subchapter does not survive the merger or is facilitating the continuation of an existing savings bank corporate reorganization as defined by rules adopted by the finance commission.

(e) If the commissioner considers the financial institution to be reorganized or merged to be in an unsafe condition, [~~:~~

[~~(1) Chapter 2001, Government Code, does not apply to the application; and~~

[~~(2)~~]] the application and all information relating to the application are confidential and not subject to public disclosure.

SECTION 5.06. Section 92.156, Finance Code, is amended by amending Subsections (a) and (c) and adding Subsection (e) to read as follows:

(a) A savings bank shall maintain [~~on file with the commissioner~~] a blanket indemnity bond with an adequate corporate surety protecting the savings bank from loss by or through dishonest or criminal action or omission, including fraud, theft, robbery, or burglary, by an officer or employee of the savings bank or a director of the savings bank when the director performs the duty of an officer or employee.

(c) Subject to rules adopted under Subsection (e), the [~~The~~] board shall [~~and the commissioner must~~] approve:

(1) the amount and form of the bond; and

(2) the sufficiency of the surety.

(e) The finance commission may adopt rules establishing the amount and form of the bond and the sufficiency of the surety.

SECTION 5.07. Section 92.204, Finance Code, is amended to read as follows:

Sec. 92.204. [~~QUALIFICATION UNDER ASSET TEST OR~~] QUALIFIED THRIFT LENDER TEST. (a) A savings bank must [~~qualify under and continue to meet~~]:

(1) qualify under and continue to meet [~~the asset test of Section 7701(a)(19), Internal Revenue Code of 1986 (26 U.S.C. Section 7701(a)(19)); or~~

[~~(2)~~] the qualified thrift lender test of Section 10(m), Home Owners' Loan Act (12 U.S.C. Section 1467a(m)); or

(2) maintain more than 50 percent of its portfolio assets in qualified thrift assets on a monthly average basis in at least nine out of 12 months.

(b) For purposes of Subsection (a)(2), "qualified thrift assets" means:

(1) qualified thrift investments as defined by 12 U.S.C. Section 1467a(m)(4)(C); and

(2) other assets determined by the commissioner, under rules adopted by the finance commission, to be substantially equivalent to qualified thrift investments described by Subdivision (1) or which further residential lending or community development.

(c) The commissioner may grant temporary or limited exceptions to the requirements of this section as the commissioner considers necessary.

SECTION 5.08. Section 92.207, Finance Code, is amended to read as follows:

Sec. 92.207. LIMITATION ON ISSUANCE OF SECURITIES. A savings bank may issue a form of stock, share, account, or investment certificate only as authorized by this subtitle or as permitted for a national bank, federal savings and loan association, federal savings bank, or state bank.

SECTION 5.09. Section 92.208, Finance Code, is amended by amending Subsection (c) and adding Subsection (e) to read as follows:

(c) A savings bank may not purchase, directly or indirectly, its own issued common stock, except under a stock repurchase plan approved in advance by the commissioner.

(e) Subsections (b) and (c) apply to the securities of the savings bank's holding company and affiliates.

SECTION 5.10. Section 92.211, Finance Code, is amended to read as follows:

Sec. 92.211. DIVIDENDS ON CAPITAL STOCK. (a) The board of a capital stock savings bank may declare and pay a dividend out of current or retained income, in cash or additional stock, to the holders of record of the stock outstanding on the date the dividend is declared.

(b) Without the prior approval of the commissioner, a cash dividend may not be declared by the board of a savings bank that the commissioner considers:

(1) to be in an unsafe condition; or

(2) to have less than zero total retained income on the date of the dividend declaration.

SECTION 5.11. Section 92.252(b), Finance Code, is amended to read as follows:

(b) The application to convert must:

(1) be filed in the office of the commissioner not later than the 30th [~~10th~~] day after the date of the meeting; and

(2) include a copy of the minutes of the meeting, sworn to by the secretary or an assistant secretary.

SECTION 5.12. Section 92.301(b), Finance Code, is amended to read as follows:

(b) The application to convert must:

(1) be submitted to the commissioner and mailed to the appropriate banking agency not later than the 30th [~~10th~~] day after the date of the meeting; and

(2) include a copy of the minutes of the meeting, sworn to by the secretary or an assistant secretary.

SECTION 5.13. Sections 92.302(b) and (c), Finance Code, are amended to read as follows:

(b) The directors, or the president and secretary, shall execute two copies of an application for certificate of incorporation as provided by Subchapter B.

(c) Each director, or the president and secretary, shall sign and acknowledge the application for certificate of incorporation as a subscriber and shall sign and acknowledge the bylaws as an incorporator.

SECTION 5.14. Section 92.351(a), Finance Code, is amended to read as follows:

(a) A savings bank may reorganize, merge, or consolidate with a corporation, another financial institution, or another entity under a plan adopted by the board.

SECTION 5.15. Chapter 92, Finance Code, is amended by adding Subchapter M to read as follows:

SUBCHAPTER M. LIMITED SAVINGS BANK

Sec. 92.601. APPLICATION TO ORGANIZE. (a) Five or more adult residents of this state may apply to organize a savings bank as a limited savings bank by submitting to the commissioner:

(1) an application to organize a limited savings bank that is:

(A) in a form specified by the commissioner; and

(B) signed by each organizer; and

(2) the filing fee.

(b) An application must contain:

(1) two copies of the limited savings bank's certificate of formation containing:

(A) the name of the savings bank;

(B) the location of the principal office;

(C) the names and addresses of the initial managers; and

(D) to the extent not inconsistent with this subtitle, the proper business of a savings bank, or a rule adopted by the finance commission related to savings banks, other provisions included in:

(i) the articles of organization of a limited liability company organized under the Texas Limited Liability Company Act (Article 1528n, Vernon's Texas Civil Statutes) if the limited savings bank was organized before January 1, 2006; or

(ii) the certificate of formation of a limited liability company organized under Chapter 101, Business Organizations Code, if:

(a) the limited savings bank was organized on or after January 1, 2006; or

(b) the organizers elect to include those provisions, if the limited savings bank was organized before January 1, 2006;

(2) two copies of the savings bank's company agreement;

(3) data sufficiently detailed and comprehensive in nature to enable the commissioner to make findings under Section 92.058, including statements, exhibits, and maps;

(4) financial information about each applicant, organizer, manager, officer, or member that the finance commission requires by rule; and

(5) other information relating to the savings bank and its operation that the finance commission requires by rule.

(c) Financial information described by Subsection (b) is confidential and not subject to public disclosure unless the commissioner finds that disclosure is necessary and in the public interest.

(d) The statement of fact must be signed and sworn to.

(e) Subchapter B applies to the organization of a limited savings bank except to the extent inconsistent with this section.

Sec. 92.602. LIABILITY OF MEMBERS AND MANAGERS. A member, transferee of a member, or manager of a limited savings bank is not liable for a debt, obligation, or liability of the limited savings bank, including a debt, obligation, or liability under a judgment, decree, or order of a court. A member or a manager of a limited savings bank is not a proper party to a proceeding by or against a limited savings bank unless the object of the proceeding is to enforce a member's or manager's right against or liability to a limited savings bank.

Sec. 92.603. CONTRIBUTIONS. A member of a limited savings bank is obligated to make contributions as required in the company agreement.

Sec. 92.604. MANAGERS OF LIMITED SAVINGS BANK. (a) Management of a limited savings bank shall be exercised by a board of managers consisting of not fewer than five or more than 21 persons.

(b) A manager must meet the qualifications for a director under Section 92.153.

(c) The governing documents of a limited savings bank may use "director" instead of "manager" and "board" instead of "board of managers."

Sec. 92.605. WITHDRAWAL OR REDUCTION OF MEMBER'S CONTRIBUTION. (a) A member may not receive from a limited savings bank any part of the member's contribution except as provided by rule adopted by the finance commission regulating withdrawal or reduction.

(b) A member may not receive any part of the member's contribution if, after the withdrawal or reduction, the capital of the savings bank would be reduced to less than the minimum capital established for the incorporation or operation of a savings bank by this subtitle or a rule adopted under this subtitle.

Sec. 92.606. COMPANY AGREEMENT OF LIMITED SAVINGS BANK. (a) A limited savings bank shall adopt a company agreement that contains provisions regulating the management and organization of the limited savings bank. The agreement is subject to the approval of the commissioner and must contain provisions the finance commission may require by a rule adopted under this subchapter.

(b) At the option of the limited savings bank, the term "bylaws" may be substituted for the term "company agreement."

Sec. 92.607. DISSOLUTION. (a) A limited savings bank organized under this subchapter is dissolved on:

(1) the expiration of the period fixed for the duration of the limited savings bank; or

(2) the occurrence of events specified in the certificate of formation or company agreement to cause dissolution.

(b) A dissolution under this section is considered a resolution to close the savings bank under Section 96.251.

Sec. 92.608. ALLOCATION OF PROFITS AND LOSSES. The profits and losses of a limited savings bank may be allocated among the members and among classes of members as provided by the company agreement. Without the prior written approval of the commissioner to use a different allocation method, the profits and losses must be allocated according to the relative interests of the members in the limited savings bank.

Sec. 92.609. DISTRIBUTIONS. Subject to rules adopted by the finance commission, distributions of cash or other assets of a limited savings bank may be made to the members as provided by the company agreement. Without the prior written approval of the commissioner to use a different distribution method, distributions must be made to the members according to the relative interests of the members as reflected in the governing documents of the limited savings bank filed with and approved by the commissioner.

Sec. 92.610. AMENDMENT OF GOVERNING DOCUMENTS. (a) A limited savings bank may amend its certificate of formation by a majority vote of the members cast at any annual meeting or a special meeting called for that purpose unless the certificate of formation requires a higher percentage.

(b) If provided in the governing documents, the company agreement of a limited savings bank may be amended by a majority vote of the board of managers unless the governing documents require a higher percentage. In the absence of an express provision in the governing documents, the company agreement may be amended by a majority vote of the members cast at any annual meeting or special meeting called for that purpose.

(c) An amendment to the governing documents may not take effect before it is filed with and approved by the commissioner.

Sec. 92.611. APPLICATION OF OTHER PROVISIONS TO LIMITED SAVINGS BANKS; MISCELLANEOUS PROVISIONS. (a) This subtitle applies to a savings bank organized as a limited savings bank under this subchapter. In the event of a conflict between this subchapter and a provision of this subtitle, this subchapter controls unless the finance commission by rule provides that this subtitle controls.

(b) For purposes of provisions of this chapter other than this subchapter, as the context requires:

(1) a manager is considered to be a director and the board of managers is considered to be the board of directors;

(2) a member is considered to be a shareholder; and

(3) a distribution is considered to be a dividend.

(c) A reference in a statute or rule to a savings bank includes a savings bank organized as a limited savings bank unless the context clearly requires that a limited savings bank is not included within the term or the provision contains express language excluding a limited savings bank.

(d) In this subchapter, "governing document" means a limited savings bank's certificate of formation or company agreement.

SECTION 5.16. Section 93.001(c), Finance Code, is amended to read as follows:

(c) A savings bank may:

(1) sue and be sued in its corporate name;

(2) adopt and operate a reasonable bonus plan, profit-sharing plan, stock bonus plan, stock option plan, pension plan, or similar incentive plan for its directors, officers, or employees, subject to any limitations under this subtitle or rules adopted under this subtitle;

(3) make reasonable donations for the public welfare or for a charitable, scientific, religious, or educational purpose;

(4) pledge its assets to secure deposits of public money of the United States, if required by the United States, including revenue and money the deposit of which is subject to control or regulation of the United States;

(5) pledge its assets to secure deposits of public money of any state or of a political corporation or political subdivision of any state or of any other entity that serves a public purpose according to rules adopted by the finance commission;

(6) become a member of or deal with any corporation or agency of the United States or this state, to the extent that the corporation or agency assists in furthering the purposes or powers of savings banks, and for that purpose may purchase stock or securities of the corporation or agency or deposit money with the corporation or agency and may comply with any other condition of membership credit;

(7) become a member of a federal home loan bank or the Federal Reserve System;

(8) hold title to any assets acquired because of the collection or liquidation of a loan, investment, or discount and may administer those assets as necessary;

(9) receive and repay any deposit or account in accordance with this subtitle and rules of the finance commission; and

(10) lend and invest its money as authorized by this subtitle and rules of the finance commission.

SECTION 5.17. Section 93.008, Finance Code, is amended to read as follows:

Sec. 93.008. POWERS RELATIVE TO OTHER FINANCIAL INSTITUTIONS. (a) Subject to limitations prescribed by rule of the finance commission, a savings bank may make a loan or investment or engage in an activity permitted:

(1) under state law for a bank or savings and loan association; or

(2) under federal law for a federal savings and loan association, savings bank, or national bank if the financial institution's principal office is located in this state.

(b) Notwithstanding any other law, a savings bank organized and chartered under this chapter may perform an act, own property, or offer a product or service that is at the time permissible within the United States for a depository institution organized under federal law or the law of this state or another state if the commissioner approves the exercise of the power as provided by this section, subject to the same limitations and restrictions applicable to the other depository institution by pertinent law, except to the extent the limitations and restrictions are modified by rules adopted under Subsection (e). This section may not be used to alter or negate the application of the laws of this state with respect to:

(1) establishment and maintenance of a branch in this state or another state or country;

(2) permissible interest rates and loan fees chargeable in this state;

(3) fiduciary duties owed to a client or customer by the bank in its capacity as fiduciary in this state;

(4) consumer protection laws applicable to transactions in this state; or

(5) compliance with the qualified thrift assets test contained in Section 92.204.

(c) A savings bank that intends to exercise a power, directly or through a subsidiary, granted by Subsection (b) that is not otherwise authorized for savings banks under the statutes of this state shall submit a letter to the commissioner describing in detail the power that the savings bank proposes to exercise and the specific authority of another depository institution to exercise the power. The savings bank shall attach copies, if available, of relevant law, regulations, and interpretive letters. The commissioner may deny the bank from exercising the power if the commissioner finds that:

(1) specific authority does not exist for another depository institution to exercise the proposed power;

(2) if the savings bank is insured by the Federal Deposit Insurance Corporation, the savings bank is prohibited from exercising the power under Section 24, Federal Deposit Insurance Act (12 U.S.C. Section 1831a), and related regulations;

(3) the exercise of the power by the bank would adversely affect the safety and soundness of the bank; or

(4) at the time the application is made, the savings bank is not well capitalized and well managed.

(d) A savings bank that is denied the requested power by the commissioner under this section may appeal. The notice of appeal must be in writing and must be received by the commissioner not later than the 30th day after the date of the denial. An appeal under this section is a contested case under Chapter 2001, Government Code.

(e) To effectuate this section, the finance commission may adopt rules implementing the method or manner in which a savings bank exercises specific powers granted under this section, including rules regarding the exercise of a power that would be prohibited to savings banks under state law but for this section.

(f) The exercise of a power by a savings bank in compliance with and in the manner authorized by this section is not a violation of any statute of this state.

SECTION 5.18. Section 94.201, Finance Code, is amended to read as follows:

Sec. 94.201. REQUIRED INVESTMENTS. A savings bank shall maintain in the savings bank's portfolio not less than 15 percent of the savings bank's deposits from its local service area designated under Section 94.202 in:

(1) first and second lien residential mortgage loans, home equity loans, or foreclosed residential mortgage loans originated in the savings bank's local service area;

(2) home improvement loans;

(3) interim residential construction loans;

(4) mortgage-backed securities secured by loans in the savings bank's local service area; [~~and~~]

(5) loans for community reinvestment; and

(6) other loans made to customers in the savings bank's local service area that meet the definition of qualified thrift assets under Section 92.204.

SECTION 5.19. Section 96.053(a), Finance Code, is amended to read as follows:

(a) Before March [~~February~~] 1 of each year, a savings bank shall provide to the commissioner on a form to be prescribed and furnished by the commissioner a written report of its affairs and operations, including a complete statement of its financial condition with a statement of income and expenses since its last annual report under this section. The report must be signed by the president, vice president, or secretary of the savings bank.

SECTION 5.20. Sections 97.001-97.007, Finance Code, are designated as Subchapter A, Chapter 97, Finance Code, and a subchapter heading is added to read as follows:

SUBCHAPTER A. GENERAL PROVISIONS APPLICABLE TO HOLDING COMPANIES

SECTION 5.21. Chapter 97, Finance Code, is amended by adding Subchapter B to read as follows:

SUBCHAPTER B. MUTUAL HOLDING COMPANIES

Sec. 97.051. REORGANIZATION TO BECOME MUTUAL HOLDING COMPANY. (a) Notwithstanding any other law, a savings bank may be reorganized as a mutual holding company by submitting to the commissioner an application for approval of reorganization.

(b) Before submission, an application for reorganization must be approved by a majority vote of the members or shareholders of the savings bank cast at an annual meeting or a special meeting called to consider the reorganization.

Sec. 97.052. APPLICATION FOR APPROVAL OF REORGANIZATION. The application for approval of reorganization must contain:

(1) a brief statement summarizing a reorganization plan;

(2) two copies of the proposed articles of incorporation of the subsidiary savings bank acknowledged by the incorporators of the subsidiary savings bank;

(3) two copies of the proposed bylaws of the savings bank;

(4) a statement that the plan of reorganization was advised, authorized, and approved by the savings bank in the manner and by the vote required by its charter and the laws of this state; and

(5) a statement of the manner of approval.

Sec. 97.053. PLAN OF REORGANIZATION. (a) The plan of reorganization must provide that:

(1) a subsidiary savings bank shall:

(A) be incorporated under Subchapter B, Chapter 92; or

(B) on prior approval of the commissioner, be incorporated under Subchapter C, Chapter 92;

(2) the savings bank shall transfer a substantial part of its assets to the subsidiary savings bank, and the subsidiary savings bank shall assume a substantial part of the savings bank's liabilities, including all depository liabilities;

(3) as a result of the reorganization, the mutual holding company must hold more than 50 percent of the stock of the subsidiary savings bank; and

(4) after transfer and assumption, persons with prior corresponding rights as depositors or creditors against a savings bank have the same rights with respect to the mutual holding company and the subsidiary savings bank.

(b) The plan of reorganization must set forth the necessary corporate steps for the savings bank to reorganize into a mutual holding company, including:

(1) all required charter amendments; and

(2) a description of the corporate management of the reorganized mutual holding company.

(c) The plan of reorganization may contain any other provision not inconsistent with law or finance commission rules.

ARTICLE 6. AMENDMENTS TO MORTGAGE BROKER LICENSE ACT

SECTION 6.01. Section 156.005, Finance Code, is amended to read as follows:

Sec. 156.005. AFFILIATED BUSINESS ARRANGEMENTS. Unless prohibited by federal or state law, this chapter may not be construed to prevent affiliated or controlled business arrangements or loan origination services by or between mortgage brokers and other professionals if the mortgage broker complies with all applicable federal and state laws permitting those arrangements or services.

SECTION 6.02. Section 156.102(d), Finance Code, is amended to read as follows:

(d) The finance commission shall consult with the commissioner [~~mortgage broker advisory committee~~] when proposing and adopting rules under this chapter.

SECTION 6.03. Section 156.104, Finance Code, is amended by amending Subsection (h) and adding Subsections (j) and (k) to read as follows:

(h) In addition to other powers and duties delegated to it by the commissioner, the advisory committee shall advise the [~~finance commission and~~] commissioner with respect to:

(1) the proposal and adoption of rules relating to:

(A) the licensing of mortgage brokers and loan officers;

(B) the education and experience requirements for licensing mortgage brokers and loan officers;

(C) conduct and ethics of mortgage brokers and loan officers;

(D) continuing education for licensed mortgage brokers and loan officers and the types of courses acceptable as continuing education courses under this chapter; and

(E) the granting or denying of an application or request for renewal for a mortgage broker license or loan officer license;

(2) the form of or format for any applications or other documents under this chapter; and

(3) the interpretation, implementation, and enforcement of this chapter.

(j) The advisory committee shall take a record vote on any matter described by Subsection (h)(1). The commissioner shall inform the finance commission of:

(1) the result of the vote; and

(2) any additional information the commissioner considers necessary to ensure the finance commission is sufficiently notified of the advisory committee's recommendations.

(k) A record vote taken by the advisory committee under Subsection (j) is only a recommendation and does not supersede the rulemaking authority of the finance commission under this subchapter.

SECTION 6.04. Section 156.201(c), Finance Code, is amended to read as follows:

(c) Each mortgage broker licensed under this chapter is responsible to the commissioner and members of the public for any act or conduct performed [~~under this chapter~~] by the mortgage broker or a loan officer sponsored by or acting for the mortgage broker in connection with:

(1) the origination of a mortgage loan; or

(2) a transaction that is related to the origination of a mortgage loan in which the mortgage broker knew or should have known of the transaction.

SECTION 6.05. Section 156.202, Finance Code, is amended to read as follows:

Sec. 156.202. EXEMPTIONS. This chapter does not apply to:

(1) any of the following entities or an employee of any of the following entities provided the employee is acting for the benefit of the employer:

(A) a bank, savings bank, or savings and loan association, or a subsidiary or an affiliate of a bank, savings bank, or savings and loan association;

(B) a state or federal credit union, or a subsidiary, affiliate, or credit union service organization of a state or federal credit union;

(C) an insurance company licensed or authorized to do business in this state under the Insurance Code;

(D) a mortgage banker registered under Chapter 157;

(E) an organization that qualifies for an exemption from state franchise and sales tax as a 501(c)(3) organization;

(F) a Farm Credit System institution; or

(G) a political subdivision of this state involved in affordable home ownership programs;

(2) an individual who makes a mortgage loan from the individual's own funds to a spouse, former spouse, or persons in the lineal line of consanguinity of the individual lending the money;

(3) an owner of real property who makes a mortgage loan to a purchaser of the property for all or part of the purchase price of the real estate against which the mortgage is secured; or

(4) an individual who:

(A) makes a mortgage loan from the individual's own funds;

(B) is not an authorized lender under Chapter 342, Finance Code; and

(C) does not regularly engage in the business of making or brokering mortgage loans.

SECTION 6.06. Section 156.203(d), Finance Code, is amended to read as follows:

(d) An application fee under this section is not refundable and may not be credited or applied to any other fee or indebtedness owed by the person paying the fee.

SECTION 6.07. Sections 156.204(a) and (c), Finance Code, as amended by Chapters 170 and 171, Acts of the 78th Legislature, Regular Session, 2003, are reenacted and amended to read as follows:

(a) To be eligible to be licensed as a mortgage broker a person must:

(1) be an individual who is at least 18 years of age;

(2) be a citizen of the United States or a lawfully admitted alien;

(3) maintain a physical office in this state and designate that office in the application;

(4) provide the commissioner with satisfactory evidence that the applicant satisfies one of the following:

(A) the person has received a bachelor's degree in an area relating to finance, banking, or business administration from an accredited college or university and has 18 months of experience in the mortgage or lending field as evidenced by documentary proof of full-time employment as a mortgage broker or loan officer with a mortgage broker or a person exempt under Section 156.202;

(B) the person is licensed in this state as:

(i) an active real estate broker under Chapter 1101, Occupations Code;

(ii) an active attorney; or

(iii) a local recording agent or insurance solicitor or agent for a legal reserve life insurance company under Chapter 21, Insurance Code, or holds an equivalent license under Chapter 21, Insurance Code; or

(C) the person has three years of experience in the mortgage lending field as evidenced by documentary proof of full-time employment as a loan officer with a mortgage broker or a person exempt under Section 156.202;

(5) provide the commissioner with satisfactory evidence of:

(A) having passed an examination, offered by a testing service or company approved by the finance commission, that demonstrates knowledge of:

(i) the mortgage industry; and

(ii) the role and responsibilities of a mortgage broker; and

(B) compliance with the financial requirements of this chapter; [~~and~~]

(6) not have been convicted of a criminal offense that the commissioner determines directly relates to the occupation of a mortgage broker as provided by Chapter 53, Occupations Code;

(7) satisfy the commissioner as to the individual's good moral character, including the individual's honesty, trustworthiness, and integrity; and

(8) not be in violation of this chapter, a rule adopted under this chapter, or any order previously issued to the individual by the commissioner.

(c) To be eligible to be licensed as a loan officer a person must:

(1) be an individual who is at least 18 years of age;

(2) be a citizen of the United States or a lawfully admitted alien;

(3) designate in the application the name of the mortgage broker sponsoring the loan officer;

(4) provide the commissioner with satisfactory evidence that the applicant satisfies one of the following:

(A) the person meets one of the requirements described by Subsection (a)(4);

(B) the person has successfully completed 30 [~~15~~] hours of education courses approved by the commissioner under this section;

(C) the person has 18 months of experience as a loan officer as evidenced by documentary proof of full-time employment as a loan officer with a mortgage broker or a person exempt under Section 156.202; or

(D) for applications received prior to January 1, 2000, the mortgage broker that will sponsor the applicant provides a certification under oath that the applicant has been provided necessary and appropriate education and training regarding all applicable state and federal law and regulations relating to mortgage loans;

(5) not have been convicted of a criminal offense that the commissioner determines directly relates to the occupation of a loan officer as provided by Chapter 53, Occupations Code;

(6) satisfy the commissioner as to the individual's good moral character, including the individual's honesty, trustworthiness, and integrity; [~~and~~]

(7) [~~(6)~~] provide the commissioner with satisfactory evidence of having passed an examination, offered by a testing service or company approved by the finance commission, that demonstrates knowledge of:

(A) the mortgage industry; and

(B) the role and responsibilities of a loan officer; and[~~.~~]

(8) [~~(7)~~] not be in violation of this chapter, a rule adopted under this chapter, or any order previously issued to the individual by the commissioner.

SECTION 6.08. Sections 156.205(a) and (b), Finance Code, are amended to read as follows:

(a) In this section, "net assets" means the difference between total assets and total liabilities, as determined by generally acceptable accounting principles, and does not include any assets that are exempt under state or federal law. All assets and liabilities are subject to verification by the commissioner.

(b) A mortgage broker must maintain net assets of at least $25,000 or a surety bond in the amount of at least $50,000. The term of the surety bond must coincide with the term of the license. The finance commission may adopt rules establishing the terms and conditions of the surety bond and the qualifications of the surety.

SECTION 6.09. Section 156.208, Finance Code, is amended by amending Subsection (e) and adding Subsection (i) to read as follows:

(e) A renewal fee is not refundable and may not be credited or applied to any other fee or indebtedness owed by the person paying the fee.

(i) The commissioner may deny the renewal of a mortgage broker license or a loan officer license if:

(1) the mortgage broker or loan officer is in violation of this chapter, a rule adopted under this chapter, or any order previously issued to the individual by the commissioner; or

(2) the mortgage broker or loan officer is in default in the payment of any administrative penalty, fee, charge, or other indebtedness owed under this title.

SECTION 6.10. Sections 156.2081(c)-(f), Finance Code, are amended to read as follows:

(c) A person whose license has been expired for 91 days or more may not renew the license. The person may obtain a new license by complying with the requirements and procedures for obtaining an original license. [~~more than 90 days but less than one year but who is otherwise eligible to renew a license may renew the license by paying to the commissioner a renewal fee that is equal to two times the normally required renewal fee.~~]

(d) [~~A person whose license has been expired for one year or more may not renew the license. The person may obtain a new license by complying with the requirements and procedures for obtaining an original license.~~

[~~(e)~~] A person who was licensed in this state, moved to another state, and is currently licensed and has been in practice in the other state for the two years preceding the date of application may obtain a new license by paying to the commissioner a fee that is equal to two times the normally required renewal fee for the license.

(e) [~~(f)~~] Not later than the 60th [~~30th~~] day before the date a person's license is scheduled to expire, the commissioner shall send written notice of the impending expiration to the person at the person's last known address according to the records of the Department of Savings and Mortgage Lending [~~Loan Department~~].

SECTION 6.11. Section 156.209, Finance Code, is amended by amending Subsection (c) and adding Subsections (f) and (g) to read as follows:

(c) The designated hearings officer shall set the time and place for a hearing requested under Subsection (b) not later than the 90th [~~30th~~] day after the date on which the appeal is received. The hearings officer shall provide at least 10 days' notice of the hearing to the applicant or person requesting the renewal. The time of the hearing may be continued periodically with the consent of the applicant or person requesting the renewal. After the hearing, the commissioner shall enter an order from the findings of fact, conclusions of law, and recommendations of the hearings officer.

(f) A person who requests a hearing under this section shall be required to pay a deposit to secure the payment of the costs of the hearing in an amount to be determined by the commissioner not to exceed $500. The entire deposit shall be refunded to the person if the person prevails in the contested case hearing. If the person does not prevail, any portion of the deposit in excess of the costs of the hearing assessed against that person shall be refundable.

(g) A person whose application for a license has been denied is not eligible to be licensed for a period of two years after the date the denial becomes final, or a shorter period determined by the commissioner after evaluating the specific

circumstances of the person's subsequent application. The finance commission may adopt rules to provide conditions for which the commissioner may shorten the time of disqualification.

SECTION 6.12. Section 156.211(c), Finance Code, is amended to read as follows:

(c) A fee under this section is not refundable and may not be credited or applied to any other fee or indebtedness owed by the person paying the fee.

SECTION 6.13. Section 156.301, Finance Code, is amended by adding Subsection (g) to read as follows:

(g) The commissioner may share information gathered during an investigation or inspection with any state or federal agency.

SECTION 6.14. Subchapter D, Chapter 156, Finance Code, is amended by adding Section 156.3011 to read as follows:

Sec. 156.3011. ISSUANCE AND ENFORCEMENT OF SUBPOENA. (a) During an investigation, the commissioner may issue a subpoena that is addressed to a peace officer of this state or other person authorized by law to serve citation or perfect service. The subpoena may require a person to give a deposition, produce documents, or both.

(b) If a person disobeys a subpoena or if a person appearing in a deposition in connection with the investigation refuses to testify, the commissioner may petition a district court in Travis County to issue an order requiring the person to obey the subpoena, testify, or produce documents relating to the matter. The court shall promptly set an application to enforce a subpoena issued under Subsection (a) for hearing and shall cause notice of the application and the hearing to be served upon the person to whom the subpoena is directed.

SECTION 6.15. Section 156.303, Finance Code, is amended by amending Subsection (a) and adding Subsections (f)-(i) to read as follows:

(a) The commissioner may order disciplinary action against a licensed mortgage broker or a licensed loan officer when the commissioner, after a hearing, has determined that the person:

(1) obtained a license, including a renewal of a license, under this chapter through a false or fraudulent representation or made a material misrepresentation in an application for a license or for the renewal of a license under this chapter;

(2) published or caused to be published an advertisement related to the business of a mortgage broker or loan officer that:

(A) is misleading;

(B) is likely to deceive the public;

(C) in any manner tends to create a misleading impression;

(D) fails to identify as a mortgage broker or loan officer the person causing the advertisement to be published; or

(E) violates federal or state law;

(3) while performing an act for which a license under this chapter is required, engaged in conduct that constitutes improper, fraudulent, or dishonest dealings;

(4) entered a plea of guilty or nolo contendere to, or is convicted of, a criminal offense that is a felony or that involves fraud or moral turpitude in a court of this or another state or in a federal court [~~failed to notify the commissioner not later than the 30th day after the date of the final conviction if the person, in a court of this or another state or in a federal court, has been convicted of or entered a plea of guilty or nolo contendere to a felony or a criminal offense involving fraud~~];

(5) failed to use a fee collected in advance of closing of a mortgage loan for a purpose for which the fee was paid;

(6) charged or received, directly or indirectly, a fee for assisting a mortgage applicant in obtaining a mortgage loan before all of the services that the person agreed to perform for the mortgage applicant are completed, and the proceeds of the mortgage loan have been disbursed to or on behalf of the mortgage applicant, except as provided by Section 156.304;

(7) failed within a reasonable time to honor a check issued to the commissioner after the commissioner has mailed a request for payment by certified mail to the person's last known business address as reflected by the commissioner's records;

(8) paid compensation to a person who is not licensed or exempt under this chapter for acts for which a license under this chapter is required;

(9) induced or attempted to induce a party to a contract to breach the contract so the person may make a mortgage loan;

(10) published or circulated an unjustified or unwarranted threat of legal proceedings in matters related to the person's actions or services as a mortgage broker or loan officer, as applicable;

(11) established an association, by employment or otherwise, with a person not licensed or exempt under this chapter who was expected or required to act as a mortgage broker or loan officer;

(12) aided, abetted, or conspired with a person to circumvent the requirements of this chapter;

(13) acted in the dual capacity of a mortgage broker or loan officer and real estate broker, salesperson, or attorney in a transaction without the knowledge and written consent of the mortgage applicant or in violation of applicable requirements under federal law;

(14) discriminated against a prospective borrower on the basis of race, color, religion, sex, national origin, ancestry, familial status, or a disability;

(15) failed or refused on demand to:

(A) produce a document, book, or record concerning a mortgage loan transaction conducted by the mortgage broker or loan officer for inspection by the commissioner or the commissioner's authorized personnel or representative;

(B) give the commissioner or the commissioner's authorized personnel or representative free access to the books or records relating to the person's business kept by an officer, agent, or employee of the person or any business entity through which the person conducts mortgage brokerage activities, including a subsidiary or holding company affiliate; or

(C) provide information requested by the commissioner as a result of a formal or informal complaint made to the commissioner;

(16) failed without just cause to surrender, on demand, a copy of a document or other instrument coming into the person's possession that was provided to the person by another person making the demand or that the person making the demand is under law entitled to receive; or

(17) disregarded or violated this chapter, a rule adopted by the finance commission under this chapter, or an order issued by the commissioner under this chapter.

(f) For purposes of Subsection (a), a person is considered convicted if a sentence is imposed on the person, the person receives community supervision, including deferred adjudication community supervision, or the court defers final disposition of the person's case.

(g) If a person fails to pay an administrative penalty that has become final or fails to comply with an order of the commissioner that has become final, in addition to any other remedy provided under law the commissioner, on not less than 10 days' notice to the person, may without a prior hearing suspend the person's mortgage broker license or loan officer license. The suspension shall continue until the person has complied with the cease and desist order or paid the administrative penalty. During the period of suspension, the person may not originate a mortgage loan and all compensation received by the person during the period of suspension is subject to forfeiture as provided by Section 156.406(b).

(h) An order of suspension under Subsection (g) may be appealed. An appeal is a contested case governed by Chapter 2001, Government Code. A hearing of an appeal of an order of suspension issued under Subsection (g) shall be held not later than the 15th day after the date of receipt of the notice of appeal. The appellant shall be provided at least three days' notice of the time and place of the hearing.

(i) An order revoking the license of a mortgage broker or loan officer may provide that the person is prohibited, without obtaining prior written consent of the commissioner, from:

(1) engaging in the business of originating or making mortgage loans;

(2) being an employee, officer, director, manager, shareholder, member, agent, contractor, or processor of a mortgage broker or loan officer; or

(3) otherwise affiliating with a person for the purpose of engaging in the business of originating or making mortgage loans.

SECTION 6.16. Subchapter D, Chapter 156, Finance Code, is amended by adding Section 156.305 to read as follows:

Sec. 156.305. RESTITUTION. The commissioner may order a person to make restitution for any amount received by that person in violation of this chapter. A mortgage broker may be required to make restitution for any amount received by a sponsored loan officer in violation of this chapter.

SECTION 6.17. Section 156.406(c), Finance Code, is amended to read as follows:

(c) If the commissioner has reasonable cause to believe that a person who is not licensed or exempt under this chapter has engaged, or is about to engage, in an act or practice for which a license is required under this chapter, the commissioner may issue without notice and hearing an order to cease and desist from continuing a particular action or an order to take affirmative action, or both, to enforce compliance with this chapter. The order shall contain a reasonably detailed statement of the facts on which the order is made. The order may assess an administrative penalty in an amount not to exceed $1,000 per day for each violation and may require a person to pay to a mortgage applicant any compensation received by the person from the applicant in violation of this chapter. If a person against whom the order is made requests a hearing, the commissioner shall set and give notice of a hearing before the commissioner or a hearings officer. The hearing shall be governed by Chapter 2001, Government Code. An order under this subsection becomes final unless the person to whom the order is issued requests a hearing not later than the 30th day after the date the order is issued. [~~Based on the findings of fact, conclusions of law, and recommendations of the hearings officer, the commissioner by order may find a violation has occurred or not occurred.~~]

SECTION 6.18. Section 156.501(b), Finance Code, is amended to read as follows:

(b) The fund shall be used to reimburse aggrieved persons to whom a court awards actual damages because of certain acts committed by a mortgage broker or loan officer who was licensed under this chapter when the act was committed. The use of the fund is limited to an act that constitutes a violation of Section 156.303(a)(2), (3), (5), (6), (8), (9), (10), (11), (12), (13), or (16) or 156.304. Payments from the fund may not be made to a lender who makes a mortgage loan originated by the mortgage broker or loan officer or who acquires a mortgage loan originated by the mortgage broker or loan officer.

ARTICLE 7. MISCELLANEOUS PROVISIONS

SECTION 7.01. Section 304.003(c), Finance Code, is amended to read as follows:

(c) The postjudgment interest rate is:

(1) the prime rate as published by the Board of Governors of the Federal Reserve System [~~Federal Reserve Bank of New York~~] on the date of computation;

(2) five percent a year if the prime rate as published by the Board of Governors of the Federal Reserve System [~~Federal Reserve Bank of New York~~] described by Subdivision (1) is less than five percent; or

(3) 15 percent a year if the prime rate as published by the Board of Governors of the Federal Reserve System [~~Federal Reserve Bank of New York~~] described by Subdivision (1) is more than 15 percent.

SECTION 7.02. The change in law made by Section 339.001(c), Finance Code, as added by this Act, applies only to a credit card transaction entered into on or after the effective date of this Act. A credit card transaction entered into before that date is governed by the law in effect immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 7.03. Not later than December 31, 2006, the Finance Commission of Texas and the Credit Union Commission shall:

(1) compare state laws related to financial institutions with applicable federal laws;

(2) determine which state laws may be preempted by federal law, rule, or order;

(3) determine which state laws may be invalidated by state or federal court ruling; and

(4) report their findings to the legislature, with recommended statutory changes.

SECTION 7.04. (a) The Office of Consumer Credit Commissioner, with the assistance of the attorney general, shall conduct a study to develop and evaluate proposals to limit the use of social security numbers by businesses in this state.

(b) In conducting the study, the consumer credit commissioner shall receive input from credit reporting agencies, businesses, and consumer groups.

(c) The consumer credit commissioner shall evaluate whether, when a business contacts a credit reporting agency for a credit check of a customer, the business and credit reporting agency should create a unique code that:

(1) would allow the business to retrieve the social security number of the customer for collection purposes; and

(2) would permit the business to delete the social security number of the customer from the records of the business.

(d) The consumer credit commissioner shall determine the date on which the system described by Subsection (c) of this section could be implemented and the feasibility of monitoring compliance with the system.

(e) Not later than July 1, 2006, the consumer credit commissioner shall submit a report to the legislature regarding the results of the study conducted under this section.

(f) This section expires September 1, 2006.

SECTION 7.05. Sections 96.052, 345.151, 345.152, and 345.154, Finance Code, and Sections 2153.103, 2153.251, 2153.253, 2153.256, 2153.257, and 2153.258(b), Occupations Code, are repealed.

ARTICLE 8. EFFECTIVE DATE

SECTION 8.01. Except as provided by Section 8.02 of this article, this Act takes effect September 1, 2005.

SECTION 8.02. Sections 2.09, 2.10, and 2.11 of this Act take effect on the date on which the constitutional amendment proposed by the 79th Legislature, Regular Session, 2005, authorizing the legislature to define rates of interest for commercial loans, takes effect. If that amendment is not approved by the voters, those sections have no effect.

Representative Solomons moved to adopt the conference committee report on **HB 955**.

The motion to adopt the conference committee report on **HB 955** 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.)

LETTER FROM THE CONSUMER CREDIT COMMISSIONER

May 27, 2005

The Honorable Burt Solomons
Texas House of Representatives
P.O. Box 2910
Austin, TX 78768–2910

Dear Chairman Solomons:

You have inquired regarding the Office of Consumer Credit Commissioner's ("OCCC") enforcement authority under **HB 955** and any enforcement powers under Chapter 393 of the Texas Finance Code.

Current Enforcement Authority of the OCCC
The Office of Consumer Credit Commionser's investigation and enforcement authority is found in §14.201. The section reads:

Investigative and enforcement authority under this subchapter applies only to this chapter, Subtitles B and C of Title 4, and Chapter 394.

Thus investigative and enforcement authority is granted to the agency for the following chapters in the Finance Code:

Chapter 14. Consumer Credit Commissioner
Chapter 341. General Provisions
Chapter 342. Consumer Loans
Chapter 343. Home Loans
Chapter 345. Retail Installment Sales
Chapter 346. Revolving Credit Accounts
Chapter 347. Manufactured Home Credit Transactions
Chapter 348. Motor Vehicle Installment Sales
Chapter 349. Penalties and Liabilities
Chapter 371. Pawnshops
Chapter 394. Debtor Assistance (Credit counseling/debt management)

HB 955 does not change the enforcement authority of the OCCC. In order for the agency to exercise its investigative or enforcement authority, it must have reasonable cause to believe that a person is violating one of the statutory provisions listed above.

Any enforcement action would necessarily entail a pleading that the person violated one of the provisions contained in Subtitle B or C or Chapter 394. In cases involving unlicensed entities who are engaged in extending cash advances, the agency must prove: (1) that the transactions are loans; and (2) that the interest rate exceeds 10 percent (the Subtitle A maximum) thereby creating a violation of Subtitle B.

Enforcement Authority under Chapter 308

HB 955 creates a new chapter in the Texas Finance Code, Chapter 308. Apparently, the addition of Chapter 308 has created a question whether the OCCC has investigative or enforcement authority over a non-licensee who engages in Subtitle A loans. As is shown above, the OCCC has not been given the right to enforce or investigate subtitle A. Chapter 308 does not grant the OCCC the legal ability to enforce violations of Chapter 308 (unlawful advertising) against a non-licensee who engages in a subtitle A loan.

Enforcement Authority under Chapter 393

Currently, Chapter 393 of the Texas Finance Code governs credit services organizations and is found in Title 5 of the Finance Code. Clearly Chapter 393 is not found in Subtitles B or C of Title 4, and therefore is outside the scope of enforcement authority of the OCCC. Violations under Chapter 393 may be brought by a consumer through a private action or by the Attorney General through a Deceptive Trade Practice Act violation. The Office of Consumer Credit Commissioner does not have the statutory authority to bring an action under Chapter 393. Chapter 393 was created to provide a statutory framework for persons to assist consumers with their credit history or rating or to assist consumers with obtaining a loan from a lender. Once a person becomes a lender, that person is acting outside the scope of Chapter 393 and is conducting themselves within title 4 of the Texas Finance Code. Chapter 393 defines a credit service organization ("CSO") as:

a person who provides, or represents that the person can or will provide, for the payment of valuable consideration any of the following services with respect to the extension of consumer credit by others:

(A) improving a consumer's credit history or rating;

(B) obtaining an extension of consumer credit for a consumer; or

(C) providing advice or assistance to a consumer with regard to Paragraph (A) or (B).

The statute specifically separates the CSO from the lender by defining the CSO as assisting the consumer with credit extended "by others." Therefore, once the CSO operates or conducts itself as a lender, the CSO must comply with Title 4 of the Texas Finance Code. **HB 955** does not change the enforcement authority of the OCCC with respect to Chapter 393.

I hope that this information thoroughly describes the enforcement authority and limits of the Office of Consumer Credit Commissioner and satisfactorily answers any uncertainties. Please contact me if I can provide additional information.

Sincerely,
Leslie L. Pettijohn

HR 2213 - ADOPTED
(by Miller)

The following privileged resolution was laid before the house:

HR 2213

BE IT RESOLVED by the House of Representatives of the State of Texas, 79th Legislature, Regular Session, 2005, That House Rule 13, Section 9(a), be suspended in part as provided by House Rule 13, Section 9(f), to enable the conference committee appointed to resolve the differences on **HB 1772** (permitting a general-law municipality to annex land in certain circumstances) to consider and take action on the following matter:

House Rule 13, Section 9(a)(4), is suspended to permit the committee to add a new Subdivision (7) to Section 43.033(a), Local Government Code, that requires a general-law municipality to offer a development agreement to a landowner before annexing land that is appraised for ad valorem tax purposes as agricultural or wildlife management use, to read as follows:

(7) if the area is appraised for ad valorem tax purposes as land for agricultural or wildlife management use under Subchapter C or D, Chapter 23, Tax Code:

(A) the municipality offers to make a development agreement with the landowner in the manner provided by Section 212.172 that would:

(i) guarantee the continuation of the extraterritorial status of the area; and

(ii) authorize the enforcement of all regulations and planning authority of the municipality that do not interfere with the agricultural or wildlife management use of the area; and

(B) the landowner fails to accept an offer described by Paragraph (A) within 30 days after the date the offer is made.

Explanation: This change is necessary to protect owners of property that is appraised as agricultural or wildlife management use for property tax purposes from annexation by a municipality in a manner that would interfere with the use of the land for agricultural or wildlife management purposes.

HR 2213 was adopted.

HB 1772 - RULES SUSPENDED

Representative Miller moved to suspend all necessary rules to consider the conference committee report on **HB 1772** at this time.

The motion prevailed.

HB 1772 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Miller submitted the following conference committee report on **HB 1772** :

Austin, Texas, May 27, 2005

The Honorable David Dewhurst
President of the Senate

The Honorable Tom Craddick
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the senate and the house of representatives on **HB 1772** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Fraser	Miller
Brimer	Casteel
Armbrister	Rose
Wentworth	Leibowitz
	Mowery
On the part of the senate	On the part of the house

HB 1772, A bill to be entitled An Act relating to permitting a general-law municipality to annex land in certain circumstances.

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

SECTION 1. Subchapter B, Chapter 43, Local Government Code, is amended by adding Section 43.032 to read as follows:

Sec. 43.032. AUTHORITY OF CERTAIN TYPE A GENERAL-LAW MUNICIPALITIES TO ANNEX AN AREA UPON PETITION BY OWNERS. (a) The governing body of a general-law municipality with a population of 1,500 to 1,599 may annex an area:

(1) that is adjacent to the annexing municipality;

(2) that is not being served with water or sewer service from a governmental entity; and

(3) for which a petition requesting annexation has been filed with the municipality.

(b) A petition requesting annexation filed under Subsection (a)(3) must:

(1) describe the area to be annexed by metes and bounds;

(2) be signed by each owner of real property in the area to be annexed; and

(3) be filed with the secretary or clerk of the municipality.

(c) Before filing the petition, the petitioners and the governing body of the municipality may enter into a development agreement to further cooperation between the municipality regarding the proposed annexation. The agreement must be attached to the petition and may allow:

(1) a facility or service, including optional, backup, emergency, mutual aid, or supplementary facilities or services, to be provided to the area or any part of the area by the municipality, a landowner, or by any other person;

(2) standards for requesting and receiving any form of municipal consent or approval required to perform an activity;

(3) remedies for breach of the agreement;

(4) the amendment, renewal, extension, termination, or any other modification of the agreement;

(5) a third-party beneficiary to be specifically designated and conferred rights or remedies under the agreement; and

(6) any other term to which the parties agree.

(d) If the governing body certifies that the petition meets the requirements of this section and agrees to enter any proposed development agreement attached to the petition, the governing body by ordinance may annex the area. On the effective date of the ordinance, the area is annexed.

(e) If the area is annexed, the municipality shall:

(1) file a certified copy of the ordinance together with a copy of the petition, including any attached development agreement, in the office of the county clerk of the county in which the municipality is located and with each party to the agreement; and

(2) provide a copy of the filed documents to each landowner in the area.

(f) The annexation of an area under this section does not expand the extraterritorial jurisdiction of the municipality. Sections 42.021 and 42.022 do not apply to an annexation made under this section.

SECTION 2. Section 43.033(a), Local Government Code, is amended to read as follows:

(a) A general-law municipality may annex adjacent territory without the consent of any of the residents or voters of the area and without the consent of any of the owners of land in the area provided that the following conditions are met:

(1) the municipality has a population of 1,000 or more and is not eligible to adopt a home-rule charter;

(2) the procedural rules prescribed by this chapter are met;

(3) the municipality must be providing the area with water or sewer service;

(4) the area:

(A) does not include unoccupied territory in excess of one acre for each service address for water and sewer service; or

(B) is entirely surrounded by the municipality and the municipality is a Type A general-law municipality;

(5) the service plan requires that police and fire protection at a level consistent with protection provided within the municipality must be provided to the area within 10 days after the effective date of the annexation; [~~and~~]

(6) the municipality and the affected landowners have not entered an agreement to not annex the area for a certain time period; and

(7) if the area is appraised for ad valorem tax purposes as land for agricultural or wildlife management use under Subchapter C or D, Chapter 23, Tax Code:

(A) the municipality offers to make a development agreement with the landowner in the manner provided by Section 212.172 that would:

(i) guarantee the continuation of the extraterritorial status of the area; and

(ii) authorize the enforcement of all regulations and planning authority of the municipality that do not interfere with the agricultural or wildlife management use of the area; and

(B) the landowner fails to accept an offer described by Paragraph (A) within 30 days after the date the offer is made.

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.

Representative Miller moved to adopt the conference committee report on **HB 1772**.

A record vote was requested.

The motion to adopt the conference committee report on **HB 1772** prevailed by (Record 964): 140 Yeas, 1 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; Coleman; Cook, B.; Cook, R.; Corte; Crownover; Davis, J.; Davis, Y.; Delisi; Denny; Deshotel; Driver; Dukes; Dunnam; Dutton; Eiland; Eissler; Elkins; Escobar; Farabee; Farrar; Flores; Flynn; Frost; Gallego; Gattis; Geren; Gonzales; Gonzalez Toureilles; Griggs; Grusendorf; Guillen; Haggerty; Hamilton; Hamric; Hardcastle; Hartnett; Hegar; Herrero; Hilderbran; Hill; Hochberg; Hodge; Homer; 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.

Nays — Crabb.

Present, not voting — Mr. Speaker; Harper-Brown(C).

Absent, Excused — Goodman.

Absent — Dawson; Edwards; Giddings; Goolsby; Hope.

HB 1773 - RULES SUSPENDED

Representative Miller moved to suspend all necessary rules to consider the conference committee report on **HB 1773** at this time.

The motion prevailed.

HB 1773 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Miller submitted the following conference committee report on **HB 1773** :

Austin, Texas, May 27, 2005

The Honorable David Dewhurst
President of the Senate

The Honorable Tom Craddick
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the senate and the house of representatives on **HB 1773** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Averitt	Miller
Brimer	Hill
Deuell	Hamilton
Gallegos	Quintanilla
Madla	Uresti
On the part of the senate	On the part of the house

HB 1773, A bill to be entitled An Act relating to the authority of certain counties to impose a hotel occupancy tax.

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

SECTION 1. Section 352.002(a), Tax Code, as amended by Chapters 64, 637, 741, 1097, and 1108, Acts of the 78th Legislature, Regular Session, 2003, is reenacted and amended to read as follows:

(a) The commissioners courts of the following counties by the adoption of an order or resolution may impose a tax on a person who, under a lease, concession, permit, right of access, license, contract, or agreement, pays for the use or possession or for the right to the use or possession of a room that is in a hotel, costs $2 or more each day, and is ordinarily used for sleeping:

(1) a county that has a population of more than 3.3 million;

(2) a county that has a population of 90,000 or more, borders the United Mexican States, and does not have three or more cities that each have a population of more than 17,500;

(3) a county in which there is no municipality;

(4) a county in which there is located an Indian reservation under the jurisdiction of the United States government;

(5) a county that has a population of 30,000 or less, that has no more than one municipality with a population of less than 2,500, and that borders two counties located wholly in the Edwards Aquifer Authority established by Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993;

(6) a county that borders the Gulf of Mexico;

(7) a county that has a population of less than 5,000, that borders the United Mexican States, and in which there is located a major observatory;

(8) a county that has a population of 12,000 or less and borders the Toledo Bend Reservoir;

(9) a county that has a population of less than 12,000 and an area of less than 275 square miles;

(10) a county that has a population of 30,000 or less and borders Possum Kingdom Lake;

(11) a county that borders the United Mexican States and has a population of more than 300,000 and less than 600,000;

(12) a county that has a population of 35,000 or more and borders or contains a portion of Lake Fork Reservoir;

(13) a county that borders the United Mexican States and in which there is located a national recreation area;

(14) a county that borders the United Mexican States and in which there is located a national park of more than 400,000 acres;

(15) a county that has a population of 28,000 or less, that has no more than four municipalities, and that is located wholly in the Edwards Aquifer Authority established by Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993;

(16) a county that has a population of 25,000 or less, whose territory is less than 750 square miles, and that has two incorporated municipalities, each with a population of 800 or less, located on the Frio River; [~~and~~]

(17) a county that has a population of 34,000 or more and borders Lake Buchanan; [~~.~~]

(18) [~~(17)~~] a county that has a population of more than 45,000 and less than 75,000, that borders the United Mexican States, and that borders or contains a portion of Falcon Lake; [~~.~~]

(19) [~~(17)~~] a county with a population of 21,000 or less that borders the Neches River and in which there is located a national preserve; and [~~.~~]

(20) [~~(17)~~] a county that has a population of 22,500 or less and that borders or contains a portion of Lake Livingston.

SECTION 2. Section 352.002(d), Tax Code, as amended by Chapters 64, 1097, and 1108, Acts of the 78th Legislature, Regular Session, 2003, is reenacted and amended to read as follows:

(d) The tax imposed by a county authorized by Subsection (a)(4), (6), (8), (9), (10), (11), (12), [~~or~~] (17), (19), or (20) to impose the tax does not apply to a hotel located in a municipality that imposes a tax under Chapter 351 applicable to the hotel. This subsection does not apply to:

(1) a county authorized by Subsection (a)(6) to impose the tax that:

(A) [~~(1)~~] has a population of less than 40,000 and adjoins the most populous county in this state; or

(B) [~~(2)~~] has a population of more than 200,000 and borders the Neches River; or

(2) a county authorized by Subsection (a)(9) to impose the tax that has a population of more than 9,000.

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.

Representative Miller moved to adopt the conference committee report on **HB 1773**.

A record vote was requested.

The motion to adopt the conference committee report on **HB 1773** prevailed by (Record 965): 143 Yeas, 0 Nays, 2 Present, not voting.

Yeas — Allen, A.; Allen, R.; Alonzo; Anchia; Anderson; Bailey; 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; Driver; Dukes; Dunnam; Dutton; Eiland; Eissler; Elkins; Escobar; Farabee; Farrar; Flores; Flynn; Frost; Gallego; Gattis; Geren; Giddings; Gonzales; Gonzalez Toureilles; Goolsby; Griggs; Grusendorf; Guillen; Haggerty; Hamilton; Hamric; Hardcastle; Hartnett; Hegar; Herrero; Hilderbran; Hill; Hochberg; Hodge; Homer; 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; Harper-Brown(C).

Absent, Excused — Goodman.

Absent — Bonnen; Edwards; Hope.

STATEMENT OF VOTE

When Record No. 965 was taken, I was temporarily out of the house chamber. I would have voted yes.

Bonnen

SB 1142 - RULES SUSPENDED

Representative Hamric moved to suspend all necessary rules to consider the conference committee report on **SB 1142** at this time.

The motion prevailed.

SB 1142 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Hamric submitted the conference committee report on **SB 1142**.

Representative Hamric moved to adopt the conference committee report on **SB 1142**.

The motion to adopt the conference committee report on **SB 1142** 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.)

SB 1297 - RULES SUSPENDED

Representative Talton moved to suspend all necessary rules to consider the conference committee report on **SB 1297** at this time.

The motion prevailed.

SB 1297 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Talton submitted the conference committee report on **SB 1297**.

Representative Talton moved to adopt the conference committee report on **SB 1297**.

The motion to adopt the conference committee report on **SB 1297** 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, Anchia, Farrar, Herrero, and Leibowitz recorded voting no.)

HB 1225 - RULES SUSPENDED

Representative Puente moved to suspend all necessary rules to consider the conference committee report on **HB 1225** at this time.

The motion prevailed.

HB 1225 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Puente submitted the following conference committee report on **HB 1225** :

Austin, Texas, May 28, 2005

The Honorable David Dewhurst
President of the Senate

The Honorable Tom Craddick
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the senate and the house of representatives on **HB 1225** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Duncan	Puente
Armbrister	Bonnen
Madla	Campbell
Staples	Geren
	Turner
On the part of the senate	On the part of the house

HB 1225, A bill to be entitled An Act relating to the grounds for an exemption from cancellation of a water right for nonuse.

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

SECTION 1. Section 11.173(b), Water Code, is amended to read as follows:

(b) A permit, certified filing, or certificate of adjudication or a portion of a permit, certified filing, or certificate of adjudication is exempt from cancellation under Subsection (a):

(1) to the extent of the owner's participation in the Conservation Reserve Program authorized by the Food Security Act, Pub. L. No. 99-198, Secs. 1231-1236, 99 Stat. 1354, 1509 - 1514 (1985) or a similar governmental program;

(2) if a significant portion of the water authorized to be used pursuant to a permit, certified filing, or certificate of adjudication has been used in accordance with a specific recommendation for meeting a water need included in the regional water plan approved pursuant to Section 16.053;

(3) if the permit, certified filing, or certificate of adjudication:

(A) was obtained to meet demonstrated long-term public water supply or electric generation needs as evidenced by a water management plan developed by the holder; and

(B) is consistent with projections of future water needs contained in the state water plan; [~~or~~]

(4) if the permit, certified filing, or certificate of adjudication was obtained as the result of the construction of a reservoir funded, in whole or in part, by the holder of the permit, certified filing, or certificate of adjudication as part of the holder's long-term water planning; or

(5) to the extent the nonuse resulted from the implementation of water conservation measures under a water conservation plan submitted by the holder of the permit, certified filing, or certificate of adjudication as evidenced by implementation reports submitted by the holder.

SECTION 2. This Act applies to a cancellation proceeding that is pending on the effective date of this Act or is initiated 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.

Representative Puente moved to adopt the conference committee report on **HB 1225**.

A record vote was requested.

The motion to adopt the conference committee report on **HB 1225** prevailed by (Record 966): 144 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; 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; Goolsby; Griggs; Grusendorf; Guillen; Haggerty; Hamilton; Hamric; Hardcastle; Hartnett; Hegar; Herrero; Hilderbran; Hill;

Hochberg; Hodge; Homer; Hopson; Howard; Hughes; Hunter; Hupp; Isett; Jackson; Jones, D.; Jones, J.; Keel; Keffer, B.; Keffer, J.; King, P.; King, T.; 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; Harper-Brown(C).

Absent, Excused — Goodman.

Absent — Hope; Kolkhorst.

STATEMENT OF VOTE

When Record No. 966 was taken, I was temporarily out of the house chamber. I would have voted yes.

Kolkhorst

HB 265 - RULES SUSPENDED

Representative W. Smith moved to suspend all necessary rules to consider the conference committee report on **HB 265** at this time.

The motion prevailed.

HB 265 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative W. Smith submitted the following conference committee report on **HB 265** :

Austin, Texas, May 28, 2005

The Honorable David Dewhurst
President of the Senate

The Honorable Tom Craddick
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the senate and the house of representatives on **HB 265** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Eltife	W. Smith
Brimer	Howard
Fraser	McReynolds
Gallegos	Pickett
	West
On the part of the senate	On the part of the house

HB 265, A bill to be entitled An Act relating to the time for processing a municipal building permit.

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

SECTION 1. Subchapter Z, Chapter 214, Local Government Code, is amended by adding Section 214.904 to read as follows:

Sec. 214.904. TIME FOR ISSUANCE OF MUNICIPAL BUILDING PERMIT. (a) This section applies only to a permit required by a municipality to erect or improve a building or other structure in the municipality or its extraterritorial jurisdiction.

(b) Not later than the 45th day after the date an application for a permit is submitted, the municipality must:

(1) grant or deny the permit;

(2) provide written notice to the applicant stating the reasons why the municipality has been unable to grant or deny the permit application; or

(3) reach a written agreement with the applicant providing for a deadline for granting or denying the permit.

(c) For a permit application for which notice is provided under Subsection (b)(2), the municipality must grant or deny the permit not later than the 30th day after the date the notice is received.

(d) If a municipality fails to grant or deny a permit application in the time required by Subsection (c) or by an agreement under Subsection (b)(3), the municipality:

(1) may not collect any permit fees associated with the application; and

(2) shall refund to the applicant any permit fees associated with the application that have been collected.

SECTION 2. The subchapter heading to Subchapter Z, Chapter 214, Local Government Code, is amended to read as follows:

SUBCHAPTER Z. MISCELLANEOUS POWERS AND DUTIES

SECTION 3. Section 214.904, Local Government Code, as added by this Act, applies only to an application for a permit submitted on or after September 1, 2005. An application for a permit submitted before that date is governed by the law in effect when the application was submitted, and the former law is continued in effect for that purpose.

SECTION 4. This Act takes effect September 1, 2005.

Representative W. Smith moved to adopt the conference committee report on **HB 265**.

The motion to adopt the conference committee report on **HB 265** 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.)

HB 468 - RULES SUSPENDED

Representative Miller moved to suspend all necessary rules to consider the conference committee report on **HB 468** at this time.

The motion prevailed.

HB 468 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Miller submitted the following conference committee report on **HB 468** :

Austin, Texas, May 28, 2005

The Honorable David Dewhurst
President of the Senate

The Honorable Tom Craddick
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the senate and the house of representatives on **HB 468** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Jackson	Hegar
Estes	Driver
Madla	Frost
	Hill
	Veasey
On the part of the senate	On the part of the house

HB 468, A bill to be entitled An Act relating to driver and traffic safety education courses.

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

SECTION 1. Section 1001.056, Education Code, is amended by amending Subsections (b), (c), (e), (f), and (g) and adding Subsections (b-1) and (c-1) to read as follows:

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

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

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

(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.

(e) The agency may charge a fee of not more than $4 for each course completion certificate number. A course provider that supplies a certificate to an operator shall collect from the [~~charge an~~] operator a fee equal to the amount of the fee paid to the 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 mail or commercial delivery [~~certificates~~]. The commissioner by rule shall determine the amount of the fee for issuance of a duplicate certificate under this subsection.

SECTION 2. Section 1001.151(e), Education Code, is amended to read as follows:

(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 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.

SECTION 3. 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 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 4. 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 [~~mail~~] a uniform certificate of course completion by mail or commercial delivery to a person who successfully completes an approved driving safety course.

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

SECTION 5. Section 1001.456(b), Education Code, is amended to read as follows:

(b) If the agency believes that a course provider, driving safety school, or driving safety instructor has violated this chapter or a rule adopted under this chapter, the 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.

SECTION 6. Sections 1001.555(a) and (c), Education Code, are 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, a course completion certificate number, or a driver education certificate to an individual, firm, or corporation not authorized to possess the certificate or number.

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

SECTION 7. This Act takes effect September 1, 2005.

Representative Miller moved to adopt the conference committee report on **HB 468**.

The motion to adopt the conference committee report on **HB 468** 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.)

HB 3333 - RULES SUSPENDED

Representative Chavez moved to suspend all necessary rules to consider the conference committee report on **HB 3333** at this time.

The motion prevailed.

HB 3333 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Chavez submitted the following conference committee report on **HB 3333** :

Austin, Texas, May 28, 2005

The Honorable David Dewhurst
President of the Senate

The Honorable Tom Craddick
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the senate and the house of representatives on **HB 3333** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Madla	Chavez
Brimer	Hill
Deuell	Hunter
Duncan	Campbell
Shapleigh	
On the part of the senate	On the part of the house

HB 3333, A bill to be entitled An Act relating to the sale or transfer of interest of real property to certain federally recognized Indian tribes.

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

SECTION 1. Amend Section 202.021, Transportation Code, by adding Subsection (i) to read as follows:

(i) Notwithstanding Subsection (b), Tract 11, Block 49, of the Ysleta Grant located in El Paso County shall be sold to a federally recognized Indian tribe:

(1) whose reservation is located within counties of this state bordering the United Mexican States; and

(2) that is not subject to the federal Indian Gaming Regulatory Act.

SECTION 2. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2005.

Representative Chavez moved to adopt the conference committee report on **HB 3333**.

A record vote was requested.

The motion to adopt the conference committee report on **HB 3333** prevailed by (Record 967): 139 Yeas, 0 Nays, 3 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; Coleman; Cook, B.; Cook, R.; Corte; Crabb; Davis, J.; Davis, Y.; Dawson; Delisi; Denny; Deshotel; Driver; Dukes; Dunnam; Dutton; Edwards; Eiland; Eissler; Elkins; Farabee; Farrar; Flores; Flynn; Frost; Gallego; Gattis; Geren; Giddings; Gonzales; Gonzalez Toureilles; Goolsby; Griggs; Grusendorf; Guillen; Haggerty; Hamilton; Hamric; Hardcastle; Hartnett; Hegar; Herrero; Hilderbran; Hill; Hochberg; Hodge; Homer; 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; McClendon; McReynolds; Menendez; Merritt; Miller; Morrison; Mowery; Naishtat; Nixon; Noriega, M.; Oliveira; Olivo; 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; Crownover; Harper-Brown(C).

Absent, Excused — Goodman.

Absent — Escobar; Hope; McCall; Moreno, P.; Orr; Otto.

SB 567 - RULES SUSPENDED

Representative J. Keffer moved to suspend all necessary rules to consider the conference committee report on **SB 567** at this time.

The motion prevailed.

SB 567 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative J. Keffer submitted the conference committee report on **SB 567**.

Representative J. Keffer moved to adopt the conference committee report on **SB 567**.

A record vote was requested.

The motion to adopt the conference committee report on **SB 567** prevailed by (Record 968): 142 Yeas, 1 Nays, 3 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; 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; Goolsby; Grusendorf; Guillen; Haggerty; Hamilton; Hamric; Hardcastle; Hartnett; Hegar; Herrero; Hilderbran; Hill; Hochberg; Hodge; Homer; Hopson; Hughes; Hunter; Hupp; Isett; Jackson; Jones, D.; Jones, J.; Keel; Keffer, B.; Keffer, J.; King, P.; King, T.; 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.

Nays — Griggs.

Present, not voting — Mr. Speaker; Harper-Brown(C); Howard.

Absent, Excused — Goodman.

Absent — Hope; Kolkhorst.

STATEMENT OF VOTE

When Record No. 968 was taken, I was temporarily out of the house chamber. I would have voted yes.

Kolkhorst

SB 1273 - RULES SUSPENDED

Representative Geren moved to suspend all necessary rules to consider the conference committee report on **SB 1273** at this time.

The motion prevailed.

SB 1273 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Geren submitted the conference committee report on **SB 1273**.

Representative Geren moved to adopt the conference committee report on **SB 1273**.

The motion to adopt the conference committee report on **SB 1273** 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 their votes are as follows: Hilderbran recorded voting no.)

HB 260 - RULES SUSPENDED

Representative Phillips moved to suspend all necessary rules to consider the conference committee report on **HB 260** at this time.

The motion prevailed.

HB 260 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Phillips submitted the following conference committee report on **HB 260** :

Austin, Texas, May 28, 2005

The Honorable David Dewhurst
President of the Senate

The Honorable Tom Craddick
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the senate and the house of representatives on **HB 260** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Averitt	Nixon
Duncan	Strama
Harris	Phillips
Wentworth	Casteel
On the part of the senate	On the part of the house

HB 260, A bill to be entitled An Act relating to suits affecting the parent-child relationship, protective orders, and collaborative law.

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

SECTION 1. Section 6.603, Family Code, is amended by adding Subsection (h) to read as follows:

(h) The provisions for confidentiality of alternative dispute resolution procedures as provided in Chapter 154, Civil Practice and Remedies Code, apply equally to collaborative law procedures under this section.

SECTION 2. Chapter 81, Family Code, is amended by adding Section 81.009 to read as follows:

Sec. 81.009. APPEAL. (a) Except as provided by Subsections (b) and (c), a protective order rendered under this subtitle may be appealed.

(b) A protective order rendered against a party in a suit for dissolution of a marriage may not be appealed until the time the final decree of dissolution of the marriage becomes a final, appealable order.

(c) A protective order rendered against a party in a suit affecting the parent-child relationship may not be appealed until the time an order providing for support of the child or possession of or access to the child becomes a final, appealable order.

SECTION 3. Section 102.004, Family Code, is amended to read as follows:

Sec. 102.004. STANDING FOR GRANDPARENT OR OTHER PERSON. (a) In addition to the general standing to file suit provided by Section 102.003[~~(13)~~], a grandparent may file an original suit requesting managing conservatorship if there is satisfactory proof to the court that:

(1) the order requested is necessary because the child's present circumstances would significantly impair [~~environment presents a serious question concerning~~] the child's physical health or emotional development [~~welfare~~]; or

(2) both parents, the surviving parent, or the managing conservator or custodian either filed the petition or consented to the suit.

(b) An original suit requesting possessory conservatorship may not be filed by a grandparent or other person. However, the court may grant a grandparent or other person deemed by the court to have had substantial past contact with the child leave to intervene in a pending suit filed by a person authorized to do so under this subchapter if there is satisfactory proof to the court that appointment of a parent as a sole managing conservator or both parents as joint managing conservators would significantly impair the child's physical health or emotional development.

(c) Possession of or access [~~Access~~] to a child by a grandparent is governed by the standards established by Chapter 153.

SECTION 4. Section 102.009(a), Family Code, is amended to read as follows:

(a) Except as provided by Subsection (b), the following are entitled to service of citation on the filing of a petition in an original suit:

(1) a managing conservator;

(2) a possessory conservator;

(3) a person having possession of or access to the child under an order;

(4) a person required by law or by order to provide for the support of the child;

(5) a guardian of the person of the child;

(6) a guardian of the estate of the child;

(7) each parent as to whom the parent-child relationship has not been terminated or process has not been waived under Chapter 161;

(8) an alleged father, unless there is attached to the petition an affidavit of waiver of interest in a child executed by the alleged father as provided by Chapter 161 or unless the petitioner has complied with the provisions of Section 161.002(b)(2) or (b)(3);

(9) a man who has filed a notice of intent to claim paternity as provided by Chapter 160;

(10) the Department of Family and Protective [~~and Regulatory~~] Services, if the petition requests that the department be appointed as managing conservator of the child; [~~and~~]

(11) the Title IV-D agency, if the petition requests the termination of the parent-child relationship and support rights have been assigned to the Title IV-D agency under Chapter 231;

(12) a prospective adoptive parent to whom standing has been conferred under Section 102.0035; and

(13) a person designated as the managing conservator in a revoked or unrevoked affidavit of relinquishment under Chapter 161 or to whom consent to adoption has been given in writing under Chapter 162.

SECTION 5. Section 105.008(a), Family Code, is amended to read as follows:

(a) The clerk of the court shall provide the state case registry with a record of a court order for child support [~~as required by procedures adopted under Section 234.003~~]. The record of an order shall include information provided by the parties on a form developed by the Title IV-D agency. The form shall be completed by the petitioner and submitted to the clerk at the time the order is filed for record.

SECTION 6. Section 105.009, Family Code, is amended by adding Subsection (m) to read as follows:

(m) A course under this section must be available in both English and Spanish.

SECTION 7. Section 153.0071, Family Code, is amended by adding Subsection (e-1) to read as follows:

(e-1) Notwithstanding Subsections (d) and (e), a court may decline to enter a judgment on a mediated settlement agreement if the court finds that:

(1) a party to the agreement was a victim of family violence, and that circumstance impaired the party's ability to make decisions; and

(2) the agreement is not in the child's best interest.

SECTION 8. Section 153.0072, Family Code, is amended by adding Subsection (h) to read as follows:

(h) The provisions for confidentiality of alternative dispute resolution procedures as provided in Chapter 154, Civil Practice and Remedies Code, apply equally to collaborative law procedures under this section.

SECTION 9. Section 153.009, Family Code, is amended to read as follows:

Sec. 153.009. INTERVIEW OF CHILD IN CHAMBERS. (a) In a nonjury trial or at a hearing, on the application of a party, the amicus attorney, or the attorney ad litem for the child, the court shall [~~may~~] interview [~~the child~~] in chambers a child 12 years of age or older and may interview in chambers a child under 12 years of age to determine the child's wishes as to conservatorship or as to the person who shall have the exclusive right to determine the child's primary residence. The court may also interview a child in chambers on the court's own motion for a purpose specified by this subsection.

(b) In a nonjury trial or at a hearing, on the application of a party, the amicus attorney, or the attorney ad litem for the child or on the court's own motion, the court may interview the child in chambers to determine the child's wishes as to possession, access, or any other issue in the suit affecting the parent-child relationship [~~When the issue of managing conservatorship is contested, on the application of a party, the court shall interview a child 12 years of age or older and may interview a child under 12 years of age~~].

(c) Interviewing a child does not diminish the discretion of the court in determining the best interests of the child.

(d) In a jury trial, the court may not interview the child in chambers regarding an issue on which a party is entitled to a jury verdict.

(e) In any trial or hearing, the [~~(c) The~~] court may permit the attorney for a party, the amicus attorney, the guardian ad litem for the child, or the attorney ad litem for the child to be present at the interview.

(f) [~~(d)~~] On the motion of a party, the amicus attorney, or the attorney ad litem for the child, or on the court's own motion, the court shall cause a record of the interview to be made when the child is 12 years of age or older. A record of the interview shall be part of the record in the case.

SECTION 10. Section 153.132, Family Code, is amended to read as follows:

Sec. 153.132. RIGHTS AND DUTIES OF PARENT APPOINTED SOLE MANAGING CONSERVATOR. Unless limited by court order, a parent appointed as sole managing conservator of a child has the rights and duties provided by Subchapter B and the following exclusive rights:

(1) the right to designate the primary residence of the child;

(2) the right to consent to medical, dental, and surgical treatment involving invasive procedures;

(3) the right [~~, and~~] to consent to psychiatric and psychological treatment;

(4) [~~(3)~~] the right to receive and give receipt for periodic payments for the support of the child and to hold or disburse these funds for the benefit of the child;

(5) [~~(4)~~] the right to represent the child in legal action and to make other decisions of substantial legal significance concerning the child;

(6) [~~(5)~~] the right to consent to marriage and to enlistment in the armed forces of the United States;

(7) [~~(6)~~] the right to make decisions concerning the child's education;

(8) [~~(7)~~] the right to the services and earnings of the child; and

(9) [~~(8)~~] except when a guardian of the child's estate or a guardian or attorney ad litem has been appointed for the child, the right to act as an agent of the child in relation to the child's estate if the child's action is required by a state, the United States, or a foreign government.

SECTION 11. Section 153.134(a), Family Code, is amended to read as follows:

(a) If a written agreement of the parents is not filed with the court, the court may render an order appointing the parents joint managing conservators only if the appointment is in the best interest of the child, considering the following factors:

(1) whether the physical, psychological, or emotional needs and development of the child will benefit from the appointment of joint managing conservators;

(2) the ability of the parents to give first priority to the welfare of the child and reach shared decisions in the child's best interest;

(3) whether each parent can encourage and accept a positive relationship between the child and the other parent;

(4) whether both parents participated in child rearing before the filing of the suit;

(5) the geographical proximity of the parents' residences;

(6) if the child is 12 years of age or older, the child's preference, if any, regarding the person to have the exclusive right to designate the primary residence of the child [~~appointment of joint managing conservators~~]; and

(7) any other relevant factor.

SECTION 12. Section 153.312(b), Family Code, is amended to read as follows:

(b) The following provisions govern possession of the child for vacations and certain specific holidays and supersede conflicting weekend or Thursday [~~Wednesday~~] periods of possession. The possessory conservator and the managing conservator shall have rights of possession of the child as follows:

(1) the possessory conservator shall have possession in even-numbered years, beginning at 6 p.m. on the day the child is dismissed from school for the school's spring vacation and ending at 6 p.m. on the day before school resumes after that vacation, and the managing conservator shall have possession for the same period in odd-numbered years;

(2) if a possessory conservator:

(A) gives the managing conservator written notice by April 1 of each year specifying an extended period or periods of summer possession, the possessory conservator shall have possession of the child for 30 days beginning not earlier than the day after the child's school is dismissed for the summer vacation and ending not later than seven days before school resumes at the end of the summer vacation, to be exercised in not more than two separate periods of at least seven consecutive days each; or

(B) does not give the managing conservator written notice by April 1 of each year specifying an extended period or periods of summer possession, the possessory conservator shall have possession of the child for 30 consecutive days beginning at 6 p.m. on July 1 and ending at 6 p.m. on July 31;

(3) if the managing conservator gives the possessory conservator written notice by April 15 of each year, the managing conservator shall have possession of the child on any one weekend beginning Friday at 6 p.m. and ending at 6 p.m. on the following Sunday during one period of possession by the

possessory conservator under Subdivision (2), provided that the managing conservator picks up the child from the possessory conservator and returns the child to that same place; and

(4) if the managing conservator gives the possessory conservator written notice by April 15 of each year or gives the possessory conservator 14 days' written notice on or after April 16 of each year, the managing conservator may designate one weekend beginning not earlier than the day after the child's school is dismissed for the summer vacation and ending not later than seven days before school resumes at the end of the summer vacation, during which an otherwise scheduled weekend period of possession by the possessory conservator will not take place, provided that the weekend designated does not interfere with the possessory conservator's period or periods of extended summer possession or with Father's Day if the possessory conservator is the father of the child.

SECTION 13. Subchapter F, Chapter 153, Family Code, is amended by adding Section 153.3161 to read as follows:

Sec. 153.3161. LIMITED POSSESSION DURING MILITARY DEPLOYMENT. (a) In addition to the general terms and conditions of possession required by Section 153.316, if a possessory conservator or a joint managing conservator of the child without the exclusive right to designate the primary residence of the child is currently a member of the armed forces of the state or the United States or is reasonably expected to join those forces, the court shall:

(1) permit that conservator to designate a person who may exercise limited possession of the child during any period that the conservator is deployed outside of the United States; and

(2) if the conservator elects to designate a person under Subdivision (1), provide in the order for limited possession of the child by the designated person under those circumstances, subject to the court's determination that the limited possession is in the best interest of the child.

(b) If the court determines that the limited possession is in the best interest of the child, the court shall provide in the order that during periods of deployment:

(1) the designated person has the right to possession of the child on the first weekend of each month beginning at 6 p.m. on Friday and ending at 6 p.m. on Sunday;

(2) the other parent shall surrender the child to the designated person at the beginning of each period of possession at the other parent's residence;

(3) the designated person shall return the child to the other parent's residence at the end of each period of possession;

(4) the child's other parent and the designated person are subject to the requirements of Sections 153.316(5)-(9);

(5) the designated person has the rights and duties of a nonparent possessory conservator under Section 153.376(a) during the period that the person has possession of the child; and

(6) the designated person is subject to any provision in a court order restricting or prohibiting access to the child by any specified individual.

(c) After the deployment is concluded, and the deployed parent returns to that parent's usual residence, the designated person's right to limited possession under this section terminates and the rights of all affected parties are governed by the terms of any court order applicable when a parent is not deployed.

SECTION 14. Sections 155.201(a) and (b), Family Code, are amended to read as follows:

(a) On the filing of a motion showing that a suit for dissolution of the marriage of the child's parents has been filed in another court and requesting a transfer to that court, the court having continuing, exclusive jurisdiction of a suit affecting the parent-child relationship shall, within the time required by Section 155.204, transfer the proceedings to the court in which the dissolution of the marriage is pending. The motion must comply with the requirements of Section 155.204(a).

(b) If a suit to modify or a motion to enforce an order is filed in the court having continuing, exclusive jurisdiction of a suit, on the timely motion of a party the court shall, within the time required by Section 155.204, transfer the proceeding to another county in this state if the child has resided in the other county for six months or longer.

SECTION 15. Section 155.204, Family Code, is amended to read as follows:

Sec. 155.204. PROCEDURE FOR TRANSFER. (a) A motion to transfer under Section 155.201(a) may be filed at any time. The motion must contain a certification that all other parties, including the attorney general, if applicable, have been informed of the filing of the motion.

(b) Except as provided by Subsection (a) or Section 262.203, a motion to transfer by a petitioner or movant is timely if it is made at the time the initial pleadings are filed. A motion to transfer by another party is timely if it is made on or before the first Monday after the 20th day after the date of service of citation or notice of the suit or before the commencement of the hearing, whichever is sooner.

(c) If a timely motion to transfer has been filed and no controverting affidavit is filed within the period allowed for its filing, the proceeding shall, not later than the 21st day after the final date of the period allowed for the filing of a controverting affidavit, be transferred [~~promptly~~] without a hearing to the proper court.

(d) [~~(b)~~] On or before the first Monday after the 20th day after the date of notice of a motion to transfer is served, a party desiring to contest the motion must file a controverting affidavit denying that grounds for the transfer exist.

(e) [~~(c)~~] If a controverting affidavit contesting the motion to transfer is filed, each party is entitled to notice not less than 10 days before the date of the hearing on the motion to transfer.

(f) [~~(d)~~] Only evidence pertaining to the transfer may be taken at the hearing.

(g) If the court finds after the hearing on the motion to transfer that grounds for the transfer exist, the proceeding shall be transferred to the proper court not later than the 21st day after the date the hearing is concluded.

(h) [~~(c)~~] An order transferring or refusing to transfer the proceeding is not subject to interlocutory appeal.

(i) [~~(f)~~] If a transfer order has been signed [~~rendered~~] by a court exercising jurisdiction under Chapter 262, a party may file the transfer order with the clerk of the court of continuing, exclusive jurisdiction. On receipt and without a hearing, the clerk of the court of continuing, exclusive jurisdiction shall transfer the files as provided by this subchapter.

SECTION 16. Sections 155.207(a), (b), and (c), Family Code, are amended to read as follows:

(a) On the signing [~~rendition~~] of an order of transfer, the clerk of the court transferring a proceeding shall send to the proper court in the county to which transfer is being made:

(1) the pleadings in the [~~complete files in all matters affecting the child in any~~] pending proceeding and any other document specifically requested by a party;

(2) certified copies of all entries in the minutes; and

(3) [~~a certified copy of any order of dissolution of marriage rendered in a suit joined with the suit affecting the parent-child relationship; and~~

[~~(4)~~] a certified copy of each final order [~~rendered~~].

(b) The clerk of the transferring court shall keep a copy of the transferred pleadings and other requested documents [~~files~~]. If the transferring court retains jurisdiction of another child who was the subject of the suit, the clerk shall send a copy of the pleadings and other requested documents [~~complete files~~] to the court to which the transfer is made and shall keep the original pleadings and other requested documents [~~files~~].

(c) On receipt of the pleadings [~~files~~], documents, and orders from the transferring court, the clerk of the transferee court shall docket the suit and shall notify all parties, the clerk of the transferring court, and, if appropriate, the transferring court's local registry that the suit has been docketed.

SECTION 17. Section 156.006(b), Family Code, is amended to read as follows:

(b) While a suit for modification is pending, the court may not render a temporary order that has the effect of changing the designation of the person who has the exclusive right to designate the primary residence of the child under the final order unless:

(1) the order is necessary because the child's present circumstances would significantly impair [~~living environment may endanger~~] the child's physical health or [~~significantly impair the child's~~] emotional development;

(2) the person designated in the final order has voluntarily relinquished the primary care and possession of the child for more than six months and the temporary order is in the best interest of the child; or

(3) the child is 12 years of age or older and has filed with the court in writing the name of the person who is the child's preference to have the exclusive right to designate the primary residence of the child and the temporary order designating that person is in the best interest of the child.

SECTION 18. Subchapter B, Chapter 156, Family Code, is amended by adding Section 156.105 to read as follows:

Sec. 156.105. MODIFICATION OF ORDER BASED ON MILITARY DEPLOYMENT. (a) The military deployment outside this country of a person who is a possessory conservator or a joint managing conservator without the exclusive right to designate the primary residence of the child is a material and substantial change of circumstances sufficient to justify a modification of an existing court order or portion of a decree that sets the terms and conditions for the possession of or access to a child.

(b) If the court determines that modification is in the best interest of the child, the court may modify the order or decree to provide in a manner consistent with Section 153.3161 for limited possession of the child during the period of the deployment by a person designated by the deployed conservator.

SECTION 19. Section 156.401, Family Code, is amended by amending Subsections (a) and (d) and adding Subsection (a-1) to read as follows:

(a) Except as provided by Subsection (a-1) or (b), the court may modify an order that provides for the support of a child if:

(1) the circumstances of the child or a person affected by the order have materially and substantially changed since the earlier of:

(A) the date of the order's rendition; or

(B) the date of the signing of a mediated or collaborative law settlement agreement on which the order is based; or

(2) it has been three years since the order was rendered or last modified and the monthly amount of the child support award under the order differs by either 20 percent or $100 from the amount that would be awarded in accordance with the child support guidelines.

(a-1) If the parties agree to an order under which the amount of child support differs from the amount that would be awarded in accordance with the child support guidelines, the court may modify the order only if the circumstances of the child or a person affected by the order have materially and substantially changed since the date of the order's rendition.

(d) Release of a child support obligor from incarceration is a material and substantial change in circumstances for purposes of this section [~~Subsection (a)(1)~~] if the obligor's child support obligation was abated, reduced, or suspended during the period of the obligor's incarceration.

SECTION 20. Sections 156.410(a) and (c), Family Code, are amended to read as follows:

(a) For purposes of Section 156.401 [~~156.401(a)(1)~~], the fact that an obligor has been called into active military service in any branch of the United States armed forces is a material and substantial change in circumstances if that active military service:

(1) is for at least 30 consecutive days; and

(2) results in a decrease in the obligor's net resources during the period of service.

(c) Return of the obligor from the active military service described by Subsection (a) is a material and substantial change in circumstances for purposes of Section 156.401 [~~156.401(a)(1)~~] for which an obligee may file a motion for modification of a child support order if the court previously modified the order on the grounds described by Subsection (a).

SECTION 21. Section 157.005(b), Family Code, is amended to read as follows:

(b) The court retains jurisdiction to confirm the total amount of child support arrearages and render judgment for past-due child support if a motion for enforcement requesting a money judgment is filed not later than the 10th anniversary after the date:

(1) the child becomes an adult; or

(2) on which the child support obligation terminates under the child support order or by operation of law [~~until the date all current child support and medical support and child support arrearages, including interest and any applicable fees and costs, have been paid~~].

SECTION 22. Section 160.760, Family Code, is amended by adding Subsection (d) to read as follows:

(d) If the intended parents fail to file the notice required by Subsection (a), the gestational mother or an appropriate state agency may file the notice required by that subsection. On a showing that an order validating the gestational agreement was rendered in accordance with Section 160.756, the court shall order that the intended parents are the child's parents and are financially responsible for the child.

SECTION 23. Section 162.017(d), Family Code, is amended to read as follows:

(d) Nothing in this chapter precludes or affects the rights of a biological or adoptive maternal or paternal grandparent to reasonable possession of or access to a grandchild, as provided in Chapter 153.

SECTION 24. Section 81.009, Family Code, as added by this Act, applies only to a protective order rendered on or after the effective date of this Act. A protective order rendered before the effective date of this Act is governed by the law in effect on the date the order was rendered, and the former law is continued in effect for that purpose.

SECTION 25. The changes in law made by this Act to Sections 102.004 and 102.009, Family Code, apply only to an original suit affecting the parent-child relationship filed on or after the effective date of this Act. An original suit affecting the parent-child relationship filed before the effective date of this Act is governed by the law in effect on the date that the suit was filed, and the former law is continued in effect for that purpose.

SECTION 26. The changes in law made by this Act to Sections 153.0071 and 153.009, Family Code, apply only to a suit affecting the parent-child relationship pending before a trial court on or filed on or after the effective date of this Act.

SECTION 27. The change in law made by this Act to Section 153.134, Family Code, applies only to an original suit affecting the parent-child relationship or a suit for modification filed on or after the effective date of this Act. An original suit affecting the parent-child relationship or a suit for modification filed before the effective date of this Act is governed by the law in effect on the date that the suit was filed, and the former law is continued in effect for that purpose.

SECTION 28. The changes in law made by this Act to Sections 155.201, 155.204, and 155.207, Family Code, apply only to a motion to transfer a suit affecting the parent-child relationship filed on or after the effective date of this Act. A motion to transfer a suit affecting the parent-child relationship filed before the effective date of this Act is governed by the law in effect on the date that the motion was filed, and the former law is continued in effect for that purpose.

SECTION 29. Section 153.3161, Family Code, as added by this Act, applies only to a suit affecting the parent-child relationship pending in a trial court on or filed on or after the effective date of this Act.

SECTION 30. The change in law made by this Act to Section 156.006, Family Code, applies only to a suit for modification filed on or after the effective date of this Act. A suit for modification filed before the effective date of this Act is governed by the law in effect on the date that the suit was filed, and the former law is continued in effect for that purpose.

SECTION 31. Section 156.105, Family Code, as added by this Act, applies only to an action to modify an order in a suit affecting the parent-child relationship pending in a trial court on or filed on or after the effective date of this Act.

SECTION 32. The change in law made by this Act to Section 156.401, Family Code, applies only to a suit for modification pending before a trial court on or filed on or after the effective date of this Act.

SECTION 33. The change in law made by this Act to Section 157.005, Family Code, relating to the enforcement of a child support order rendered before the effective date of this Act applies only to a proceeding for enforcement that is commenced on or after the effective date of this Act. A proceeding for enforcement that is commenced before the effective date of this Act is governed by the law in effect on the date the proceeding was commenced, and the former law is continued in effect for that purpose.

SECTION 34. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2005.

Representative Phillips moved to adopt the conference committee report on **HB 260**.

A record vote was requested.

The motion to adopt the conference committee report on **HB 260** prevailed by (Record 969): 139 Yeas, 0 Nays, 2 Present, not voting.

Yeas — Allen, A.; Allen, R.; Alonzo; Anchia; Anderson; Bailey; Baxter; Berman; Blake; Bohac; Bonnen; Branch; Brown, B.; 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; Goolsby; Griggs; Grusendorf; Guillen; Haggerty; Hamilton; Hamric; Hardcastle; Hartnett; Hegar; Herrero; Hilderbran; Hill; Hochberg; Hodge; Homer; 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; McClendon; McReynolds; Menendez; Merritt; Miller; Moreno, P.; Morrison; Mowery; Naishtat; Nixon; Noriega, M.; Oliveira; Olivo; Orr; Paxton; Peña; Phillips; 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; Harper-Brown(C).

Absent, Excused — Goodman.

Absent — Brown, F.; Hope; Isett; McCall; Otto; Pickett; Smith, T.

HB 3001 - HOUSE DISCHARGES CONFEREES
HOUSE CONCURS IN SENATE AMENDMENTS

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

HB 3001, A bill to be entitled An Act relating to the amount of the annual constitutional appropriation to certain agencies and institutions of higher education and to the allocation of those funds to those agencies and institutions.

Representative Morrison moved to discharge the conferees and concur in the senate amendments to **HB 3001**.

The motion to discharge conferees and 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.) (The vote was reconsidered later today, and the house concurred in senate amendments by Record No. 971.)

HB 1207 - RULES SUSPENDED

Representative Haggerty moved to suspend all necessary rules to consider the conference committee report on **HB 1207** at this time.

The motion prevailed.

HB 1207 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Haggerty submitted the following conference committee report on **HB 1207** :

Austin, Texas, May 27, 2005

The Honorable David Dewhurst
President of the Senate

The Honorable Tom Craddick
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the senate and the house of representatives on **HB 1207** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Lindsay	Haggerty
Armbrister	Bonnen
Jackson	Callegari
Madla	Hardcastle
	Puente
On the part of the senate	On the part of the house

HB 1207, A bill to be entitled An Act relating to the exclusion of land from a water district with outstanding bonds for failure to provide sufficient services.

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

SECTION 1. Section 49.3076, Water Code, is amended by amending Subsections (a)-(c) and adding Subsection (a-1) to read as follows:

(a) The board of a district that has a total area of more than 5,000 acres shall call a hearing on the exclusion of land from the district on a written petition filed with the secretary of the board by a landowner whose land has been included in and taxable by the district for more than 28 years if any bonds issued by the district payable in whole or in part from taxes of the district are outstanding and the petition:

(1) includes a signed petition evidencing the consent of the owners of a majority of the acreage proposed to be excluded, as reflected by the most recent certified tax roll of the district;

(2) includes a claim that the district has not provided the land with retail utility services;

(3) describes the property to be excluded;

(4) provides facts necessary for the board to make the findings required by Subsection (b); and

(5) is filed before August 31, 2007 [~~2005~~].

(a-1) The board of a district that has a total area of more than 1,000 acres and not more than 5,000 acres shall call a hearing on the exclusion of land from the district on a written petition filed with the secretary of the board by a landowner whose land has been included in and taxable by the district for more than 40 years if any bonds issued by the district payable in whole or in part from taxes of the district are outstanding and the petition complies with the requirements of Subsection (a).

(b) The board of a district may exclude land under this section only on finding that:

(1) the district has never provided retail utility services to the land described by the petition;

(2) the district has imposed a tax on the land for more than:

(A) 28 years if the board calls a hearing under Subsection (a); or

(B) 40 years if the board calls a hearing under Subsection (a-1); and

(3) all taxes the district has levied and assessed against the land and all fees and assessments the district has imposed against the land or the owner that are due and payable on or before the date of the petition are fully paid.

(c) Unless the district presents evidence at the hearing that conclusively demonstrates that the requirements and grounds for exclusion described by Subsection [~~Subsections~~] (a) or (a-1), as appropriate, and Subsection (b) have not been met, the board shall enter an order excluding the land from the district and shall redefine in the order the boundaries of the district to embrace all land not excluded.

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.

Representative Haggerty moved to adopt the conference committee report on **HB 1207**.

A record vote was requested.

The motion to adopt the conference committee report on **HB 1207** prevailed by (Record 970): 143 Yeas, 0 Nays, 2 Present, not voting.

Yeas — Allen, A.; Alonzo; Anchia; Anderson; 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; Goolsby; Griggs; Grusendorf; Guillen; Haggerty; Hamilton; Hamric; Hardcastle; Hartnett; Hegar; Herrero; Hilderbran; Hill; Hochberg; Hodge; Homer; Hopson; 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; Harper-Brown(C).

Absent, Excused — Goodman.

Absent — Allen, R.; Hope; Howard.

HR 2212 - ADOPTED
(by Hilderbran)

The following privileged resolution was laid before the house:

HR 2212

BE IT RESOLVED by the House of Representatives of the State of Texas, 79th Legislature, Regular Session, 2005, That House Rule 13, Section 9(a), be suspended in part as provided by House Rule 13, Section 9(f), to enable the conference committee appointed to resolve the differences on **HB 2027** (the use of certain weapons in or on the beds or banks of certain rivers and streams in particular counties; providing a penalty) to consider and take action on the following matter:

House Rule 13, Section 9(a)(2), is suspended to permit the committee to omit "KERR," in the chapter heading to added Chapter 284, Parks and Wildlife Code, and "Kerr," in added Subsection (b), Section 284.001, Parks and Wildlife Code.

Explanation: This change is necessary to exempt Kerr County from the application of Chapter 284, Parks and Wildlife Code, as added by **HB 2027**.

HR 2212 was adopted.

HB 2027 - RULES SUSPENDED

Representative Hilderbran moved to suspend all necessary rules to consider the conference committee report on **HB 2027** at this time.

The motion prevailed.

HB 2027 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Hilderbran submitted the following conference committee report on **HB 2027** :

Austin, Texas, May 28, 2005

The Honorable David Dewhurst
President of the Senate

The Honorable Tom Craddick
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the senate and the house of representatives on **HB 2027** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Armbrister	Hilderbran
Jackson	Baxter
Lucio	Phillips
Fraser	
On the part of the senate	On the part of the house

HB 2027, A bill to be entitled An Act relating to the use of certain weapons in or on the beds or banks of certain rivers and streams in particular counties; providing a penalty.

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

SECTION 1. Title 7, Parks and Wildlife Code, is amended by adding Chapter 284 to read as follows:

CHAPTER 284. DIMMIT, EDWARDS, FRIO, KENEDY, LLANO, MAVERICK, REAL, UVALDE, AND ZAVALA COUNTIES

Sec. 284.001. DISCHARGE OF FIREARM PROHIBITED. (a) In this section:

(1) "Firearm" has the meaning assigned by Section 62.014.

(2) "Navigable river or stream" has the meaning assigned by Section 90.001.

(b) This section applies only to a navigable river or stream located wholly or partly in Dimmit, Edwards, Frio, Kenedy, Llano, Maverick, Real, Uvalde, or Zavala County.

(c) Except as provided by Subsection (d), a person may not discharge a firearm or shoot an arrow from any kind of bow if:

(1) the person is located in or on the bed or bank of a navigable river or stream at the time the firearm is discharged or the arrow is shot from the bow; or

(2) any portion of the ammunition discharged or arrow shot could physically contact the bed or bank of a navigable river or stream.

(d) This section does not apply to:

(1) an individual acting in the scope of the individual's duties as a peace officer or department employee; or

(2) the discharge of a shotgun loaded with ammunition that releases only shot when discharged.

(e) This section does not limit the ability of a license holder to carry a concealed handgun under the authority of Subchapter H, Chapter 411, Government Code.

SECTION 2. This Act takes effect September 1, 2005.

Representative Hilderbran moved to adopt the conference committee report on **HB 2027**.

The motion to adopt the conference committee report on **HB 2027** 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.)

(Speaker in the chair)

HB 3001 - VOTE RECONSIDERED

Representative Morrison moved to reconsider the vote by which the house discharged conferees and concurred in senate amendments to **HB 3001**.

The motion to reconsider prevailed.

HB 3001 - HOUSE DISCHARGES CONFEREES
HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS

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

HB 3001, A bill to be entitled An Act relating to the amount of the annual constitutional appropriation to certain agencies and institutions of higher education and to the allocation of those funds to those agencies and institutions.

Representative Morrison moved to discharge the conferees and concur in the senate amendments to **HB 3001**.

A record vote was requested.

The motion to discharge conferees and concur in senate amendments prevailed by (Record 971): 142 Yeas, 0 Nays, 1 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; Eiland; Eissler; Elkins; Escobar; Farabee; Farrar; Flynn; Frost; Gallego; Gattis; Geren; Giddings; Gonzales; Gonzalez Toureilles; Goolsby; Griggs; Grusendorf; Guillen; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Hegar; Herrero; Hilderbran; Hill; Hochberg; Hodge; Homer; Hopson; Howard; Hughes; Hunter; Hupp; Isett; Jackson; Jones, D.; Jones, J.; 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(C).

Absent, Excused — Goodman.

Absent — Coleman; Edwards; Flores; Hope; Keel.

STATEMENTS OF VOTE

When Record No. 971 was taken, I was in the house but away from my desk. I would have voted yes.

Coleman

When Record No. 971 was taken, I was in the house but away from my desk. I would have voted yes.

Flores

Senate Committee Substitute

CSHB 3001, A bill to be entitled An Act relating to the amount of the annual constitutional appropriation to certain agencies and institutions of higher education and to the allocation of those funds to those agencies and institutions.

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

SECTION 1. Section 62.021, Education Code, is amended by amending Subsection (a) and adding Subsections (a-1) and (a-2) to read as follows:

(a) Each state fiscal year beginning with the state fiscal year ending August 31, 2007, an eligible institution is entitled to receive an amount allocated in accordance with this section from funds appropriated by Section 17(a), Article VII, Texas Constitution. The comptroller shall distribute funds allocated under this subsection only on presentation of a claim and issuance of a warrant in accordance with Section 403.071, Government Code. The comptroller may not issue a warrant from any funds allocated under this subsection before the delivery of goods or services described in Section 17, Article VII, Texas Constitution, except for the payment of principal or interest on bonds or notes or for a payment for a book or other published library material as authorized by Section 2155.386, Government Code. The allocation of funds under this subsection is made in accordance with an equitable formula consisting of the following elements: space deficit, facilities condition, institutional complexity, and a separate allocation [~~allocations~~] for [~~medical units and~~] the Texas State Technical College System[~~, and an additional allocation for Texas Southern University for compliance with the Texas Desegregation Plan~~]. The amounts allocated by the formula are as follows:

(1) $3,434,348 to [~~$5,256,817 Texas A&M University-Commerce, including an allocation of $1,027,070 to Texas A&M University-Texarkana;~~

[~~$8,818,023 Lamar University, including an allocation of $491,946 to Lamar Institute of Technology, an allocation of $743,967 to Lamar University at Orange and an allocation of $2,336,605 to Lamar University at Port Arthur;~~

[~~$3,007,669~~] Midwestern State University;

(2) $26,137,233 to the [~~$18,021,033~~] University of North Texas;

(3) $8,139,391 to the University of North Texas Health Science Center at Fort Worth;

(4) $12,882,348 to [~~$7,131,692~~] The University of Texas–Pan American;

(5) $4,186,790 [~~, including an allocation of $1,050,580~~] to The University of Texas at Brownsville;

(6) $7,025,771 to [~~$6,633,109~~] Stephen F. Austin State University;

(7) to the following component institutions of the [~~$3,640,000 University of North Texas Health Science Center at Fort Worth;~~

[~~$26,132,524~~] Texas State University System:

(A) $11,210,508 to Lamar University;

(B) $1,115,048 to Lamar State College–Orange;

(C) $1,190,119 to Lamar State College–Port Arthur;

(D) $3,585,802 [~~Administration and the following component institutions, including an allocation of $3,887,211~~] to Angelo State University;

(E) $9,916,306 [~~an allocation of $5,864,608~~] to Sam Houston State University;

(F) $19,799,276 [~~an allocation of $14,479,112~~] to Texas State University–San Marcos;

(G) $2,043,772 [~~an allocation of $1,635,271~~] to Sul Ross State University; and

(H) $379,831 [~~an allocation of $266,322~~] to Sul Ross State University-Rio Grande College;

(8) $11,156,463 to [~~$7,191,493~~] Texas Southern University [~~(includes allocation of $1,000,000 for compliance with Texas Desegregation Plan)~~];

(9) $26,829,477 to [~~$20,961,881~~] Texas Tech University;

(10) $17,849,441 to [~~$7,735,000~~] Texas Tech University Health Sciences Center;

(11) $8,424,209 to [~~$6,974,897~~] Texas Woman's University;

(12) to the following component institutions of the [~~$36,952,989~~] University of Houston System:

(A) $35,276,140 [~~Administration and the following component institutions, including an allocation of $25,986,116~~] to the University of Houston;

(B) $2,282,883 [~~an allocation of $1,659,449~~] to the University of Houston–Victoria;

(C) $6,001,337 [~~an allocation of $3,853,447~~] to the University of Houston–Clear Lake; and

(D) $9,628,151 [~~an allocation of $5,453,977~~] to the University of Houston–Downtown;

(13) to the [~~$12,692,873 The~~] following component institutions [~~components~~] of The Texas A&M University System:

(A) $8,278,993 [~~, including an allocation of $3,687,722~~] to Texas A&M University–Corpus Christi;

(B) $3,130,211 [~~an allocation of $1,778,155~~] to Texas A&M International University;

(C) $5,052,232 [~~an allocation of $3,555,651~~] to Texas A&M University–Kingsville; [~~and~~]

(D) $4,776,890 [~~an allocation of $3,671,345~~] to West Texas A&M University;

(E) $5,345,678 to Texas A&M University–Commerce; and

(F) $1,646,352 to Texas A&M University–Texarkana; and

(14) $5,775,000 to the [~~$3,850,000~~] Texas State Technical College System Administration and the following component campuses, but not its extension centers or programs:

(A) Texas State Technical College-Harlingen;

(B) Texas State Technical College–Marshall;

(C) Texas State Technical College--West Texas [~~Sweetwater~~]; and

(D) Texas State Technical College–Waco.

(a-1) For the state fiscal year ending August 31, 2006, an eligible institution is entitled to receive an amount allocated in accordance with this section from funds appropriated by Section 17(a), Article VII, Texas Constitution. The

comptroller shall distribute funds allocated under this subsection only on presentation of a claim and issuance of a warrant in accordance with Section 403.071, Government Code. The comptroller may not issue a warrant from any funds allocated under this subsection before the delivery of goods or services described in Section 17, Article VII, Texas Constitution, except for the payment of principal or interest on bonds or notes or for a payment for a book or other published library material as authorized by Section 2155.386, Government Code. The allocation of funds under this subsection is made in accordance with an equitable formula consisting of the following elements: space deficit, facilities condition, institutional complexity, and a separate allocation for the Texas State Technical College System. The amounts allocated by the formula are as follows:

(1) $2,289,565 to Midwestern State University;

(2) $17,424,822 to the University of North Texas;

(3) $5,426,261 to the University of North Texas Health Science Center at Fort Worth;

(4) $8,588,232 to The University of Texas–Pan American;

(5) $2,791,194 to The University of Texas at Brownsville;

(6) $4,683,847 to Stephen F. Austin State University;

(7) to the following component institutions of the Texas State University System:

(A) $7,473,672 to Lamar University;

(B) $743,365 to Lamar State College–Orange;

(C) $793,412 to Lamar State College–Port Arthur;

(D) $2,390,535 to Angelo State University;

(E) $6,610,870 to Sam Houston State University;

(F) $13,199,517 to Texas State University–San Marcos;

(G) $1,362,515 to Sul Ross State University; and

(H) $253,220 to Sul Ross State University-Rio Grande College;

(8) $7,437,642 to Texas Southern University;

(9) $17,886,318 to Texas Tech University;

(10) $11,899,627 to Texas Tech University Health Sciences Center;

(11) $5,616,139 to Texas Woman's University;

(12) to the following component institutions of the University of Houston System:

(A) $23,517,427 to the University of Houston;

(B) $1,521,922 to the University of Houston–Victoria;

(C) $4,000,892 to the University of Houston–Clear Lake; and

(D) $6,418,767 to the University of Houston–Downtown;

(13) to the following component institutions of The Texas A&M University System:

(A) $5,519,329 to Texas A&M University–Corpus Christi;

(B) $2,086,807 to Texas A&M International University;

(C) $3,368,155 to Texas A&M University–Kingsville;

(D) $3,184,593 to West Texas A&M University;

(E) $3,563,785 to Texas A&M University–Commerce; and

(F) $1,097,568 to Texas A&M University–Texarkana; and

(14) $3,850,000 to the Texas State Technical College System Administration and the following component campuses, but not its extension centers or programs:

(A) Texas State Technical College-Harlingen;

(B) Texas State Technical College–Marshall;

(C) Texas State Technical College–West Texas; and

(D) Texas State Technical College–Waco.

(a-2) Subsection (a-1) and this subsection expire September 1, 2006.

SECTION 2. Section 62.024, Education Code, is amended to read as follows:

Sec. 62.024. AMOUNT OF ALLOCATION INCREASED. In accordance with [~~Article VII,~~] Section 17(a), Article VII, [~~of the~~] Texas Constitution, for each state fiscal year beginning with the state fiscal year ending August 31, 2007, the amount of the annual constitutional appropriation under that subsection is increased to $262.5 [~~$175~~] million.

SECTION 3. Section 62.027(c), Education Code, is amended to read as follows:

(c) The increase provided by the amendment to Section 62.024 enacted by the 79th Legislature, Regular Session, 2005, in the amount of the appropriation made under Section 17(a), Article VII, Texas Constitution, for each state fiscal year beginning with the state fiscal year ending August 31, 2007, constitutes the increase in accordance with Section 17(a) that the legislature considers appropriate for the five-year period [~~is valid and effective~~] beginning September 1, 2005 [~~1995~~].

SECTION 4. Section 62.021(e), Education Code, is repealed.

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

(b) Subject to Subsection (c) of this section, Section 2 of this Act takes effect September 1, 2006.

(c) Sections 2 and 3 of this Act take effect only if this Act is approved by a vote of two-thirds of the membership of each house of the legislature as required by Section 17(a), Article VII, Texas Constitution.

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

Amend **CSHB 3001** (Senate committee printing) by striking all below the enacting clause and substituting the following:

SECTION 1. Section 62.021, Education Code, is amended by amending Subsection (a) and adding Subsections (a-1) and (a-2) to read as follows:

(a) In each state [~~Each~~] fiscal year beginning with the state fiscal year ending August 31, 2008, an eligible institution is entitled to receive an amount allocated in accordance with this section from funds appropriated for that year by Section 17(a), Article VII, Texas Constitution. The comptroller shall distribute funds allocated under this subsection only on presentation of a claim and issuance of a warrant in accordance with Section 403.071, Government Code. The comptroller may not issue a warrant from any funds allocated under this subsection before the delivery of goods or services described in Section 17, Article VII, Texas Constitution, except for the payment for a book or other

published library material as authorized by Section 2155.386, Government Code. The allocation of funds under this subsection is made in accordance with an equitable formula consisting of the following elements: space deficit, facilities condition, institutional complexity, and a separate allocation [~~allocations~~] for [~~medical units and~~] the Texas State Technical College System[~~, and an additional allocation for Texas Southern University for compliance with the Texas Desegregation Plan~~]. The annual amounts allocated by the formula are as follows:

(1) $3,434,348 to [~~$5,256,817 Texas A&M University-Commerce, including an allocation of $1,027,070 to Texas A&M University-Texarkana;~~

[~~$8,818,023 Lamar University, including an allocation of $491,946 to Lamar Institute of Technology, an allocation of $743,967 to Lamar University at Orange and an allocation of $2,336,967 to Lamar University at Port Arthur;~~

[~~$3,007,669~~] Midwestern State University;

(2) $26,137,233 to the [~~$18,021,033~~] University of North Texas;

(3) $8,139,391 to the University of North Texas Health Science Center at Forth Worth;

(4) $12,882,348 to [~~$7,131,692~~] The University of Texas–Pan American;

(5) $4,186,790 [~~, including an allocation of $1,050,580~~] to The University of Texas at Brownsville;

(6) $7,025,771 to [~~$6,633,109~~] Stephen F. Austin State University;

(7) to the following component institutions of the [~~$3,640,000 University of North Texas Health Science Center at Forth Worth,~~

[~~$26,132,524~~] Texas State University System:

(A) $11,210,508 to Lamar University;

(B) $1,115,048 to Lamar State College–Orange;

(C) $1,190,119 to Lamar State College–Port Arthur;

(D) $3,585,802 [~~Administration and the following component institutions, including an allocation of $3,887,211~~] to Angelo State University;

(E) $9,916,306 [~~an allocation of $5,864,608~~] to Sam Houston State University;

(F) $19,799,276 [~~an allocation of $14,479,112~~] to Texas State University–San Marcos;

(G) $2,043,772 [~~an allocation of $1,635,271~~] to Sul Ross State University; and

(H) [~~an allocation of $266,322~~] to Sul Ross State University-Rio Grande College;

(8) $11,156,463 to [~~$7,191,493~~] Texas Southern University [~~(includes allocation of $1,000,000 for compliance with Texas Desegregation Plan)~~];

(9) $26,829,477 to [~~$20,961,881~~] Texas Tech University;

(10) $17,849,441 to [~~$7,735,000~~] Texas Tech University Health Sciences Center;

(11) $8,424,209 to [~~$6,974,897~~] Texas Women's University;

(12) to the following component institutions of the [~~$36,952,989~~] University of Houston System:

(A) $35,276,140 [~~Administration and the following component institution, including an allocation of $25,986,116~~] to the University of Houston;

(B) $2,282,833 [~~an allocation of $1,659,449~~] to the University of Houston–Victoria;

(C) $6,001,337 [~~an allocation of $3,853,447~~] to the University of Houston–Clear Lake; and

(D) $9,628,151 [~~an allocation of $3,453,977~~] to the University of Houston–Downtown;

(13) to the [~~$12,692,873 The~~] following component institutions [~~components~~] of the Texas A&M University System:

(A) $8,278,993 [~~, including an allocation of $3,687,722~~] to Texas A&M University–Corpus Christi;

(B) $3,130,211 [~~an allocation of $1,778,155~~ to Texas A&M International University;

(C) $5,052,232 [~~an allocation of $3,555,651~~] to Texas A&M University–Kingsville; [~~and~~]

(D) $4,776,890 [~~an allocation of $3,671,345~~] to West Texas A&M University;

(E) $5,345,678 to Texas A&M University–Commerce; and

(F) $1,646,352 to Texas A&M University–Texarkana; and

(14) $5,775,000 to the [~~$3,850,000~~] Texas State Technical College System Administration and the following component campuses, but not its extension centers or programs;

(A) Texas State Technical College-Harlingen;

(B) Texas State Technical College–Marshall;

(C) Texas State Technical College--West Texas [~~Sweetwater~~]; and

(D) Texas State Technical College–Waco.

(a-1) In each year of the state fiscal biennium ending August 31, 2007, an eligible institution is entitled to receive an amount allocated in accordance with this section from funds appropriated for that year by Section 17(a), Article VII, Texas Constitution. The comptroller shall distribute funds allocated under this subsection only on presentation of a claim and issuance of a warrant in accordance with Section 403.071, Government Code. The comptroller may not issue a warrant from any funds allocated under this subsection before the delivery of goods or services described in Section 17, Article VII, Texas Constitution, except for the payment of principal or interest on bonds or notes or for a payment for a book or other published library material as authorized by Section 2155.386, Government Code. The allocation of funds under this subsection is made in accordance with an equitable formula consisting of the following elements: space deficit, facilities condition, institutional complexity, and a separate allocation for the Texas State Technical College System. The annual amounts allocated by the formula are as follows:

(1) $2,289,565 to Midwestern State University;

(2) $5,426,261 to the University of North Texas;

(3) $5,426,261 to the University of North Texas Health Science Center at Fort Worth;

(4) $8,588,232 to The University of Texas–Pan American;
(5) $2,791,194 to The University of Texas at Brownsville;
(6) $4,683,847 to Stephen F. Austin State University;
(7) to the following component institutions of the Texas State University System;
(A) $7,473,672 to Lamar University;
(B) $743,365 to Lamar State College–Orange;
(C) $793,412 to Lamar State College–Port Arthur;
(D) $2,390,535 to Angelo State University;
(E) $6,610,870 to Sam Houston State University;
(F) $13,199,517 to Texas State University–San Marcos;
(G) $1,362,515 to Sul Ross State University; and
(H) $252,220 to Sul Ross State University-Rio Grande College;
(8) $7,427,642 to Texas Southern University;
(9) $17,886,318 to Texas Tech University;
(10) $11,899,627 to Texas Tech University Health Sciences Center;
(11) $5,616,139 to Texas Women's University;
(12) to the following component institutions of the University of Houston System:
(A) $23,517,427 to the University of Houston;
(B) $1,521,922 to the University of Houston–Victoria;
(C) $4,000,892 to the University of Houston–Clear Lake; and
(D) $6,418,767 to the University of Houston–Downtown;
(13) to the following component institutions of The Texas A&M University System:
(A) $5,519,329 to Texas A&M University–Corpus Christi;
(B) $2,086,807 to Texas A&M International University;
(C) $3,368,155 to Texas A&M University–Kingsville;
(D) $3,184,593 to West Texas A&M University;
(E) $3,563,785 to Texas A&M University–Commerce; and
(F) $1,097,568 to Texas A&M University–Texarkana; and
(14) $3,850,000 to the Texas State Technical College System Administration and the following component campuses, but not its extension centers or programs:
(A) Texas State Technical College-Harlingen;
(B) Texas State Technical College–Marshall;
(C) Texas State Technical College–West Texas; and
(D) Texas State Technical College–Waco.

(a-2) Except as otherwise provided by this subsection, Subsection (a-1) and this subsection expire September 1, 2007. Notwithstanding Subsection (a), the annual allocation of funds made under Subsection (a) applies only if Section 62.024 is amended by the 79th Legislature, Regular Session, 2005, to increase the amount of the appropriation made under Section 17(a), Article VII, Texas Constitution, for each state fiscal year beginning with the state fiscal year ending August 31, 2008. If Section 62.024 is not amended by the 79th Legislature, Regular Session, 2005, as described by this subsection, then the annual allocation

provided by Subsection (a-1) continues to apply to each state fiscal year following the state fiscal biennium ending August 31, 2007, and Subsection (a-1) and this subsection do not expire.

SECTION 2. Section 62.024, Education Code, is amended to read as follows:

Sec. 62.024. AMOUNT OF ALLOCATION INCREASED. In accordance with [~~Article VII,~~] Section 17(a), Article VII, [~~of the~~] Texas Constitution, for each state fiscal year beginning with the state fiscal year ending August 31, 2008, the amount of the annual constitutional appropriation under that subsection is increased to $262.5 million. Before the state fiscal year ending August 31, 2008, the amount of the annual constitutional appropriation under that subsections is $175 million.

SECTION 3. Section 62.027(c), Education Code, is amended to read as follows:

(c) The increase provided by the amendment to Section 62.024 enacted by the 79th Legislature, Regular Session, 2005, in the amount of the appropriation made under Section 17(a), Article VII, Texas Constitution, for each state fiscal year beginning with the state fiscal year ending August 31, 2008, constitutes the increase in accordance with Section 17(a) that the legislature considers appropriate for the five-year period [~~is valid and effective~~] beginning September 1, 2005 [~~1995~~].

SECTION 4. Section62.021(e), Education Code, is repealed.

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

(b) Sections 2 and 3 of the Act take effect only if this Act is approved by a vote of two-thirds of the membership of each house of the legislature as required by Section 17(a), Article VII, Texas Constitution.

HR 2280 - NOTICE OF INTRODUCTION

Pursuant to the provisions of Rule 13, Section 9(f) of the House Rules, the speaker announced the introduction of **HR 2280**, suspending the limitations on the conferees for **HB 1116**.

HB 3526 - RULES SUSPENDED

Representative Hochberg moved to suspend all necessary rules to consider the conference committee report on **HB 3526** at this time.

The motion prevailed.

HB 3526 - HOUSE DISCHARGES CONFEREES
HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS

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

HB 3526, A bill to be entitled An Act relating to the creation of the Greater Sharpstown Management District; providing authority to impose a tax and issue a bond or similar obligation.

Representative Hochberg moved to discharge the conferees and concur in the senate amendments to **HB 3526**.

A record vote was requested.

The motion to discharge conferees and concur in senate amendments prevailed by (Record 972): 142 Yeas, 0 Nays, 1 Present, not voting.

Yeas — Allen, A.; Allen, R.; Alonzo; Anchia; Anderson; Bailey; 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; Driver; Dukes; Dunnam; Dutton; 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; Hegar; Herrero; Hilderbran; Hill; Hochberg; Hodge; Homer; 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; 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; Wong; Woolley; Zedler.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Goodman.

Absent — Bonnen; Burnam; Hope; Isett; West.

Senate Committee Substitute

CSHB 3526, relating to the creation of the Greater Sharpstown Management District; providing authority to impose a tax and issue a bond or similar obligation.

SECTION 1. Subtitle C, Title 4, Special District Local Laws Code, is amended by adding Chapter 3850 to read as follows:

CHAPTER 3850. GREATER SHARPSTOWN MANAGEMENT DISTRICT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 3850.001. DEFINITIONS. In this chapter:

(1) "Board" means the board of directors of the district.

(2) "District" means the Greater Sharpstown Management District.

Sec. 3850.002. GREATER SHARPSTOWN MANAGEMENT DISTRICT. The Greater Sharpstown Management District is a special district created under Section 59, Article XVI, Texas Constitution.

Sec. 3850.003. PURPOSE; DECLARATION OF INTENT. (a) The creation of the district is essential to accomplish the purposes of Sections 52 and 52-a, Article III, and Section 59, Article XVI, Texas Constitution, and other public purposes stated in this chapter. By creating the district and in authorizing

the City of Houston, Harris County, and other political subdivisions to contract with the district, the legislature has established a program to accomplish the public purposes set out in Section 52-a, Article III, Texas Constitution.

(b) The creation of the district is necessary to promote, develop, encourage, and maintain employment, commerce, transportation, housing, tourism, recreation, the arts, entertainment, economic development, safety, and the public welfare in the district and adjacent areas.

(c) This chapter and the creation of the district may not be interpreted to relieve Harris County or the City of Houston from providing the level of services provided as of the effective date of this Act, to the area in the district. The district is created to supplement and not to supplant the county or municipal services provided in the area in the district.

Sec. 3850.004. FINDINGS OF BENEFIT AND PUBLIC PURPOSE. (a) The district is created to serve a public use and benefit.

(b) All land and other property included in the district will benefit from the improvements and services to be provided by the district under powers conferred by Sections 52 and 52-a, Article III, and Section 59, Article XVI, Texas Constitution, and other powers granted under this chapter.

(c) The creation of the district is in the public interest and is essential to:

(1) further the public purposes of developing and diversifying the economy of the state;

(2) eliminate unemployment and underemployment; and

(3) develop or expand transportation and commerce.

(d) The district will:

(1) promote the health, safety, and general welfare of residents, employers, employees, visitors, and consumers in the district, and of the public;

(2) provide needed funding for the district to preserve, maintain, and enhance the economic health and vitality of the district territory as a community and business center; and

(3) promote the health, safety, welfare, and enjoyment of the public by providing pedestrian ways and by landscaping and developing certain areas in the district, which are necessary for the restoration, preservation, and enhancement of scenic beauty.

(e) Pedestrian ways along or across a street, whether at grade or above or below the surface, and street lighting, street landscaping, and street art objects are parts of and necessary components of a street and are considered to be a street or road improvement.

(f) The district will not act as the agent or instrumentality of any private interest even though the district will benefit many private interests as well as the public.

Sec. 3850.005. PARKING. A parking improvement is considered to be a street or road improvement.

Sec. 3850.006. DISTRICT TERRITORY. (a) The district is composed of the territory described by Section 2 of the Act enacting this chapter, as that territory may have been modified under:

(1) Subchapter J, Chapter 49, Water Code; or

(2) other law.

(b) The boundaries and field notes of the district contained in Section 2 of the Act enacting this chapter form a closure. A mistake in the field notes or in copying the field notes in the legislative process does not in any way affect the district's:

(1) organization, existence, or validity;

(2) right to issue any type of bond for a purpose for which the district is created or to pay the principal of and interest on the bond;

(3) right to impose or collect an assessment or tax; or

(4) legality or operation.

Sec. 3850.007. ELIGIBILITY FOR INCLUSION IN SPECIAL ZONES. All or any part of the area of the district is eligible to be included in:

(1) a tax increment reinvestment zone created by a municipality under Chapter 311, Tax Code;

(2) a tax abatement reinvestment zone created by a municipality under Chapter 312, Tax Code; or

(3) an enterprise zone created by a municipality under Chapter 2303, Government Code.

Sec. 3850.008. APPLICABILITY OF MUNICIPAL MANAGEMENT DISTRICTS LAW. Except as otherwise provided by this chapter, Chapter 375, Local Government Code, applies to the district.

Sec. 3850.009. LIBERAL CONSTRUCTION OF CHAPTER. This chapter shall be liberally construed in conformity with the findings and purposes stated in this chapter.

[Sections 3850.010-3850.050 reserved for expansion]

SUBCHAPTER B. BOARD OF DIRECTORS

Sec. 3850.051. BOARD OF DIRECTORS; TERMS. (a) The district is governed by a board of nine voting directors who serve staggered terms of four years, with four or five directors' terms expiring June 1 of each odd-numbered year.

(b) The board by resolution may change the number of voting directors on the board, but only if the board determines that the change is in the best interest of the district. The board may not consist of fewer than five or more than 15 voting directors.

Sec. 3850.052. APPOINTMENT OF DIRECTORS. The mayor and members of the governing body of the City of Houston shall appoint voting directors from persons recommended by the board. A person is appointed if a majority of the members of the governing body, including the mayor, vote to appoint that person.

Sec. 3850.053. NONVOTING DIRECTORS. (a) The following persons serve as nonvoting directors:

(1) the directors of the following departments of the City of Houston or a person designated by that director:

(A) parks and recreation;

(B) planning and development;

(C) public works; and

(D) civic center; and

(2) the City of Houston's chief of police.

(b) If a department described by Subsection (a) is consolidated, renamed, or changed, the board may appoint a director of the consolidated, renamed, or changed department as a nonvoting director. If a department described by Subsection (a) is abolished, the board may appoint a representative of another department that performs duties comparable to those performed by the abolished department.

Sec. 3850.054. QUORUM. For purposes of determining whether a quorum of the board is present, the following are not counted:

(1) a board position vacant for any reason, including death, resignation, or disqualification;

(2) a director who is abstaining from participation in a vote because of a conflict of interest; or

(3) a nonvoting director.

Sec. 3850.055. INITIAL VOTING DIRECTORS. (a) The initial board consists of the following voting directors:

Pos. No.	Name of Director
1	Kenneth Li
2	Welcome Wilson, Jr.
3	Michael Laster
4	Maurisa Tolbert
5	Chris Vasquez
6	Toni Franklin
7	Tracey Suttles
8	Don Wang
9	Fred Bhandara

(b) Of the initial voting directors, the terms of directors appointed for positions 1 through 5 expire June 1, 2007, and the terms of directors appointed for positions 6 through 9 expire June 1, 2009.

(c) Section 3850.052 does not apply to this section.

(d) This section expires September 1, 2009.

[Sections 3850.056-3850.100 reserved for expansion]

SUBCHAPTER C. POWERS AND DUTIES

Sec. 3850.101. EXERCISE OF POWERS OF DEVELOPMENT CORPORATION. The district may exercise the powers of a corporation created under Section 4B, Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes), including the power to own, operate, acquire, construct, lease, improve, and maintain projects described by that section.

Sec. 3850.102. NONPROFIT CORPORATION. (a) The board by resolution may authorize the creation of a nonprofit corporation to assist and act for the district in implementing a project or providing a service authorized by this chapter.

(b) The nonprofit corporation:

(1) has each power of and is considered for purposes of this chapter to be a local government corporation created under Chapter 431, Transportation Code; and

(2) may implement any project and provide any service authorized by this chapter.

(c) The board shall appoint the board of directors of the nonprofit corporation. The board of directors of the nonprofit corporation shall serve in the same manner as the board of directors of a local government corporation created under Chapter 431, Transportation Code, except that a board member is not required to reside in the district.

Sec. 3850.103. AGREEMENTS; GRANTS. (a) The district may make an agreement with or accept a gift, grant, or loan from any person.

(b) The implementation of a project is a governmental function or service for the purposes of Chapter 791, Government Code.

Sec. 3850.104. AUTHORITY TO CONTRACT FOR LAW ENFORCEMENT. To protect the public interest, the district may contract with a law enforcement services provider, including Harris County or the City of Houston, to provide law enforcement services in the district for a fee.

Sec. 3850.105. APPROVAL BY CITY OF HOUSTON. (a) Except as provided by Subsection (c), the district must obtain the approval of the City of Houston's governing body for:

(1) the issuance of bonds for an improvement project;

(2) the plans and specifications of an improvement project financed by the bonds; and

(3) the plans and specifications of an improvement project related to the use of land owned by the City of Houston, an easement granted by the City of Houston, or a right-of-way of a street, road, or highway.

(b) The approval obtained under Subsection (a) for the issuance of bonds must be a resolution by the City of Houston. The approval obtained under Subsection (a) for plans and specifications must be a permit issued by the City of Houston.

(c) If the district obtains the approval of the City of Houston's governing body of a capital improvements budget for a period not to exceed five years, the district may finance the capital improvements and issue bonds specified in the budget without further approval from the City of Houston.

Sec. 3850.106. MEMBERSHIP IN CHARITABLE ORGANIZATIONS. The district may join and pay dues to an organization that:

(1) enjoys tax-exempt status under Section 501(c)(3), (4), or (6), Internal Revenue Code of 1986; and

(2) performs a service or provides an activity consistent with the furtherance of a district purpose.

Sec. 3850.107. ECONOMIC DEVELOPMENT PROGRAMS AND OTHER POWERS RELATED TO PLANNING AND DEVELOPMENT. (a) The district may establish and provide for the administration of one or more programs to promote state or local economic development and to stimulate business and commercial activity in the district, including programs to:

(1) make loans and grants of public money; and

(2) provide district personnel and services.

(b) The district has all of the powers of a municipality under Chapter 380, Local Government Code.

Sec. 3850.108. NO EMINENT DOMAIN. The district may not exercise the power of eminent domain.

[Sections 3850.109–3850.150 reserved for expansion]

SUBCHAPTER D. FINANCIAL PROVISIONS

Sec. 3850.151. DISBURSEMENTS AND TRANSFERS OF MONEY. The board by resolution shall establish the number of directors' signatures and the procedure required for a disbursement or transfer of the district's money.

Sec. 3850.152. MONEY USED FOR IMPROVEMENTS OR SERVICES. The district may acquire, construct, finance, operate, or maintain any improvement or service authorized under this chapter or Chapter 375, Local Government Code, using any money available to the district.

Sec. 3850.153. PETITION REQUIRED FOR FINANCING SERVICES AND IMPROVEMENTS WITH ASSESSMENTS. (a) The board may not finance a service or improvement project with assessments under this chapter unless a written petition requesting that service or improvement has been filed with the board.

(b) A petition requesting a project financed by assessment must be signed by:

(1) the owners of a majority of the assessed value of real property in the district subject to assessment according to the most recent certified tax appraisal roll for Harris County; or

(2) at least 50 owners of real property in the district, if more than 50 persons own real property in the district according to the most recent certified tax appraisal roll for Harris County.

Sec. 3850.154. METHOD OF NOTICE FOR HEARING. (a) The district may mail the notice required by Section 375.115(c), Local Government Code, by certified or first class United States mail. The board shall determine the type of notice required based on whether adequate notice is provided by the method.

(b) If the district uses first class mail to provide the notice, the district must also publish the notice in a newspaper of general circulation in the district not later than the 20th day before the date of the event for which notice was provided.

Sec. 3850.155. ASSESSMENTS; LIENS FOR ASSESSMENTS. (a) The board by resolution may impose and collect an assessment for any purpose authorized by this chapter.

(b) An assessment, a reassessment, or an assessment resulting from an addition to or correction of the assessment roll by the district, penalties and interest on an assessment or reassessment, an expense of collection, and reasonable attorney's fees incurred by the district:

(1) are a first and prior lien against the property assessed;

(2) are superior to any other lien or claim other than a lien or claim for county, school district, or municipal ad valorem taxes; and

(3) are the personal liability of and a charge against the owners of the property even if the owners are not named in the assessment proceedings.

(c) The lien is effective from the date of the board's resolution imposing the assessment until the date the assessment is paid. The board may enforce the lien in the same manner that the board may enforce an ad valorem tax lien against real property.

(d) The board may make a correction to or deletion from the assessment roll that does not increase the amount of assessment of any parcel of land without providing notice and holding a hearing in the manner required for additional assessments.

Sec. 3850.156. LIMITATION ON AMOUNT OF CERTAIN ASSESSMENTS. An assessment based on the taxable value of real property may not exceed 12 cents per $100 of assessed valuation of taxable property in the district, according to the most recent certified tax appraisal roll for Harris County.

Sec. 3850.157. PUBLIC IMPROVEMENT DISTRICT ASSESSMENTS. An assessment levied in the district for a public improvement district under Chapter 372, Local Government Code, may be used only under the terms for which the assessment was levied. Money raised by an assessment in the public improvement district under that chapter must be used in the public improvement district, and may not be transferred for use outside the area for which the assessment was originally levied.

Sec. 3850.158. UTILITY PROPERTY EXEMPT FROM IMPACT FEES AND ASSESSMENTS. The district may not impose an impact fee or assessment on the property, including the equipment, rights-of-way, facilities, or improvements, of:

(1) an electric utility or a power generation company as defined by Section 31.002, Utilities Code;

(2) a gas utility as defined by Section 101.003 or 121.001, Utilities Code;

(3) a telecommunications provider as defined by Section 51.002, Utilities Code; or

(4) a person who provides to the public cable television or advanced telecommunications services.

Sec. 3850.159. AD VALOREM TAX. (a) If authorized at an election held in accordance with Section 3850.162, the district may impose an annual ad valorem tax on taxable property in the district to:

(1) maintain and operate the district;

(2) construct or acquire improvements; or

(3) provide a service.

(b) The board shall determine the tax rate. The rate may not exceed the rate approved at the election.

Sec. 3850.160. BONDS AND OTHER OBLIGATIONS. (a) The district may issue bonds or other obligations payable wholly or partly from taxes, assessments, impact fees, revenue, grants, or other money of the district, or any combination of those sources of money, to pay for any authorized purpose of the district.

(b) The district may issue a bond or other obligation in the form of a bond, note, certificate of participation or other instrument evidencing a proportionate interest in payments to be made by the district, or other type of obligation.

Sec. 3850.161. TAXES FOR BONDS AND OTHER OBLIGATIONS. At the time bonds or other obligations payable wholly or partly from ad valorem taxes are issued:

(1) the board shall impose a continuing direct annual ad valorem tax, without limit as to rate or amount, for each year that all or part of the bonds are outstanding; and

(2) the district annually shall impose the continuing direct ad valorem tax on all taxable property in the district in an amount sufficient to:

(A) pay the interest on the bonds or other obligations as the interest becomes due;

(B) create a sinking fund for the payment of the principal of the bonds or other obligations when due or the redemption price at any earlier required redemption date; and

(C) pay the expenses of imposing the taxes.

Sec. 3850.162. TAX AND BOND ELECTIONS. (a) The district shall hold an election in the manner provided by Subchapter L, Chapter 375, Local Government Code, to obtain voter approval before the district imposes an ad valorem tax or issues bonds payable from ad valorem taxes. The proposition for an election approving an ad valorem tax must specify the maximum tax rate authorized.

(b) Section 375.243, Local Government Code, does not apply to the district.

Sec. 3850.163. CITY OF HOUSTON NOT REQUIRED TO PAY DISTRICT OBLIGATIONS. Except as provided by Section 375.263, Local Government Code, the City of Houston is not required to pay a bond, note, or other obligation of the district.

Sec. 3850.164. COMPETITIVE BIDDING. Section 375.221, Local Government Code, applies to the district only for a contract that has a value greater than $25,000.

Sec. 3850.165. TAX AND ASSESSMENT ABATEMENTS. The district may grant in the manner authorized by Chapter 312, Tax Code, an abatement for a tax or assessment owed to the district.

[Sections 3850.166-3850.200 reserved for expansion]

SUBCHAPTER E. DISSOLUTION

Sec. 3850.201. DISSOLUTION OF DISTRICT WITH OUTSTANDING DEBT. (a) The board may dissolve the district regardless of whether the district has debt. Section 375.264, Local Government Code, does not apply to the district.

(b) If the district has debt when it is dissolved, the district shall remain in existence solely for the purpose of discharging its debts. The dissolution is effective when all debts have been discharged.

SECTION 2. As of the effective date of this Act, the Greater Sharpstown Management District includes all territory contained in the following described area:

Beginning at the intersection of the East Right of Way of Beltway 8 and the South Right of Way of the Westpark Tollway,
Thence East along the South Right of Way of the Westpark Tollway to the East Right of Way of Gessner,
Thence North along the East Right of Way of Gessner to the North Right of Way of Westpark,
Thence East along the North Right of Way of Westpark to the East Right of Way of Highway 59,
Thence Southwest along the East Right of Way of Highway 59 to the East Right of Way of Hillcroft,
Thence Southeast following South along the East Right of Way of Hillcroft to the South Right of Way of Bissonnet,
Thence Southwest along the South Right of Way of Bissonnet to the West Right of Way of Gessner,
Thence North along the West Right of Way of Gessner to the East Right of Way of Highway 59,
Thence Southwest along the East Right of Way of Highway 59 crossing to the North Right of Way of Sugar Branch Drive.
Thence West along the North Right of Way of Sugar Brach Drive to the East Right of Way of Beltway 8.
Thence North along the East Right of Way of Beltway 8, to the Point of Beginning.
Save and Except
1034150000001
RES D BLK 4 BELTWAY R/P & EXTN
1052570000001
RES D BLK 4 (061*TR D4) TOWN PARK
0915050000007
TR 19C (001*TR 19A-2) SHARPSTOWN ACREAGE
0930640000002
TRS 31 & 31E BLK 31 (001*TRS 31A-2B 31A-2C 31A-4 & 31A-5) SHARPSTOWN INDUSTRIAL PARK 11
1071900000004
RES A3 BLK 3 (001*TR A2) REGENCY SQ OFFICE PARK 3 R/P
1071900000005
RES A5 BLK 3 (001*TR 4A) REGENCY SQ OFFICE PARK 3 R/P
0930630000017
TRS 28G & 28H BLK 28 (001*TR 28J) SHARPSTOWN INDUSTRIAL PARK 11
1170330000001
RES A ROZNOV BUSINESS PARK
1059760000001
RES A BLK 1 COMMERCE PARK SEC 2
1080620000005
RES A6 & A7 BLK 1 (008*LT 7 & TR 6A)(061*TR A7) WESTWOOD CENTER SEC 2

1080620000009
RES A8 BLK 1 (008*TR 6A) WESTWOOD CENTER SEC 2
1080620000010
RES A9 BLK 1 (061*TR A2) WESTWOOD CENTER SEC 2
1080620000002
RES A1 BLK 1 (008*TR 1 BLK 1 PT RES A) WESTWOOD CENTER SEC 2
1080560000011
RES A4 & A5 BLK 1 WESTWOOD CENTER SEC 1
1121370000043
RES B2 (061*TR B2) SUGAR BRANCH
0915440000013
TR 2A-1 BLK 8 (001*TR 2B-1) SHARPSTOWN INDUSTRIAL PARK 4
1150880000001
RES A CENTRE BUSINESS PARK
0472050000002
TR 1A ABST 1433 W YATES

SECTION 3. A petition filed under Section 3850.153, Special District Local Laws Code, as added by this Act, may be dated before the effective date of this Act.

SECTION 4. If the Greater Sharpstown Management District imposes an assessment on property under Subchapter D, Chapter 3850, Special District Local Laws Code, as added by this Act, the district shall credit against the district's first annual assessment an amount equal to that year's assessment paid on that property for a public improvement district under Chapter 372, Local Government Code.

SECTION 5. The legislature finds that:

(1) proper and legal notice of the intention to introduce this Act, setting forth the general substance of this Act, has been published as provided by law, and the notice and a copy of this Act have been furnished to all persons, agencies, officials, or entities to which they are required to be furnished by the constitution and laws of this state, including the governor, who has submitted the notice and Act to the Texas Commission on Environmental Quality;

(2) the Texas Commission on Environmental Quality has filed its recommendations relating to this Act with the governor, lieutenant governor, and speaker of the house of representatives within the required time;

(3) the general law relating to consent by political subdivisions to the creation of districts with conservation, reclamation, and road powers and the inclusion of land in those districts has been complied with; and

(4) all requirements of the constitution and laws of this state and the rules and procedures of the legislature with respect to the notice, introduction, and passage of this Act have been fulfilled and accomplished.

SECTION 6. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2005.

MESSAGE FROM THE SENATE

A message from the senate was received at this time (see the addendum to the daily journal, Messages from the Senate, Message No. 3).

HB 2491 - RULES SUSPENDED

Representative Puente moved to suspend all necessary rules to consider the conference committee report on **HB 2491** at this time.

The motion prevailed.

HB 2491 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Puente submitted the following conference committee report on **HB 2491** :

Austin, Texas, May 28, 2005

The Honorable David Dewhurst
President of the Senate

The Honorable Tom Craddick
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the senate and the house of representatives on **HB 2491** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Armbrister	Puente
Eltife	Crabb
Seliger	Otto
	Paxton
	Rodriguez
On the part of the senate	On the part of the house

HB 2491, A bill to be entitled An Act relating to the administration and collection of ad valorem taxes, including the transfer of an ad valorem tax lien and a contract for foreclosure of an ad valorem tax lien; amending, correcting, and clarifying the Tax Code, Property Code, and Civil Practice and Remedies Code.

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

SECTION 1. Section 1.07(b), Tax Code, is amended to read as follows:

(b) The official or agency shall address the notice to the property owner, the person designated under Section 1.111(f) to receive the notice for the property owner, if that section applies, or, if appropriate, the property owner's agent at the agent's [~~his~~] address according to the most recent record in the possession of the official or agency. However, if a property owner files a written request with the appraisal district that notices be sent to a particular address, the official or agency shall send the notice to the address stated in the request.

SECTION 2. Section 1.11(b), Tax Code, is amended to read as follows:

(b) To be effective, a [~~A~~] request made under [~~pursuant to~~] this section must be filed with the appraisal district. A request remains in effect until revoked by a written revocation filed with the appraisal district by the owner.

SECTION 3. Section 11.43, Tax Code, is amended by adding Subsections (l) and (m) to read as follows:

(l) The form for an application under Section 11.13 must include a space for the applicant to state the applicant's date of birth. Failure to provide the date of birth does not affect the applicant's eligibility for an exemption under that section, other than an exemption under Section 11.13(c) or (d) for an individual 65 years of age or older.

(m) Notwithstanding Subsections (a) and (k), a person who receives an exemption under Section 11.13, other than an exemption under Section 11.13(c) or (d) for an individual 65 years of age or older, in a tax year is entitled to receive an exemption under Section 11.13(c) or (d) for an individual 65 years of age or older in the next tax year on the same property without applying for the exemption if the person becomes 65 years of age in that next year as shown by information in the records of the appraisal district that was provided to the appraisal district by the individual in an application for an exemption under Section 11.13 on the property or in correspondence relating to the property. This subsection does not apply if the chief appraiser determines that the individual is no longer entitled to any exemption under Section 11.13 on the property.

SECTION 4. Section 22.28, Tax Code, is amended by amending Subsection (b) and adding Subsection (c) to read as follows:

(b) The chief appraiser shall certify to the assessor for each taxing unit participating in the appraisal district that imposes taxes on the property that the chief appraiser has imposed [~~may retain a portion of~~] a penalty [~~collected~~] under this section[~~, not to exceed 20 percent of the amount of the penalty, to cover the chief appraiser's costs of collecting the penalty~~]. The assessor [~~chief appraiser~~] shall add the amount of the penalty to the original amount of tax imposed on the property and shall include that amount in the tax bill for that year. The penalty becomes part of the tax on the property and is secured by the tax lien that attaches to the property under Section 32.01 [~~distribute the remainder of the penalty to each taxing unit participating in the appraisal district that imposes taxes on the property in proportion to the taxing unit's share of the total amount of taxes imposed on the property by all taxing units participating in the district~~].

(c) To help defray the costs of administering this chapter, a collector who collects a penalty imposed under Subsection (a) shall remit to the appraisal district that employs the chief appraiser who imposed the penalty an amount equal to five percent of the penalty amount collected.

SECTION 5. Subchapter B, Chapter 23, Tax Code, is amended by adding Section 23.225 to read as follows:

Sec. 23.225. APPRAISAL OF LAND INCLUDED IN HABITAT PRESERVE AND SUBJECT TO CONSERVATION EASEMENT. (a) In this section, "endangered species," "federal permit," and "habitat preserve" have the meanings assigned by Section 83.011, Parks and Wildlife Code.

(b) In appraising land that is included in a habitat preserve and is subject to a conservation easement created under Chapter 183, Natural Resources Code, or other law that restricts the use of the land to protect an endangered species under a federal permit, the chief appraiser shall consider the effect of the restriction on the value of the land.

SECTION 6. Section 23.51(3), Tax Code, is amended to read as follows:

(3) "Category" means the value classification of land considering the agricultural use to which the land is principally devoted. The chief appraiser shall determine the categories into which land in the appraisal district is classified. In classifying land according to categories, the chief appraiser shall distinguish between [~~Categories of land may include but are not limited to~~] irrigated cropland, dry cropland, improved pasture, native pasture, orchard, and waste. The chief appraiser may establish additional categories. The chief appraiser shall [~~and may be~~] further divide each category [~~divided~~] according to soil type, soil capability, irrigation, general topography, geographical factors, and other factors that [~~which~~] influence the productive capacity of the category. The chief appraiser shall obtain information from the Texas Agricultural [~~Agriculture~~] Extension Service, the Natural Resources [~~Soil~~] Conservation Service of the United States Department of Agriculture, and other recognized agricultural sources for the purposes of determining the categories of land [~~production~~] existing in the appraisal district.

SECTION 7. Section 25.25(d), Tax Code, is amended to read as follows:

(d) At any time prior to the date the taxes become delinquent, a property owner or the chief appraiser may file a motion with the appraisal review board to change the appraisal roll to correct an error that resulted in an incorrect appraised value for the owner's property. However, the error may not be corrected unless it resulted in an appraised value that exceeds by more than one-third the correct appraised value. If the appraisal roll is changed under this subsection, the property owner must pay to each affected taxing unit a late-correction penalty equal to 10 percent of the amount of taxes as calculated on the basis of the corrected appraised value. Payment of the late-correction penalty is secured by the lien that attaches to the property under Section 32.01 and is subject to enforced collection under Chapter 33. The roll may not be changed under this subsection if:

(1) the property was the subject of a protest brought by the property owner under Chapter 41, a hearing on the protest was conducted in which the property owner offered evidence or argument, and the appraisal review board made a determination of the protest on the merits; or

(2) the appraised value of the property was established as a result of a written agreement between the property owner or the owner's agent and the appraisal district.

SECTION 8. Section 26.11(c), Tax Code, is amended to read as follows:

(c) If the amount of prorated taxes determined to be due as provided by this section is tendered to the collector for the unit, the collector [~~he~~] shall accept the tender. The payment absolves:

(1) the transferor of liability for taxes by the unit on the property for the year of the transfer; and

(2) the taxing unit of liability for a refund in connection with taxes on the property for the year of the transfer.

SECTION 9. Section 31.05(a), Tax Code, is amended to read as follows:

(a) The governing body of a taxing unit [~~that collects its own taxes~~] may adopt the discounts provided by Subsection (b) or Subsection (c) [~~of this section~~], or both, in the manner required by law for official action by the body. The discounts, if adopted, apply only to that taxing unit's taxes [~~for a taxing unit for which the adopting taxing unit collects taxes if the governing body of the other unit, in the manner required by law for official action by the body, adopts the discounts or approves of their application to its taxes by the collecting unit~~]. If a taxing unit adopts both discounts under Subsections (b) and (c) [~~of this section~~], the discounts adopted under Subsection (b) apply unless the [~~unit mails its~~] tax bills for the unit are mailed after September 30, in which case only the discounts under Subsection (c) apply. A taxing unit that collects taxes for another taxing unit that adopts the discounts may prepare and mail separate tax bills on behalf of the adopting taxing unit and may charge an additional fee for preparing and mailing the separate tax bills and for collecting the taxes imposed by the adopting taxing unit. If under an intergovernmental contract a county assessor-collector collects taxes for a taxing unit that adopts the discounts, the county assessor-collector may terminate the contract if the county has adopted a discount policy that is different from the discount policy adopted by the adopting taxing unit.

SECTION 10. Section 31.073, Tax Code, is amended to read as follows:

Sec. 31.073. RESTRICTED OR CONDITIONAL PAYMENTS PROHIBITED. A restriction or condition placed on a check in payment of taxes, penalties, or interest by the maker that limits the amount of taxes, penalties, or interest owed to an amount less than that stated in the tax bill or shown by the tax collector's records is void unless the restriction or condition is authorized by this code.

SECTION 11. Section 31.08(a), Tax Code, is amended to read as follows:

(a) At the request of any person, a collector for a taxing unit shall issue a certificate showing the amount of delinquent taxes, penalties, [~~and~~] interest, and any known costs and expenses under Section 33.48 due the unit on a property according to the unit's current tax records. If the collector collects taxes for more than one taxing unit, the certificate must show the amount of delinquent taxes, penalties, [~~and~~] interest, and any known costs and expenses under Section 33.48 due on the property to each taxing unit for which the collector collects the taxes. The collector shall charge a fee not to exceed $10 for each certificate issued. The collector shall pay all fees collected under this section into the treasury of the taxing unit that employs the collector [~~him~~].

SECTION 12. Section 32.05, Tax Code, is amended by amending Subsections (b) and (c) and adding Subsections (b-1), (d), and (e) to read as follows:

(b) Except as provided by Subsection (c)(1) [~~(c) of this section~~], a tax lien provided by this chapter takes priority over:

(1) the claim of any creditor of a person whose property is encumbered by the lien;

(2) [~~and over~~] the claim of any holder of a lien on property encumbered by the tax lien, including any lien held by a property owners' association, homeowners' association, condominium unit owners' association, or council of owners of a condominium regime under a restrictive covenant, condominium declaration, master deed, or other similar instrument that secures regular or special maintenance assessments, fees, dues, interest, fines, costs, attorney's fees, or other monetary charges against the property; and

(3) any right of remainder, right or possibility of reverter, or other future interest in, or encumbrance against, the property, whether vested or contingent [~~not the debt or lien existed before attachment of the tax lien~~].

(b-1) The priority given to a tax lien by Subsection (b) prevails, regardless of whether the debt, lien, future interest, or other encumbrance existed before attachment of the tax lien.

(c) A tax lien provided by this chapter is inferior to [~~a claim~~]:

(1) a claim for any survivor's allowance, funeral expenses, or expenses of the last illness of a decedent made against the estate of a decedent as provided by law;

(2) except as provided by Subsection (b)(2), [~~under~~] a recorded restrictive covenant that runs [~~running~~] with the land and was[~~, other than a restrictive covenant in favor of a property owners' association or homeowners' association~~] recorded before January 1 of the year the tax lien arose; or

(3) [~~under~~] a valid easement of record recorded before January 1 of the year the tax lien arose.

(d) In an action brought under Chapter 33 for the enforced collection of a delinquent tax against property, a property owners' association, homeowners' association, condominium unit owners' association, or council of owners of a condominium regime that holds a lien for regular or special maintenance assessments, fees, dues, interest, fines, costs, attorney's fees, or other monetary charges against the property is not a necessary party to the action unless, at the time the action is commenced, notice of the lien in a liquidated amount is evidenced by a sworn instrument duly executed by an authorized person and recorded with the clerk of the county in which the property is located. A tax sale of the property extinguishes the lien held by a property owners' association, homeowners' association, condominium unit owners' association, or council of owners of a condominium regime for all amounts that accrued before the date of sale if:

(1) the holder of the lien is joined as a party to an action brought under Chapter 33 by virtue of a notice of the lien on record at the time the action is commenced; or

(2) the notice of lien is not of record at the time the action is commenced, regardless of whether the holder of the lien is made a party to the action.

(e) The existence of a recorded restrictive covenant, declaration, or master deed that generally provides for the lien held by a property owners' association, homeowners' association, condominium unit owners' association, or council of owners of a condominium regime does not, by itself, constitute actual or constructive notice to a taxing unit of a lien under Subsection (d).

SECTION 13. Section 32.06, Tax Code, is amended to read as follows:

Sec. 32.06. TRANSFER OF TAX LIEN. (a) In this section:

(1) "Mortgage servicer" has the meaning assigned by Section 51.0001, Property Code.

(2) "Transferee" means a person authorized to pay the taxes of another.

(a-1) A person may authorize another person to pay the delinquent taxes imposed by a taxing unit on the person's real property by filing with the collector for the unit a sworn document stating:

(1) the authorization;

(2) the name and street address of the transferee[~~, naming the other person~~] authorized to pay the taxes of the property owner; and

(3) a description of[~~, and describing~~] the property by street address, if applicable, and legal description.

(a-2) After a tax lien is transferred, taxes on the property that become due in subsequent tax years may be transferred before the delinquency date in the manner provided by Subsection (a-1).

(a-3) A tax lien may be transferred before the delinquency date in the manner provided by Subsection (a-1) only if the real property is not subject to a lien other than the tax lien.

(b) If a transferee [~~person~~] authorized to pay a property owner's [~~another's~~] taxes pursuant to Subsection (a-1) [~~(a)~~] pays the taxes and any penalties and interest imposed, the collector shall issue a tax receipt to that transferee [~~the person paying the taxes~~]. In addition, the collector or a person designated by the collector shall certify on the sworn document that payment of the taxes and any penalties and interest on the described property and collection costs has been made by the transferee on behalf of the property owner [~~a person other than the person~~] liable for the taxes when imposed and that the taxing unit's tax lien is transferred to that transferee [~~the person paying the taxes~~]. The collector shall attach to the sworn document the collector's seal of office or sign the document before a notary public and deliver the sworn document, a tax receipt, and the affidavit attesting to the transfer of the tax lien to the transferee within 30 days [~~person paying the taxes~~]. The sworn document, tax receipt, and affidavit attesting to the transfer of the tax lien may be combined into one document. The collector shall conspicuously identify in the applicable taxpayer's account the date of the transfer of a tax lien transferred under this section [~~keep a record of all tax liens transferred as provided by this section~~].

(c) Except as otherwise provided by this section, the transferee of a tax lien and any successor in interest is entitled to foreclose the lien:

(1) in the manner provided by law for foreclosure of tax liens; or

(2) in the manner specified in Section 51.002, Property Code, and Section 32.065 of this code, if the property owner and the transferee enter into a contract that is secured by a lien on the property.

(d) To be enforceable, a tax lien transferred as provided by this section must be recorded with the sworn statement and affidavit attesting to the transfer of the tax lien as described in Subsection (b) in the deed records of each county in which the property encumbered by the lien is located.

(e) A transferee [~~person~~] holding a tax lien transferred as provided by this section may not charge a greater rate of interest than 18 percent a year on the funds advanced. Funds advanced are limited to the taxes, penalties, interest, and collection costs paid as shown on the tax receipt, expenses paid to record the lien, plus reasonable closing costs [~~recording expenses paid to acquire and record the lien~~].

(f) The mortgage servicer [~~holder~~] of a preexisting lien on property encumbered by a tax lien transferred as provided by Subsection (b) [~~this section~~] is entitled, within six months after the date on which the tax lien is recorded in all counties in which the property is located, to obtain a release of the transferred tax lien by paying [~~pay~~] the transferee [~~holder~~] of the tax lien the amount owed under the contract between the property owner and the transferee. A transferee may charge a reasonable fee for a payoff statement that is requested after an initial payoff statement is provided.

(g) At any time after the end of the six-month period specified by Subsection (f) and before a notice of foreclosure of the transferred tax lien is sent, the transferee of the tax lien or the holder of the tax lien may require the property owner to provide written authorization and pay a reasonable fee before providing information regarding the current balance owed by the property owner to the transferee or the holder of the tax lien.

(h) A mortgage servicer who pays a transferred tax lien [~~paid for the lien, plus interest accrued at the rate provided by Subsection (c) and recording expenses, and~~] becomes subrogated to all rights in the lien.

(i) [~~(g)~~] A foreclosure of [~~suit to foreclose~~] a tax lien transferred as provided by this section may not be instituted within one year from the date on which the lien is recorded in all counties in which the property is located, unless the contract between the owner of the property and the transferee provides otherwise.

(j) [~~(h)~~] After one year from the date on which a tax lien transferred as provided by this section is recorded in all counties in which the property is located, the transferee [~~holder~~] of the lien may [~~file suit to~~] foreclose the lien in the manner provided by Subsection (c) unless a contract between the holder of the lien and the owner of the property encumbered by the lien provides otherwise. If a foreclosure [~~the~~] suit results in foreclosure of the lien, the transferee [~~person filing suit~~] is entitled to recover attorney's fees in an amount not to exceed 10 percent of the judgment. The proceeds of a sale following a judicial foreclosure as provided by this subsection shall be applied first to the payment of court costs, then to payment of the judgment, including accrued interest, and then to the

payment of any attorney's fees fixed in the judgment. Any remaining proceeds shall be paid to other holders of liens on the property in the order of their priority and then to the person whose property was sold at the tax sale.

(k) Beginning on the date the foreclosure deed is recorded, the [~~(i) The~~] person whose property is sold as provided by Subsection (c) [~~this section~~] or the mortgage servicer of [~~any person holding~~] a prior recorded [~~first~~] lien against the property is entitled[~~, within one year after the date the property is sold,~~] to redeem the foreclosed property from the purchaser [~~at the tax sale~~] by paying the [~~that~~] purchaser or successor 125 [~~the tax sale purchase price, plus costs, and interest accrued on the judgment to the date of redemption or 118~~] percent of the purchase price during the first year of the redemption period or 150 percent of the purchase price during the second year of the redemption period with cash or cash equivalent funds. The right of redemption may be exercised on or before the second anniversary of the date on which the purchaser's deed is filed of record if the property sold was the residence homestead of the owner, was land designated for agricultural use, or was a mineral interest. For any other property, the right of redemption must be exercised not later than the 180th day after the date on which the purchaser's deed is filed of record [~~amount of the judgment, whichever is less~~]. If a person redeems the property as provided by this subsection, the purchaser at the tax sale shall deliver a deed to the property to the person redeeming the property. If the person who owned the property at the time of foreclosure redeems the property, all liens existing on the property at the time of the tax sale remain in effect to the extent not paid from the sale proceeds.

SECTION 14. Section 32.065, Tax Code, is amended by amending Subsections (a), (b), (c), (d), and (f) and adding Subsections (b-1) and (g) to read as follows:

(a) Section 32.06 does not abridge the right of an owner of real property to enter into a contract for the payment of taxes [~~with the holder of a lien on the property, including a transferee under Section 32.06 or this section, or affect a contract between the owner and holder of a lien for the payment of taxes on the property~~].

(b) Notwithstanding any agreement to the contrary, a [~~A~~] contract entered into under Subsection (a) between a transferee and the property owner under Section 32.06 that is secured by a priority lien on the property shall [~~may~~] provide for a power of sale and foreclosure under Chapter 51, Property Code, and:

(1) an event of default; [~~and~~]

(2) notice of acceleration;

(3) recording of the contract in each county in which the property is located;

(4) recording of the sworn document and affidavit attesting to the transfer of the tax lien;

(5) requiring the transferee to serve foreclosure notices on the property owner at the property owner's last known address in the manner required by Sections 51.002(b), (d), and (e), Property Code, or by a commercially reasonable delivery service that maintains verifiable records of deliveries for at least five years from the date of delivery; and

(6) requiring, at the time the foreclosure notices required by Subdivision (5) are served on the property owner, the transferee to serve a copy of the notice of sale in the same manner on the mortgage servicer or the holder of all recorded real property liens encumbering the property that includes on the first page, in 14-point boldfaced type or 14-point uppercase typewritten letters, a statement that reads substantially as follows:

"PURSUANT TO TEXAS TAX CODE SECTION 32.06, THE FORECLOSURE SALE REFERRED TO IN THIS DOCUMENT IS A SUPERIOR TRANSFER TAX LIEN SUBJECT TO RIGHT OF REDEMPTION UNDER CERTAIN CONDITIONS. THE FORECLOSURE IS SCHEDULED TO OCCUR ON THE (DATE)."

(b-1) On an event of default and notice of acceleration, the mortgage servicer of a recorded lien encumbering real property may obtain a release of a transferred tax lien on the property by paying the transferee of the tax lien or the holder of the tax lien the amount owed by the property owner to that transferee or holder.

(c) Notwithstanding any other provision of this code, a transferee of a tax lien is subrogated to and is entitled to exercise any right or remedy possessed by the transferring taxing unit, including or related to foreclosure or judicial sale, but is prohibited from exercising a remedy of foreclosure or judicial sale where the transferring taxing unit would be prohibited from foreclosure or judicial sale.

(d) Chapters 342 and 346, Finance Code, [~~and Section 302.102, Finance Code,~~] do not apply to a transaction covered by this section. The transferee of a tax lien under this section is not required to obtain a license under Title 4, Finance Code.

(f) Before accepting an application fee or executing a contract, the transferee shall disclose [~~The first written communication by the lender~~] to the transferee's [~~its~~] prospective borrower each type and [~~shall disclose~~] the amount [~~types~~] of possible additional charges or fees that may be incurred by the borrower in connection with the loan or contract under this section.

(g) An affidavit of the transferee executed after foreclosure of a tax lien that recites compliance with the terms of Section 32.06 and this section and is recorded in each county in which the property is located:

(1) is prima facie evidence of compliance with Section 32.06 and this section; and

(2) may be relied on conclusively by a bona fide purchaser for value without notice of any failure to comply.

SECTION 15. Sections 33.011(a) and (d), Tax Code, are amended to read as follows:

(a) The governing body of a taxing unit:

(1) shall waive penalties and may provide for the waiver of interest on a delinquent tax if an act or omission of an officer, employee, or agent of the taxing unit or the appraisal district in which the taxing unit participates caused or resulted in the taxpayer's failure to pay the tax before delinquency and if the tax is paid not later than the 21st day after the date the taxpayer knows or should know of the delinquency; and

(2) may waive penalties and provide for the waiver of interest on a delinquent tax if:

(A) the property for which the tax is owed is acquired by a religious organization; and

(B) [~~that qualifies the property for exemption under Section 11.20~~] before the first anniversary of the date the religious organization acquires the property, the organization pays the tax and qualifies the property for an exemption under Section 11.20 as evidenced by the approval of the exemption by the chief appraiser under Section 11.45.

(d) A request for a waiver of penalties and interest under Subsection (a)(1), (b), or (h) [~~this section~~] must be made before the 181st day after the delinquency date. A request for a waiver of penalties and interest under Subsection (a)(2) must be made before the first anniversary of the date the religious organization acquires the property. To be valid, a waiver of penalties or interest under this section must be requested in writing. If a written request for a waiver is not timely made, the governing body of a taxing unit may not waive any penalties or interest under this section.

SECTION 16. Section 33.02(a), Tax Code, is amended to read as follows:

(a) The collector for a taxing unit [~~that collects its own taxes~~] may enter an agreement with a person delinquent in the payment of the tax for payment of the tax, penalties, and interest in installments. The agreement must be in writing and may not extend for a period of more than 36 months.

SECTION 17. Section 33.22, Tax Code, is amended by adding Subsections (d) and (e) to read as follows:

(d) A collector is entitled to recover attorney's fees in an amount equal to the compensation specified in the contract with the attorney if:

(1) recovery of the attorney's fees is requested in the application for the tax warrant;

(2) the taxing unit served by the collector contracts with an attorney under Section 6.30;

(3) the existence of the contract and the amount of attorney's fees that equals the compensation specified in the contract are supported by the affidavit of the collector; and

(4) the tax sought to be recovered is not subject to the additional penalty under Section 33.07 or 33.08 at the time the application is filed.

(e) If a taxing unit is represented by an attorney who is also an officer or employee of the taxing unit, the collector for the taxing unit is entitled to recover attorney's fees in an amount equal to 15 percent of the total amount of delinquent taxes, penalties, and interest that the property owner owes the taxing unit.

SECTION 18. Subchapter A, Chapter 33, Tax Code, is amended by adding Section 33.045 to read as follows:

Sec. 33.045. NOTICE OF PROVISIONS AUTHORIZING DEFERRAL OR ABATEMENT. (a) A tax bill mailed by an assessor or collector under Section 31.01 and any written communication delivered to a property owner by an assessor or collector for a taxing unit or an attorney or other agent of a taxing unit that specifically threatens a lawsuit to collect a delinquent tax shall contain the following explanation in capital letters: "IF YOU ARE 65 YEARS OF AGE OR OLDER OR ARE DISABLED AND THE PROPERTY DESCRIBED IN THIS DOCUMENT IS YOUR RESIDENCE HOMESTEAD, YOU SHOULD CONTACT THE APPRAISAL DISTRICT REGARDING ANY ENTITLEMENT YOU MAY HAVE TO A POSTPONEMENT IN THE PAYMENT OF THESE TAXES".

(b) This section does not apply to a communication that relates to taxes that are the subject of pending litigation.

SECTION 19. Subchapter A, Chapter 33, Tax Code, is amended by adding Section 33.11 to read as follows:

Sec. 33.11. EARLY ADDITIONAL PENALTY FOR COLLECTION COSTS FOR TAXES IMPOSED ON PERSONAL PROPERTY. (a) In order to defray costs of collection, the governing body of a taxing unit or appraisal district in the manner required by law for official action may provide that taxes imposed on tangible personal property that become delinquent on or after February 1 of a year incur an additional penalty on a date that occurs before July 1 of the year in which the taxes become delinquent if:

(1) the taxing unit or appraisal district or another unit that collects taxes for the unit has contracted with an attorney under Section 6.30; and

(2) the taxes on the personal property become subject to the attorney's contract before July 1 of the year in which the taxes become delinquent.

(b) A penalty imposed under Subsection (a) is incurred by the delinquent taxes on the later of:

(1) the date those taxes become subject to the attorney's contract; or

(2) 60 days after the date the taxes become delinquent.

(c) The amount of the penalty may not exceed the amount of the compensation specified in the contract with the attorney to be paid in connection with the collection of the delinquent taxes.

(d) A tax lien attaches to the property on which the tax is imposed to secure payment of the penalty.

(e) If a penalty is provided under this section, a taxing unit or appraisal district may not:

(1) recover attorney's fees in a suit to collect delinquent taxes subject to the penalty; or

(2) impose an additional penalty under Section 33.07 on a delinquent personal property tax.

(f) If the governing body of a taxing unit or appraisal district provides for a penalty under this section, the collector for the taxing unit or appraisal district shall send a notice of the penalty to the property owner. The notice shall state the

date on which the penalty is incurred, and the tax collector shall deliver the notice at least 30 and not more than 60 days before that date. If the amount of personal property tax, penalty and interest owed to all taxing units for which the tax collector collects exceeds $10,000 on a single account identified by a unique property identification number, the notice regarding that account must be delivered by certified mail, return receipt requested. All other notices under this section may be delivered by regular first-class mail.

(g) The authority granted to taxing units and appraisal districts under this section is to be construed as an alternative, with regards to delinquent personal property taxes, to the authority given by Section 33.07.

SECTION 20. Section 33.23(a), Tax Code, is amended to read as follows:

(a) A tax warrant shall direct a peace officer in the county and the collector to seize as much of the person's personal property as may be reasonably necessary for the payment of all taxes, penalties, [~~and~~] interest, and attorney's fees included in the application and all costs of seizure and sale. The warrant shall direct the person whose property is seized to disclose to the officer executing the warrant the name and the address if known of any other person having an interest in the property.

SECTION 21. Section 33.25, Tax Code, is amended by amending Subsections (f) and (h) and adding Subsection (i) to read as follows:

(f) The proceeds of a sale of property under this section shall be applied to:

(1) any compensation owed to or any expense advanced by the licensed auctioneer under an agreement entered into under Subsection (b) or a service provider under an agreement entered into under Subsection (c);

(2) all usual costs, expenses, and fees of the seizure and sale, payable to the peace officer conducting the sale;

(3) all additional expenses incurred in advertising the sale or in removing, storing, preserving, or safeguarding the seized property pending its sale;

(4) all usual court costs payable to the clerk of the court that issued the tax warrant; and

(5) taxes, penalties, [~~and~~] interest, and attorney's fees included in the application for warrant.

(h) After a seizure of personal property defined by Sections 33.21(d)(2)-(5), the collector shall apply the seized property toward the payment of the taxes, penalties, [~~and~~] interest, and attorney's fees included in the application for warrant and all costs of the seizure as required by Subsection (f).

(i) After a tax warrant is issued, the seizure or sale of the property may be canceled and terminated at any time by the applicant or an authorized agent or attorney of the applicant.

SECTION 22. Section 33.48, Tax Code, is amended by adding Subsection (d) to read as follows:

(d) A collector who accepts a payment of the court costs and other expenses described by this section shall disburse the amount of the payment as follows:

(1) amounts owing under Subsections (a)(1), (2), (3), and (6) are payable to the clerk of the court in which the suit is pending; and

(2) expenses described by Subsection (a)(4) are payable to the general fund of the taxing unit or to the person or entity who advanced the expense.

SECTION 23. Section 33.51, Tax Code, is amended to read as follows:

Sec. 33.51. WRIT OF POSSESSION. (a) If the court orders the foreclosure of a tax lien and the sale of real property, the judgment shall provide for the issuance by the clerk of said court of a writ of possession to the purchaser at the sale or to the purchaser's assigns no sooner than 20 days following the date on which the purchaser's deed from the sheriff or constable is filed of record.

(b) The officer charged with executing the writ shall place the purchaser or the purchaser's assigns in possession of the property described in the purchaser's deed without further order from any court and in the manner provided by the writ, subject to any notice to vacate that may be required to be given to a tenant under Section 24.005(b), Property Code.

(c) The writ of possession shall order the officer executing the writ to:

(1) post a written warning that is at least 8-1/2 by 11 inches on the exterior of the front door of the premises notifying the occupant that the writ has been issued and that the writ will be executed on or after a specific date and time stated in the warning that is not sooner than the 10th day after the date the warning is posted; and

(2) on execution of the writ:

(A) deliver possession of the premises to the purchaser or the purchaser's assigns;

(B) instruct the occupants to immediately leave the premises and, if the occupants fail or refuse to comply, physically remove them from the premises;

(C) instruct the occupants to remove, or to allow the purchaser or purchaser's assigns, representatives, or other persons acting under the officer's supervision to remove, all personal property from the premises; and

(D) place, or have an authorized person place, the removed personal property outside the premises at a nearby location, but not so as to block a public sidewalk, passageway, or street and not while it is raining, sleeting, or snowing.

(d) The writ of possession shall authorize the officer, at the officer's discretion, to engage the services of a bonded or insured warehouseman to remove and store, subject to applicable law, all or part of the personal property at no cost to the purchaser, the purchaser's assigns, or the officer executing the writ. The officer may not require the purchaser or the purchaser's assigns to store the personal property.

(e) The writ of possession shall contain notice to the officer that under Section 7.003, Civil Practice and Remedies Code, the officer is not liable for damages resulting from the execution of the writ if the officer executes the writ in good faith and with reasonable diligence.

(f) The warehouseman's lien on stored property, the officer's duties, and the occupants' rights of redemption as provided by Section 24.0062, Property Code, are all applicable with respect to any personal property that is removed under Subsection (d).

(g) A sheriff or constable may use reasonable force in executing a writ under this section.

(h) If a taxing unit is a purchaser and is entitled to a writ of possession in the taxing unit's name:

(1) a bond may not be required of the taxing unit for issuance or delivery of a writ of possession; and

(2) a fee or court cost may not be charged for issuance or delivery of a writ of possession.

(i) In this section:

(1) "Premises" means all of the property described in the purchaser's deed, including the buildings, dwellings, or other structures located on the property.

(2) "Purchaser" includes a taxing unit to which property is bid off under Section 34.01(j).

SECTION 24. Subchapter C, Chapter 33, Tax Code, is amended by adding Section 33.57 to read as follows:

Sec. 33.57. ALTERNATIVE NOTICE OF TAX FORECLOSURE ON CERTAIN PARCELS OF REAL PROPERTY. (a) In this section, "appraised value" means the appraised value according to the most recent appraisal roll approved by the appraisal review board.

(b) This section may be invoked and used by one or more taxing units if there are delinquent taxes, penalties, interest, and attorney's fees owing to a taxing unit on a parcel of real property, and:

(1) the total amount of delinquent taxes, penalties, interest, and attorney's fees owed exceeds the appraised value of the parcel; or

(2) there are 10 or more years for which delinquent taxes are owed on the parcel.

(c) One or more taxing units may file a single petition for foreclosure under this section that includes multiple parcels of property and multiple owners. Alternatively, separate petitions may be filed and docketed separately for each parcel of property. Another taxing unit with a tax claim against the same parcel may intervene in an action for the purpose of establishing and foreclosing its tax lien without further notice to a defendant. The petition must be filed in the county in which the tax was imposed and is sufficient if it is in substantially the form prescribed by Section 33.43 and further alleges that:

(1) the amount owed in delinquent taxes, penalties, interest, and attorney's fees exceeds the appraised value of the parcel; or

(2) there are 10 or more years for which delinquent taxes are owed on the parcel.

(d) Simultaneously with the filing of the petition under this section, a taxing unit shall also file a motion with the court seeking an order approving notice of the petition to each defendant by certified mail in lieu of citation and, if the amount of delinquent taxes, penalties, interest, and attorney's fees alleged to be owed exceeds the appraised value of the parcel, waiving the appointment of an attorney ad litem. The motion must be supported by certified copies of tax

records that show the tax years for which delinquent taxes are owed, the amounts of delinquent taxes, penalties, interest, and attorney's fees, and, if appropriate, the appraised value of the parcel.

(e) The court shall approve a motion under Subsection (d) if the documents in support of the motion show that:

(1) the amount of delinquent taxes, penalties, interest, and attorney's fees that are owed exceeds the appraised value of the parcel; or

(2) there are 10 or more years for which delinquent taxes are owed on the parcel.

(f) Before filing a petition under this section, or as soon afterwards as practicable, the taxing unit or its attorney shall determine the address of each owner of a property interest in the parcel for the purpose of providing notice of the pending petition. If the title search, the taxing unit's tax records, and the appraisal district records do not disclose an address of a person with a property interest, consulting the following sources of information is to be considered a reasonable effort by the taxing unit or its attorney to determine the address of a person with a property interest in the parcel subject to foreclosure:

(1) telephone directories, electronic or otherwise, that cover:

(A) the area of any last known address for the person; and

(B) the county in which the parcel is located;

(2) voter registration records in the county in which the parcel is located; and

(3) where applicable, assumed name records maintained by the county clerk of the county in which the parcel is located and corporate records maintained by the secretary of state.

(g) Not later than the 45th day before the date on which a hearing on the merits on a taxing unit's petition is scheduled, the taxing unit or its attorney shall send a copy of the petition and a notice by certified mail to each person whose address is determined under Subsection (f), informing the person of the pending foreclosure action and the scheduled hearing. A copy of each notice shall be filed with the clerk of the court together with an affidavit by the tax collector or by the taxing unit's attorney attesting to the fact and date of mailing of the notice.

(h) In addition to the notice required by Subsection (g), the taxing unit shall provide notice by publication and by posting to all persons with a property interest in the parcel subject to foreclosure. The notice shall be published in the English language once a week for two weeks in a newspaper that is published in the county in which the parcel is located and that has been in general circulation for at least one year immediately before the date of the first publication, with the first publication to be not less than the 45th day before the date on which the taxing unit's petition is scheduled to be heard. When returned and filed in the trial court, an affidavit of the editor or publisher of the newspaper attesting to the date of publication, together with a printed copy of the notice as published, is sufficient proof of publication under this subsection. If a newspaper is not published in the county in which the parcel is located, publication in an otherwise qualifying newspaper published in an adjoining county is sufficient. The maximum fee for publishing the citation shall be the lowest published word or

line rate of that newspaper for classified advertising. The notice by posting shall be in the English language and given by posting a copy of the notice at the courthouse door of the county in which the foreclosure is pending not less than the 45th day before the date on which the taxing unit's petition is scheduled to be heard. Proof of the posting of the notice shall be made by affidavit of the attorney for the taxing unit, or of the person posting it. If the publication of the notice cannot be had for the maximum fee established in this subsection, and that fact is supported by the affidavit of the attorney for the taxing unit, the notice by posting under this subsection is sufficient.

(i) The notice required by Subsections (g) and (h) must include:

(1) a statement that foreclosure proceedings have been commenced and the date the petition was filed;

(2) a legal description, tax account number, and, if known, a street address for the parcel in which the addressee owns a property interest;

(3) the name of the person to whom the notice is addressed and the name of each other person who, according to the title search, has an interest in the parcel in which the addressee owns a property interest;

(4) the date, time, and place of the scheduled hearing on the petition;

(5) a statement that the recipient of the notice may lose whatever property interest the recipient owns in the parcel as a result of the hearing and any subsequent tax sale;

(6) a statement explaining how a person may contest the taxing unit's petition as provided by Subsection (j) and that a person's interest in the parcel may be preserved by paying all delinquent taxes, penalties, interest, attorney's fees, and court costs before the date of the scheduled hearing on the petition;

(7) the name, address, and telephone number of the taxing unit and the taxing unit's attorney of record; and

(8) the name of each other taxing unit that imposes taxes on the parcel, together with a notice that any taxing unit may intervene without further notice and set up its claims for delinquent taxes.

(j) A person claiming a property interest in a parcel subject to foreclosure may contest a taxing unit's petition by filing with the clerk of the court a written response to the petition not later than the seventh day before the date scheduled for hearing on the petition and specifying in the response any affirmative defense of the person. A copy of the response must be served on the taxing unit's attorney of record in the manner required by Rule 21a, Texas Rules of Civil Procedure. The taxing unit is entitled on request to a continuance of the hearing if a written response filed to a notice of the hearing contains an affirmative defense or requests affirmative relief against the taxing unit.

(k) Before entry of a judgment under this section, a taxing unit may remove a parcel erroneously included in the petition and may take a voluntary nonsuit as to one or more parcels of property without prejudicing its action against the remaining parcels.

(l) If before the hearing on a taxing unit's petition the taxing unit discovers a deficiency in the provision of notice under this section, the taxing unit shall take reasonable steps in good faith to correct the deficiency before the hearing. A

notice provided by Subsections (g)-(i) is in lieu of citation issued and served under Rule 117a, Texas Rules of Civil Procedure. Regardless of the manner in which notice under this section is given, an attorney ad litem may not be appointed for a person with an interest in a parcel with delinquent taxes, penalties, interest, and attorney's fees against the parcel in an amount that exceeds the parcel's appraised value. To the extent of any additional conflict between this section and the Texas Rules of Civil Procedure, this section controls. Except as otherwise provided by this section, a suit brought under this section is governed generally by the Texas Rules of Civil Procedure and by Subchapters C and D of this chapter.

(m) A judgment in favor of a taxing unit under this section must be only for foreclosure of the tax lien against the parcel. The judgment may not include a personal judgment against any person.

(n) A person is considered to have been provided sufficient notice of foreclosure and opportunity to be heard for purposes of a proceeding under this section if the taxing unit follows the procedures required by this section for notice by certified mail or by publication and posting or if one or more of the following apply:

(1) the person had constructive notice of the hearing on the merits by acquiring an interest in the parcel after the date of the filing of the taxing unit's petition;

(2) the person appeared at the hearing on the taxing unit's petition or filed a responsive pleading or other communication with the clerk of the court before the date of the hearing; or

(3) before the hearing on the taxing unit's petition, the person had actual notice of the hearing.

SECTION 25. Section 42.23, Tax Code, is amended by adding Subsections (d) and (e) to read as follows:

(d) Each party to an appeal is considered a party seeking affirmative relief for the purpose of discovery regarding expert witnesses under the Texas Rules of Civil Procedure if, on or before the 120th day after the date the appeal is filed, the property owner:

(1) makes a written offer of settlement;

(2) requests alternative dispute resolution; and

(3) designates, in response to an appropriate written discovery request, which cause of action under this chapter is the basis for the appeal.

(e) For purposes of Subsection (d), a property owner may designate a cause of action under Section 42.25 or 42.26 as the basis for an appeal, but may not designate a cause of action under both sections as the basis for the appeal. Discovery regarding a cause of action that is not specifically designated by the property owner under Subsection (d) shall be conducted as provided by the Texas Rules of Civil Procedure. The court may enter a protective order to modify the provisions of this subsection under Rule 192.6 of the Texas Rules of Civil Procedure.

SECTION 26. Section 12.002(e), Property Code, is amended to read as follows:

(e) A person may not file for record or have recorded in the county clerk's office a plat or replat of a subdivision of real property unless the plat or replat has attached to it an original tax certificate from each taxing unit with jurisdiction of the real property indicating that no delinquent ad valorem taxes are owed on the real property. This subsection does not apply if:

(1) more than one person acquired the real property from a decedent under a will or by inheritance and those persons owning an undivided interest in the property obtained approval to subdivide the property to provide each person with a divided interest and a separate title to the property; or

(2) a taxing unit acquired the real property for public use through eminent domain proceedings or voluntary sale.

SECTION 27. Subchapter B, Chapter 21, Property Code, is amended by adding Section 21.0211 to read as follows:

Sec. 21.0211. PAYMENT OF AD VALOREM TAXES. (a) A court may not authorize withdrawal of any money deposited under Section 21.021 unless the petitioner for the money files with the court:

(1) a tax certificate issued under Section 31.08, Tax Code, by the tax collector for each taxing unit that imposes ad valorem taxes on the condemned property showing that there are no delinquent taxes, penalties, interest, or costs owing on the condemned property or on any larger tract of which the condemned property forms a part; and

(2) in the case of a whole taking that occurs after the date the ad valorem tax bill for taxes imposed by a taxing unit on the property is sent, a tax receipt issued under Section 31.075, Tax Code, by the tax collector of the taxing unit that imposes ad valorem taxes showing that the taxes on the condemned property for the current tax year, prorated under Section 26.11, Tax Code, have been paid.

(b) For purposes of Subsection (a)(2), a "case of a whole taking" means a case in which the location, size, and boundaries of the property assessed for ad valorem taxes are identical to that of the condemned property.

SECTION 28. Section 17.091(a), Civil Practice and Remedies Code, is amended to read as follows:

(a) In a suit to collect delinquent property taxes by the state or a subdivision of the state in which a person who is a defendant is a nonresident, the secretary of state is an agent for service of process on that defendant if the defendant owns, has, or claims an interest in or a lien against property in this state that is the subject of the suit.

SECTION 29. (a) Section 11.43(m), Tax Code, as added by this Act, applies only to eligibility for an exemption from ad valorem taxation under Section 11.13(c) or (d), Tax Code, for an individual 65 years of age or older for a tax year beginning on or after January 1, 2006.

(b) Section 23.225, Tax Code, as added by this Act, and Section 23.51, Tax Code, as amended by this Act, apply only to the appraisal of land for a tax year that begins on or after January 1, 2006.

(c) Section 31.05(a), Tax Code, as amended by this Act, applies to the adoption of a discount by a taxing unit beginning with the 2005 tax year, except as provided by Subsection (d) of this section.

(d) If a taxing unit's tax bills for the 2005 tax year are mailed before the effective date of this Act, Section 31.05(a), Tax Code, as amended by this Act, applies to the adoption of a discount by the taxing unit beginning with the 2006 tax year, and the law in effect when the bills were mailed applies to the 2005 tax year with respect to that taxing unit.

(e) Section 31.073, Tax Code, as amended by this Act, applies only to payments of taxes, penalties, or interest that are made on or after the effective date of this Act.

(f) Section 32.05, Tax Code, as amended by this Act, applies to any lien, regardless of the date on which it arose, and to any cause of action pending on the effective date of this Act or brought after that date.

(g) Section 33.011, Tax Code, as amended by this Act, applies only to a request for a waiver of penalty or interest made on or after the effective date of this Act. A request for a waiver made before the effective date of this Act is governed by the law as it existed immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

(h) Section 33.02, Tax Code, as amended by this Act, applies to an installment agreement entered before, on, or after the effective date of this Act.

(i) Section 33.22, Tax Code, as amended by this Act, applies only to a tax warrant proceeding pending on the effective date of this Act or brought after that date.

(j) Section 33.23, Tax Code, as amended by this Act, applies only to an installment agreement Section 33.23, Tax Code, as amended by this Act, applies only to a tax warrant issued on or after the effective date of this Act. A tax warrant issued before the effective date of this Act is governed by the law as it existed immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

(k) Section 33.25, Tax Code, as amended by this Act, applies only to a tax warrant proceeding in which the application for a tax warrant was filed on or after the effective date of this Act. A tax warrant proceeding commenced by application before the effective date of this Act is governed by the law as it existed immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

(l) Section 33.48, Tax Code, as amended by this Act, applies only to a cause of action pending on the effective date of this Act or brought after that date.

(m) Section 33.51, Tax Code, as amended by this Act, applies to a writ of possession that is based on a judgment entered before, on, or after the effective date of this Act.

(n) Section 33.57, Tax Code, as added by this Act, applies only to a cause of action pending on the effective date of this Act or brought after the effective date of this Act.

(o) Section 42.23, Tax Code, as amended by this Act, applies only to an appeal of an appraisal review board order if the appeal is filed or amended on or after the effective date of this Act. An appeal filed or amended before the effective date of this Act is covered by the law in effect when the appeal was filed or amended, and the former law is continued in effect for that purpose.

(p) Section 12.002(e), Property Code, as amended by this Act, applies only to a plat or replat of a subdivision that is filed for recordation on or after the effective date of this Act. A plat or replat of a subdivision that was filed for recordation before the effective date of this Act is governed by the law in effect immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

(q) Section 21.0211, Property Code, as added by this Act, applies only to an eminent domain proceeding that is commenced on or after the effective date of this Act. An eminent domain proceeding commenced before the effective date of this Act is governed by the law as it existed immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

(r) Section 17.091, Civil Practice and Remedies Code, as amended by this Act, applies only to a cause of action pending on the effective date of this Act or brought after the effective date of this Act.

SECTION 30. This Act takes effect September 1, 2005.

Representative Puente moved to adopt the conference committee report on **HB 2491**.

The motion to adopt the conference committee report on **HB 2491** 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: Riddle recorded voting no.)

(P. King in the chair)

HB 2421 - RULES SUSPENDED

Representative Chavez moved to suspend all necessary rules to consider the conference committee report on **HB 2421** at this time.

The motion prevailed.

HB 2421 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Chavez submitted the following conference committee report on **HB 2421** :

Austin, Texas, May 28, 2005

The Honorable David Dewhurst
President of the Senate

The Honorable Tom Craddick
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the senate and the house of representatives on **HB 2421** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Zaffirini	Chavez
West, Royce	Ritter
Fraser	Morrison
Shapiro	Seaman
Carona	
On the part of the senate	On the part of the house

HB 2421, A bill to be entitled An Act relating to the use of an employer assessment to fund the Texas Enterprise Fund and the skills development program and authorizing the Texas Workforce Commission to develop new job incentive programs.

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

SECTION 1. Section 204.006(a), Labor Code, is amended to read as follows:

(a) A person's contribution rate for the calendar year in which the person becomes an employer is the greater of:

(1) the rate established for that year for the major group to which the employer is assigned under Section 204.004, less one-tenth of one percent; or

(2) two and six-tenths [~~seven-tenths~~] percent.

SECTION 2. Subchapter D, Chapter 204, Labor Code, is amended by adding Section 204.0625 to read as follows:

Sec. 204.0625. ADJUSTMENT TO REPLENISHMENT TAX RATE. On and after January 1, 2006, the replenishment tax rate computed under Section 204.062 shall be adjusted to a rate computed by subtracting one-tenth of one percent from the percentage computed under Section 204.062(a).

SECTION 3. Chapter 204, Labor Code, is amended by adding Subchapter G to read as follows:

SUBCHAPTER G. EMPLOYMENT AND TRAINING INVESTMENT ASSESSMENT; FUNDS

Sec. 204.121. EMPLOYMENT AND TRAINING INVESTMENT ASSESSMENT. (a) In addition to any other taxes imposed under this subtitle, an employment and training investment assessment is imposed on or after January 1, 2006, on each employer paying contributions under this subtitle as a separate assessment of one-tenth of one percent of wages paid by the employer.

(b) The commission shall deposit the revenue from the employment and training investment assessment to the credit of the holding fund created under Section 204.122.

(c) The employment and training investment assessment is due at the same time, collected in the same manner, and subject to the same penalties and interest as other contributions assessed under this subtitle.

Sec. 204.122. HOLDING FUND. (a) The employment and training investment holding fund is a special trust fund outside of the state treasury in the custody of the comptroller separate and apart from all public money or funds of this state.

(b) The comptroller shall administer the holding fund in accordance with the directions of the commission. Interest accruing on amounts in the holding fund shall be deposited quarterly to the credit of the compensation fund.

Sec. 204.123. TRANSFER TO TEXAS ENTERPRISE FUND, SKILLS DEVELOPMENT FUND, TRAINING STABILIZATION FUND, AND COMPENSATION FUND. (a) If, on September 1 of a year, the commission determines that the amount in the compensation fund will exceed 100 percent of its floor as computed under Section 204.061 on the next October 1 computation date, the commission shall transfer from the holding fund created under Section 204.122:

(1) from the first $160 million deposited in the holding fund in any state fiscal biennium:

(A) during the state fiscal biennium ending August 31, 2007:

(i) 67 percent to the Texas Enterprise Fund created under Section 481.078, Government Code, except that the amount transferred under this paragraph may not exceed the amount appropriated by the legislature to the Texas Enterprise Fund in that biennium; and

(ii) 33 percent to the skills development fund created under Section 303.003, except that the amount transferred under this paragraph may not exceed the amount appropriated by the legislature to the skills development program strategies and activities in that biennium; and

(B) during any state fiscal biennium beginning on or after September 1, 2007:

(i) 75 percent to the Texas Enterprise Fund created under Section 481.078, Government Code, except that the amount transferred under this paragraph may not exceed the amount appropriated by the legislature to the Texas Enterprise Fund in that biennium; and

(ii) 25 percent to the skills development fund created under Section 303.003, except that the amount transferred under this paragraph may not exceed the amount appropriated by the legislature to the skills development program strategies and activities in that biennium; and

(2) any remaining amount in the holding fund after the distribution under Subdivision (1) to the training stabilization fund created under Section 302.101.

(b) If, on September 1 of a year, the commission determines that the amount in the compensation fund will be at or below 100 percent of its floor as computed under Section 204.061 on the next October 1 computation date, the commission shall transfer to the compensation fund as much of the amount in the holding fund as is necessary to raise the amount in the compensation fund to 100 percent of its floor, up to and including the entire amount in the holding fund. The

commission shall transfer any remaining balance in the holding fund to the Texas Enterprise Fund, the skills development fund, and the training stabilization fund in the percentages prescribed by Subsection (a).

SECTION 4. Chapter 302, Labor Code, is amended by adding Subchapter F to read as follows:

SUBCHAPTER F. EMPLOYMENT AND TRAINING INVESTMENT ASSESSMENT

Sec. 302.101. TRAINING STABILIZATION FUND. (a) The training stabilization fund is established as a special trust fund outside of the state treasury in the custody of the comptroller separate and apart from all public money or funds of this state. The fund is composed of:

(1) money deposited to the fund under Section 204.123; and

(2) any other money received for deposit in the fund.

(b) Money in the training stabilization fund may be used in a year in which the amounts in the employment and training investment holding fund are insufficient to meet the legislative appropriation for that fiscal year for either the Texas Enterprise Fund or the skills development program strategies and activities.

(c) Money in the training stabilization fund shall be transferred to the Texas Enterprise Fund and the skills development fund under Subsection (b) not later than September 30. The transfer under Subsection (b) shall consist of transferring 67 percent of the money in the training stabilization fund to the Texas Enterprise Fund and 33 percent of the money in the training stabilization fund to the skills development fund. The amount transferred from the training stabilization fund may not exceed the amounts appropriated to the Texas Enterprise Fund and skills development program strategies and activities in the fiscal year in which the transfer is made.

(d) Interest that accrues on the money in the training stabilization fund shall be deposited quarterly to the credit of the compensation fund.

SECTION 5. Chapter 303, Labor Code, is amended by adding Section 303.0035 to read as follows:

Sec. 303.0035. USE OF MONEY IN HOLDING FUND (GENERAL REVENUE ACCOUNT 5069) FOR SKILLS DEVELOPMENT. Money in the holding fund (general revenue account 5069) may be used only for the purposes for which the money in the skills development fund created under Section 303.003 may be used.

SECTION 6. Section 303.005, Labor Code, is amended to read as follows:

Sec. 303.005. PARTICIPATION IN ADDITIONAL PROGRAMS; APPLICATION REQUIREMENTS; PRIORITY. (a) An employer may not apply both to a public community or technical college for customized training and assessment from the college through a grant issued to the college under the skills development fund program established under this chapter and for a grant under the Texas Enterprise Fund [~~smart jobs fund~~] program established under Subchapter E [~~J~~], Chapter 481, Government Code, unless the employer and the college file an application for concurrent participation in both programs that complies with any rules adopted by the Texas Workforce Commission on concurrent participation [~~Section 481.1565, Government Code~~].

(b) In awarding any grant under this chapter, the commission shall consider giving priority to training incentives for small businesses.

SECTION 7. Section 2308.308, Government Code, is amended to read as follows:

Sec. 2308.308. PUBLIC COMMUNITY COLLEGE. A public community college shall promptly provide workforce training and services that are requested:

(1) by a board if the need for the training and services is based on the labor market information system available for the area;

(2) by employers located in the college's taxing district when the request is presented directly to the college by the employers or through the board; or

(3) as part of economic development incentives designed to attract or retain an employer, including incentives offered under the skills development [~~smart jobs~~] fund program under [~~Subchapter J,~~] Chapter 303, Labor Code [~~481~~].

SECTION 8. The change in law made by this Act to Section 204.006(a), Labor Code, takes effect January 1, 2006.

SECTION 9. Except as provided by Section 8 of 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.

Representative Chavez moved to adopt the conference committee report on **HB 2421**.

A record vote was requested.

The motion to adopt the conference committee report on **HB 2421** prevailed by (Record 973): 140 Yeas, 1 Nays, 3 Present, not voting.

Yeas — Allen, A.; Allen, R.; Alonzo; Anchia; Bailey; Baxter; Berman; Blake; Bohac; Bonnen; Branch; 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; Driver; Dukes; Dunnam; Dutton; 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; Hegar; Herrero; Hilderbran; Hill; Hochberg; Hodge; Homer; Hopson; Hughes; Hunter; Hupp; Isett; Jackson; Jones, D.; Jones, J.; Keel; Keffer, B.; Keffer, J.; 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; Talton; Taylor; Thompson; Truitt; Turner; Uresti; Van Arsdale; Veasey; Villarreal; Vo; West; Wong; Woolley; Zedler.

Nays — Swinford.

Present, not voting — Mr. Speaker; Howard; King, P.(C).

Absent, Excused — Goodman.

Absent — Anderson; Callegari; Deshotel; Hope.

STATEMENTS OF VOTE

When Record No. 973 was taken, I was in the house but away from my desk. I would have voted yes.

Anderson

When Record No. 973 was taken, I was in the house but away from my desk. I would have voted yes.

Deshotel

I was shown voting no on Record No. 973. I intended to vote yes.

Swinford

I was shown voting yes on Record No. 973. I intended to vote no.

Zedler

HB 183 - HOUSE DISCHARGES CONFEREES
HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS

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

HB 183, A bill to be entitled An Act relating to the prosecution of offenses involving the use of safety belts and child passenger safety seat systems.

Representative F. Brown moved to discharge the conferees and concur in the senate amendments to **HB 183**.

A record vote was requested.

The motion to discharge conferees and concur in senate amendments prevailed by (Record 974): 134 Yeas, 8 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; Crownover; Davis, J.; Davis, Y.; Dawson; Delisi; Denny; Driver; Dukes; Dunnam; Dutton; 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; Hartnett; Hegar; Herrero; Hilderbran; Hill; Hochberg; Hodge; Homer; Hopson; Howard; Hughes; Hunter; Hupp; Isett; Jackson; Jones, D.; Jones, J.; Keel; Keffer, J.; 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; Phillips; Pickett; Pitts;

Puente; Quintanilla; Raymond; Riddle; Ritter; Rodriguez; Rose; Smith, T.; Smith, W.; Smithee; Solis; Solomons; Strama; Straus; Swinford; Taylor; Thompson; Truitt; Turner; Uresti; Van Arsdale; Veasey; Villarreal; Vo; West; Wong; Woolley.

Nays — Crabb; Harper-Brown; Keffer, B.; Paxton; Reyna; Seaman; Talton; Zedler.

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

Absent, Excused — Goodman.

Absent — Anderson; Deshotel; Hope; Peña.

STATEMENTS OF VOTE

When Record No. 974 was taken, I was in the house but away from my desk. I would have voted yes.

Anderson

I was shown voting yes on Record No. 974. I intended to vote no.

R. Cook

I was shown voting yes on Record No. 974. I intended to vote no.

Crownover

When Record No. 974 was taken, I was in the house but away from my desk. I would have voted yes.

Deshotel

I was shown voting yes on Record No. 974. I intended to vote no.

Hilderbran

I was shown voting yes on Record No. 974. I intended to vote no.

Kolkhorst

When Record No. 974 was taken, I was in the house but away from my desk. I would have voted yes.

Peña

I was shown voting yes on Record No. 974. I intended to vote no.

Ritter

I was shown voting yes on Record No. 974. I intended to vote no.

Swinford

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

Amend **HB 183** by striking below the enabling clause and substituting the following:

SECTION 1. Section 545.412(a), Transportation Code, as amended by Chapters 618 and 910, Acts of the 77th Legislature, Regular Session, 2001, is reenacted and amended to read as follows:

(a) A person commits an offense if the person operates a passenger vehicle, transports a child who is younger than five [~~four~~] years of age and [~~or~~] less than 36 inches in height, and does not keep the child secured during the operation of the vehicle in a child passenger safety seat system according to the instructions of the manufacturer of the safety seat system.

SECTION 2. Section 545.412(e), Transportation Code, is amended to read as follows:

(e) This section does not apply to a person:

(1) operating a vehicle transporting passengers for hire, including third party transport service providers when transporting clients pursuant to a contract to provide nonemergency Medicaid transportation; or

(2) transporting a child in a vehicle in which all seating positions equipped with child passenger safety seat systems or safety belts are occupied.

SECTION 3. Section 545.413(b), Transportation Code, is amended to read as follows:

(b) A person commits an offense if the person:

(1) operates a passenger vehicle that is equipped with safety belts; and

(2) allows a child who is [~~at least five years of age but~~] younger than 17 years of age [~~or who is younger than five years of age~~] and who is not required to be secured in a child passenger safety seat system under Section 545.412(a) [~~at least 36 inches in height~~] to ride in the vehicle without requiring the child to be secured by a safety belt, provided the child is occupying a seat that is equipped with a safety belt.

SECTION 4. (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 the purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before that date.

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

SECTION 5. This Act takes effect September 1, 2005.

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

Amend Senator Staples Amendment No. 1 to **HB 183** by adding the following appropriately numbered sections to the bill and renumbering subsequent sections of the bill accordingly:

SECTION __. Subchpater I, Chapter 545, Transportation Code, is amended by adding Section 545.4121 to read as follows:

Sec. 545.4121. DEFENSE; POSSESSION OF CHILD PASSENGER SAFETY SEAT SYSTEM. (a) This section applies to an offense committed under Section 545.412.

(b) It is an defense to prosecution of an offense to which this section applies that the defendant provides to the court evidence satisfactory to the court that the defendant possesses an appropriate child passenger safety seat system for each child requried to be secured in a child passenger safety seat system under Section 545.412(a).

SECTION __.

(a) The Department of Public Safety of the State of Texas shall conduct a study regarding legislative options to improve child passenger safety laws.

(b) In completing the study, the Department of Public Safety of the State of Texas shall seek input from:

(1) state agencies charged with developing child passenger laws;

(2) advocates for child safety;

(3) volunteer organizations providing child safety services to children;

(4) parents;

(5) automobile manufacturers and child passenger safety seat manufacturers; and

(6) other appropriate persons as determined by the department.

(c) The study must include:

(1) whether there are public safety benefits to increasing the age, height, or weight requirements for children to ride in a vehicle properly secured in a safety seat;

(2) the need for a grace period for drivers to learn of a potential change in child passenger safety seat laws;

(3) potential reduction of health care costs to treat seatbelt and other related injuries to children if child passenger safety laws are changed;

(4) options to educate parents and educators about the importance of child passenger safety laws; and

(5) other states' child safety laws;

(d) The Department of Public Safety of the State of Texas shall complete the study and report to the legislature on or before September 1, 2006.

(e) This SECTION expires September 1, 2007.

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

Amend Floor Amendment No. 1 (Staples) to **HB 183** by adding the following appropriately numbered SECTIONS to the amendment and renumbering subsequent SECTIONS of the bill accordingly:

SECTION ___. Section 45.0511, Code of Criminal Procedure, is amended by adding Subsection (u) to read as follows:

(u) The requirement of Subsection (b)(2) does not apply to a defendant charged with an offense under Section 545.412, Transportation Code, if the judge requires the defendant to attend and present proof that the defendant has successfully completed a specialized driving safety course that includes four hours of instruction that encourages the use of child passenger safety seat systems, and any driving safety course taken by the defendant under this section within the 12 months preceding the date of the offense did not include that training. The person's driving record under Subsection (c)(2) and the affidavit of the defendant under Subsection (c)(3) is required to include only previous or concurrent course that included that training.

SECTION ___. Section 708.052, Transportation Code, is amended by adding Subsection (f) to read as follows:

(f) For the purposes of this section, an offense under Section 545.412 is a moving violation of a traffic law.

HR 2249 - ADOPTED
(by Bonnen)

The following privileged resolution was laid before the house:

HR 2249

BE IT RESOLVED by the House of Representatives of the State of Texas, 79th Legislature, Regular Session, 2005, That House Rule 13, Section 9(a), be suspended in part as provided by House Rule 13, Section 9(f), to enable the conference committee appointed to resolve the differences on **HB 2793**, relating to the removal and collection of convenience switches from motor vehicles, to consider and take action on the following matters:

(1) House Rule 13, Sections 9(a)(1) and (2) are suspended to permit the committee to change "375.004" to "375.003" in newly added Subchapter A of Chapter 375, Health and Safety Code, and to omit added Section 375.003, Health and Safety Code:

Sec. 375.003. PURPOSE; COMMISSION AUTHORITY TO AMEND PROCEDURES. (a) It is the purpose of this chapter to establish a convenience switch recovery program for this state that is recognized by the United States Environmental Protection Agency as a method of compliance with regulations promulgated under Section 112 of the federal Clean Air Act (42 U.S.C. Section 7412) to the extent that the regulations recognize state convenience switch recovery programs as a method of compliance.

(b) Consistent with the purpose expressed in Subsection (a), the commission may amend procedures adopted to implement this chapter to include additional program elements paid for from the convenience switch recovery account established under Section 375.251 if, after January 1, 2007, the attorney general certifies that the state will not have a recognized program without implementing those additional elements based on:

(1) information included in the annual implementation report required under Section 375.151; and

(2) a final written guidance document or rule, including a preamble to the guidance document or rule, developed for Section 112 of the federal Clean Air Act (42 U.S.C. Section 7412) and provided by the United States Environmental Protection Agency.

Explanation: This change is necessary to eliminate the purpose statement for the chapter and the authority of the commission to amend program procedures.

(2) House Rule 13, Section 9(a)(1) is suspended to permit the committee to change added Section 375.101, Health and Safety Code to read as follows:

Sec. 375.101. REMOVAL AND MANAGEMENT OF CONVENIENCE SWITCHES. (a) A vehicle recycler or scrap metal recycling facility that removes convenience switches from eligible vehicles in accordance with educational materials received under this chapter shall be provided regulatory incentives by the commission under programs implemented pursuant to Section 5.755, Water Code, including on-site technical assistance and compliance history classification adjustments.

(b) In order to qualify for the regulatory incentives provided by this Section, a vehicle recycler or scrap metal recycling facility must submit a report to the commission by November 15 of each year documenting:

(1) the number of convenience switches collected during the prior 12 months; and

(2) the total number of eligible vehicles processed for recycling during the same time period.

(c) Nothing in this chapter shall be construed to require scrap metal recycling facilities or vehicle recyclers to remove convenience switches or maintain records regarding convenience switches they have not removed, and the commission shall not promulgate regulations that create such requirements.

Explanation: This change is necessary in order for the convenience switch recovery program to be implemented as a voluntary program.

(3) House Rule 13, Section 9(a)(2) is suspended to permit the committee to omit the following Sections from newly added Chapter 375, Health and Safety Code that were included in both the house and senate versions:

Sec. 375.102. VEHICLE RECYCLER AND SCRAP METAL RECYCLING FACILITY RECORDS. (a) A vehicle recycler or scrap metal recycling facility that removes convenience switches under Section 375.101 shall maintain records documenting:

(1) the number of convenience switches collected;

(2) the total number of end-of-life vehicles processed for recycling; and

(3) the number of convenience switches that were inaccessible because of damage to the end-of-life vehicle.

(b) A vehicle recycler that removes convenience switches shall note on the inventory receipt for surrendered certificates of title or other evidence of ownership required to be maintained under Chapter 2302, Occupations Code, the following additional information:

(1) whether a vehicle for which title or other evidence of ownership was surrendered was an eligible vehicle; and

(2) a certification that all identified convenience switches were recovered and placed in containers specified by the applicable convenience switch recovery program.

Sec. 375.103. LIMITATION ON DUTIES OF VEHICLE RECYCLER OR SCRAP RECYCLING FACILITY. (a) The commission may not require a vehicle recycler or scrap metal recycling facility to undertake any action beyond the actions reasonably arising from obligations created under this chapter.

(b) A summary of the records required under Section 375.102 must be reported to the commission by September 1 of each year.

Sec. 375.104. HONEST CONVEYANCE; RECEIPT OF VEHICLE. (a) A person may not represent that a convenience switch has been removed from an end-of-life vehicle being conveyed for recycling or other processing unless that person:

(1) removed the convenience switch; or

(2) has good cause to believe that another person removed the convenience switch.

(b) A scrap metal recycling facility or other person that acquires scrap metal, including scrap metal in the form of an intentionally flattened, crushed, shredded, or baled vehicle, is not considered to be in violation of this subchapter solely because a convenience switch is found in the scrap metal after acquisition.

Explanation: This change is necessary to eliminate language governing recordkeeping requirements and other obligations of vehicle recyclers and scrap metal recycling facilities and to make other conforming changes necessary to implement the convenience switch recovery program as a voluntary program.

(4) House Rule 13, Section 9(a)(1) is suspended to permit the committee to change added Section 375.151(a), Health and Safety Code to read as follows:

Sec. 375.151. ANNUAL IMPLEMENTATION REPORT. (a) On or before December 31 of each year, the commission shall:

(1) publish a report that documents the capture rate achieved through the implementation of this chapter; and

(2) issue recommendations to the governor, the lieutenant governor, the speaker of the house of representatives, and the chair of each standing committee of the legislature with jurisdiction over environmental issues, which identifies legislative action that may be appropriate to improve the capture rate referenced in Subsection (a)(1) while promoting vehicle recycling and preventing the export of scrap metal from the state.

Explanation: This change is necessary to change the reporting requirements to reflect the implementation of the convenience switch recovery program as a voluntary program and the elimination of the mandatory recordkeeping requirements for vehicle recyclers and scrap metal recycling facilities.

(5) House Rule 13, Section 9(a)(1), is suspended to permit the committee to change "January" to "November" and "calendar year" to "12 months" in added Section 375.152, Health and Safety Code.

Explanation: This change is necessary to ensure that the annual manufacturer's report is provided to the commission before the commission is required to publish its annual implementation report.

(6) House Rule 13, Section 9(a)(1) is suspended to permit the committee to omit the following language from newly added Chapter 375, Health and Safety Code, that was included in both the house and senate versions:

SUBCHAPTER E. PENALTIES AND ENFORCEMENT

Sec. 375.201. PENALTIES AND ENFORCEMENT. A person who violates a provision of this chapter, or a rule or order issued under this chapter, is subject to the penalty and enforcement provisions of Chapter 7, Water Code.

Explanation: This change is necessary as a conforming change to reflect the implementation of the convenience switch recovery program as a voluntary program.

(7) House Rule 13, Section 9(a)(2) is suspended to permit the committee to omit the following section of the bill amending Section 386.252, Health and Safety Code, which was included in both the house and senate versions:

SECTION 2. Section 386.252, Health and Safety Code, is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

(a) Except as provided by Subsection (c), money [Money] in the fund may be used only to implement and administer programs established under the plan and shall be allocated as follows:

(1) for the diesel emissions reduction incentive program, 87.5 percent of the money in the fund, of which not more than 10 percent may be used for on-road diesel purchase or lease incentives;

(2) for the new technology research and development program, 9.5 percent of the money in the fund, of which up to $250,000 is allocated for administration, up to $200,000 is allocated for a health effects study, $500,000 is to be deposited in the state treasury to the credit of the clean air account created under Section 382.0622 to supplement funding for air quality planning activities in affected counties, and not less than 20 percent is to be allocated each year to support research related to air quality for the Houston-Galveston-Brazoria and Dallas-Fort Worth nonattainment areas by a nonprofit organization based in Houston; and

(3) for administrative costs incurred by the commission and the laboratory, three percent.

(c) Except as provided by Section 375.003(b), this subsection takes effect only if the attorney general certifies that the United States Environmental Protection Agency has promulgated final regulations under Section 112 of the federal Clean Air Act (42 U.S.C. Section 7412) that recognize state convenience switch recovery programs as a method of compliance with those final regulations and that require an incentive as provided by Section 375.055 for a program's approval by the United States Environmental Protection Agency. If the attorney general's certification is made before September 1, 2006, money collected but not appropriated for any program or activity under Subsection (a) for the fiscal year beginning September 1, 2005, shall be reallocated to the convenience switch recovery account established under Section 375.251 on or before the 90th day after the date of the certification and not later than August 31, 2006, in an amount not to exceed $24 million. If the attorney general's certification is made on or after September 1, 2006, or the attorney general's certification under Section 375.003 is made on or after January 1, 2007, money collected but not appropriated for any program or activity under Subsection (a) for the fiscal year immediately preceding the fiscal year in which the certification occurs shall be reallocated to the convenience switch recovery account established under Section 375.251 on or before the 90th day after the date of the certification and not later than August 31 of the fiscal year in which the certification occurs in an amount not to exceed $24 million. If after an attorney general's certification is made, the amount collected and reallocated to the convenience switch recovery account is less than $24 million, additional reallocations of money collected in excess of the amounts appropriated for any program or activity under Subsection (a) to the convenience switch recovery account shall occur before November 1 of each fiscal year after the fiscal year of the initial reallocation until the total cumulative amount reallocated equals $24 million.

Explanation: This change is necessary to eliminate the use of a portion of the unexpended balance of the Texas emissions reduction plan fund to fund the convenience switch recovery program.

HR 2249 was adopted.

HB 2793 - RULES SUSPENDED

Representative Bonnen moved to suspend all necessary rules to consider the conference committee report on **HB 2793** at this time.

The motion prevailed.

HB 2793 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Bonnen submitted the following conference committee report on **HB 2793** :

Austin, Texas, May 28, 2005

The Honorable David Dewhurst
President of the Senate

The Honorable Tom Craddick
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the senate and the house of representatives on **HB 2793** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Jackson	Bonnen
Harris	Homer
Lucio	T. King
Shapleigh	Kuempel
On the part of the senate	On the part of the house

HB 2793, A bill to be entitled An Act relating to the removal and collection of convenience switches from motor vehicles.

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

SECTION 1. Subtitle B, Title 5, Health and Safety Code, is amended by adding Chapter 375 to read as follows:

CHAPTER 375. REMOVAL OF CONVENIENCE SWITCHES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 375.001. DEFINITIONS. In this chapter:

(1) "Capture rate" means the annual number of convenience switches removed, collected, and recovered, expressed as a percentage of the number of convenience switches estimated to be available for removal in that year from end-of-life vehicles.

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

(3) "Convenience switch" means a capsule, commonly known as a bullet, that:

(A) is part of a convenience light switch assembly; and

(B) because of its mercury content, is the type of switch subject to work practice standards promulgated by the United States Environmental Protection Agency under Section 112 of the federal Clean Air Act (42 U.S.C. Section 7412).

(4) "Convenience switch recovery program" means a program for removing, collecting, and recovering convenience switches from end-of-life vehicles in accordance with Subchapter B.

(5) "Eligible vehicle" means a vehicle identified by information provided by the manufacturer to the commission under Section 375.051 as a vehicle that might contain a convenience switch.

(6) "End-of-life vehicle" means a vehicle that:

(A) has not been intentionally flattened, crushed, shredded, or baled; and

(B) is sold, given, or otherwise conveyed to a vehicle recycler or scrap metal recycling facility for the purpose of recycling.

(7) "Executive director" means the executive director of the commission.

(8) "Manufacturer" means:

(A) a person who is the last entity in the production or assembly process of a new vehicle; or

(B) the importer or domestic distributor of the vehicle, in the case of an imported vehicle.

(9) "Scrap metal recycling facility" means a facility at a fixed location that uses equipment to process and refabricate scrap metal into prepared grades and principally produces scrap iron, scrap steel, or nonferrous metallic scrap for sale.

(10) "Vehicle" means any automobile, station wagon, truck, van, or sport utility vehicle with a gross vehicle weight rating of less than 12,000 pounds.

(11) "Vehicle recycler" means a person engaged in the business of acquiring, dismantling, or preparing for recycling six or more end-of-life vehicles in a calendar year for the primary purpose of reselling the vehicles' parts. The term includes a salvage vehicle dealer licensed under Chapter 2302, Occupations Code.

Sec. 375.002. APPLICABILITY OF CHAPTER. (a) This chapter applies only to:

(1) a manufacturer of vehicles sold in this state that contain or contained convenience switches; and

(2) a vehicle recycler or scrap metal recycling facility in this state.

(b) The requirements of this chapter do not apply to a manufacturer on or after the 10th anniversary of the date on which the manufacturer last installed a convenience switch in a vehicle sold in this state.

Sec. 375.003. EXPIRATION. This chapter expires August 31, 2015.

[Sections 375.004-375.050 reserved for expansion]

SUBCHAPTER B. CONVENIENCE SWITCH RECOVERY PROGRAM

Sec. 375.051. MANUFACTURER PROGRAM COMPONENTS. (a) Each manufacturer of vehicles sold in this state, individually or as part of a group, shall, not later than January 1, 2006, implement a program that provides the following:

(1) information identifying that manufacturer's eligible vehicles, including:

(A) a description of the convenience switches used by the manufacturer;

(B) the location on each vehicle of each convenience switch;

(C) the safe and environmentally sound methods for removing a convenience switch from an end-of-life vehicle; and

(D) the estimated number of convenience switches available, for purposes of computing the capture rate;

(2) educational materials to assist a vehicle recycler or scrap metal recycling facility in following a safe and environmentally sound method to remove convenience switches from end-of-life vehicles, including educational materials on hazards presented by the content of a convenience switch and the proper handling of that content;

(3) methods for recycling or disposing of the manufacturer's convenience switches, including the method of packaging and shipping a convenience switch to an authorized recycling, storage, or disposal facility; and

(4) methods for the storage of a convenience switch collected and recovered from an end-of-life vehicle if environmentally appropriate recycling or disposal technologies are not available.

(b) To the extent possible, a convenience switch recovery program must use existing end-of-life vehicle infrastructure. If that infrastructure is not used, the program must include reasons for establishing a separate infrastructure.

Sec. 375.052. PACKAGING, SHIPPING, AND RECYCLING COSTS. Each manufacturer, individually or as part of a group, shall pay the costs of:

(1) packaging and shipping of the manufacturer's convenience switches to recycling, storage, or disposal facilities; and

(2) recycling, storing, or disposing of the manufacturer's removed convenience switches.

Sec. 375.053. COSTS OF EDUCATIONAL MATERIALS. Each manufacturer shall provide financing for:

(1) the preparation of educational materials required under Section 375.051; and

(2) the distribution of those materials at workshops that the commission is required to conduct as part of the commission's technical assistance.

Sec. 375.054. PROVISION OF STORAGE CONTAINERS. Each manufacturer, individually or as part of a group, shall pay for and provide to each vehicle recycler and scrap metal recycling facility containers suitable for the safe storage of convenience switches, including switches encased in light assemblies from which the switches cannot be removed.

[Sections 375.055-375.100 reserved for expansion]

SUBCHAPTER C. CONVENIENCE SWITCH RECOVERY PROGRAM IMPLEMENTATION

Sec. 375.101. REMOVAL AND MANAGEMENT OF CONVENIENCE SWITCHES. (a) A vehicle recycler or scrap metal recycling facility that removes convenience switches from eligible vehicles in accordance with educational materials received under this chapter shall be provided regulatory incentives by the commission under programs implemented pursuant to Section 5.755, Water Code, including on-site technical assistance and compliance history classification adjustments.

(b) In order to qualify for the regulatory incentives provided by this section, a vehicle recycler or scrap metal recycling facility must submit a report to the commission by November 15 of each year documenting:

(1) the number of convenience switches collected during the prior 12 months; and

(2) the total number of eligible vehicles processed for recycling during the same time period.

(c) Nothing in this chapter shall be construed to require scrap metal recycling facilities or vehicle recyclers to remove convenience switches or maintain records regarding convenience switches they have not removed, and the commission shall not promulgate regulations that create such requirements.

Sec. 375.102. HANDLING OF CONVENIENCE SWITCHES. After removal from a vehicle, a convenience switch shall be collected, stored, transported, and otherwise handled in accordance with:

(1) the applicable convenience switch recovery program; and

(2) the applicable solid waste rules of the commission.

[Sections 375.103-375.150 reserved for expansion]

SUBCHAPTER D. REPORTS

Sec. 375.151. ANNUAL IMPLEMENTATION REPORT. (a) On or before December 31 of each year, the commission shall:

(1) publish a report that documents the capture rate achieved through the implementation of this chapter; and

(2) issue recommendations to the governor, the lieutenant governor, the speaker of the house of representatives, and the chair of each standing committee of the legislature with jurisdiction over environmental issues, which identifies legislative action that may be appropriate to improve the capture rate referenced in Subsection (a)(1) while promoting vehicle recycling and preventing the export of scrap metal from the state.

(b) The executive director may discontinue the requirement for an annual report under this section if the executive director determines that the convenience switches in end-of-life vehicles no longer pose a significant threat to the environment or to public health.

Sec. 375.152. ANNUAL MANUFACTURER'S IMPLEMENTATION REPORT. On or before November 15 of each year, each manufacturer, individually or as part of a group, shall report to the commission the total number

of convenience switches recovered in this state and the total amount of mercury, by weight, recovered from those convenience switches during the preceding 12 months.

SECTION 2. (a) The Texas Commission on Environmental Quality shall adopt rules for regulating a convenience switch, as defined by Section 375.001, Health and Safety Code, as added by this Act, as universal waste under 30 T.A.C. Section 335.261.

(b) Until rules have been adopted and promulgated under Subsection (a) of this section, the Texas Commission on Environmental Quality shall regulate a convenience switch, as defined by Section 375.001, Health and Safety Code, as added by this Act, as a universal waste in accordance with 40 C.F.R. Part 273, and as incorporated by reference in 30 T.A.C. Section 335.261.

SECTION 3. Not later than the 60th day after the effective date of this Act, individually or as part of a group, a manufacturer shall provide containers as required by Section 375.054, Health and Safety Code, as added by this Act, to each vehicle recycler and scrap metal recycling facility identified by the Texas Commission on Environmental Quality.

SECTION 4. The initial report described by Section 375.151, Health and Safety Code, as added by this Act, shall be published as required by that section on or before December 31, 2006.

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 August 29, 2005.

Representative Bonnen moved to adopt the conference committee report on **HB 2793**.

The motion to adopt the conference committee report on **HB 2793** 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.)

SB 988 - RULES SUSPENDED

Representative Flynn moved to suspend all necessary rules to consider the conference committee report on **SB 988** at this time.

The motion prevailed.

SB 988 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Flynn submitted the conference committee report on **SB 988**.

Representative Flynn moved to adopt the conference committee report on **SB 988**.

The motion to adopt the conference committee report on **SB 988** 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.)

SB 1189 - RULES SUSPENDED

Representative Hartnett moved to suspend all necessary rules to consider the conference committee report on **SB 1189** at this time.

The motion prevailed.

SB 1189 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Hartnett submitted the conference committee report on **SB 1189**.

SB 1189 - STATEMENT OF LEGISLATIVE INTENT

REPRESENTATIVE ESCOBAR: Chairman Hartnett, I really appreciate the work you put into this bill, and your committee was very receptive of a bill I brought to committee that was very important to my district, because for 25 years the people of Claybrook County have been requesting a district court of its own, is this correct?

REPRESENTATIVE HARTNETT: That's correct.

ESCOBAR: I just want everybody to understand that throughout this session, I heard a lot of discussion about being tough on crime, about trying to put a stop to drug trafficking in our country, and the district court in Claybrook County is located on the Gulf Cartels which is one of the major cartels of drug trafficking into the United States, and I just wanted to make sure that everyone understood if we are going to be tough on crime, we've got to look at everything and not be political about it. This particular court would have been—in that position—it would have helped the people, because we do have the sarita checkpoint, a border patrol checkpoint, that handles many cases. Many of those cases are turned over to the state to be prosecuted in state court, and you know very well, sir, that I had a point of order to kill this bill, is this correct?

HARTNETT: That's my understanding.

ESCOBAR: Okay, sir, I also respect what you have done to help me out with this so, because of your respect, and the committee, and the members of this house who worked so hard to help me out with that bill, I will not bring that point of order and I thank you for your time.

HARTNETT: We all appreciate that. And I want to say, I have never seen a representative work so hard on trying to get a court for their district, and I hope you'll keep up the fight.

Representative Hartnett moved to adopt the conference committee report on **SB 1189**.

The motion to adopt the conference committee report on **SB 1189** 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.)

HB 2221 - RULES SUSPENDED

Representative Luna moved to suspend all necessary rules to consider the conference committee report on **HB 2221** at this time.

The motion prevailed.

HB 2221 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Luna submitted the following conference committee report on **HB 2221** :

Austin, Texas, May 28, 2005

The Honorable David Dewhurst
President of the Senate

The Honorable Tom Craddick
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the senate and the house of representatives on **HB 2221** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

West, Royce	Luna
Carona	Morrison
Hinojosa	Turner
Shapiro	Callegari
Williams	Seaman
On the part of the senate	On the part of the house

HB 2221, A bill to be entitled An Act relating to the territory of a public junior college district and to the provision of services by a junior college district to students residing outside the district.

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

SECTION 1. Subchapter A, Chapter 130, Education Code, is amended by adding Section 130.00311 to read as follows:

Sec. 130.00311. METHODS OF INCLUSION OR PARTICIPATION IN JUNIOR COLLEGE DISTRICT. (a) The following are methods that may be used to be included in or to participate in a junior college district:

(1) the registered voters of territory that is not located in a junior college district may petition to join an existing junior college district or to establish a new junior college district under the other provisions of this chapter; or

(2) a junior college district may enter into an agreement with an entity or community under Section 130.0081 to provide services to the entity or community.

(b) If a political subdivision or part of a political subdivision is not located in a junior college district or has not entered into an agreement under Section 130.0081, a person who resides in that territory and who is a student of a junior college district shall be charged tuition and fees at the rate established under Section 130.0032(d).

SECTION 2. Section 130.0032, Education Code, is amended by adding Subsection (d) to read as follows:

(d) The governing board of a junior college district shall establish the rate of tuition and fees charged to a student who resides outside the district by considering factors such as:

(1) the sufficiency of the rate to promote taxpayer equity by encouraging areas benefiting from the educational services of the district to participate in financing the education of students from that area;

(2) the extent to which the rate will ensure that the cost to the district of providing educational services to a student who resides outside the district is not financed disproportionately by the taxpayers residing within the district; and

(3) the rate that would generate tuition and fees equal to the total amount of tuition and fees charged to a similarly situated student who resides in the district plus an amount per credit hour determined by dividing the total amount of ad valorem taxes imposed by the district in the tax year preceding the year in which the academic year begins by the total number of credit hours for which the students who were residents of the district enrolled in the district in the preceding academic year.

SECTION 3. Subchapter A, Chapter 130, Education Code, is amended by adding Section 130.0081 to read as follows:

Sec. 130.0081. AGREEMENT WITH JUNIOR COLLEGE DISTRICT. (a) A junior college district may enter into an agreement with any person, including an employer, political subdivision, or other entity, to provide educational services. The agreement must provide for the entity to cover at least any cost to the district of providing the services that exceeds the amount of tuition and fees that would be charged to a student who resides in the district and is enrolled in a substantially similar course.

(b) Students who are enrolled in a course under the agreement are entitled to pay tuition and fees at the rate applicable to a student who resides in the district.

SECTION 4. Section 130.063, Education Code, is amended to read as follows:

Sec. 130.063. EXTENSION OF JUNIOR COLLEGE DISTRICT BOUNDARIES [~~FOR JUNIOR COLLEGE PURPOSES ONLY~~]. (a) Subject to Subsection (b), territory [~~Territory~~] may be annexed to a [~~the~~] junior college district [~~for junior college purposes only,~~] by [~~either~~] contract under Section 130.064 or election under Section 130.065, if the territory:

(1) is contiguous to the annexing junior college district [~~consists of a school district or part of a school district or a county or part of a county~~]; or [~~and~~]

(2) is [~~adjacent to the junior college district or~~] located in the service area of the annexing district established under Subchapter J.

(b) Territory may be annexed to a junior college district as provided by this section only if the territory is located wholly within a single school district, county, or municipality. This subsection does not prohibit a junior college district from conducting annexation elections or other annexation procedures for more than one territory at the same time.

(c) A junior college district may not annex territory under this section that is included in the boundaries of another junior college district.

(d) A junior college district may not annex territory under this section if[~~:~~

[~~(1) the territory is located in the same county as any part of the junior college district; and~~

[~~(2)~~] a campus of the Texas State Technical College System is located:

(1) within the county in which the territory is located; and

(2) outside the junior college district.

SECTION 5. Sections 130.065, 130.066, and 130.067, Education Code, are amended to read as follows:

Sec. 130.065. ANNEXATION BY ELECTION. (a) On presentation to the governing board of a junior college district of [~~If the annexation is by election,~~] a petition proposing the annexation of territory to the district, the governing board may call an election on the question of annexing the territory. The petition must:

(1) contain an accurate description of the territory proposed for annexation; and

(2) be signed by a number of [~~five percent of the~~] registered voters in the territory proposed [~~seeking~~] to be annexed equal to at least five percent of the registered voters in that territory as of the most recent general election for state and county officers [~~shall be presented to the county school board of the county, or to the commissioners court of the county in case there is no county school board~~].

(b) Before the governing board of the junior college district may order an annexation election, the board must hold a public hearing within the territory proposed for annexation. The hearing must be held not earlier than the 45th day and not later than the 30th day before the date the board issues the order for the election [~~The petition shall contain a legally sufficient description of the territory proposed for annexation, and shall be accompanied by a certified copy of an order by the governing board of the junior college district affected approving the proposed annexation of the territory to the junior college district for junior college purposes only~~].

(c) Not later than the 30th day before the date of a public hearing held under Subsection (b), the board shall complete and publish a service plan for the territory proposed for annexation. The service plan is informational only and must include:

(1) the maximum property tax rate that the board may adopt;

(2) the most recent property tax rate adopted by the board and any tax rate increase proposed or anticipated to occur after the annexation;

(3) the tuition rate that would apply after annexation for a student who resides in the district;

(4) the tuition and fees that would apply under Section 130.0032(d) for a student who resides outside the district;

(5) plans for providing educational services in the territory, including proposed or contemplated campus and facility expansion in the territory;

(6) plans for cooperation with local workforce agencies; and

(7) any other elements consistent with this subchapter prescribed by rule of the Texas Higher Education Coordinating Board.

(d) The governing [~~county school~~] board[~~, or the commissioners court,~~] shall issue an order for an election to be held in the territory proposed for annexation on a uniform election date that is[~~,~~] not less than 45 [~~20 nor more than 30~~] days after [~~from~~] the date of the order and that affords enough time to hold the election in the manner provided by law. The board[~~, and~~] shall give notice of the [~~date of the~~] election in the manner provided by law for notice by the county judge of a general election [~~by posting notices of such election in three public places within the territory proposed for annexation~~].

(e) The governing board shall conduct the election in accordance with the Election Code.

(f) The election shall be held only in the territory proposed for annexation, and only [~~(d) Only~~] those registered voters [~~legally qualified electors~~] residing in that [~~the~~] territory are [~~proposed for annexation shall be~~] permitted to vote.

(g) The ballot shall be printed to provide for voting for or against the proposition: "Annexation of the following territory for junior college purposes: _____", with the blank filled in with a description of the territory proposed for annexation.

(h) The measure is adopted if the measure receives a favorable vote of a majority of those voters voting on the measure [~~(e) The county school board, or the commissioners court shall canvass the returns at a meeting held not more than five days after the election. If the votes cast in the election show a majority in favor of annexation, the territory shall be declared annexed to the junior college district for junior college purposes only~~].

(i) If the measure is adopted, the governing board of the district shall enter an order declaring the result of the election and that the territory is annexed to the junior college district on the date specified in the order.

(j) If the proposition is adopted and the governing board is elected from single-member districts, the governing board in the annexation order entered under Subsection (i) shall assign the new territory to one or more of the current single-member districts.

(k) The annexation of territory and any resulting change in the single-member districts from which members of the governing board are elected does not affect the term of a member of the governing board serving on the date the annexation or redistricting takes effect. The governing board shall provide that each member of the governing board representing a single-member district who is holding office on the date the annexation takes effect serve the remainder of the member's term and represent a single-member district in the expanded junior college district for that term regardless of whether the member resides in that single-member district.

(l) If the measure is not adopted at the election, another election to annex all or part of the same territory may not be held earlier than one year after the date of the election at which the measure is not adopted. [~~(f) The county school board or commissioners court shall cause a certified copy of the order to be transmitted to the governing board of the junior college district.~~

[~~(g) At the next regular or special meeting of the governing board of the junior college district, the board shall, in the event of annexation by election, enter its order concurring in the order of the county school board or the commissioners court and shall enter an order redefining the boundary lines of the junior college district as enlarged and extended, and shall cause the order to be recorded on the minutes of the board of the junior college district.~~]

Sec. 130.066. AUTOMATIC ANNEXATION OF CERTAIN TERRITORY. If the junior college district annexes territory under this subchapter comprising all of a municipality or school district, the governing board by order may annex for junior college purposes any territory later annexed by or added to the municipality or school district [~~ADDING CONTIGUOUS TERRITORY TO A JUNIOR COLLEGE DISTRICT. (a) Any territory may be included within the boundaries of a junior college district, herein called "district," for junior college purposes, in the manner hereinafter specified; provided, the territory to be included is:~~

[~~(1) contiguous to the district in which such territory is to be included; or~~

[~~(2) located in the service area of the district established under Subchapter J.~~

[~~(b) Upon presentation of a petition, signed by 50, or a majority, whichever number is smaller, of the qualified electors residing in the territory proposed for inclusion in a district, to the governing body of the district requesting that the boundaries of the district be changed to include the territory described in said petition, such governing body may, in its discretion, order an election to be held within the boundaries of the entire district as proposed to be changed on the question of whether the boundaries of the district shall be changed to include the proposed territory. The ballots for such election shall have printed thereon "For" and "Against" boundary change. All qualified electors residing within the boundaries of the entire district as proposed to be changed shall be qualified to vote at such an election.~~

[~~(c) The governing body of the district calling an election hereunder shall give notice of any such election by causing a substantial copy of its order calling the election to be posted in at least three public places within the boundaries of the district as proposed to be changed and published at least one time in a newspaper of general circulation within such boundaries. Provided, however, if any railroad right-of-way or other property is located within such territory, additional notice shall be given by certified mail, to the railroad company, at the address shown on the latest county tax roll. Such posting, such publication, and such certified mail notice shall be done at least 30 days prior to the date on which the election is to be held.~~

[~~(d) Except as otherwise provided herein, all elections held hereunder shall be governed by the provisions relating to bond elections held by independent school districts. The order calling the election may provide that the entire district as proposed to be changed shall constitute one election precinct or such order may provide for more than one election precinct.~~

[~~(c) The returns of any such election shall be canvassed by the governing body of the district and if a majority of persons residing in the district and voting at the election and a majority of the persons residing in the territory proposed to be annexed and voting at the election vote for the boundary change, the governing body of the district shall, in its order canvassing such returns, declare the boundaries of the district changed to include the territory described in the petition theretofore presented to them. Such order may also include the name by which the district as changed shall be known.~~

[~~(f) At the next regular election held in the junior college district after territory is added to the district under this section, the qualified electors shall elect a new board of trustees. To continue in office, members of the present board of trustees must be reelected at this election.~~

[~~(g) This section is cumulative of all other laws on the subject, but this section is wholly sufficient authority within itself for the inclusion of territory in the boundaries of a district and the performance of the other acts and procedures authorized hereby, without reference to any other laws or any restrictions or limitations contained therein, except as herein specifically provided in this section. However, the governing body of any district may use the provisions of any other laws, not in conflict with the provisions of this section, to the extent convenient or necessary to carry out any power or authority, express or implied, granted by this section~~].

Sec. 130.067. ANNEXATION OF COUNTY-LINE SCHOOL DISTRICT [~~DISTRICTS~~] FOR JUNIOR COLLEGE PURPOSES. (a) In this section:

(1) "County-line school district" means any type of public school district created or organized under general or special law that includes within its boundaries territory that is located in two or more counties of Texas.

(2) "County or joint-county junior college district" means a junior college district that was originally created and organized with the same boundaries as a county or as a group of contiguous counties and that included all of the territory in the county or group of counties and did not include a part of any county without including the entire territory of the county.

(b) A part [~~Parts~~] of a county-line school district that is contiguous to but not included within the boundaries of a county or joint-county junior college district [~~districts~~] may be annexed to the [~~adjacent county or joint county~~] junior college district [~~districts~~] for junior college purposes only either by election as provided by Section 130.065 or by order entered pursuant to a petition requesting annexation of the territory[~~,~~] as provided by [~~in~~] this section.

(c) [~~(b)~~] The county or joint-county junior college district as originally created and organized must have included in its boundaries a part of the [~~a~~] county-line school district, and the part of the county-line school district to be annexed may [~~is~~] not be included in any other junior college district.

(d) On presentation of a petition, signed by a number of registered voters residing in the part of a county-line school district requesting annexation equal to at least a majority of the registered voters residing in that territory as of the most recent general election for state and county officers to the county judge of the county in which the territory requested to be annexed is located, together with a

certified copy of an order by the governing board of the junior college district approving the proposed annexation to the junior college district for junior college purposes only, the county judge shall certify the filing of the petition and order to the commissioners court. The court at its next meeting shall pass an order declaring the territory annexed to the junior college district.

(e) Territory may be annexed by petition under this section only if the territory is located wholly within a single county. For territory located in more than one county, a separate petition requesting the annexation of the territory is required for each county. [~~(c) The county or joint county junior college districts to which this section is applicable are those where the junior college district as originally created and organized had the same boundaries as a county or as a group of contiguous counties and included all of the territory in a county or group of counties and did not include a part of any county without including the entire territory of such county in such junior college district.~~

[~~(d) A "county line school district" as used in this section is any type of public school district created or organized under general or special laws of Texas, which includes within its boundaries territory that extends into or is located in two or more counties of Texas.~~]

SECTION 6. Section 130.068, Education Code, is amended to read as follows:

Sec. 130.068. EXTENDING BOUNDARIES OF JUNIOR COLLEGE DISTRICT IN DISTRICT'S SERVICE AREA [~~ANNEXATION OF NON-INCLUDED PARTS OF COUNTIES~~]. (a) The governing board of a junior college district may order an election on the question of establishing expanded boundaries for the junior college district to encompass all of the territory located within the district's service area established by Subchapter J, other than territory located in the service area of another junior college district, if more than 35 percent of the total number of students who enrolled in the junior college district in the most recent academic year resided outside of the existing junior college district.

(b) The governing board of a junior college district may order an election on the question of establishing expanded boundaries for the junior college district to encompass part of the territory located within the district's service area established by Subchapter J, other than territory located in the service area of another junior college district, if more than 15 percent of the high school graduates for each of the preceding five academic years in the territory proposed to be added to the district have enrolled in the junior college district.

(c) Except as otherwise provided by this section, Section 130.065 applies to an action taken under this section, including the provisions of Section 130.065 requiring a petition to be submitted before an election may be called.

(d) A junior college district may not adopt new boundaries for the district under this section that extend within the service area of another junior college district. [~~(a) The non-included portion or portions of such county line districts may be annexed to the county or joint-county junior college district by either of two methods as provided by Subsections (b) and (c) of this section.~~

[~~(b) On the petition of 20 or a majority of the legally qualified voters residing in that part of a county line district not a part of a junior college district as described in Section 130.067 of this code praying for the annexation for junior college purposes only, of that part of the county line school district to the junior college district in which the remainder of the county line district is a part, the county judge of that county which has jurisdiction of the county line school district shall issue an order for an election to be held in the non included portion of the county line school district praying to be annexed to the county or joint county junior college district. The county judge shall give notice of the date of the election by posting notices at three public places in the part of the county line school district wherein the election is to be held. Only those legally qualified voters residing in that part of the county line school district shall be permitted to vote. The commissioners court shall at its next meeting canvass the returns of the election, and if the votes cast in the election show a majority in favor of annexation, then the court shall declare that part of the county line school district annexed to the junior college district for junior college purposes only. The court shall cause certified copies of the order to be transmitted to the commissioners court of every county in which the junior college district and the county line school district have territory, and each court shall make orders concurring in the order and shall cause them to be entered on the minutes of each commissioners court.~~

[~~(c) Where a petition, signed by a majority of the legally qualified voters residing in that part of a county line school district praying for annexation for junior college purposes only, of that part of the county line school district to the junior college district in which the remainder of the county line district is a part, is presented to the county judge of that county which has jurisdiction of the county line school district together with a certified copy of an order by the governing board of the junior college district approving the proposed annexation to the junior college district for junior college purposes only; instead of ordering an election to be held as provided in Subsection (b) of this section, the county judge shall certify the filing of the petition and order to the commissioners court. The court at its next meeting shall pass an order declaring such non included part of the county line school district annexed to the junior college district for junior college purposes only and cause certified copies of the order to be transmitted to the commissioners court of every county in which the junior college district and the county line school district have territory. Each such court shall make orders concurring in the order and cause same to be entered on the minutes of each commissioners court.~~]

SECTION 7. Sections 130.071, 130.0711, 130.072, and 130.073, Education Code, are repealed.

SECTION 8. Subchapter D, Chapter 130, Education Code, as amended by this Act, applies only to annexation by a junior college district for which a petition requesting annexation is filed or an annexation election is ordered on or after the effective date of this Act. If a petition requesting annexation is filed or an annexation election is ordered under Subchapter D, Chapter 130, Education Code, before the effective date of this Act, the annexation procedures related to

that petition or election and the effect of the petition or election are governed by the law in effect immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

SECTION 9. This Act does not affect the validity of an agreement entered into before the effective date of this Act between a junior college district and another person for the provision of educational services by the district.

SECTION 10. The change in law made by this Act to Section 130.0032, Education Code, applies beginning with tuition charged for the 2005-2006 academic year.

SECTION 11. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2005.

Representative Luna moved to adopt the conference committee report on **HB 2221**.

A record vote was requested.

The motion to adopt the conference committee report on **HB 2221** prevailed by (Record 975): 128 Yeas, 9 Nays, 2 Present, not voting.

Yeas — Allen, R.; Alonzo; Anderson; Bailey; Berman; Blake; Bohac; Bonnen; 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; Driver; Dunnam; Eiland; Eissler; Elkins; Escobar; Farabee; Farrar; Flores; Flynn; Frost; Gallego; Giddings; Gonzales; Gonzalez Toureilles; Goolsby; Griggs; Grusendorf; Guillen; Haggerty; Hamilton; Hamric; Hardcastle; Hartnett; Hegar; Herrero; Hilderbran; Hill; Hochberg; Hodge; Homer; Hopson; Howard; Hughes; Hunter; Hupp; Isett; Jackson; Jones, D.; Jones, J.; Keffer, B.; Keffer, J.; King, T.; Krusee; Kuempel; Laney; Laubenberg; Leibowitz; Luna; Madden; Martinez; Martinez Fischer; McCall; McClendon; McReynolds; Menendez; Merritt; Miller; Moreno, P.; Morrison; Mowery; Naishtat; Nixon; Oliveira; Olivo; Orr; Otto; Paxton; Peña; Phillips; Pickett; Pitts; Puente; Quintanilla; Raymond; Reyna; Riddle; Ritter; Seaman; Smith, T.; Smith, W.; Smithee; Solis; Solomons; Straus; Swinford; Talton; Taylor; Truitt; Turner; Uresti; Van Arsdale; Veasey; Villarreal; Vo; West; Wong; Woolley; Zedler.

Nays — Allen, A.; Anchia; Baxter; Gattis; Geren; Harper-Brown; Kolkhorst; Strama; Thompson.

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

Absent, Excused — Goodman.

Absent — Burnam; Dukes; Dutton; Edwards; Hope; Keel; Noriega, M.; Rodriguez; Rose.

STATEMENTS OF VOTE

I was shown voting no on Record No. 975. I intended to vote yes.

Harper-Brown

I was shown voting yes on Record No. 975. I intended to vote no.

Hilderbran

REMARKS ORDERED PRINTED

Representative Solis moved to print remarks between Representative Escobar and Representative Hartnett on **SB 1189**.

The motion prevailed.

SB 1176 - RULES SUSPENDED

Representative Eiland moved to suspend all necessary rules to consider the conference committee report on **SB 1176** at this time.

The motion prevailed.

SB 1176 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Eiland submitted the conference committee report on **SB 1176**.

Representative Eiland moved to adopt the conference committee report on **SB 1176**.

The motion to adopt the conference committee report on **SB 1176** 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.)

HR 2258 - ADOPTED
(by Keel)

The following privileged resolution was laid before the house:

HB 2258

BE IT RESOLVED by the House of Representatives of the State of Texas, 79th Legislature, Regular Session, 2005, That House Rule 13, Section 9(a), be suspended in part as provided by House Rule 13, Section 9(f), to enable the conference committee appointed to resolve the differences on **HB 1690** (common nuisance) to consider and take action on the following matters:

(1) House Rule 13, Sections 9(a)(3) and (4), are suspended to permit the committee to add the following language to Section 125.004(d), Civil Practice and Remedies Code, as added by the bill: <u>The posting of a sign prohibiting the activity alleged is not conclusive evidence that the owner did not tolerate the activity.</u>

Explanation: The added language is necessary to ensure that posting of a sign by a real property owner prohibiting the activity constituting a common nuisance alleged to have occurred does not conclusively establish that the owner did not tolerate the alleged activity.

(2) House Rule 13, Sections 9(a)(3) and (4), are suspended to permit the committee to add the following language to Section 125.044, Civil Practice and Remedies Code, as amended by the bill:

(b-1) The posting of a sign prohibiting the activity alleged is not conclusive evidence that the owner did not tolerate the activity.

Explanation: The added language is necessary to ensure that posting of a sign by a real property owner prohibiting the activity constituting a common nuisance alleged to have occurred does not conclusively establish that the owner did not tolerate the alleged activity.

HR 2258 was adopted.

HB 1690 - RULES SUSPENDED

Representative Keel moved to suspend all necessary rules to consider the conference committee report on **HB 1690** at this time.

The motion prevailed.

HB 1690 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Keel submitted the following conference committee report on **HB 1690** :

Austin, Texas, May 27, 2005

The Honorable David Dewhurst
President of the Senate

The Honorable Tom Craddick
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the senate and the house of representatives on **HB 1690** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

West, Royce	Keel
Carona	Hill
Duncan	Hodge
Ellis	Nixon
Harris	Rose
On the part of the senate	On the part of the house

HB 1690, A bill to be entitled An Act relating to common nuisance.

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

SECTION 1. Section 125.001(3), Civil Practice and Remedies Code, is amended to read as follows:

(3) "Multiunit residential property" means improved real property with at least three dwelling units, including an apartment building, condominium, hotel, or motel. The term does not include [~~:~~

[~~(A) a property in which each dwelling unit is occupied by the owner of the property; or~~

[~~(B)~~] a single-family home or duplex.

SECTION 2. Section 125.0015, Civil Practice and Remedies Code, is amended to read as follows:

Sec. 125.0015. COMMON NUISANCE. (a) A person who [~~knowingly~~] maintains a place to which persons habitually go for the following purposes and who knowingly tolerates the activity and furthermore fails to make reasonable attempts to abate the activity maintains a common nuisance:

(1) discharge of a firearm in a public place as prohibited by the Penal Code;

(2) reckless discharge of a firearm as prohibited by the Penal Code;

(3) engaging in organized criminal activity as a member of a combination as prohibited by the Penal Code;

(4) delivery, possession, manufacture, or use of a controlled substance in violation of Chapter 481, Health and Safety Code;

(5) gambling, gambling promotion, or communicating gambling information as prohibited by the Penal Code;

(6) prostitution, promotion of prostitution, or aggravated promotion of prostitution as prohibited by the Penal Code;

(7) compelling prostitution as prohibited by the Penal Code; [~~or~~]

(8) commercial manufacture, commercial distribution, or commercial exhibition of obscene material as prohibited by the Penal Code~~;~~

(9) aggravated assault as described by Section 22.02, Penal Code;

(10) sexual assault as described by Section 22.011, Penal Code;

(11) aggravated sexual assault as described by Section 22.021, Penal Code;

(12) robbery as described by Section 29.02, Penal Code;

(13) aggravated robbery as described by Section 29.03, Penal Code;

(14) unlawfully carrying a weapon as described by Section 46.02, Penal Code;

(15) murder as described by Section 19.02, Penal Code; or

(16) capital murder as described by Section 19.03, Penal Code.

(b) A person maintains a common nuisance if the person[~~:~~

[~~(1) knowingly~~] maintains a multiunit residential property to which persons habitually go to commit acts listed in Subsection (a) and knowingly tolerates the [~~following~~] acts and furthermore fails to make reasonable attempts to abate the acts [~~:~~

[~~(A) aggravated assault as described by Section 22.02, Penal Code;~~

[~~(B) sexual assault as described by Section 22.011, Penal Code;~~

[~~(C) aggravated sexual assault as described by Section 22.021, Penal Code;~~

[~~(D) robbery as described by Section 29.02, Penal Code;~~

[~~(E) aggravated robbery as described by Section 29.03, Penal Code;~~

[~~(F) unlawfully carrying a weapon as described by Section 46.02, Penal Code;~~

[~~(G) murder as described by Section 19.02, Penal Code; or~~

[~~(H) capital murder as described by Section 19.03, Penal Code; and~~

[~~(2) has failed to make reasonable attempts to abate such acts~~].

SECTION 3. Section 125.002, Civil Practice and Remedies Code, is amended by amending Subsection (b) and adding Subsection (h) to read as follows:

(b) A person may bring a suit under Subsection (a) against any person who maintains, owns, uses, or is a party to the use of a place for purposes constituting a nuisance under this subchapter and may bring an action in rem against the place itself. A council of owners, as defined by Section 81.002, Property Code, or a unit owners' association organized under Section 82.101, Property Code, may be sued under this subsection if the council or association maintains, owns, uses, or is a party to the use of the common areas of the council's or association's condominium for purposes constituting a nuisance.

(h) A person who may bring a suit under Section 125.0015 shall consider, among other factors, whether the property owner, the owner's authorized representative, or the operator or occupant of the business, dwelling, or other place where the criminal acts occurred:

(1) promptly notifies the appropriate governmental entity or the entity's law enforcement agency of the occurrence of criminal acts on the property; and

(2) cooperates with the governmental entity's law enforcement investigation of criminal acts occurring at the property.

SECTION 4. Section 125.004, Civil Practice and Remedies Code, is amended by amending Subsections (a) and (b) and adding Subsection (d) to read as follows:

(a) Proof that an activity described by Section 125.0015 is frequently committed at the place involved or that the place is frequently used for an activity described by Section 125.0015 is prima facie evidence that the defendant knowingly tolerated [~~permitted~~] the activity.

(b) Evidence that persons have been arrested for or convicted of offenses for an activity described by Section 125.0015 in the place involved is admissible to show knowledge on the part of the defendant with respect to [~~that~~] the act that occurred. The originals or certified copies of the papers and judgments of those arrests or convictions are admissible in the suit for injunction, and oral evidence is admissible to show that the offense for which a person was arrested or convicted was committed at the place involved.

(d) Notwithstanding Subsection (a), evidence that the defendant, the defendant's authorized representative, or another person acting at the direction of the defendant or the defendant's authorized representative requested law enforcement or emergency assistance with respect to an activity at the place where the common nuisance is allegedly maintained is not admissible for the purpose of showing the defendant tolerated the activity or failed to make reasonable attempts to abate the activity alleged to constitute the nuisance but may be admitted for other purposes, such as showing that a crime listed in Section 125.0015 occurred. Evidence that the defendant refused to cooperate with law enforcement or emergency services with respect to the activity is admissible. The posting of a sign prohibiting the activity alleged is not conclusive evidence that the owner did not tolerate the activity.

SECTION 5. Section 125.044, Civil Practice and Remedies Code, is amended by amending Subsection (b) and adding Subsection (b-1) to read as follows:

(b) In a proceeding begun under Subsection (a):

(1) proof that acts creating a common nuisance are frequently committed at the place is prima facie evidence that the owner and the operator knowingly tolerated [~~permitted~~] the acts; [~~and~~]

(2) evidence that persons have been arrested for or convicted of offenses involving acts at the place that create a common nuisance is admissible to show knowledge on the part of the owner and the operator with respect to [~~that~~] the acts that occurred; and

(3) notwithstanding Subdivision (1), evidence that the defendant, the defendant's authorized representative, or another person acting at the direction of the defendant or the defendant's authorized representative requested law enforcement or emergency assistance with respect to an activity at the place where the common nuisance is allegedly maintained is not admissible for the purpose of showing the defendant tolerated the activity or failed to make reasonable attempts to abate the activity alleged to constitute the nuisance but may be admitted for other purposes, such as showing that a crime listed in Section 125.0015 occurred. Evidence that the defendant refused to cooperate with law enforcement or emergency services with respect to the activity is admissible.

(b-1) The posting of a sign prohibiting the activity alleged is not conclusive evidence that the owner did not tolerate the activity.

SECTION 6. It is the intent of the legislature that the passage by the 79th Legislature, Regular Session, 2005, of **HB 2086** or another bill that repeals Chapter 125, Civil Practice and Remedies Code, and adds other law governing common or public nuisance and the amendments made by this Act shall be harmonized, if possible, as provided by Section 311.025(b), Government Code, so that effect may be given to each. If the amendments made by this Act to Chapter 125, Civil Practice and Remedies Code, and the amendments made by **HB 2086** or any other bill that repeals Chapter 125, Civil Practice and Remedies Code, and adds other law governing common or public nuisance are irreconcilable, it is the intent of the legislature that this Act prevail, regardless of the relative dates of enactment of this Act and any other bill, but only to the extent that any differences are irreconcilable.

SECTION 7. The change in law made by this Act applies only to a cause of action that accrues on or after the effective date of this Act. A cause of action that accrues before the effective date of this Act is governed by the law in effect immediately before that date, and that law is continued in effect for that purpose.

SECTION 8. This Act takes effect September 1, 2005.

(Speaker in the chair)

HB 1690 - STATEMENT OF LEGISLATIVE INTENT

REPRESENTATIVE NIXON: Mr. Keel, the language in the statute will now be clear that a person is maintaining a common nuisance if it is a place to which persons habitually go to engage in nuisance crimes, and the owner "knowingly tolerates the activity and furthermore fails to make reasonable attempts to abate the activity."

REPRESENTATIVE KEEL: Yes.

NIXON: As a matter of legislative intent, the language is pled in the conjunctive and would require the plaintiff to prove the defendant did both things: knowingly tolerated the activity and failed to make reasonable attempts to abate the activity.

KEEL: Yes.

REMARKS ORDERED PRINTED

Representative Nixon moved to print remarks between Representative Keel and Representative Nixon.

The motion prevailed.

Representative Keel moved to adopt the conference committee report on **HB 1690**.

The motion to adopt the conference committee report on **HB 1690** 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.)

HB 1690 - STATEMENT OF LEGISLATIVE INTENT

With the best of intentions, the legislature has over the years enacted and modified statutory authority intended to facilitate appropriate legal action by municipalities against persons and property owners who tolerate ongoing criminal activity. The idea was to target places that served as staging areas for crime where owners permitted illegal goings-on to fester.

Whenever authority is created by the legislature and bestowed upon local governments, the legislature assumes that sound discretion will be applied by local governments in the exercise of power, and not abused as tools of oppression or misused as subterfuge for simply raising revenue.

The House Committee on Civil Practices heard lengthy sworn testimony over the course of several weeks from various and diverse citizens and business owners regarding the misuse of Section 125 of the Civil Practice and Remedies Code by the city of Dallas, Texas. The law was used as a club to wield against honest and law abiding citizens to such an extent that crimes may have been committed under color of law by the city itself in the inappropriate application of nuisance abatement authority.

The current inartfully worded statute had the unintended consequence of facilitating the city to say in the courtroom that anyone who "knowingly maintained property" was strictly liable for crime occurring thereon, even where the citizens were themselves law abiding and furthermore taking affirmative acts

to protect themselves and their property from lawbreakers. The misuse of the statute was documented in sworn testimony before the house committee and included many specifics, including the following:

A select few businesses in high crime areas were targeted, while much more egregious crime occurred on surrounding properties and was ignored by the city.

Statistics and offenses, that had nothing to do with the business itself, such as traffic stops leading to arrests in the same block of the business, were used as evidence against the business.

Businesses were directed to hire certain security, with the obvious suggestion being that the hiring of certain personnel would mitigate nuisance abatement enforcement threats by the city.

In one instance, the city had 11 police cars, in a show of intimidation, park in a business parking lot, after the honest business owner simply had challenged the city's enforcement decisions against him. Obviously that tactic by the city discouraged customers from coming onto the business property and was furthermore intended to bully the business in a threatening manner. (The fact that this incident of intimidation occurred was confirmed by the new city police chief, who assured the house committee that his new tenure at the department would include internal investigations of the incident and other more serious civil rights violations the committee heard about.)

Code enforcements were illegitimately used as harassment of uncooperative businesses.

One business owner was strongly encouraged to make a financial donation to a particular local elected official's "birthday fund."

Businesses were in some cases ordered by the city legal department to strictly comply with calling authorities in every instance of possible illegal activity. Those calls for help were then counted against the business in the city's criteria for evidence of nuisance abatement violations. Some businesses, who complied with the city legal office's orders, were given hostile and conflicting orders from responding officers.

Businesses were in some cases ordered to engage in inappropriate acts that were themselves illegal. A nationally renowned hotel chain was ordered to run criminal history checks on guests—an action that is not only impossible for private citizens to accomplish—but would itself possibly constitute a violation of guests' civil rights, potentially subjecting the business to legal liability.

One carwash owner, who by all accounts was himself a law abiding individual, was sanctioned for an employee, who had been searched in an unrelated incident where marihuana was found by police to be in the employee's pants pocket. It was suggested by the city legal department that the owner needed to conduct random pat-down searches on a regular basis of his employees—an act that is forbidden by law even for law enforcement.

The city's method had a logic that made it impossible for businesses to comply: If you did not call the police for help, you were branded as a business that tolerated nuisances. If you did call the police, the calls for help were used as evidence against you that crime was occurring on your premises.

The city, in addition to imposing expensive litigation on businesses, and in many cases also imposing fines and costs on them, placed the burden on businesses to pay for police protection. Businesses were told that legal action against them would continue unless they hired off duty Dallas Police Officers and furthermore reimbursed the city for the use of their equipment, such as patrol cars. The city very purposefully moved a basic service obligation—that being its duty to protect its citizens—from a city budget item to a user fee, making taxpaying citizens pay additional actual costs for the privilege of being protected from crime.

The changes to the statute in **HB 1690** are designed to reign in these types of abuses. The bill makes clear that the target of nuisance abatement should be persons or businesses that knowingly tolerate the actual nuisance crimes. Calls for assistance to police should no longer be misused by municipalities as evidence against law abiding citizens or businesses calling for help. The bill furthermore clarifies those businesses that do tolerate crime or do not cooperate with lawful police enforcement of real problems, will still be prosecuted.

The legislature should always carefully monitor the utilization by local governments of potentially oppressive enforcement schemes, such as the nuisance abatement enactments. Unfortunately, it cannot be simply assumed that local governments will not apply such laws in a bad faith manner nor misuse them as instruments of oppression. In the circumstances documented before the Committee on Civil Practices, the abuse by city government was particularly egregious.

Keel

HR 2277 - NOTICE OF INTRODUCTION

Pursuant to the provisions of Rule 13, Section 9(f), of the House Rules, the speaker announced the introduction of **HR 2277**, suspending the limitations on the conferees for **HB 3540**.

(Reyna in the chair)

HR 2268 - ADOPTED
(by Hughes)

The following privileged resolution was laid before the house:

HR 2268

BE IT RESOLVED by the House of Representatives of the State of Texas, 79th Legislature, Regular Session, 2005, That House Rule 13, Section 9(a), be suspended in part as provided by House Rule 13, Section 9(f), to enable the conference committee appointed to resolve the differences on **HB 2201** (implementing a clean coal project in this state) to consider and take action on the following matter:

House Rule 13, Sections 9(a)(1) and (3), are suspended to permit the committee to revise proposed Section 5.558(a), Water Code, to read as follows:

(a) As authorized by federal law, the commission by rule shall implement reasonably streamlined processes for issuing permits required to construct a component of the FutureGen project designed to meet the FutureGen emissions profile as defined by Section 382.0565, Health and Safety Code.

Explanation: The change is necessary to conform the meaning of the phrase "FutureGen emissions profile" in proposed Section 5.558(a), Water Code, to the phrase as it is defined by proposed Section 382.0565, Health and Safety Code.

HR 2268 was adopted.

HB 2201 - RULES SUSPENDED

Representative Hughes moved to suspend all necessary rules to consider the conference committee report on **HB 2201** at this time.

The motion prevailed.

HB 2201 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Hughes submitted the following conference committee report on **HB 2201** :

Austin, Texas, May 28, 2005

The Honorable David Dewhurst
President of the Senate

The Honorable Tom Craddick
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the senate and the house of representatives on **HB 2201** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Estes	Hughes
Eltife	R. Cook
Fraser	Hopson
Jackson	P. King
Seliger	
On the part of the senate	On the part of the house

HB 2201, A bill to be entitled An Act relating to implementing a clean coal project in this state.

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

SECTION 1. The legislature finds that:

(1) this state produces the most energy in the country and is the largest consumer of coal in the country;

(2) the generation of electric energy in this state by coal-powered generation is estimated to be 37 percent of the electric energy generation in this state;

(3) affordable electric energy in this state is founded on low-cost coal-powered generation;

(4) energy production has a significant role in providing permanent, well-paid employment in this state for this state's growing population, and the energy production industry provides income and revenue that ensures this state may continue to provide a high standard of services to this state's residences and businesses;

(5) the United States Department of Energy's proposed FutureGen research into integrated carbon sequestration and hydrogen research provides for $800 million in federal funding and $200 million in funding by private industry and other countries;

(6) it is a priority for this state to secure funding under the United States Department of Energy's proposed FutureGen programs because to do so will help this state to become a world leader in innovative energy technologies and is expected to:

(A) create more than 11,000 new jobs in this state;

(B) provide compensation for workers of more than $374.3 million;

(C) generate $98 million in tax revenue; and

(D) result in a total economic benefit to this state of $1.2042 billion;

(7) FutureGen projects will provide this state with an opportunity to meet this state's energy demands and lower emissions of air contaminants, so the FutureGen technologies should be encouraged for use in electric energy generation;

(8) this state is in a unique position to secure funding under FutureGen projects since this state has:

(A) a ready source of coal and lignite to fuel FutureGen projects;

(B) appropriate geological features for storing carbon dioxide;

(C) a market for energy produced; and

(D) electric energy transmission resources capable of carrying the resulting power loads;

(9) this state has 31 billion barrels of oil in depleted oil fields that could be recovered by means of carbon dioxide enhanced recovery;

(10) carbon dioxide from FutureGen projects could be used to recover three billion barrels of oil and generate $4 billion in tax revenue for this state;

(11) hydrogen produced by FutureGen projects could be used to fuel fuel cells and for this state's petrochemical industry to manufacture products;

(12) to facilitate construction of one or more components of the FutureGen projects at a new or existing electric generating, steam production, or industrial products facility is in the best interest of all of this state's residents; and

(13) streamlining procedural processes as necessary to ensure predictability in this state's regulatory scheme will improve this state's position for obtaining federal funding and will preserve the environmental protection obtained by present substantive regulatory standards.

SECTION 2. Section 2305.037, Government Code, is amended to read as follows:

Sec. 2305.037. INNOVATIVE [~~RENEWABLE~~] ENERGY DEMONSTRATION PROGRAM. (a) The energy office is the supervising state agency of the innovative [~~renewable~~] energy demonstration program and shall distribute grant money under the program for demonstration projects that develop sustainable and innovative [~~renewable~~] energy resources, including:

(1) a clean coal project, as defined by Section 5.001, Water Code;

(2) a gasification project for a coal and biomass mixture;

(3) photovoltaic, biomass, wind, and solar applications; and

(4) [~~(2)~~] other appropriate low-emission, renewable, and sustainable energy applications.

(b) Contingent on the selection of a Texas site for the location of the coal-based integrated sequestration and hydrogen project to be built in partnership with the United States Department of Energy, commonly referred to as the FutureGen project, and to the extent that funds are appropriated for this purpose, the energy office shall distribute to the managing entity of the FutureGen project an amount equal to 50 percent of the total amount invested in the project by private industry sources. The managing entity of the FutureGen project shall provide records as considered necessary by the energy office to justify grants under this subsection. Cumulative distributions under this subsection may not exceed $20 million.

(c) The energy office may require a grant recipient under the program to match a grant in a ratio determined by the energy office.

SECTION 3. Subchapter C, Chapter 382, Health and Safety Code, is amended by adding Section 382.0565 to read as follows:

Sec. 382.0565. CLEAN COAL PROJECT PERMITTING PROCEDURE. (a) The United States Department of Energy may specify the FutureGen emissions profile for a project in that department's request for proposals or request for a contract. If the United States Department of Energy does not specify in a request for proposals or a request for a contract the FutureGen emissions profile, the profile means emissions of air contaminants at a component of the FutureGen project, as defined by Section 5.001, Water Code, that equal not more than:

(1) one percent of the average sulphur content of the coal or coals used for the generation of electricity at the component;

(2) 10 percent of the average mercury content of the coal or coals used for the generation of electricity at the component;

(3) 0.05 pounds of nitrogen oxides per million British thermal units of energy produced at the component; and

(4) 0.005 pounds of particulate matter per million British thermal units of energy produced at the component.

(b) As authorized by federal law, the commission by rule shall implement reasonably streamlined processes for issuing permits required to construct a component of the FutureGen project designed to meet the FutureGen emissions profile.

(c) When acting under a rule adopted under Subsection (b), the commission shall use public meetings, informal conferences, or advisory committees to gather the opinions and advice of interested persons.

(d) The permit processes authorized by this section are not subject to the requirements relating to a contested case hearing under this chapter, Chapter 5, Water Code, or Subchapters C-G, Chapter 2001, Government Code.

(e) This section does not apply to an application for a permit to construct or modify a new or existing coal-fired electric generating facility that will use pulverized or supercritical pulverized coal.

SECTION 4. Subchapter C, Chapter 171, Tax Code, is amended by adding Section 171.108 to read as follows:

Sec. 171.108. DEDUCTION OF COST OF CLEAN COAL PROJECT FROM TAXABLE CAPITAL OR TAXABLE EARNED SURPLUS APPORTIONED TO THIS STATE. (a) In this section, "clean coal project" has the meaning assigned by Section 5.001, Water Code.

(b) A corporation may deduct from its apportioned taxable capital the amortized cost of equipment or from its apportioned taxable earned surplus 10 percent of the amortized cost of equipment:

(1) that is used in a clean coal project;

(2) that is acquired by the corporation for use in generation of electricity, production of process steam, or industrial production;

(3) that the corporation uses in this state; and

(4) the cost of which is amortized in accordance with Subsection (c).

(c) The amortization of the cost of capital used in a clean coal project must:

(1) be for a period of at least 60 months;

(2) provide for equal monthly amounts;

(3) begin in the month during which the equipment is placed in service in this state; and

(4) cover only a period during which the equipment is used in this state.

(d) A corporation that makes a deduction under this section shall file with the comptroller an amortization schedule showing the period for which the deduction is to be made. On the request of the comptroller, the corporation shall file with the comptroller proof of the cost of the equipment or proof of the equipment's operation in this state.

(e) A corporation may elect to make the deduction authorized by this section from apportioned taxable capital or apportioned taxable earned surplus, but not from both, for each separate regular annual period. An election for an initial period applies to the second tax period and to the first regular annual period.

SECTION 5. Section 313.024(b), Tax Code, is amended to read as follows:

(b) To be eligible for a limitation on appraised value under this subchapter, the corporation or limited liability company must use the property in connection with:

(1) manufacturing;

(2) research and development;

(3) a clean coal project, as defined by Section 5.001, Water Code;

(4) a gasification project for a coal and biomass mixture; or

(5) [~~(3)~~] renewable energy electric generation.

SECTION 6. Section 5.001, Water Code, is amended by amending Subdivisions (2) and (3) and adding Subdivisions (4), (5), (6), and (7) to read as follows:

(2) "Commission" means the Texas [~~Natural Resource Conservation~~] Commission on Environmental Quality.

(3) "Executive director" means the executive director of the Texas [~~Natural Resource Conservation~~] Commission on Environmental Quality.

(4) "Clean coal project" means the installation of one or more components of the coal-based integrated sequestration and hydrogen research project to be built in partnership with the United States Department of Energy, commonly referred to as the FutureGen project. The term includes the construction or modification of a facility for electric generation, industrial production, or the production of steam as a byproduct of coal gasification to the extent that the facility installs one or more components of the FutureGen project.

(5) "Coal" has the meaning assigned by Section 134.004, Natural Resources Code.

(6) "Component of the FutureGen project" means a process, technology, or piece of equipment that:

(A) is designed to employ coal gasification technology to generate electricity, hydrogen, or steam in a manner that meets the FutureGen project profile;

(B) is designed to employ fuel cells to generate electricity in a manner that meets the FutureGen project profile;

(C) is designed to employ a hydrogen-fueled turbine to generate electricity where the hydrogen is derived from coal in a manner that meets the FutureGen project profile;

(D) is designed to demonstrate the efficacy at an electric generation or industrial production facility of a carbon dioxide capture technology in a manner that meets the FutureGen project profile;

(E) is designed to sequester a portion of the carbon dioxide captured from an electric generation or industrial production facility in a manner that meets the FutureGen project profile in conjunction with appropriate remediation plans and appropriate techniques for reservoir characterization, injection control, and monitoring;

(F) is designed to sequester carbon dioxide as part of enhanced oil recovery in a manner that meets the FutureGen project profile in conjunction with appropriate techniques for reservoir characterization, injection control, and monitoring;

(G) qualifies for federal funds designated for the FutureGen project;

(H) is required to perform the sampling, analysis, or research necessary to submit a proposal to the United States Department of Energy for the FutureGen project; or

(I) is required in a final United States Department of Energy request for proposals for the FutureGen project or is described in a final United States Department of Energy request for proposals as a desirable element to be considered in the awarding of the project.

(7) "FutureGen project profile" means a standard or standards relevant to a component of the FutureGen project, as provided in a final or amended United States Department of Energy request for proposals or contract.

SECTION 7. Subchapter M, Chapter 5, Water Code, is amended by adding Section 5.558 to read as follows:

Sec. 5.558. CLEAN COAL PROJECT PERMITTING. (a) As authorized by federal law, the commission by rule shall implement reasonably streamlined processes for issuing permits required to construct a component of the FutureGen project designed to meet the FutureGen emissions profile as defined by Section 382.0565, Health and Safety Code.

(b) When acting under a rule adopted under Subsection (a), the commission shall use public meetings, informal conferences, or advisory committees to gather the opinions and advice of interested persons.

(c) The permit processes authorized by this section are not subject to the requirements relating to a contested case hearing under this chapter, Chapter 382, Health and Safety Code, or Subchapters C-G, Chapter 2001, Government Code.

(d) This section does not apply to an application for a permit to construct or modify a new or existing coal-fired electric generating facility that will use pulverized or supercritical pulverized coal.

SECTION 8. Section 16.053, Water Code, is amended by adding Subsection (r) to read as follows:

(r) The board by rule shall provide for reasonable flexibility to allow for a timely amendment of a regional water plan, the board's approval of an amended regional water plan, and the amendment of the state water plan, to facilitate planning for water supplies reasonably required for a clean coal project, as defined by Section 5.001. The rules may allow for amending a regional water plan without providing notice and without a public meeting or hearing under Subsection (h) if the amendment does not:

(1) significantly change the regional water plan, as reasonably determined by the board; or

(2) adversely affect other water management strategies in the regional water plan.

SECTION 9. Subchapter B, Chapter 27, Water Code, is amended by adding Section 27.022 to read as follows:

Sec. 27.022. JURISDICTION OVER CARBON DIOXIDE INJECTION. The commission has jurisdiction over the injection of carbon dioxide produced by a clean coal project, to the extent authorized by federal law, into a zone that is below the base of usable quality water and that is not productive of oil, gas, or geothermal resources by a Class II injection well, or by a Class I injection well if required by federal law.

SECTION 10. The heading to Subchapter C, Chapter 27, Water Code, is amended to read as follows:

SUBCHAPTER C. OIL AND GAS WASTE; INJECTION WELLS

SECTION 11. Subchapter C, Chapter 27, Water Code, is amended by adding Section 27.038 to read as follows:

Sec. 27.038. JURISDICTION OVER CARBON DIOXIDE INJECTION. The railroad commission has jurisdiction over injection of carbon dioxide produced by a clean coal project, to the extent authorized by federal law, into a reservoir that is productive of oil, gas, or geothermal resources by a Class II injection well, or by a Class I injection well if required by federal law.

SECTION 12. (a) This section takes effect only if **SB 831**, Acts of the 79th Legislature, Regular Session, 2005, or similar legislation providing for funding emerging technologies, is enacted and becomes law.

(b) Chapter 490, Government Code, as added by **SB 831**, Acts of the 79th Legislature, Regular Session, 2005, is amended by adding Subchapter G to read as follows:

SUBCHAPTER G. CLEAN COAL PROJECTS

Sec. 490.301. DEFINITION. In this section, "clean coal project" has the meaning assigned by Section 5.001, Water Code.

Sec. 490.302. USE OF MONEY FOR CLEAN COAL PROJECT. (a) Notwithstanding Section 490.102, the governor may allocate money appropriated to the fund by the legislature to provide matching money for a clean coal project as described by Section 2305.037 if the governor has the express written prior approval of the lieutenant governor and the speaker of the house of representatives to do so.

(b) The governor may allocate proceeds deposited in the fund as provided by an agreement described by Section 490.103 to provide matching money for a clean coal project as described by Section 2305.037 if the governor has the express written prior approval of the lieutenant governor and the speaker of the house of representatives to do so.

Sec. 490.303. ELIGIBILITY OF CLEAN COAL PROJECT FOR MONEY. Notwithstanding any other provision of this subchapter, a clean coal project constitutes an opportunity for emerging technology suitable for consideration for a grant under Subchapter C, incentives as provided by Subchapter D, grant matching as provided by Subchapter E, and acquisition of research superiority under Subchapter F.

SECTION 13. Not later than September 1, 2006:

(1) the Texas Water Development Board shall adopt rules under Section 16.053, Water Code, as amended by this Act;

(2) the Texas Commission on Environmental Quality shall adopt rules under Section 382.0565, Health and Safety Code, and under Sections 5.558 and 27.022, Water Code, as added by this Act; and

(3) the Railroad Commission of Texas shall adopt rules under Section 27.038, Water Code, as added by this Act.

SECTION 14. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2005.

Representative Hughes moved to adopt the conference committee report on **HB 2201**.

A record vote was requested.

The motion to adopt the conference committee report on **HB 2201** prevailed by (Record 976): 140 Yeas, 3 Nays, 2 Present, not voting.

Yeas — Allen, A.; Allen, R.; Alonzo; Anchia; Bailey; Baxter; Berman; Blake; Bohac; Branch; Brown, B.; Brown, F.; Burnam; Callegari; Campbell; Casteel; Castro; Chavez; Chisum; Coleman; Cook, B.; Cook, R.; Corte; Crabb; Crownover; Davis, J.; Davis, Y.; Dawson; Delisi; Deshotel; Driver; Dukes; Dunnam; Dutton; Edwards; Eiland; Eissler; Elkins; Escobar; Farabee; Farrar; Flores; Flynn; Frost; Gallego; Gattis; Geren; Giddings; Gonzales; Gonzalez Toureilles; Goolsby; Griggs; Grusendorf; Guillen; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Hegar; Hilderbran; Hill; Hochberg; Hodge; Homer; 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; 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; 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.

Nays — Anderson; Herrero; Leibowitz.

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

Absent, Excused — Goodman.

Absent — Bonnen; Denny; Hope.

HB 2048 - RULES SUSPENDED

Representative Uresti moved to suspend all necessary rules to consider the conference committee report on **HB 2048** at this time.

The motion prevailed.

HB 2048 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Uresti submitted the following conference committee report on **HB 2048** :

Austin, Texas, May 27, 2005

The Honorable David Dewhurst
President of the Senate

The Honorable Tom Craddick
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the senate and the house of representatives on **HB 2048** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Ellis	Uresti
Eltife	Hupp
Nelson	M. Noriega
Williams	
On the part of the senate	On the part of the house

HB 2048, A bill to be entitled An Act relating to certain online services and transactions involving state agencies and to the abolishment of the TexasOnline Authority and the transfer of its powers and duties to the Texas Department of Information Resources.

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

SECTION 1. Section 2054.111, Government Code, is amended to read as follows:

Sec. 2054.111. USE OF TEXASONLINE PROJECT. (a) In this section, [~~"authority,"~~] "local government[~~,~~]" and "project" have the meanings assigned by Section 2054.251.

(b) A state agency shall consider using the project for agency services provided on the Internet, including:

(1) financial transactions;

(2) applications for licenses, permits, registrations, and other related documents from the public;

(3) electronic signatures; and

(4) any other applications that require security.

(c) If a state agency chooses not to use the project under Subsection (b), the agency must provide documentation to the department [~~authority~~] that shows the services and security required by the agency. The department [~~authority~~] shall prescribe the documentation required.

(d) A state agency that uses the project shall comply with rules adopted by the department, including any rules regarding:

(1) the appearance of the agency's Internet site and the ease with which the site can be used;

(2) the use of the project [~~authority~~] seal; and

(3) marketing efforts under Subsection (g).

(e) A state agency or local government that uses the project may charge a fee under Subchapter I if:

(1) the fee is necessary to recover the actual costs directly and reasonably incurred by the agency or local government because of the project for:

(A) the use of electronic payment methods; or

(B) interfacing with other information technology systems;

(2) the fee does not include an amount to recover state agency or local government employee costs;

(3) the state agency or local government approves the amount of the fee using the state agency's or local government's standard approval process for fee increases;

(4) the chief financial officer for the state agency or local government certifies that the amount of the fee is necessary to recover the actual costs incurred because of the project; and

(5) the department [~~authority~~] approves the amount of the fee.

(f) A local government may not charge a fee under Subsection (e) that is otherwise prohibited under Section 195.006 or 195.007, Local Government Code.

(g) A state agency that uses the project shall assist the department [~~authority~~] with marketing efforts regarding the use of the project.

SECTION 2. Section 2054.1115(b), Government Code, is amended to read as follows:

(b) The state agency or local government may charge a reasonable fee, as provided by Section 2054.111 or Subchapter I, to recover costs incurred through electronic payment methods used under this section.

SECTION 3. Section 2054.113(c), Government Code, is amended to read as follows:

(c) Before a state agency may contract with a third party for Internet application development that duplicates a TexasOnline function, the state agency must notify the department [~~TexasOnline Authority~~] of its intent to bid for such services at the same time that others have the opportunity to bid. The program management office may exempt a state agency from this section if it determines the agency has fully complied with Section 2054.111.

SECTION 4. Subchapter F, Chapter 2054, Government Code, is amended by adding Section 2054.129 to read as follows:

Sec. 2054.129. ADVERTISING ONLINE OPTIONS. Each state agency shall advertise the options for completing transactions with that agency online.

SECTION 5. The heading to Subchapter I, Chapter 2054, Government Code, is amended to read as follows:

SUBCHAPTER I. TEXASONLINE [~~AUTHORITY AND~~] PROJECT

SECTION 6. Sections 2054.252(a), (b), (c), (e), and (f), Government Code, are amended to read as follows:

(a) The department [~~authority~~] shall implement a project designated "TexasOnline" that establishes a common electronic infrastructure through which state agencies and local governments, including licensing entities, may by any method [~~electronically~~]:

(1) send and receive documents or required payments to and from:

(A) members of the public;

(B) persons who are regulated by the agencies or local governments; and

(C) the agencies and local governments;

(2) receive applications for original and renewal licenses and permits, including occupational licenses, complaints about occupational license holders, and other documents for filing from members of the public and persons who are

regulated by a state agency or local government that, when secure access is necessary, can be electronically validated by the agency, local government, member of the public, or regulated person;

(3) send original and renewal occupational licenses to persons regulated by licensing entities;

(4) send profiles of occupational license holders to persons regulated by licensing entities and to the public;

(5) store information; and

(6) provide and receive any other service to and from the agencies and local governments or the public.

(b) The electronic infrastructure established by the department [~~authority~~] under Subsection (a) may include the Internet, intranets, extranets, and wide area networks.

(c) The department [~~authority~~] may implement this section in phases. Each state agency or local government that chooses to participate in the project and each licensing entity shall comply with the schedule established by the department [~~authority~~].

(e) The department [~~authority~~] shall charge fees to licensing entities as provided by this subchapter in amounts sufficient to cover the cost of implementing this section with respect to licensing entities. The department [~~authority~~] shall charge a subscription fee to be paid by each licensing entity. The department may not charge the subscription fee until the service for which the fee is charged is available on the Internet. If the department [~~authority~~] determines that the transaction costs exceed the maximum increase in occupational license issuance or renewal fees allowed under Subsection (g), the department [~~authority~~] may also charge a reasonable convenience fee to be recovered from a license holder who uses the project for online issuance or renewal of a license.

(f) The department [~~authority~~] may exempt a licensing entity from subscription fees under Subsection (e) if the department [~~authority~~] determines that the licensing entity has established an Internet portal that is performing the functions described by Subsection (a).

SECTION 7. Section 2054.259, Government Code, is amended to read as follows:

Sec. 2054.259. GENERAL POWERS AND DUTIES OF DEPARTMENT [~~TEXASONLINE AUTHORITY~~]. The department [~~authority~~] shall:

(1) develop policies related to operation of the project;

(2) approve or disapprove services to be provided by the project;

(3) operate and promote the project;

(4) oversee contract performance for the project;

(5) comply with department financial requirements;

(6) oversee money generated for the operation and expansion of the project;

(7) develop project pricing policies, including policies regarding any fees that a state agency, including the department, or a local government may charge for a transaction that uses the project;

(8) evaluate participation in the project to determine if performance efficiencies or other benefits and opportunities are gained through project implementation; and

(9) perform [~~advise the department about the project; and~~

[~~(10) coordinate with the department to receive~~] periodic security audits of the operational facilities of the project.

SECTION 8. Subchapter I, Chapter 2054, Government Code, is amended by adding Sections 2054.2591 and 2054.2592 to read as follows:

Sec. 2054.2591. FEES. (a) The department shall set fees that a state agency, including the department, or a local government may charge for a transaction that uses the project. The department shall set fees at amounts sufficient to recover the direct and indirect costs of the project.

(b) A fee set by the department for using the project is in addition to any other statutory fees. The revenue collected from the fees must be used to support the project, including the recovery of project costs.

Sec. 2054.2592. FEE EXEMPTION; BARBER AND COSMETOLOGY BOARDS. The department may not charge the State Board of Barber Examiners or the Texas Cosmetology Commission a fee to use the project for the issuance or renewal of an occupational license.

SECTION 9. Section 2054.260, Government Code, is amended to read as follows:

Sec. 2054.260. REPORTING REQUIREMENTS[~~: AUTHORITY~~]. (a) Not later than September 1 of each even-numbered year, the department [~~authority~~] shall report on the status, progress, benefits, and efficiency gains of the project. The department [~~authority~~] shall provide the report to:

(1) the presiding officer of each house of the legislature;

(2) the chair of each committee in the legislature that has primary jurisdiction over the department;

(3) the governor; and

(4) each state agency or local government participating in the project.

(b) Not later than September 1 of each even-numbered year, [~~As required by~~] the department[~~, the authority~~] shall report on [~~to the department regarding~~] financial matters, including project costs and revenues, and [~~.~~

[~~(c) The authority shall report to the department~~] on any significant issues regarding contract performance on the project.

(c) The department shall provide the report to:

(1) the presiding officer of each house of the legislature; and

(2) the chair of each committee in the legislature with primary jurisdiction over the department.

SECTION 10. Section 2054.2605(b), Government Code, is amended to read as follows:

(b) This section applies only to a licensing entity for which the department [~~authority~~] has begun implementation of the project under the schedule established by the department [~~authority~~].

SECTION 11. Sections 2054.2606(d) and (e), Government Code, are amended to read as follows:

(d) The department [~~authority~~] shall adopt [~~prepare~~] rules [~~for adoption by the board~~] to prescribe the amount of the fee to be collected by a state agency that establishes a profile system for its license holders.

(e) The department [~~authority~~] shall adopt [~~prepare~~] additional rules as necessary to assist in the funding and administration of the profile systems established by state agencies, including rules prescribing policies for vendor contracts relating to the collection and entry of profile data.

SECTION 12. Section 2054.261, Government Code, is amended to read as follows:

Sec. 2054.261. ASSISTANCE AND COORDINATION WITH OTHER GOVERNMENTAL ENTITIES. The department [~~authority~~] shall:

(1) assist state agencies and local governments in researching and identifying potential funding sources for the project;

(2) assist state agencies and local governments in using the project;

(3) assist the legislature and other state leadership in coordinating electronic government initiatives; and

(4) coordinate operations between state agencies and local governments to achieve integrated planning for the project.

SECTION 13. Section 2054.262, Government Code, is amended to read as follows:

Sec. 2054.262. RULES. [~~(a)~~] The department [~~authority~~] shall adopt [~~prepare~~] rules regarding operation of the project [~~for consideration by the board~~].

[~~(b) The board may adopt rules prepared by the authority.~~]

SECTION 14. Section 2054.263, Government Code, is amended to read as follows:

Sec. 2054.263. SEAL. The department [~~authority~~] shall adopt an icon, symbol, brand, seal, or other identifying device to represent the project.

SECTION 15. Section 2054.266, Government Code, is amended to read as follows:

Sec. 2054.266. DONATIONS AND GRANTS. The department [~~authority~~] may request and accept a donation or grant from any person for use by the department [~~authority~~] in implementing or managing the project.

SECTION 16. Sections 2054.271(a) and (c), Government Code, are amended to read as follows:

(a) The department [~~authority~~] or another state agency or local government that uses the project [~~TexasOnline~~] may use the Department of Public Safety's or another state agency's database, as appropriate, to authenticate an individual's identity on the project [~~TexasOnline~~].

(c) The department may adopt [~~authority shall propose~~] rules[~~, which the board may adopt,~~] regarding the use of a standardized database for authentication under this section.

SECTION 17. Subchapter I, Chapter 2054, Government Code, is amended by adding Sections 2054.273 and 2054.274 to read as follows:

Sec. 2054.273. INDEPENDENT ANNUAL AUDIT. (a) Not later than August 1 of each year, any private vendor chosen to implement or manage the project shall have an audit of the vendor's finances associated with the

management and operation of the project performed by an independent certified public accountant selected by the state. The vendor shall pay for the audit and shall have a copy of the audit provided to the department.

(b) Not later than August 15 of each year, the department shall provide a copy of the audit report to:

(1) the presiding officer of each house of the legislature; and

(2) the chair of each committee in the legislature with primary jurisdiction over the department.

(c) The department shall keep a copy of the audit report and make the audit report available for inspection by any interested person during regular business hours.

Sec. 2054.274. RECOVERY OF FEES. A person that pays a fee for using the project may recover the fee in the ordinary course of business.

SECTION 18. Section 2054.351, Government Code, is amended to read as follows:

Sec. 2054.351. DEFINITIONS. In this subchapter, [~~"authority,"~~] "licensing entity[~~,~~]" and "occupational license" have the meanings assigned those terms by Section 2054.251[~~, as added by Chapter 342, Acts of the 77th Legislature, Regular Session, 2001~~].

SECTION 19. Sections 2054.352(b) and (c), Government Code, are amended to read as follows:

(b) The department [~~authority~~] may add additional agencies as system capabilities are developed.

(c) A licensing entity other than an entity listed by Subsection (a) may participate in the system established under Section 2054.353, [~~as added by Chapter 353, Acts of the 77th Legislature, Regular Session, 2001,~~] subject to the approval of the department [~~authority~~].

SECTION 20. Section 2054.353, Government Code, is amended to read as follows:

Sec. 2054.353. ELECTRONIC SYSTEM FOR OCCUPATIONAL LICENSING TRANSACTIONS. (a) The department [~~authority~~] shall administer a common electronic system using the Internet through which a licensing entity can electronically:

(1) send occupational licenses and other documents to persons regulated by the licensing entity [~~authority~~] and to the public;

(2) receive applications for occupational licenses and other documents for filing from persons regulated by the licensing entity [~~authority~~] and from the public, including documents that can be electronically signed if necessary; and

(3) receive required payments from persons regulated by the licensing entity [~~authority~~] and from the public.

(b) The department [~~authority~~] may implement this section in phases. Each licensing entity that participates in the system established under this section shall comply with the schedule established by the department [~~authority~~].

(c) The department [~~authority~~] may use any Internet portal established under a demonstration project administered by the department [~~authority~~].

(d) The department [~~authority~~] may exempt a licensing entity from participating in the system established by this section if the department [~~authority~~] determines that:

(1) the licensing entity has established an Internet portal that allows the performance of the functions described by Subsection (a); or

(2) online license renewal for the licensing entity would not be cost-effective or in the best interest of the project.

SECTION 21. Section 195.003, Local Government Code, is amended to read as follows:

Sec. 195.003. PERSONS AUTHORIZED TO FILE ELECTRONICALLY. (a) The following persons may file documents electronically for recording with a county clerk that accepts electronic filing and recording under this chapter:

(1) an attorney licensed in this state;

(2) a bank, savings and loan association, savings bank, or credit union doing business under laws of the United States or this state;

(3) a federally chartered lending institution, a federal government-sponsored entity, an instrumentality of the federal government, or a person approved as a mortgagee by the United States to make federally insured loans;

(4) a person licensed to make regulated loans in this state;

(5) a title insurance company or title insurance agent licensed to do business in this state; or

(6) an agency of this state.

(b) A fee may not be charged to a person authorized to file under this section, except as provided by Section 195.006 or 195.007.

SECTION 22. Subchapter E, Chapter 548, Transportation Code, is amended by adding Section 548.258 to read as follows:

Sec. 548.258. USE OF TEXASONLINE. (a) In this section, "TexasOnline" has the meaning assigned by Section 2054.003, Government Code.

(b) The department may adopt rules to require an inspection station to use TexasOnline to:

(1) purchase inspection certificates; or

(2) send to the department a record, report, or other information required by the department.

SECTION 23. (a) Section 531.0312, Government Code, is amended by adding Subsection (e) to read as follows:

(e) Each local workforce development board, the Texas Head Start State Collaboration Office, and each school district shall provide the Texas Information and Referral Network with information regarding eligibility for and availability of child-care and education services for inclusion in the statewide information and referral network. The local workforce development boards, Texas Head Start State Collaboration Office, and school districts shall provide the information in a form determined by the executive commissioner. In this subsection, "child-care and education services" has the meaning assigned by Section 531.03131.

(b) Subchapter B, Chapter 531, Government Code, is amended by adding Section 531.03131 to read as follows:

Sec. 531.03131. ELECTRONIC ACCESS TO CHILD-CARE AND EDUCATION SERVICES REFERRAL INFORMATION. (a) In this section, "child-care and education services" means:

(1) subsidized child-care services administered by the Texas Workforce Commission and local workforce development boards and funded wholly or partly by federal child-care development funds;

(2) child-care and education services provided by a Head Start or Early Head Start program provider;

(3) child-care and education services provided by a school district through a prekindergarten or after-school program; and

(4) any other government-funded child-care and education services, other than education and services provided by a school district as part of the general program of public and secondary education, designed to educate or provide care for children under the age of 13 in middle-income or low-income families.

(b) In addition to providing health and human services information, the Texas Information and Referral Network Internet site established under Section 531.0313 shall provide information to the public regarding child-care and education services provided by public or private entities throughout the state. The Internet site will serve as a single point of access through which a person may be directed on how or where to apply for all child-care and education services available in the person's community.

(c) To the extent resources are available, the Internet site must:

(1) be geographically indexed and designed to inform an individual about the child-care and education services provided in the area where the person lives;

(2) contain prescreening questions to determine a person's or family's probable eligibility for child-care and education services; and

(3) be designed in a manner that allows staff of the Texas Information and Referral Network to:

(A) provide an applicant with the telephone number, physical address, and electronic mail address of the nearest Head Start or Early Head Start office or center and local workforce development center and the appropriate school district; and

(B) send an electronic mail message to each appropriate entity described by Paragraph (A) containing the name of and contact information for each applicant and a description of the services the applicant is applying for.

(d) On receipt of an electronic mail message from the Texas Information and Referral Network under Subsection (c)(3)(B), each entity shall contact the applicant to verify information regarding the applicant's eligibility for available child-care and education services and, on certifying eligibility, shall match the applicant with entities providing those services in the applicant's community, including local workforce development boards, local child-care providers, or a Head Start or Early Head Start program provider.

(e) The child-care resource and referral network under Chapter 310, Labor Code, and each entity providing child-care and education services in this state, including local workforce development boards, the Texas Education Agency, school districts, Head Start and Early Head Start program providers, municipalities, counties, and other political subdivisions of this state, shall cooperate with the Texas Information and Referral Network as necessary in the administration of this section.

(f) Not later than the last day of the month following each calendar quarter, the commission shall file with the legislature a report regarding the use of the Internet site in the provision and delivery of child-care and education services during the reporting period. The report must include:

(1) the number of referrals made to Head Start or Early Head Start offices or centers;

(2) the number of referrals made to local workforce development centers; and

(3) the number of referrals made to each school district.

(c) If before implementing any provision of this section a state agency determines that a waiver or authorization from a federal agency is necessary for implementation of that provision, the agency affected by the provision shall request the waiver or authorization and may delay implementing that provision until the waiver or authorization is granted.

SECTION 24. The following are repealed:

(1) Sections 2054.251(1) and (2), 2054.253 through 2054.258, 2054.264, 2054.2645, 2054.265, and 2054.267, Government Code; and

(2) Section 7, Chapter 342, Acts of the 77th Legislature, Regular Session, 2001.

SECTION 25. The amendments made by this Act to Section 2054.113(c), Government Code, apply only to a bid made on or after the effective date of this Act. A bid that is made before that date is governed by the law in effect when the bid was made, and the former law is continued in effect for that purpose.

SECTION 26. On the effective date of this Act:

(1) the TexasOnline Authority is abolished and all functions and activities performed by the TexasOnline Authority immediately before that date are transferred to the Department of Information Resources;

(2) a schedule established or rule or form related to the TexasOnline Authority is a schedule, rule, or form of the Department of Information Resources and remains in effect until amended or replaced by that department;

(3) a reference in law or an administrative rule to the TexasOnline Authority means the Department of Information Resources;

(4) a complaint, investigation, or other proceeding before the TexasOnline Authority is transferred without change in status to the Department of Information Resources, and the Department of Information Resources assumes, as appropriate and without a change in status, the position of the TexasOnline Authority in an action or proceeding to which the TexasOnline Authority is a party;

(5) all money, contracts, leases, property, and obligations of the TexasOnline Authority are transferred to the Department of Information Resources;

(6) an employee of the TexasOnline Authority becomes an employee of the Department of Information Resources; and

(7) the unexpended and unobligated balance of any money appropriated by the legislature for the TexasOnline Authority is transferred to the Department of Information Resources.

SECTION 27. In the event of a conflict between a provision of this Act and another Act passed by the 79th Legislature, Regular Session, 2005, that becomes law, this Act prevails and controls regardless of the relative dates of enactment.

SECTION 28. 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 on the 91st day after the last day of the legislative session.

Representative Uresti moved to adopt the conference committee report on **HB 2048**.

A record vote was requested.

The motion to adopt the conference committee report on **HB 2048** prevailed by (Record 977): 144 Yeas, 0 Nays, 2 Present, not voting.

Yeas — Allen, A.; Allen, R.; Alonzo; Anchia; Anderson; Bailey; 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; Driver; Dukes; Dunnam; Dutton; 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; Hegar; Herrero; Hilderbran; Hill; Hochberg; Hodge; Homer; 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; 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; Reyna(C).

Absent, Excused — Goodman.

Absent — Bonnen; Hope.

HB 843 - RULES SUSPENDED

Representative Truitt moved to suspend all necessary rules to consider the conference committee report on **HB 843** at this time.

The motion prevailed.

HB 843 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Truitt submitted the following conference committee report on **HB 843** :

Austin, Texas, May 28, 2005

The Honorable David Dewhurst
President of the Senate

The Honorable Tom Craddick
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the senate and the house of representatives on **HB 843** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Nelson	Truitt
Carona	Gattis
Eltife	P. King
Estes	Riddle
Fraser	
On the part of the senate	On the part of the house

HB 843, A bill to be entitled An Act relating to the authority of certain counties to regulate communication facility structures in certain circumstances; providing a penalty.

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

SECTION 1. Chapter 240, Local Government Code, is amended by adding Subchapter E to read as follows:

SUBCHAPTER E. COMMUNICATION FACILITY STRUCTURES

Sec. 240.081. DEFINITIONS. In this subchapter:

(1) "Residential subdivision" means a subdivision:

(A) for which a plat is recorded in the county real property records;

(B) in which the majority of the lots are subject to deed restrictions limiting the lots to residential use; and

(C) that includes at least five lots that have existing residential structures.

(2) "Communication facility structure" means:

(A) antenna support structures for mobile and wireless telecommunication facilities, whip antennas, panel antennas, microwave dishes, or receive-only satellite dishes;

(B) cell enhancers and related equipment for wireless transmission from a sender to one or more receivers for mobile telephones, mobile radio systems facilities, commercial radio service, or other services or receivers; or

(C) a monopole tower, a steel lattice tower, or any other communication tower supporting mobile and wireless telecommunication facilities.

Sec. 240.082. APPLICABILITY. (a) This subchapter applies only to real property that is located in the unincorporated area of a county with a population of 1.4 million or more.

(b) This subchapter does not apply to:

(1) existing communication facilities or other structures used for the purpose of colocation, provided the height is not increased by more than 10 feet;

(2) a communication facility structure built to replace an existing communication facility structure if:

(A) the replacement communication facility structure is constructed within 50 feet of the existing communication facility structure;

(B) the replacement communication facility structure is the same size and constructed for the same purpose as the existing communication facility structure; and

(C) the existing communication facility structure is removed not later than the 14th day after the date the replacement communication facility begins operations; or

(3) a communications antenna, antenna facility, or antenna tower or support structure located in a residential area that is used by an amateur radio operator exclusively for amateur radio communications or public safety services.

Sec. 240.083. AUTHORITY OF COUNTY TO REGULATE. (a) Subject to the restrictions in Section 240.084, the commissioners court of a county subject to this subchapter may by order regulate the location of communication facility structures in the unincorporated areas of the county.

(b) The regulations may include a requirement for a permit for the construction or expansion of the facility and may impose fees, not to exceed $50, on regulated persons to recover the cost of administering the regulations.

Sec. 240.084. LOCATION OF COMMUNICATION FACILITY STRUCTURE. The commissioners court of a county that is subject to this subchapter may by order prohibit the construction of a communication facility structure within 300 feet, or the height of the structure, whichever is greater, of a residential subdivision.

Sec. 240.085. FILING REQUIREMENTS REGARDING CONSTRUCTION. A person proposing to construct a communication facility structure in the unincorporated area of a county subject to this subchapter shall file with the county official designated by the commissioners court:

(1) a statement informing the county that the construction is proposed and providing the date on or after which the construction is proposed to begin;

(2) copies of any necessary permits from the Federal Communications Commission or Federal Aviation Administration;

(3) a plat or map of the specific proposed location of the communication facility structure; and

(4) the correct phone number and address of the entity primarily responsible for the construction.

Sec. 240.086. VARIANCES. (a) A person who desires to construct or increase the height of a communication facility structure in violation of an order adopted by a county subject to this subchapter may apply to the commissioners court of the county for a variance from the regulation.

(b) The commissioners court may allow a variance from a regulation if the commissioners court finds that:

(1) a literal application or enforcement of the regulation would result in practical difficulty or unnecessary hardship; and

(2) the granting of the relief would:

(A) result in substantial justice being done;

(B) not be contrary to the public interest; and

(C) be in accordance with the spirit of the regulation and this subchapter.

(c) The commissioners court may impose any reasonable conditions on the variance that it considers necessary to accomplish the purposes of this subchapter.

(d) Before granting a request for a variance under this section, the county may require the applicant to prominently post an outdoor sign at the location stating that a communication facility structure is intended to be located on the premises and providing the name and business address of the applicant.

(e) The sign must be at least 24 by 36 inches in size and must be written in lettering at least two inches in size. The county in which the communication facility structure is to be located may require the sign to be in English and a language other than English if it is likely that a substantial number of the residents in the area speak a language other than English as their familiar language.

Sec. 240.087. OFFENSE. (a) A person commits an offense if the person violates an order adopted under this subchapter and the order defines the violation as an offense.

(b) An offense under this section is prosecuted in the same manner as an offense defined under state law.

(c) An offense under this section is a Class C misdemeanor.

Sec. 240.088. INJUNCTION. The county attorney or an attorney representing the county may file an action in a district court to enjoin a violation or threatened violation of an order adopted under this subchapter. The court may grant appropriate relief.

SECTION 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.

Representative Truitt moved to adopt the conference committee report on **HB 843**.

A record vote was requested.

The motion to adopt the conference committee report on **HB 843** prevailed by (Record 978): 145 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; 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; Goolsby; Griggs; Grusendorf; Guillen; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Hegar; Herrero; Hilderbran; Hill; Hochberg; Hodge; Homer; 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; 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; Reyna(C).

Absent, Excused — Goodman.

Absent — Hope.

SB 265 - RULES SUSPENDED

Representative B. Keffer moved to suspend all necessary rules to consider the conference committee report on **SB 265** at this time.

The motion prevailed.

SB 265 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative B. Keffer submitted the conference committee report on **SB 265**.

Representative B. Keffer moved to adopt the conference committee report on **SB 265**.

The motion to adopt the conference committee report on **SB 265** 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.)

SB 882 - RULES SUSPENDED

Representative A. Allen moved to suspend all necessary rules to consider the conference committee report on **SB 882** at this time.

The motion prevailed.

SB 882 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative A. Allen submitted the conference committee report on **SB 882**.

Representative A. Allen moved to adopt the conference committee report on **SB 882**.

The motion to adopt the conference committee report on **SB 882** 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.)

HR 2280 - ADOPTED
(by Solomons)

The following privileged resolution was laid before the house:

HR 2280

BE IT RESOLVED by the House of Representatives of the State of Texas, 79th Legislature, Regular Session, 2005, That House Rule 13, Section 9(a), be suspended in part as provided by House Rule 13, Section 9(f), to enable the conference committee appointed to resolve the differences on **HB 1116** (the governmental entities subject to the sunset review process) to consider and take action on the following matter:

House Rule 13, Section 9(a)(4) is suspended to allow the committee to add the following new language as Subsections (a) and (b) of SECTION 1.04 of the conference committee report:

(a) Section 21.035(a), Education Code, is amended to read as follows:

(a) [~~The board is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished and this subchapter expires September 1, 2005.~~]

[~~(b)~~] The [~~board and the~~] Texas Education Agency shall provide [~~enter into a memorandum of understanding to consolidate~~] administrative functions and services.

[~~(c) The sunset commission shall focus its review of the board on the appropriateness of recommendations made by the sunset commission to the 78th Legislature and compliance with the MOU to consolidate functions.~~]

(b) Section 21.039, Education Code, is repealed.

Explanation: This addition is necessary to adjust the language in the legislation regarding the administrative relationship between the State Board for Educator Certification and the Texas Education Agency.

HR 2280 was adopted.

HB 1116 - RULES SUSPENDED

Representative Solomons moved to suspend all necessary rules to consider the conference committee report on **HB 1116** at this time.

The motion prevailed.

HB 1116 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Solomons submitted the following conference committee report on **HB 1116** :

Austin, Texas, May 28, 2005

The Honorable David Dewhurst
President of the Senate

The Honorable Tom Craddick
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the senate and the house of representatives on **HB 1116** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Nelson	Solomons
Carona	Chisum
Harris	B. Cook
Jackson	Hamric
Whitmire	Truitt
On the part of the senate	On the part of the house

HB 1116, A bill to be entitled An Act relating to the governmental entities subject to the sunset review process.

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

ARTICLE 1. ENTITIES GIVEN 2007 SUNSET DATE

SECTION 1.01. TEXAS BOARD OF CRIMINAL JUSTICE; TEXAS DEPARTMENT OF CRIMINAL JUSTICE. Section 492.012, Government Code, is amended to read as follows:

Sec. 492.012. SUNSET PROVISION. The Texas Board of Criminal Justice and the Texas Department of Criminal Justice are subject to Chapter 325 (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board and the department are abolished September 1, 2007 [~~2011~~].

SECTION 1.02. CORRECTIONAL MANAGED HEALTH CARE COMMITTEE. Section 501.132, Government Code, is amended to read as follows:

Sec. 501.132. APPLICATION OF SUNSET ACT. The Correctional Managed Health Care Committee is subject to Chapter 325 (Texas Sunset Act). Unless continued in existence as provided by that chapter, the committee is abolished and this subchapter expires September 1, 2007 [~~2011~~].

SECTION 1.03. TEXAS ALCOHOLIC BEVERAGE COMMISSION. (a) Section 5.01(b), Alcoholic Beverage Code, is amended to read as follows:

(b) The Texas Alcoholic Beverage Commission is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the commission is abolished and Subchapter A, Chapter 5, of this code expires September 1, 2007 [~~2005~~]. In the review of the commission by the Sunset Advisory Commission, as required by this section, the sunset commission shall limit its review to the appropriateness of recommendations made by the sunset commission to the 79th Legislature. In the Sunset Advisory Commission's report to the 80th Legislature, the sunset commission may include any recommendations it considers appropriate.

(b) This section takes effect only if the 79th Legislature, Regular Session, 2005, does not enact other legislation that becomes law and that amends Section 5.01(b), Alcoholic Beverage Code, to extend the sunset date of the Texas Alcoholic Beverage Commission. If the 79th Legislature, Regular Session, 2005, enacts legislation of that kind, this section has no effect.

SECTION 1.04. STATE BOARD FOR EDUCATOR CERTIFICATION. (a) Sections 21.035(a), (b), and (c), Education Code, are amended to read as follows:

[~~(a) The board is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished and this subchapter expires September 1, 2005.~~

[~~(b)~~] The [~~board and the~~] Texas Education Agency shall provide the board's [~~enter into a memorandum of understanding to consolidate~~] administrative functions and services.

[~~(c) The sunset commission shall focus its review of the board on the appropriateness of recommendations made by the sunset commission to the 78th Legislature and compliance with the MOU to consolidate functions.~~]

(b) Section 21.039, Education Code, is repealed.

(c) This section takes effect only if the 79th Legislature, Regular Session, 2005, does not enact other legislation that becomes law and that affects Section 21.035, Education Code. If the 79th Legislature, Regular Session, 2005, enacts legislation of that kind, this section has no effect.

SECTION 1.05. TEXAS EDUCATION AGENCY. (a) Section 7.004, Education Code, is amended to read as follows:

Sec. 7.004. SUNSET PROVISION. The Texas Education Agency is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the agency is abolished September 1, 2007 [~~2005~~]. In the review of the agency by the Sunset Advisory Commission, as required by this section, the sunset commission shall limit its review to the appropriateness of recommendations made by the sunset commission to the 79th Legislature. In the Sunset Advisory Commission's report to the 80th Legislature, the sunset commission may include any recommendations it considers appropriate.

(b) Section 8.010, Education Code, is repealed.

(c) This section takes effect only if the 79th Legislature, Regular Session, 2005, does not enact other legislation that becomes law and that amends Section 7.004, Education Code, to extend the sunset date of the Texas Education Agency. If the 79th Legislature, Regular Session, 2005, enacts legislation of that kind, this section has no effect.

ARTICLE 2. ENTITIES GIVEN 2009 SUNSET DATE

SECTION 2.01. TEXAS MILITARY PREPAREDNESS COMMISSION. Section 436.003, Government Code, as added by Chapter 149, Acts of the 78th Legislature, Regular Session, 2003, is amended to read as follows:

Sec. 436.003. SUNSET PROVISION. The commission is subject to Chapter 325 (Texas Sunset Act). Unless continued in existence as provided by that chapter, the commission is abolished and this chapter expires September 1, 2009 [~~2007~~].

SECTION 2.02. TEXAS CANCER COUNCIL. Section 102.003, Health and Safety Code, is amended to read as follows:

Sec. 102.003. SUNSET PROVISION. The Texas Cancer Council is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the council is abolished and this chapter expires September 1, 2009 [~~2011~~].

SECTION 2.03. TEXAS COUNCIL FOR DEVELOPMENTAL DISABILITIES. Section 112.023, Human Resources Code, is amended to read as follows:

Sec. 112.023. SUNSET PROVISION. The Texas Council for Developmental Disabilities is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the council is abolished and this chapter expires September 1, 2009 [~~2011~~].

SECTION 2.04. GOVERNOR'S COMMITTEE ON PEOPLE WITH DISABILITIES. Section 115.005, Human Resources Code, is amended to read as follows:

Sec. 115.005. SUNSET PROVISION. The Governor's Committee on People with Disabilities is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the committee is abolished and this chapter expires September 1, 2009 [~~2011~~].

SECTION 2.05. TEXAS DEPARTMENT OF INSURANCE. Section 31.004, Insurance Code, is amended to read as follows:

Sec. 31.004. SUNSET PROVISION. The Texas Department of Insurance is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the department is abolished September 1, 2009 [~~2007~~].

SECTION 2.06. OFFICE OF PUBLIC INSURANCE COUNSEL. Section 501.003, Insurance Code, is amended to read as follows:

Sec. 501.003. SUNSET PROVISION. The office is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the office is abolished September 1, 2009 [~~2007~~].

ARTICLE 3. ENTITIES GIVEN 2011 SUNSET DATE

SECTION 3.01. DEPARTMENT OF AGRICULTURE. Section 11.003, Agriculture Code, is amended to read as follows:

Sec. 11.003. SUNSET PROVISION. The Department of Agriculture is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the department is abolished September 1, 2011 [~~2007~~].

SECTION 3.02. TEXAS-ISRAEL EXCHANGE FUND BOARD. Section 45.006(i), Agriculture Code, is amended to read as follows:

(i) The board is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished and this chapter expires September 1, 2011 [~~2007~~].

SECTION 3.03. BOARD OF DIRECTORS–OFFICIAL COTTON GROWERS' BOLL WEEVIL ERADICATION FOUNDATION. Section 74.127(a), Agriculture Code, is amended to read as follows:

(a) The board of directors of the official cotton growers' boll weevil eradication foundation is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished and this subchapter expires September 1, 2011 [~~2007~~].

SECTION 3.04. STATE PRESERVATION BOARD. Section 443.002, Government Code, is amended to read as follows:

Sec. 443.002. SUNSET PROVISION. The State Preservation Board is subject to Chapter 325 (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished and this chapter expires September 1, 2011 [~~2007~~].

SECTION 3.05. PRESCRIBED BURNING BOARD. Section 153.044, Natural Resources Code, is amended to read as follows:

Sec. 153.044. SUNSET PROVISION. The Prescribed Burning Board is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished and this chapter expires September 1, 2011 [~~2007~~].

SECTION 3.06. PUBLIC UTILITY COMMISSION OF TEXAS. (a) Section 12.005, Utilities Code, is amended to read as follows:

Sec. 12.005. APPLICATION OF SUNSET ACT. The Public Utility Commission of Texas is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter or by Chapter 39, the commission is abolished and this title expires September 1, 2011 [~~2005~~].

(b) This section takes effect only if the 79th Legislature, Regular Session, 2005, does not enact other legislation that becomes law and that amends Section 12.005, Utilities Code, to extend the sunset date of the Public Utility Commission of Texas or a successor in function. If the 79th Legislature, Regular Session, 2005, enacts legislation of that kind, this section has no effect.

SECTION 3.07. OFFICE OF PUBLIC UTILITY COUNSEL. (a) Section 13.002, Utilities Code, is amended to read as follows:

Sec. 13.002. APPLICATION OF SUNSET ACT. The Office of Public Utility Counsel is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the office is abolished and this chapter expires September 1, 2011 [~~2005~~].

(b) This section takes effect only if the 79th Legislature, Regular Session, 2005, does not enact other legislation that becomes law and that amends Section 13.002, Utilities Code, to extend the sunset date of the Office of Public Utility Counsel or a successor in function. If the 79th Legislature, Regular Session, 2005, enacts legislation of that kind, this section has no effect.

SECTION 3.08. TEXAS LOTTERY COMMISSION. Section 467.002, Government Code, is amended to read as follows:

Sec. 467.002. APPLICATION OF SUNSET ACT. The commission is subject to Chapter 325 (Texas Sunset Act). Unless continued in existence as provided by that chapter, the commission is abolished and this chapter, Chapter 466 of this code, and Chapter 2001, Occupations Code, expire [~~Act expires~~] September 1, 2011 [~~2005. In the review of the commission by the Sunset Advisory Commission, as required by this section, the sunset commission shall limit its review to the appropriateness of recommendations made by the sunset commission to the 78th Legislature. In the Sunset Advisory Commission's report to the 79th Legislature, the sunset commission may include any recommendations it considers appropriate~~].

ARTICLE 4. ENTITIES GIVEN 2015 SUNSET DATE

SECTION 4.01. TEXAS BOARD OF PROFESSIONAL GEOSCIENTISTS. Section 1002.003, Occupations Code, is amended to read as follows:

Sec. 1002.003. APPLICATION OF SUNSET ACT. The Texas Board of Professional Geoscientists is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished and this chapter expires September 1, 2015 [~~2013~~].

ARTICLE 5. ENTITIES REMOVED FROM SPECIFIC SUNSET REVIEW

SECTION 5.01. REPEALER. The following laws are repealed:

(1) Section 413.003, Government Code (Criminal Justice Policy Council);

(2) Section 2108.007, Government Code (Texas Incentive and Productivity Commission);

(3) Section 2205.019, Government Code (State Aircraft Pooling Board);

(4) Article 21.49-20(d), Insurance Code (Property and Casualty Insurance Legislative Oversight Committee); and

(5) Section 39.907(d), Utilities Code (Electric Utility Restructuring Legislative Oversight Committee).

ARTICLE 6. STUDY OF COURT COSTS AND FEES

SECTION 6.01. STUDY OF COURT COSTS AND FEES. As part of its review of criminal justice agencies for the 80th Legislature, the Sunset Advisory Commission shall study the purpose, collection, and use of certain criminal court costs and fees and parole, probation, and community supervision fees. In the commission's report to the 80th Legislature, the commission shall include any recommendations it considers appropriate resulting from its consideration of the study. The Office of the State Auditor, the Legislative Budget Board, the comptroller of public accounts, and any other state agency shall assist the commission as necessary in conducting the study required by this section.

ARTICLE 7. EFFECTIVE DATE

SECTION 7.01. EFFECTIVE DATE. This Act takes effect September 1, 2005.

Representative Solomons moved to adopt the conference committee report on **HB 1116**.

The motion to adopt the conference committee report on **HB 1116** 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.)

HR 2251 - ADOPTED
(by Uresti)

The following privileged resolution was laid before the house:

HR 2251

BE IT RESOLVED by the House of Representatives of the State of Texas, 79th Legislature, Regular Session, 2005, That House Rule 13, Section 9(a), be suspended in part as provided by House Rule 13, Section 9(f), to enable the conference committee appointed to resolve the differences on **HB 1126** (emergency medical services vehicles and personnel and the collection and use of certain health-related data) to consider and take action on the following matter:

House Rule 13, Section 9(a)(4), is suspended to permit the committee to add the following new SECTIONS to read as follows:

SECTION . Section 104.042(e), Health and Safety Code, is amended to read as follows:

(e) Data received by the department under this section containing information identifying specific patients [~~persons or health care facilities~~] is confidential, is not subject to disclosure under Chapter 552, Government Code, and may not be released unless the [~~all identifying~~] information identifying the patient is removed. This subsection does not authorize the release of information that is confidential under Chapter 108.

SECTION . Subchapter D, Chapter 104, Health and Safety Code, is amended by adding Section 104.044 to read as follows:

Sec. 104.044. SORTING COLLECTED DATA. (a) The department shall compile the health data collected under this subchapter and organize the results, to the extent possible, according to the following geographic areas:

(1) the Texas-Mexico border region;
(2) each public health region;
(3) rural areas;
(4) urban areas;
(5) each county; and
(6) the state.

(b) Health data released under this subchapter must be released in accordance with the way it is compiled under this section.

SECTION . Subchapter A, Chapter 191, Health and Safety Code, is amended by adding Section 191.008 to read as follows:

Sec. 191.008. SORTING COLLECTED DATA. (a) The department shall compile the information relating to births, deaths, and fetal deaths collected under this chapter and organize the results, to the extent possible, according to the following geographic areas:

(1) the Texas-Mexico border region;
(2) each public health region;

(3) rural areas;
(4) urban areas;
(5) each county; and
(6) the state.

(b) The department may release the information relating to births, deaths, and fetal deaths in accordance with the way it is compiled under this section.

SECTION . The change in law made by this Act to Chapters 104 and 191, Health and Safety Code, applies only to the furnishing of data under Chapters 104 and 191, Health and Safety Code, or a rule adopted under that chapter that is originally required to be furnished on or after the effective date of this Act. The furnishing of data originally required to be furnished before the effective date of this Act is governed by the law as it existed immediately before that date, and that law is continued in effect for that purpose.

SECTION . The Department of State Health Services shall consult with a group of affected persons and entities to define rural and urban areas for purposes of Sections 104.044 and 191.008, Health and Safety Code, as added by this Act, including:

(1) individuals with expertise in rural health services research, epidemiology, rural public health services delivery, demography, health planning, and large data sets; and

(2) representatives from universities, the Department of State Health Services, the Office of Rural Community Affairs, area health education centers, and local and county health departments.

Explanation: The changes are necessary to require the Department of State Health Services to compile and organize certain health and vital statistics related data by region, and to protect the confidentiality of the data collected.

HR 2251 was adopted.

HB 1126 - RULES SUSPENDED

Representative Uresti moved to suspend all necessary rules to consider the conference committee report on **HB 1126** at this time.

The motion prevailed.

HB 1126 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Uresti submitted the following conference committee report on **HB 1126** :

Austin, Texas, May 28, 2005

The Honorable David Dewhurst
President of the Senate

The Honorable Tom Craddick
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the senate and the house of representatives on **HB 1126** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Madla	Uresti
Gallegos	Delisi
Lucio	Laubenberg
Nelson	Solis
	Zedler
On the part of the senate	On the part of the house

HB 1126, A bill to be entitled An Act relating to emergency medical services vehicles and personnel and the collection and use of certain health-related data.

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

SECTION 1. Section 104.042(e), Health and Safety Code, is amended to read as follows:

(e) Data received by the department under this section containing information identifying specific patients [~~persons or health care facilities~~] is confidential, is not subject to disclosure under Chapter 552, Government Code, and may not be released unless the [~~all identifying~~] information identifying the patient is removed. This subsection does not authorize the release of information that is confidential under Chapter 108.

SECTION 2. Subchapter D, Chapter 104, Health and Safety Code, is amended by adding Section 104.044 to read as follows:

Sec. 104.044. SORTING COLLECTED DATA. (a) The department shall compile the health data collected under this subchapter and organize the results, to the extent possible, according to the following geographic areas:

(1) the Texas-Mexico border region;
(2) each public health region;
(3) rural areas;
(4) urban areas;
(5) each county; and
(6) the state.

(b) Health data released under this subchapter must be released in accordance with the way it is compiled under this section.

SECTION 3. Subchapter A, Chapter 191, Health and Safety Code, is amended by adding Section 191.008 to read as follows:

Sec. 191.008. SORTING COLLECTED DATA. (a) The department shall compile the information relating to births, deaths, and fetal deaths collected under this chapter and organize the results, to the extent possible, according to the following geographic areas:

(1) the Texas-Mexico border region;
(2) each public health region;
(3) rural areas;
(4) urban areas;
(5) each county; and

(6) the state.

(b) The department may release the information relating to births, deaths, and fetal deaths in accordance with the way it is compiled under this section.

SECTION 4. Section 773.004(a), Health and Safety Code, is amended to read as follows:

(a) This chapter does not apply to:

(1) a ground transfer vehicle and staff used to transport a patient who is under a physician's care between medical facilities or between a medical facility and a private residence, unless it is medically necessary to transport the patient using a stretcher;

(2) [~~ground or~~] air transfer that does not advertise as an ambulance service and that is not licensed by the department;

(3) the use of ground or air transfer vehicles to transport sick or injured persons in a casualty situation that exceeds the basic vehicular capacity or capability of emergency medical services providers in the area;

(4) an industrial ambulance; or

(5) a physician, registered nurse, or other health care practitioner licensed by this state unless the health care practitioner staffs an emergency medical services vehicle regularly.

SECTION 5. Section 773.042, Health and Safety Code, is amended to read as follows:

Sec. 773.042. BASIC LIFE-SUPPORT EMERGENCY MEDICAL SERVICES PROVIDER QUALIFICATIONS. A provider qualifies as a basic life-support emergency medical services provider if it provides a vehicle that is designed for transporting the sick or injured, [~~and~~] has personnel and sufficient equipment and supplies for providing basic life support, and is capable of providing emergency and nonemergency transportation.

SECTION 6. Section 773.057, Health and Safety Code, is amended by adding Subsection (e) to read as follows:

(e) In addition to any other qualifications that an emergency medical services provider must possess to obtain the type of license sought, all emergency medical services providers must possess the qualifications required for a basic emergency medical services provider under Section 773.042.

SECTION 7. Section 143.005, Local Government Code, is amended to read as follows:

Sec. 143.005. STATUS OF EMPLOYEES IF CHAPTER ADOPTED. (a) Each fire fighter or police officer serving in a municipality that adopts this chapter and who has been in the service of the municipality for more than six months at the time this chapter is adopted and who is entitled to civil service classification has the status of a civil service employee and is not required to take a competitive examination to remain in the position the person occupies at the time of the adoption.

(b) In a municipality that adopts this chapter, an employee of the fire department whose primary duties are to provide emergency medical services for the municipality is considered to be a fire fighter who is a member of the fire department performing fire medical emergency technology, entitled to civil service protection, and covered by this chapter.

SECTION 8. The change in law made by this Act to Chapter 104 and Chapter 191, Health and Safety Code, applies only to the furnishing of data under Chapter 104 and Chapter 191, Health and Safety Code, or a rule adopted under those chapters that is originally required to be furnished on or after the effective date of this Act. The furnishing of data originally required to be furnished before the effective date of this Act is governed by the law as it existed immediately before that date, and that law is continued in effect for that purpose.

SECTION 9. The Department of State Health Services shall consult with a group of affected persons and entities to define rural and urban areas for purposes of Sections 104.044 and 191.008, Health and Safety Code, as added by this Act, including:

(1) individuals with expertise in rural health services research, epidemiology, rural public health services delivery, demography, health planning, and large data sets; and

(2) representatives from universities, the Department of State Health Services, the Office of Rural Community Affairs, area health education centers, and local and county health departments.

SECTION 10. (a) A person or vehicle that becomes subject to Chapter 773, Health and Safety Code, and rules adopted under that law as a result of the changes in law made by this Act is not required to comply with Chapter 773 and applicable rules before January 1, 2006.

(b) A person who is a licensed emergency medical services provider immediately before the effective date of this Act must meet the requirements of Section 773.042, Health and Safety Code, as amended by this Act, on renewing the license.

SECTION 11. This Act takes effect September 1, 2005.

Representative Uresti moved to adopt the conference committee report on **HB 1126**.

The motion to adopt the conference committee report on **HB 1126** 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.)

SB 712 - RULES SUSPENDED

Representative R. Cook moved to suspend all necessary rules to consider the conference committee report on **SB 712** at this time.

The motion prevailed.

SB 712 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative R. Cook submitted the conference committee report on **SB 712**.

SB 712 - STATEMENT OF LEGISLATIVE INTENT

REPRESENTATIVE TURNER: Does the language in your report provide funding for targeted energy efficiency programs that were previously funded by the system benefit fund?

REPRESENTATIVE R. COOK: Yes.

TURNER: And do these funds come from existing funds now in place for energy efficiency program activities in competitive areas?

R. COOK: Yes.

TURNER: And provision based on the house amendment to **SB 712** that passed the house by a margin of 98-39 earlier this week?

R. COOK: Yes.

TURNER: So is it correct that we are simply making the targeted energy assistance programs a funding priority in their expenditure of funds?

R. COOK: Yes.

TURNER: And finally, the provision provides that funding shall be allocated to both the Targeted Energy Efficiency programs run by local community agencies, and the Hard to Reach program that serves a somewhat higher income population group. When the PUC allocates these precious funds, is it your intent that the first and highest priority should be to target funding for the community based Targeted Energy Efficiency programs that provide help to those families and elderly persons who are having the most difficult time in paying their bills?

R. COOK: Yes.

REMARKS ORDERED PRINTED

Representative Turner moved to print remarks between Representative R. Cook and Representative Turner.

The motion prevailed.

Representative R. Cook moved to adopt the conference committee report on **SB 712**.

The motion to adopt the conference committee report on **SB 712** 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.)

MESSAGE FROM THE SENATE

A message from the senate was received at this time (see the addendum to the daily journal, Messages from the Senate, Message No. 4).

SB 568 - RULES SUSPENDED

Representative Truitt moved to suspend all necessary rules to consider the conference committee report on **SB 568** at this time.

The motion prevailed.

SB 568 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Truitt submitted the conference committee report on **SB 568**.

Representative Truitt moved to adopt the conference committee report on **SB 568**.

The motion to adopt the conference committee report on **SB 568** 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.)

HR 2278 - ADOPTED
(by Bonnen)

Representative Hughes moved to suspend all necessary rules to take up and consider at this time **HR 2278**.

The motion prevailed.

The following resolution was laid before the house:

HR 2278, Honoring Doris Williams of Lake Jackson on her 70th birthday.

HR 2278 was adopted.

HR 2279 - ADOPTED
(by Bonnen)

Representative Hughes moved to suspend all necessary rules to take up and consider at this time **HR 2279**.

The motion prevailed.

The following resolution was laid before the house:

HR 2279, In memory of Jewel Hawthorne Winder of Caro.

HR 2279 was unanimously adopted by a rising vote.

RESOLUTIONS ADOPTED

Representative Alonzo moved to suspend all necessary rules in order to take up and consider at this time **HR 2241 - HR 2244** and **HR 2246**.

The motion prevailed.

The following resolutions were laid before the house:

HR 2241 (by Alonzo), Commemorating the 37th anniversary of the 1969 Crystal City student walkout.

HR 2242 (by Alonzo), Honoring Luis Martinez for his exemplary service as a legislative intern in the office of State Representative Roberto Alonzo.

HR 2243 (by Alonzo), Honoring the life of Cesar Chavez and recognizing the month beginning March 31, 2006, as Cesar Chavez Farmworker Appreciation Month.

HR 2244 (by Alonzo), Honoring participants in the University of North Texas Roberto R. Alonzo Bilingual/ESL Education Scholars Program for 2006.

HR 2246 (by Alonzo), Recognizing the 19th annual Grand Prairie Cinco de Mayo Celebration.

The resolutions were adopted.

HCR 233 - ADOPTED
(by Berman)

The following privileged resolution was laid before the house:

HCR 233

WHEREAS **HB 2110** has been adopted by the house of representatives and the senate; and

WHEREAS, The bill contains technical 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 2110** in the SECTION of the bill that adds Section 30.05(h), Penal Code, by striking "has the meaning assigned by Section 46.15" and substituting the following:

"means another state with which the attorney general of this state, with the approval of the governor of this state, negotiated an agreement after determining that the other state:

(1) has firearm proficiency requirements for peace officers; and

(2) fully recognizes the right of peace officers commissioned in this state to carry weapons in the other state".

HCR 233 was adopted.

HCR 238 - ADOPTED
(by Hughes)

The following privileged resolution was laid before the house:

HCR 238

WHEREAS, **HB 2201** has been adopted by the house of representatives and the senate and is being prepared for enrollment; 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 make the following corrections:

(1) In SECTION 6 of the bill, amended Section 5.001(6)(C), Water Code (conference committee report, page 9, line 7), between "FutureGen" and "profile", insert "project".

(2) In SECTION 6 of the bill, amended Section 5.001(6)(D), Water Code (conference committee report, page 9, line 11), between "FutureGen" and "profile", insert "project".

(3) In SECTION 6 of the bill, amended Section 5.001(6)(E), Water Code (conference committee report, page 9, line 15), between "FutureGen" and "profile", insert "project".

(4) In SECTION 6 of the bill, amended Section 5.001(6)(F), Water Code (conference committee report, page 9, line 20), between "FutureGen" and "profile", insert "project".

(5) In SECTION 13(2) of the bill (conference committee report, page 13, line 18), strike "Section 5.558" and substitute "under Sections 5.558 and 27.022".

HCR 238 was adopted.

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. 5).

HR 2214 - ADOPTED
(by Talton)

The following privileged resolution was laid before the house:

HR 2214

BE IT RESOLVED by the House of Representatives of the State of Texas, 79th Legislature, Regular Session, 2005, That House Rule 13, Section 9(a), be suspended in part as provided by House Rule 13, Section 9(f), to enable the conference committee appointed to resolve the differences on **HB 1835** (the apportionment of municipal infrastructure costs in regard to certain property development projects) to consider and take action on the following matter:

House Rule 13, Section 9(a)(1), is suspended to permit the committee to change the text of SECTION 2 of the bill to read as follows:

SECTION 2. The change in law made by this Act applies to the approval of a development project that is not finally adjudicated before the effective date of this Act.

Explanation: The change is necessary to ensure that the changes in law made by the bill apply to a matter that has not been finally determined by a court before the effective date of the Act.

HR 2214 - STATEMENT OF LEGISLATIVE INTENT

REPRESENTATIVE THOMPSON: Robert, you and I have discussed this last night, and again this morning, and it is my understanding that this does not impact any pending cases.

REPRESENTATIVE TALTON: It is my understanding that is does not. I am not aware of any.

THOMPSON: Okay, and you were told it is not going to impact any pending cases.

TALTON: That's what I was told.

THOMPSON: And it is only to make sure that we are clear on some language in the law that the senate author believed needed clearing up?

TALTON: That is correct. The senate author thought it needed clearing up on the Flyer-Mount case to make sure that the city didn't have to pay any attorney fees or expert fees.

THOMPSON: And the case which was fighted, that has already been decided by the Texas Supreme Court? Did it go to the 5th circuit?

TALTON: It did not. It went to the Texas Supreme Court, and that was it.

THOMPSON: And that case has been decided, and has not been appealed, and it is final?

TALTON: That's right. It is final as of March of 2004.

REMARKS ORDERED PRINTED

Representative Thompson moved to print remarks between Representative Talton and Representative Thompson.

The motion prevailed.

HR 2214 was adopted.

HB 1835 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Talton submitted the following conference committee report on **HB 1835** :

Austin, Texas, May 27, 2005

The Honorable David Dewhurst
President of the Senate

The Honorable Tom Craddick
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the senate and the house of representatives on **HB 1835** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Armbrister	Talton
Fraser	Bailey
Lucio	R. Cook
Madla	Howard
On the part of the senate	On the part of the house

HB 1835, A bill to be entitled An Act relating to the apportionment of municipal infrastructure costs in regard to certain property development projects.

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

SECTION 1. Subchapter Z, Chapter 212, Local Government Code, is amended by adding Section 212.904 to read as follows:

Sec. 212.904. APPORTIONMENT OF MUNICIPAL INFRASTRUCTURE COSTS. (a) If a municipality requires as a condition of approval for a property development project that the developer bear a portion of the costs of municipal infrastructure improvements by the making of dedications, the payment of fees, or the payment of construction costs, the developer's portion of the costs may not exceed the amount required for infrastructure improvements

that are roughly proportionate to the proposed development as approved by a professional engineer who holds a license issued under Chapter 1001, Occupations Code, and is retained by the municipality.

(b) A developer who disputes the determination made under Subsection (a) may appeal to the governing body of the municipality. At the appeal, the developer may present evidence and testimony under procedures adopted by the governing body. After hearing any testimony and reviewing the evidence, the governing body shall make the applicable determination within 30 days following the final submission of any testimony or evidence by the developer.

(c) A developer may appeal the determination of the governing body to a county or district court of the county in which the development project is located within 30 days of the final determination by the governing body.

(d) A municipality may not require a developer to waive the right of appeal authorized by this section as a condition of approval for a development project.

(e) A developer who prevails in an appeal under this section is entitled to applicable costs and to reasonable attorney's fees, including expert witness fees.

(f) This section does not diminish the authority or modify the procedures specified by Chapter 395.

SECTION 2. The change in law made by this Act applies to the approval of a development project that is not finally adjudicated before 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.

Representative Talton moved to adopt the conference committee report on **HB 1835**.

A record vote was requested.

The motion to adopt the conference committee report on **HB 1835** prevailed by (Record 979): 142 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; 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; Goolsby; Griggs; Grusendorf; Guillen; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Hegar; Herrero; Hilderbran; Hill; Hochberg; Hodge; Homer; Hopson; Howard; Hughes; Hunter; Hupp; Isett; Jackson; Jones, D.; Jones, J.; Keel; Keffer, B.; Keffer, J.; King, P.; Kolkhorst; Krusee; Kuempel; Laney; Laubenberg; Leibowitz; Luna; Madden; Martinez; Martinez Fischer; McCall; McClendon; McReynolds; Menendez; Merritt; Miller; Morrison; Mowery; Naishtat; Nixon; Noriega, M.; Oliveira; Olivo; Orr; Otto; Paxton; Peña; Phillips; Pickett; Pitts; Puente; Quintanilla; Raymond; Riddle; Ritter; Rodriguez; Rose; Seaman; Smith, T.; Smith, W.;

Smithee; Solis; Solomons; Strama; Straus; Swinford; Talton; Taylor; Thompson; Truitt; Turner; Uresti; Van Arsdale; Veasey; Villarreal; Vo; West; Wong; Woolley; Zedler.

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

Absent, Excused — Goodman.

Absent — Chisum; Hope; King, T.; Moreno, P.

STATEMENT OF VOTE

When Record No. 979 was taken, I was in the house but away from my desk. I would have voted yes.

T. King

(Speaker in the chair)

HB 2120 - RULES SUSPENDED

Representative R. Allen moved to suspend all necessary rules to consider the conference committee report on **HB 2120** at this time.

The motion prevailed.

HB 2120 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative R. Allen submitted the following conference committee report on **HB 2120** :

Austin, Texas, May 28, 2005

The Honorable David Dewhurst
President of the Senate

The Honorable Tom Craddick
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the senate and the house of representatives on **HB 2120** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Wentworth	R. Allen
Madla	Nixon
Brimer	Truitt
West, Royce	Rose
	Hamric
On the part of the senate	On the part of the house

HB 2120, A bill to be entitled An Act relating to the administration of county government and the exercise of powers at the county level.

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

SECTION 1. Article 14.06(a), Code of Criminal Procedure, is amended to read as follows:

(a) Except as provided by Subsection (b), in each case enumerated in this Code, the person making the arrest or the person having custody of the person arrested shall take the person arrested or have him taken without unnecessary delay, but not later than 48 hours after the person is arrested, before the magistrate who may have ordered the arrest, before some magistrate of the county where the arrest was made without an order, or, [~~if necessary~~] to provide more expeditiously to the person arrested the warnings described by Article 15.17 of this Code, before a magistrate in any other [~~a~~] county of this state [~~bordering the county in which the arrest was made~~]. The magistrate shall immediately perform the duties described in Article 15.17 of this Code.

SECTION 2. Article 15.16, Code of Criminal Procedure, is amended to read as follows:

Art. 15.16. HOW WARRANT IS EXECUTED. (a) The officer or person executing a warrant of arrest shall without unnecessary delay take the person or have him taken before the magistrate who issued the warrant or before the magistrate named in the warrant, if the magistrate is in the same county where the person is arrested. If the issuing or named magistrate is in another county, the person arrested shall without unnecessary delay be taken before some magistrate in the county in which he was arrested.

(b) Notwithstanding Subsection (a), to provide more expeditiously to the person arrested the warnings described by Article 15.17, the officer or person executing the arrest warrant may as permitted by that article take the person arrested before a magistrate in a county other than the county of arrest.

SECTION 3. Article 15.17(a), Code of Criminal Procedure, is amended to read as follows:

(a) In each case enumerated in this Code, the person making the arrest or the person having custody of the person arrested shall without unnecessary delay, but not later than 48 hours after the person is arrested, take the person arrested or have him taken before some magistrate of the county where the accused was arrested or, [~~if necessary~~] to provide more expeditiously to the person arrested the warnings described by this article, before a magistrate in any other [~~a~~] county of this state [~~bordering the county in which the arrest was made~~]. The arrested person may be taken before the magistrate in person or the image of the arrested person may be presented [~~broadcast by closed circuit television~~] to the magistrate by means of an electronic broadcast system. The magistrate shall inform in clear language the person arrested, either in person or through the electronic broadcast system [~~by closed circuit television~~], of the accusation against him and of any affidavit filed therewith, of his right to retain counsel, of his right to remain silent, of his right to have an attorney present during any interview with peace officers or attorneys representing the state, of his right to terminate the interview at any time, and of his right to have an examining trial. The magistrate shall also inform the person arrested of the person's right to request the appointment of counsel if the person cannot afford counsel. The magistrate shall inform the person arrested of the procedures for requesting appointment of counsel. If the person does not speak and understand the English language or is deaf, the magistrate shall inform the person in a manner consistent with Articles 38.30 and 38.31, as appropriate.

The magistrate shall ensure that reasonable assistance in completing the necessary forms for requesting appointment of counsel is provided to the person at the same time. If the person arrested is indigent and requests appointment of counsel and if the magistrate is authorized under Article 26.04 to appoint counsel for indigent defendants in the county, the magistrate shall appoint counsel in accordance with Article 1.051. If the magistrate is not authorized to appoint counsel, the magistrate shall without unnecessary delay, but not later than 24 hours after the person arrested requests appointment of counsel, transmit, or cause to be transmitted to the court or to the courts' designee authorized under Article 26.04 to appoint counsel in the county, the forms requesting the appointment of counsel. The magistrate shall also inform the person arrested that he is not required to make a statement and that any statement made by him may be used against him. The magistrate shall allow the person arrested reasonable time and opportunity to consult counsel and shall, after determining whether the person is currently on bail for a separate criminal offense, admit the person arrested to bail if allowed by law. [~~A closed-circuit television system may not be used under this subsection unless the system provides for a two-way communication of image and sound between the arrested person and the magistrate.~~] A recording of the communication between the arrested person and the magistrate shall be made. The recording shall be preserved until the earlier of the following dates: (1) the date on which the pretrial hearing ends; or (2) the 91st day after the date on which the recording is made if the person is charged with a misdemeanor or the 120th day after the date on which the recording is made if the person is charged with a felony. The counsel for the defendant may obtain a copy of the recording on payment of a reasonable amount to cover costs of reproduction. For purposes of this subsection, "electronic broadcast system" means a two-way electronic communication of image and sound between the arrested person and the magistrate and includes secure Internet videoconferencing.

SECTION 4. Article 15.18, Code of Criminal Procedure, is amended to read as follows:

Art. 15.18. ARREST FOR OUT-OF-COUNTY OFFENSE. (a) A person arrested under a warrant issued in a county other than the one in which the person is arrested shall be taken before a magistrate of the county where the arrest takes place or, to provide more expeditiously to the arrested person the warnings described by Article 15.17, before a magistrate in any other county of this state, including the county where the warrant was issued. The magistrate [~~who~~] shall:

(1) take bail, if allowed by law, and, if without jurisdiction, immediately transmit the bond taken to the court having jurisdiction of the offense; or

(2) in the case of a person arrested under warrant for an offense punishable by fine only, accept a written plea of guilty or nolo contendere, set a fine, determine costs, accept payment of the fine and costs, give credit for time served, determine indigency, or, on satisfaction of the judgment, discharge the defendant, as the case may indicate.

(b) Before the 11th business day after the date a magistrate accepts a written plea of guilty or nolo contendere in a case under Subsection (a)(2), the magistrate shall, if without jurisdiction, transmit to the court having jurisdiction of the offense:

(1) the written plea;

(2) any orders entered in the case; and

(3) any fine or costs collected in the case.

(c) The arrested person may be taken before a magistrate by means of an electronic broadcast system as provided by and subject to the requirements of Article 15.17.

SECTION 5. Article 15.19(b), Code of Criminal Procedure, is amended to read as follows:

(b) If a person is arrested and taken before a magistrate in a county other than [~~bordering~~] the county in which the arrest is made [~~under the provisions of Article 15.17(a) of this code~~] and if the person is remanded to custody, the person may be confined in a jail in the county in which the magistrate serves for a period of not more than 72 hours after the arrest before being transferred to the county jail of the county in which the arrest occurred.

SECTION 6. Article 27.18, Code of Criminal Procedure, is amended by adding Subsections (d), (e), (f), and (g) to read as follows:

(d) A defendant who is confined in a county other than the county in which charges against the defendant are pending may use the teleconferencing method provided by this article or the electronic broadcast system authorized in Article 15.17 to enter a plea or waive a right in the court with jurisdiction over the case.

(e) A defendant who enters a plea or waiver under Subsection (d):

(1) consents to venue in the county in which the court receiving the plea or waiver is located; and

(2) waives any claim of error related to venue.

(f) Subsection (e) does not prohibit a court from granting a defendant's motion for a change of venue during the trial of the defendant.

(g) If a defendant enters a plea of guilty or nolo contendere under Subsection (d), the attorney representing the state may request at the time the plea is entered that the defendant submit a fingerprint of the defendant suitable for attachment to the judgment. On request for a fingerprint under this subsection, the county in which the defendant is confined shall obtain a fingerprint of the defendant and use first-class mail or other means acceptable to the attorney representing the state and the county to forward the fingerprint to the court accepting the plea.

SECTION 7. Section 403.1042(b), Government Code, is amended to read as follows:

(b) The advisory committee is composed of 11 members appointed as follows:

(1) one member appointed by the comptroller to represent a public hospital or hospital district located in a county with a population of 50,000 or less or a public hospital owned or maintained by a municipality;

(2) one member appointed by the political subdivision that, in the year preceding the appointment, received the largest annual distribution paid from the account;

(3) one member appointed by the political subdivision that, in the year preceding the appointment, received the second largest annual distribution paid from the account;

(4) four members appointed by the Texas Conference of Urban Counties from nominations received from political subdivisions that,[~~:~~

[~~(A)~~] in the year preceding the appointment, received the 3rd, 4th, 5th, 6th, 7th, 8th, 9th, 10th, 11th, or 12th largest annual distribution paid from the account[~~; and~~

[~~(B) do not have an appointee serving on the advisory committee at the time of appointment~~];

(5) one member appointed by the County Judges and Commissioners Association of Texas;

(6) one member appointed by the North and East Texas County Judges and Commissioners Association;

(7) one member appointed by the South Texas County Judges and Commissioners Association; and

(8) one member appointed by the West Texas County Judges and Commissioners Association.

SECTION 8. Section 511.009(c), Government Code, is amended to read as follows:

(c) At any time and on the application of the county commissioners court or sheriff, the commission may grant reasonable variances, including variances that are to last for the life of a facility, clearly justified by the facts, for operation of a facility not in strict compliance with state law. A variance may not permit unhealthy, unsanitary, or unsafe conditions.

SECTION 9. Section 12.137, Health and Safety Code, is amended by amending Subsections (b) and (c) and adding Subsection (b-1) to read as follows:

(b) The advisory committee is composed of 11 members appointed [~~by the advisory committee~~] as follows:

(1) one member appointed [~~nominated~~] by the board to represent a public hospital or hospital district located in a county with a population of 50,000 or less or a public hospital owned or maintained by a municipality;

(2) one member appointed [~~nominated~~] by the political subdivision that, in the year preceding the appointment, received the largest annual distribution paid from the account;

(3) one member appointed [~~nominated~~] by the political subdivision that, in the year preceding the appointment, received the second largest annual distribution paid from the account;

(4) four members appointed [~~nominated~~] by the Texas Conference of Urban Counties from nominations received from political subdivisions that[~~:~~

[~~(A)~~] in the year preceding the appointment, received the 3rd, 4th, 5th, 6th, 7th, 8th, 9th, 10th, 11th, or 12th largest annual distribution paid from the account; [~~and~~

[~~(B) do not have a nominee serving on the advisory committee at the time of appointment;~~]

(5) one member appointed [~~nominated~~] by the County Judges and Commissioners Association of Texas;

(6) one member appointed [~~nominated~~] by the North and East Texas County Judges and Commissioners Association;

(7) one member appointed [~~nominated~~] by the South Texas County Judges and Commissioners Association; and

(8) one member appointed [~~nominated~~] by the West Texas County Judges and Commissioners Association.

(b-1) An appointing entity under Subsection (b) is not a state association of counties.

(c) A commissioners court that sets the tax rate for a hospital district must approve any person appointed [~~nominated~~] by the hospital district to serve on the advisory committee.

SECTION 10. Subchapter C, Chapter 281, Health and Safety Code, is amended by adding Section 281.0475 to read as follows:

Sec. 281.0475. RENAMING DISTRICT. (a) This section applies only to a district created in a county with a population of more than 800,000 that was not included in the boundaries of a hospital district before September 1, 2003.

(b) With the approval of the commissioners court, the board may rename the district.

SECTION 11. Section 281.056, Health and Safety Code, is amended by amending Subsections (b), (c), and (d) and adding Subsection (b-1) to read as follows:

(b) Except as provided by Subsection (b-1), a district may employ or contract with private legal counsel to represent the district on any legal matter. If the district does not employ or contract with private legal counsel on a legal matter, the [~~The~~] county attorney, district attorney, or criminal district attorney, as appropriate, with the duty to represent the county in civil matters shall represent the district [~~in all legal matters~~].

(b-1) The county attorney, district attorney, or criminal district attorney, as appropriate, with the duty to represent the county in civil matters shall, in all legal matters, represent a district located in:

(1) a county with a population of 650,000 or more that borders the United Mexican States;

(2) a county with a population of 3.4 million or more; or

(3) a county with a population of more than 800,000 that was not included in the boundaries of a hospital district before September 1, 2003.

(c) A [~~The~~] board that receives legal services from a county attorney, district attorney, or criminal district attorney may employ additional private legal counsel when the board determines that additional counsel is advisable. A board that contracts or employs private legal counsel under Subsection (b) may request and receive additional legal services from the county attorney, district attorney, or criminal district attorney, as appropriate, with the duty to represent the county in civil matters when the board determines that additional counsel is necessary.

(d) If the district receives legal services from a county attorney, district attorney, or criminal district attorney, the [~~The~~] district shall contribute sufficient funds to the general fund of the county for the account of the budget of the county attorney, district attorney, or criminal district attorney, as appropriate, to pay all additional salaries and expenses incurred by that officer in performing the duties required by the district.

SECTION 12. Section 343.011(c), Health and Safety Code, is amended to read as follows:

(c) A public nuisance is:

(1) keeping, storing, or accumulating refuse on premises in a neighborhood unless the refuse is entirely contained in a closed receptacle;

(2) keeping, storing, or accumulating rubbish, including newspapers, abandoned vehicles, refrigerators, stoves, furniture, tires, and cans, on premises in a neighborhood or within 300 feet of a public street for 10 days or more, unless the rubbish or object is completely enclosed in a building or is not visible from a public street;

(3) maintaining premises in a manner that creates an unsanitary condition likely to attract or harbor mosquitoes, rodents, vermin, or disease-carrying pests;

(4) allowing weeds to grow on premises in a neighborhood if the weeds are located within 300 feet of another residence or commercial establishment;

(5) maintaining a building in a manner that is structurally unsafe or constitutes a hazard to safety, health, or public welfare because of inadequate maintenance, unsanitary conditions, dilapidation, obsolescence, disaster, damage, or abandonment or because it constitutes a fire hazard;

(6) maintaining on abandoned and unoccupied property in a neighborhood, or maintaining on any property in a neighborhood in a county with a population of more than 1.1 million, a swimming pool that is not protected with:

(A) a fence that is at least four feet high and that has a latched gate that cannot be opened by a child; or

(B) a cover over the entire swimming pool that cannot be removed by a child;

(7) maintaining a flea market in a manner that constitutes a fire hazard;

(8) discarding refuse or creating a hazardous visual obstruction on:

(A) county-owned land; or

(B) land or easements owned or held by a special district that has the commissioners court of the county as its governing body; or

(9) discarding refuse on the smaller of:

(A) the area that spans 20 feet on each side of a utility line; or

(B) the actual span of the utility easement.

SECTION 13. Section 81.028, Local Government Code, is amended by adding Subsection (b-1) to read as follows:

(b-1) A county judge may file a standing order of emergency delegation of authority that clearly indicates the types of orders or official documents that the officer or employee may sign on behalf of the county judge in the event of an emergency or disaster.

SECTION 14. Section 83.002, Local Government Code, is amended to read as follows:

Sec. 83.002. BOND. (a) The county treasurer, before beginning to perform the duties of office, must execute a bond with a surety company authorized to do business in this state as a surety. The bond [~~that~~] must be:

(1) approved by the commissioners court;

(2) [~~and~~] made payable to the county judge in an amount established by the commissioners court not to exceed one-half of one percent of the largest amount budgeted for general county maintenance and operations for any fiscal year of the county beginning during the term of office preceding the term for which the bond is to be given except that the amount may not be less than $5,000 or more than $500,000; and

(3) [~~. The bond must be~~] conditioned that the treasurer will[~~:~~

[~~(1)~~] faithfully execute the duties of office[~~;~~

[~~(2) remit according to law all funds received as county treasurer; and~~

[~~(3) render an account of all funds received to the commissioners court at each regular term of the court~~].

(b) The treasurer must take and subscribe the official oath, which must be endorsed on the bond. The bond and the oath shall be recorded in the county clerk's office. The commissioners court may, at any time, require the treasurer to obtain a new or additional bond if the court considers the existing bond insufficient or doubtful. The bond may not exceed the maximum amount provided by Subsection (a). The bond must be acquired within 20 days after the date notice of the requirement has been given by the commissioners court. The failure of a treasurer to obtain a bond required by this subsection subjects the treasurer to removal under Section 83.004.

SECTION 15. Section 83.003(c), Local Government Code, is amended to read as follows:

(c) The introductory course required by Subsection (a) and [~~at least 10 hours of~~] the continuing education required by Subsection (b) must be sponsored or cosponsored by [~~taken at~~] an accredited public institution of higher education. [~~The remaining required classroom hours, wherever taken, must be certified by an accredited public institution of higher education.~~]

SECTION 16. Sections 83.004(a) and (c), Local Government Code, are amended to read as follows:

(a) If a person elected to the office of county treasurer fails to provide an adequate bond as required by Section 83.002(a) and to take the official oath on or before assuming the office [~~within 20 days after the date the certificate of election is received~~], the county judge may [~~shall~~] declare the office vacant.

(c) A vacancy in the office of county treasurer shall be filled as provided by Section 87.041. The person appointed to fill the vacancy shall, on or before entering upon the discharge of the duties of office [~~and within 20 days after the~~

~~date notice of the appointment is received~~], take the official oath and obtain the same surety bond as required by Section 83.002(a) for an elected county treasurer.

SECTION 17. Section 85.001(a), Local Government Code, is amended to read as follows:

(a) A person elected as sheriff, before beginning to perform the duties of office, must execute a bond with:

(1) two or more good and sufficient sureties; or

(2) a solvent surety company authorized to do business in this state.

SECTION 18. Section 86.002(a), Local Government Code, is amended to read as follows:

(a) Before entering on the duties of office, a person who is elected to the office of constable must execute a bond with two or more good and sufficient sureties or with a solvent surety company authorized to do business in this state. The bond must be payable to the governor and the governor's successors in office and conditioned that the constable will faithfully perform the duties imposed by law. The bond must be approved by the commissioners court of the county. The commissioners court shall set the bond in an amount of not less than $500 or more than $1,500.

SECTION 19. The heading to Section 89.001, Local Government Code, is amended to read as follows:

Sec. 89.001. SPECIAL COUNSEL IN POPULOUS COUNTIES [~~WITH POPULATION OF MORE THAN ONE MILLION~~].

SECTION 20. Section 89.001(a), Local Government Code, is amended to read as follows:

(a) The commissioners court of a county with a population of more than 1.25 [~~one~~] million may employ an attorney as special counsel.

SECTION 21. Section 89.0041(b), Local Government Code, is amended to read as follows:

(b) The written notice must be delivered by certified or registered mail by the 30th business day after suit is filed and contain:

(1) the style and cause number of the suit;

(2) the court in which the suit was filed; [~~and~~]

(3) the date on which the suit was filed; and

(4) the name of the person filing suit.

SECTION 22. Section 157.002(a), Local Government Code, is amended to read as follows:

(a) The commissioners court by rule may provide for medical care and hospitalization and may provide for compensation, accident, hospital, and disability insurance for the following persons if their salaries are paid from the funds of the county or funds of a flood control district located entirely in the county, or funds of a hospital district described by Section 281.0475, Health and Safety Code, located entirely in the county, or if they are employees of another governmental entity for which the county is obligated to provide benefits:

(1) deputies, assistants, and other employees of the county, or of the flood control district, or of the hospital district, who work under the commissioners court or its appointees;

(2) county and district officers and their deputies and assistants appointed under Subchapter A, Chapter 151;

(3) employees appointed under Section 10(a), Article 42.12, Code of Criminal Procedure;

(4) any retired person formerly holding any status listed above; and

(5) the dependents of any person listed above.

SECTION 23. Section 157.003(b), Local Government Code, is amended to read as follows:

(b) A person who elects to participate in the health plan must authorize contributions to the fund by salary deduction. The authorization must be in writing and must be given at the time of the person's employment or on the effective date of the rules. The county and any participating flood control district or hospital district shall also contribute to the fund. A person who does not contribute to the plan may not receive hospitalization or insurance benefits.

SECTION 24. Subchapter A, Chapter 157, Local Government Code, is amended by adding Section 157.008 to read as follows:

Sec. 157.008. INSURANCE POOL OR INSURANCE COMPANY NOT CREATED. If a county provides for medical care and hospitalization or provides for compensation, accident, hospital, and disability insurance to persons listed under Section 157.002(a)(1), the county:

(1) has not created an insurance pool with a flood control district, hospital district, or other governmental entity, unless the county enters into a contract under Chapter 172; and

(2) is not an insurance company subject to the Insurance Code or to regulation by the Texas Department of Insurance as an insurance company.

SECTION 25. Section 157.101(a), Local Government Code, is amended to read as follows:

(a) A commissioners court by rule, including through an intergovernmental risk pool organized under Chapter 172, may provide for group health and related benefits, including medical care, surgical care, hospitalization, and pharmaceutical, life, accident, disability, long-term care, vision, dental, mental health, and substance abuse benefits, for the following persons if their salaries are paid from the funds of the county or funds of a flood control district located entirely in the county, or funds of a hospital district described by Section 281.0475, Health and Safety Code, located entirely in the county, or if they are employees of another governmental entity for which the county is obligated to provide benefits:

(1) deputies, assistants, and other employees of the county, or of the flood control district, or of the hospital district, who work under the commissioners court or its appointees;

(2) county and district officers and their deputies and assistants appointed under Subchapter A, Chapter 151;

(3) employees of a community supervision and corrections department established under Chapter 76, Government Code;

(4) a retired person formerly holding a status listed in Subdivisions (1)-(3); and

(5) the dependents of a person listed in Subdivisions (1)-(4).

SECTION 26. Section 157.102(b), Local Government Code, is amended to read as follows:

(b) A person who elects to participate in any aspect of the group health and related benefits plan and is required to make contributions toward the payment of the plan must authorize contributions to the fund by salary deduction. The authorization must be submitted in writing to the county officer authorized by the commissioners court to administer payroll deductions. The authorization remains in effect as long as the person is required to make contributions toward the payment of the plan. If the amount of the person's required contributions changes after the date the request for deduction is submitted, the county shall notify the person of the change before the change takes effect. The county and any participating flood control district or hospital district may also contribute to the fund.

SECTION 27. Subchapter F, Chapter 157, Local Government Code, is amended by adding Section 157.106 to read as follows:

Sec. 157.106. INSURANCE POOL OR INSURANCE COMPANY NOT CREATED. If a county provides for group health and related benefits, including medical care, surgical care, hospitalization, and pharmaceutical, life, accident, disability, long-term care, vision, dental, mental health, and substance abuse benefits, to persons listed under Section 157.101(a)(1), the county:

(1) has not created an insurance pool with a flood control district, hospital district, or other governmental entity, unless the county enters into a contract under Chapter 172; and

(2) is not an insurance company subject to the Insurance Code or to regulation by the Texas Department of Insurance as an insurance company.

SECTION 28. Section 172.003(1), Local Government Code, is amended to read as follows:

(1) "Affiliated service contractor" means an organization qualified for exemption under Section 501(c), Internal Revenue Code (26 U.S.C. Section 501(c)), as amended, that provides governmental or quasi-governmental services on behalf of a political subdivision and derives more than 25 [~~50~~] percent of its gross revenues from grants or funding from the political subdivision.

SECTION 29. Chapter 263, Local Government Code, is amended by adding Subchapter F to read as follows:

SUBCHAPTER F. ADVERTISING SPACE

Sec. 263.251. SALE OR LEASE OF ADVERTISING SPACE. (a) The commissioners court of a county may adopt a procedure by which the county may:

(1) lease to another entity advertising space located:

(A) in or on a building or part of a building owned by the county;

(B) on a vehicle owned by the county; or

(C) on an official county website; or

(2) sell advertising space located on correspondence distributed by the county through the United States Postal Service.

(b) The procedure must include a requirement that the county publish, before a sale or lease is made, a notice of its intent to sell or lease the advertising space. The notice must:

(1) be published:

(A) at least one time in a newspaper of general circulation in the county not earlier than the 30th day or later than the 14th day before the date the award of the sale or lease is made; and

(B) on the county's official website continuously for the 14 days immediately before the date the award of the sale or lease is made;

(2) include a description of the advertising space, including its location and a description of the part of any real or personal property that the advertising space occupies; and

(3) include a description of the procedure by which bids or proposals for the sale or lease may be submitted.

(c) Under the procedure, the commissioners court may reject any and all bids or proposals submitted.

SECTION 30. Subchapter B, Chapter 292, Local Government Code, is amended by adding Section 292.030 to read as follows:

Sec. 292.030. FACILITIES IN UNINCORPORATED AREA OF COUNTY. (a) The commissioners court of a county may purchase, construct, reconstruct, improve, equip, or provide for by other means, including by lease or lease with an option to purchase, a branch office in the unincorporated area of the county.

(b) Any county officer may maintain an office and the county may provide any county service at the branch office authorized by this section. The maintenance of an office or the provision of a service at the branch office must be in addition to an office maintained or service provided at any other location required by law.

SECTION 31. Section 351.0415, Local Government Code, is amended to read as follows:

Sec. 351.0415. COMMISSARY OPERATION BY SHERIFF OR PRIVATE VENDOR. (a) The sheriff of a county or the sheriff's designee, including a private vendor operating a detention facility under contract with the county, may operate, or contract with another person to operate, a commissary for the use of the inmates [~~prisoners~~] committed to the county jail or to a detention facility operated by the private vendor, as appropriate. The commissary must be operated in accordance with rules adopted by the Commission on Jail Standards.

(b) The sheriff or the sheriff's designee:

(1) has exclusive control of the commissary funds;

(2) shall maintain commissary accounts showing the amount of proceeds from the commissary operation and the amount and purpose of disbursements made from the proceeds; and

(3) shall accept new bids to renew contracts of commissary suppliers every five years.

(c) The sheriff or the sheriff's designee may use commissary proceeds only to:

(1) fund, staff, and equip a program addressing the social needs of the inmates [~~county prisoners~~], including an educational or recreational program and religious or rehabilitative counseling;

(2) supply inmates [~~county prisoners~~] with clothing, writing materials, and hygiene supplies;

(3) establish, staff, and equip the commissary operation and fund the salaries of staff responsible for managing the inmates' commissary accounts; [~~or~~]

(4) fund, staff, and equip both an educational and a law library for the educational use of inmates; or

(5) fund physical plant improvements, technology, equipment, programs, services, and activities that provide for the well-being, health, safety, and security of the inmates and the facility [~~county prisoners~~].

(d) For a jail under the supervision of the sheriff, at [~~At~~] least once each county fiscal year, or more often if the commissioners court desires, the auditor shall, without advance notice, fully examine the jail commissary accounts. The auditor shall verify the correctness of the accounts and report the findings of the examination to the commissioners court of the county at its next term beginning after the date the audit is completed.

(e) A private vendor operating a detention facility under contract with the county shall ensure that the facility commissary accounts are annually examined by an independent auditor.

(f) When entering into a contract under Subsection (a), the sheriff or the sheriff's designee shall consider the following:

(1) whether the contract should provide for a fixed rate of return combined with a sales growth incentive;

(2) the menu items offered by the provider and the price of those items;

(3) the value, as measured by a best value standard, and benefits to inmates and the commissary, as offered by the provider;

(4) safety and security procedures to be performed by the provider; and

(5) the performance record of the provider, including service availability, reliability, and efficiency.

(g) Commissary proceeds may be used only for the purposes described in Subsection (c). A commissioners court may not use commissary proceeds to fund the budgetary operating expenses of a county jail.

SECTION 32. Section 351.04155, Local Government Code, is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

(a) This section applies only to a county that:

(1) has a population of one million or more; [~~and~~]

(2) has two municipalities with a population of 200,000 [~~300,000~~] or more; and

(3) is adjacent to a county with a population of one million or more.

(c) A purchase made by the sheriff using commissary proceeds is subject to the competitive purchasing procedures contained in Subchapter C, Chapter 262. For the purpose of complying with that subchapter, a reference in that subchapter to "commissioners court" means the sheriff and a reference to "the county official who makes purchases for the county" means the sheriff or the sheriff's designee.

SECTION 33. Subtitle B, Title 11, Local Government Code, is amended by adding Chapter 353 to read as follows:

CHAPTER 353. COUNTY HAZARDOUS MATERIALS SERVICES

Sec. 353.001. DEFINITIONS. In this chapter:

(1) "Concerned party" means a person:

(A) involved in the possession, ownership, or transportation of a hazardous material that is released or abandoned; or

(B) who has legal liability for the causation of an incident resulting in the release or abandonment of a hazardous material.

(2) "Hazardous material" means a flammable material, an explosive, a radioactive material, a hazardous waste, a toxic substance, or related material, including a substance defined as a "hazardous substance," "hazardous material," "toxic substance," or "solid waste" under:

(A) the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. Section 9601 et seq.);

(B) the federal Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et seq.);

(C) the federal Toxic Substances Control Act (15 U.S.C. Section 2601 et seq.);

(D) the federal Hazardous Materials Transportation Act (49 U.S.C. Section 5101 et seq.); or

(E) Chapter 361, Health and Safety Code.

Sec. 353.002. APPLICABILITY. This chapter applies to an incident involving hazardous material that has been leaked, spilled, released, or abandoned on any property.

Sec. 353.003. HAZARDOUS MATERIALS SERVICES. (a) A county may provide hazardous materials services, including a response to an incident involving hazardous material that has been leaked, spilled, released, or abandoned, if:

(1) the county first provides reasonable notice to a concerned party regarding the need for the hazardous materials services so that the concerned party has a reasonable opportunity to respond to the incident involving hazardous material; and

(2) the concerned party fails to respond or fails to respond in a timely and effective manner to the incident.

(b) A county may provide limited control and containment measures that are necessary to protect human health and the environment without first complying with the requirements of Subsection (a) if the county is the first entity to arrive at a site where an incident involving hazardous material has occurred that is prepared to take action in response to the incident.

(c) If the hazardous material is natural gas released from an underground facility as defined by Section 251.002, Utilities Code, the county:

(1) must comply with the requirements of Section 251.159, Utilities Code; and

(2) may not operate any equipment or other controls or devices at the underground facility without the express permission of the operator of the facility.

Sec. 353.004. FEE FOR PROVIDING HAZARDOUS MATERIALS SERVICE; EXCEPTION. (a) A county, or a person authorized by contract on the county's behalf, may charge a reasonable fee, including a fee to offset the cost of providing control and containment measures under Section 353.003(b), to a concerned party for responding to a hazardous materials service call.

(b) A county, or a person authorized by contract on the county's behalf, may charge a fee for providing hazardous materials services under Section 353.003(a) only if the county has complied with the requirements of that subsection. A concerned party is not liable for a fee associated with the county's hazardous materials services under Section 353.003(a) or a fee to offset the cost of providing control and containment measures under Section 353.003(b) if the county provides hazardous materials services under Section 353.003(a) and the county does not provide notice as required by Section 353.003(a)(1).

(c) An individual who is a concerned party does not have to pay a fee under this section if:

(1) the individual is not involved in the possession, ownership, or transportation of the hazardous material as the employee, agent, or servant of another person;

(2) the individual is involved solely for private, noncommercial purposes related to the individual's own property and the individual receives no compensation for any services involving the hazardous materials; and

(3) the hazardous materials possessed, owned, or being transported by the individual are in forms, quantities, and containers ordinarily available for sale as consumer products to members of the general public.

Sec. 353.005. EXEMPTION FOR GOVERNMENTAL ENTITIES. This chapter does not apply to hazardous materials owned or possessed by a governmental entity.

SECTION 34. Chapter 372, Local Government Code, is amended by adding Subchapter C to read as follows:

SUBCHAPTER C. IMPROVEMENT PROJECTS IN CERTAIN COUNTIES

Sec. 372.101. DEFINITIONS; APPLICABILITY. (a) In this subchapter:

(1) "Board" means the board of directors of a district.

(2) "District" means a public improvement district created by a county under this subchapter.

(3) "Hotel" has the meaning assigned by Section 156.001, Tax Code, and includes a timeshare, overnight lodging unit, or condominium during the time the timeshare, overnight lodging unit, or condominium is rented by a person who is not the owner of the timeshare, overnight lodging unit, or condominium.

(4) "Municipality" means the municipality in whose extraterritorial jurisdiction the improvement project is to be located.

(b) This subchapter applies only to a county with a population of 825,000 or more.

Sec. 372.102. PURPOSE. By enacting this subchapter, the legislature has created a program for economic development as provided in Section 52-a, Article III, Texas Constitution. A county may engage in economic development projects as provided by this subchapter, and, on a determination of the commissioners court of the county to create a district, may delegate the authority to oversee and manage the economic development project to an appointed board of directors. In appointing a board, the commissioners court delegates its authority to serve a public use and benefit.

Sec. 372.103. COUNTY MAY ESTABLISH DISTRICT. A county may create a public improvement district under this subchapter if the county determines it is in the county's best interest. A district created under this subchapter is a political subdivision of this state.

Sec. 372.104. APPLICABILITY; CONFLICT OF LAWS. This subchapter controls to the extent of a conflict between this subchapter and Subchapter A.

Sec. 372.105. ESTABLISHMENT OF ECONOMIC DEVELOPMENT PROJECTS; OPTIONAL CREATION OF PUBLIC IMPROVEMENT DISTRICT. (a) The commissioners court of a county, other than a county that borders on the Gulf of Mexico or a bay or inlet of the gulf or a county that has two municipalities located in whole or in part within its boundaries each having a population of 300,000 or more, may on receipt of a petition satisfying the requirements of Section 372.005, establish by order an economic development project in a designated portion of the county, or, if the county determines it is in the best interests of the county, create a district only in an area located in the extraterritorial jurisdiction of a municipality in that county.

(b) The order must:

(1) describe the territory in which the economic development project is to be located or the boundaries of a district;

(2) specifically authorize the district to exercise the powers of this subchapter if the county has determined that creating a district is in the county's best interests; and

(3) state whether the petition requests improvements to be financed and paid for with taxes authorized by this subchapter instead of or in addition to assessments.

Sec. 372.106. GOVERNING BODY; TERMS. If a county elects to delegate the authority granted under this subchapter, it shall appoint a board of seven directors to serve staggered two-year terms, with three or four directors' terms expiring June 1 of each year to manage the economic development project or, at the option of the county, govern the district.

Sec. 372.107. ELIGIBILITY. (a) To be eligible to serve as a director, a person must be at least 18 years old.

(b) If the population of the district is more than 1,000, to be eligible to serve as a director, a person must be at least 18 years old, reside in the district, and meet the qualifications of Section 375.063.

Sec. 372.108. VACANCIES; QUORUM. (a) A board vacancy is filled in the same manner as the original appointment.

(b) A vacant board position is not counted for the purposes of establishing a quorum of the board.

Sec. 372.109. CONFLICTS OF INTEREST. Chapter 171 governs conflicts of interest for directors.

Sec. 372.110. COMPENSATION. (a) For purposes of this section, "performs the duties of a director" means substantial performance of the management of the district's business, including participation in board and committee meetings and other activities involving the substantive deliberation of district business and in pertinent educational programs, but does not include routine or ministerial activities such as the execution of documents or self-preparation for meetings.

(b) A county is authorized to compensate the directors when they perform the duties of a director. The county shall compensate a director not more than $50 a day for each day that the director performs the duties of a director.

Sec. 372.111. OATH AND BOND; OFFICER ELECTIONS. As soon as practicable, a board member shall give the bond and take the oath of office in accordance with Section 375.067, and the board shall elect officers in accordance with Section 375.068.

Sec. 372.112. ELECTION DATES. (a) For an election ordered by the county under this subchapter before December 31, 2005, the uniform election dates under the Election Code in effect on January 1, 2005, apply.

(b) This section expires January 1, 2007.

Sec. 372.113. POWERS AND DUTIES. (a) A county operating under this subchapter has the powers and duties of:

(1) a county development district under Chapter 383, except for Section 383.066;

(2) a road district created by a county under Section 52, Article III, Texas Constitution; and

(3) a municipality or county under Chapter 380 or 381, or under Section 372.003(b)(9).

(b) A county is authorized to manage an economic development project in a designated portion of the county, or to create a district and to delegate to a board the county's powers and duties as provided by this subchapter.

(c) A county may not delegate to a district the powers and duties of a road district or the power to provide water, wastewater, or drainage facilities under this section unless both the municipality and county consent by resolution.

Sec. 372.114. DEVELOPMENT AGREEMENTS. A county may enter into a development agreement with an owner of land in the territory designated for an economic development project, or a district may enter into a development agreement, for a term not to exceed 30 years on any terms and conditions the county or the board considers advisable. The parties may amend the agreement.

Sec. 372.115. ECONOMIC DEVELOPMENT AGREEMENT; ELECTION; TAXES. (a) A county may enter into an agreement, only on terms and conditions the commissioners court and a board consider advisable, to make

a grant or loan of public money to promote state or local economic development and to stimulate business and commercial activity in the territory where the economic development project is located, or in the district, including a grant or loan to induce the construction of a tourist destination or attraction in accordance with Chapter 380 or 381.

(b) If authorized by the county, a district created by the county may order an election to be held in the district to approve a grant or loan agreement. The grant or loan may be payable over a term of years and be enforceable on the district under the terms of the agreement and the conditions of the election, which may, subject to the requirements of Section 372.127(c), include the irrevocable obligation to impose an ad valorem tax, sales and use tax, or hotel occupancy tax for a term not to exceed 30 years. If authorized at the election, the board may contract to pay the taxes to the recipient of the grant or loan in accordance with the agreement.

(c) If the property owners petitioning a county to create a district under Section 372.105 propose that the district be created only to provide economic development grants or loans and road improvements and not to impose assessments, and the county determines that the creation of the district is in the best interests of the county, the district is not required to prepare a feasibility report, a service plan or assessment plan, or an assessment roll as required by this chapter.

Sec. 372.116. CONTRACTS; GENERAL. (a) A district may contract with any person, including the municipality or county, on the terms and conditions and for a period of time the board determines, to:

(1) accomplish any district purpose, including a contract to pay, repay, or reimburse from tax proceeds or another specified source of money any costs, including reasonable interest, incurred by a person on the county's or the district's behalf, including all or part of the costs of an improvement project; and

(2) receive, administer, and perform the county's or the district's duties and obligations under a gift, grant, loan, conveyance, or other financial assistance arrangement relating to the investigation, planning, analysis, study, design, acquisition, construction, improvement, completion, implementation, or operation by the district or another person of an improvement project or proposed improvement project.

(b) A state agency, municipality, county, other political subdivision, corporation, or other person may contract with the county or district to carry out the purposes of this subchapter.

Sec. 372.117. PROCUREMENT CONTRACTS. A district may contract for materials, supplies, and construction:

(1) in accordance with the laws applicable to counties; or

(2) in the same manner that a local government corporation created pursuant to Chapter 431, Transportation Code, is authorized to contract.

Sec. 372.118. RULES; ENFORCEMENT. A county may authorize the board to adopt rules:

(1) to administer and operate the district;

(2) for the use, enjoyment, availability, protection, security, and maintenance of district property, including facilities; or

(3) to provide for public safety and security in the district.

Sec. 372.119. FEES. A county may authorize a board to establish, revise, repeal, enforce, collect, and apply the proceeds from user fees or charges for the enjoyment, sale, rental, or other use of its facilities or other property, or for services or improvement projects.

Sec. 372.120. RULES; REGULATION OF ROADS AND OTHER PUBLIC AREAS. (a) A county may authorize a board to adopt rules to regulate the private use of public roadways, open spaces, parks, sidewalks, and similar public areas in the district, if the use is for a public purpose.

(b) A rule, order, ordinance, or regulation of a county or municipality that conflicts with a rule adopted under this section controls to the extent of any conflict.

(c) A rule adopted under this section may provide for the safe and orderly use of public roadways, open spaces, parks, sidewalks, and similar public areas in the area of the district or economic development project.

Sec. 372.121. ROAD PROJECTS. (a) To the extent authorized by Section 52, Article III, Texas Constitution, the county may delegate to the district the authority to construct, acquire, improve, maintain, or operate macadamized, graveled, or paved roads or turnpikes, or improvements in aid of those roads or turnpikes, inside the territory targeted by the county for an economic development project, or the district.

(b) A road project must meet all applicable construction standards, zoning and subdivision requirements, and regulatory ordinances of each municipality in whose corporate limits or extraterritorial jurisdiction the district is located. If the district is located outside the extraterritorial jurisdiction of a municipality, a road project must meet all applicable construction standards, zoning and subdivision requirements, and regulatory ordinances of each county in which the district is located.

Sec. 372.122. UTILITIES. (a) This subchapter does not grant the board any right-of-way management authority over public utilities.

(b) To the extent the construction, maintenance, or operation of a project under this subchapter requires the relocation or extension of a public utility facility, the district shall reimburse the public utility for all costs associated with the relocation, removal, extension, or other adjustment of the facility.

Sec. 372.123. SERVICE PLAN REQUIRED. The commissioners court of the county that created the district may require a district to prepare an annual service plan, in the manner provided for by Section 372.013, that meets the approval of the commissioners court.

Sec. 372.124. NO EMINENT DOMAIN. A district may not exercise the power of eminent domain.

Sec. 372.125. NO TAX ABATEMENTS. A county may not grant a tax abatement or enter into a tax abatement agreement for a district created under this subchapter.

Sec. 372.126. BONDS; NOTES. (a) A district may not issue bonds unless approved by the commissioners court of the county that created the district. If the population in the district is more than 1,000, the bonds may not be issued unless approved by a majority of the voters of the district voting in an election held for that purpose. A bond election under this subsection does not affect prior bond issuances and is not required for refunding bond issuances.

(b) A district may not issue a negotiable promissory note or notes unless approved by the commissioners court of the county that created the district.

(c) If the commissioners court grants approval under this section, bonds, notes, and other district obligations may be secured by district revenue or any type of district taxes or assessments.

Sec. 372.127. AUTHORITY TO IMPOSE ASSESSMENTS AND AD VALOREM, SALES AND USE, AND HOTEL OCCUPANCY TAXES; ELECTION. (a) A county or a district created under this subchapter may accomplish its purposes and pay the cost of services and improvements by imposing:

(1) an assessment;

(2) an ad valorem tax;

(3) a sales and use tax; or

(4) a hotel occupancy tax.

(b) A district may impose an ad valorem tax, hotel occupancy tax, or sales and use tax to accomplish the economic development purposes prescribed by Section 52a, Article III, Texas Constitution, if the tax is approved by:

(1) the commissioners court of the county that created the district; and

(2) a majority of the voters of the district voting at an election held for that purpose.

(c) A county must adopt an order providing whether a district has the authority to impose a hotel occupancy tax, sales and use tax, or ad valorem tax, and must provide the rate at which the district may impose the tax. A tax rate approved by the commissioners court and pledged to secure bonds, notes, grant agreements, or development agreements may not be reduced until the obligations of those instruments have been satisfied.

Sec. 372.128. USE OF REVENUE FROM TAXES. A tax authorized by a county to be imposed under this subchapter may be used to accomplish any improvement project or road project, or to provide any service authorized by this chapter or Chapter 380, 381, or 383.

Sec. 372.129. HOTEL OCCUPANCY TAX. (a) A county may authorize a district to impose a hotel occupancy tax on a person who pays for the use or possession of or for the right to the use or possession of a room that is ordinarily used for sleeping in a hotel in the district.

(b) If authorized by a county, a district shall impose a hotel occupancy tax as provided by Chapter 383, Local Government Code, and Section 352.107, Tax Code, except that a hotel occupancy tax:

(1) may be used for any purpose authorized in this subchapter; and

(2) is authorized by the county to be imposed by the district.

(c) The hotel occupancy tax rate is the greater of nine percent or the rate imposed by the municipality.

(d) A hotel occupancy tax may not be imposed on the occupants of a hotel unless the owner of the hotel agrees to the imposition of the hotel occupancy taxes under this subchapter. After the owner agrees, the agreement may not be revoked by the owner of the hotel or any subsequent owner of the hotel. After an agreement under this section, the district may impose hotel occupancy taxes as provided by this subchapter.

Sec. 372.130. SALES AND USE TAX. (a) A commissioners court may authorize a district to impose a sales and use tax in increments of one-eighth of one percent up to a rate of two percent.

(b) Except as otherwise provided in this subchapter, a sales and use tax must be imposed in accordance with Chapter 383, Local Government Code, and Chapter 323, Tax Code.

Sec. 372.131. AD VALOREM TAX. A commissioners court may authorize a district to impose an ad valorem tax on property in the district in accordance with Chapter 257, Transportation Code.

Sec. 372.132. BORROWING. The commissioners court may authorize a district to borrow money for any district purpose, including for a development agreement that authorizes the district to borrow money.

Sec. 372.133. REPAYMENT OF COSTS. The commissioners court may authorize a district, by a lease, lease-purchase agreement, installment purchase contract, or other agreement, or by the imposition or assessment of a tax, user fee, concession, rental, or other revenue or resource of the district, to provide for or secure the payment or repayment of:

(1) the costs and expenses of the establishment, administration, and operation of the district;

(2) the district's costs or share of costs of an improvement project; or

(3) the district's contractual obligations or indebtedness.

Sec. 372.134. LIABILITIES; ASSUMPTION OF ASSETS AFTER COMPLETE ANNEXATION BY MUNICIPALITY. (a) If the municipality annexes the entire territory of a district, the municipality shall assume the district's assets, but is not liable for the district's debt or other obligations.

(b) If the county has authorized a district created under this subchapter to have debt or other obligations, the district remains in existence after the territory is annexed by the municipality for the purpose of collecting any taxes or assessments authorized by the county and imposed by the district before annexation. Taxes or assessments collected after annexation must be used by the district solely for the purpose of satisfying any preexisting county-authorized district debt or other obligation. After the debt or other obligations have been discharged, or two years have expired since the date of the annexation, the district is dissolved and any outstanding debt or obligations are extinguished.

Sec. 372.135. AUTHORITY TO IMPOSE TAXES OR ASSESSMENTS AFTER PARTIAL OR COMPLETE ANNEXATION. (a) After a district has been annexed by a municipality wholly or partly for general purposes, the county

may not authorize the district to impose an ad valorem tax, hotel occupancy tax, or sales and use tax, or collect an assessment in the area that the municipality overlaps the district, except as provided by Subsection (b) or Section 372.134(b).

(b) A district may continue to impose a tax in an area that the municipality annexes for limited purposes and in which the municipality does not impose taxes. If the municipality annexes an area for limited purposes and imposes some of the taxes which the district is imposing but not all of them, the district may continue to impose taxes only to the extent that the level of taxation of the municipality and the district combined, calculating the hotel tax, the sales tax, and the ad valorem tax independently, is equal to or less than the tax level of the municipality as to fully annexed areas.

(c) The legislature intends that the level of taxation of areas where the district and the municipality overlap do not exceed the level of taxation of fully annexed areas.

SECTION 35. Section 311.002(1), Tax Code, is amended to read as follows:

(1) "Project costs" means the expenditures made or estimated to be made and monetary obligations incurred or estimated to be incurred by the municipality or county establishing a reinvestment zone that are listed in the project plan as costs of public works or public improvements in the zone, plus other costs incidental to those expenditures and obligations. "Project costs" include:

(A) capital costs, including the actual costs of the acquisition and construction of public works, public improvements, new buildings, structures, and fixtures; the actual costs of the acquisition, demolition, alteration, remodeling, repair, or reconstruction of existing buildings, structures, and fixtures; and the actual costs of the acquisition of land and equipment and the clearing and grading of land;

(B) financing costs, including all interest paid to holders of evidences of indebtedness or other obligations issued to pay for project costs and any premium paid over the principal amount of the obligations because of the redemption of the obligations before maturity;

(C) real property assembly costs;

(D) professional service costs, including those incurred for architectural, planning, engineering, and legal advice and services;

(E) imputed administrative costs, including reasonable charges for the time spent by employees of the municipality or county in connection with the implementation of a project plan;

(F) relocation costs;

(G) organizational costs, including the costs of conducting environmental impact studies or other studies, the cost of publicizing the creation of the zone, and the cost of implementing the project plan for the zone;

(H) interest before and during construction and for one year after completion of construction, whether or not capitalized;

(I) the cost of operating the reinvestment zone and project facilities;

(J) the amount of any contributions made by the municipality or county from general revenue for the implementation of the project plan; and

(K) payments made at the discretion of the governing body of the municipality or county that the governing body [~~municipality~~] finds necessary or convenient to the creation of the zone or to the implementation of the project plans for the zone.

SECTION 36. Sections 311.003 and 311.004, Tax Code, are amended to read as follows:

Sec. 311.003. PROCEDURE FOR CREATING REINVESTMENT ZONE. (a) The governing body of a municipality by ordinance or the governing body of a county by order may designate a contiguous geographic area in the jurisdiction of the municipality or county to be a reinvestment zone to promote development or redevelopment of the area if the governing body determines that development or redevelopment would not occur solely through private investment in the reasonably foreseeable future.

(b) Before adopting an ordinance or order providing for a reinvestment zone, the governing body of the municipality or county must prepare a preliminary reinvestment zone financing plan. As soon as the plan is completed, a copy of the plan must be sent to the governing body of each taxing unit that levies taxes on real property in the proposed zone.

(c) Before adopting an ordinance or order providing for a reinvestment zone, the municipality or county must hold a public hearing on the creation of the zone and its benefits to the municipality or county and to property in the proposed zone. At the hearing an interested person may speak for or against the creation of the zone, its boundaries, or the concept of tax increment financing. Not later than the seventh day before the date of the hearing, notice of the hearing must be published in a newspaper having general circulation in the municipality or county.

(d) A municipality or county proposing to designate a reinvestment zone must provide a reasonable opportunity for the owner of property to protest the inclusion of the property in a proposed reinvestment zone.

(e) Not later than the 60th day before the date of the public hearing required by Subsection (c), the governing body of the municipality or county must notify in writing the governing body of each other taxing unit that levies real property taxes in the proposed reinvestment zone that it intends to establish the zone. The notice must contain a description of the proposed boundaries of the zone, the tentative plans for the development or redevelopment of the zone, and an estimate of the general impact of the proposed zone on property values and tax revenues. The notice may be given later than the 60th day before the date of the public hearing if the governing body of each municipality, county, and school district, other than the municipality or county proposing to designate a reinvestment zone, that levies real property taxes in the proposed zone agrees to waive the requirement.

(f) A taxing unit may request additional information from the governing body of the municipality or county proposing to designate a reinvestment zone. The governing body of the municipality or county shall provide the information

requested to the extent practicable. In addition to the notice required by Subsection (e), the governing body of the municipality or county proposing to designate a reinvestment zone shall make a formal presentation to the governing body of each municipality, county, or school district, other than the municipality or county proposing to designate the zone, that levies real property taxes in the proposed reinvestment zone. The presentation must include a description of the proposed boundaries of the zone, the tentative plans for the development or redevelopment of the zone, and an estimate of the general impact of the proposed zone on property values and tax revenues. The governing body of the municipality or county shall notify each other taxing unit that levies real property taxes in the proposed zone of each presentation to be made to a municipality, county, or school district under this subsection. Members of the governing body of each taxing unit that levies real property taxes in the proposed zone may attend a presentation under this subsection. If agreed to by the municipalities, county, or school districts involved, the governing body of the municipality or county proposing to designate a reinvestment zone may make a single presentation to more than one municipal, county, or school district governing body.

(g) Not later than the 15th day after the date on which the notice required by Subsection (e) is given, each taxing unit that levies real property taxes in the proposed reinvestment zone shall designate a representative to meet with the governing body of the municipality or county proposing to designate a reinvestment zone to discuss the project plan and the reinvestment zone financing plan and shall notify the governing body of the municipality or county of its designation. At any time after the 15th day after the date on which the notice required by Subsection (e) has been given to every taxing unit, the governing body of the municipality or county proposing to designate a reinvestment zone may call a meeting of the representatives of the taxing units. The governing body of the municipality or county may call as many meetings as it considers necessary. Each representative shall be notified of each meeting in advance. At the meetings the governing body of the municipality or county and the representatives of the other taxing units may discuss the boundaries of the zone, development in the zone, the tax increment that each taxing unit will contribute to the tax increment fund, the retention by a taxing unit of a portion of its tax increment as permitted by Section 311.013, the exclusion of particular parcels of property from the zone, the board of directors for the zone, and tax collection for the zone. On the motion of the governing body of the municipality or county calling the meeting, any other matter relevant to the proposed reinvestment zone may be discussed.

Sec. 311.004. CONTENTS OF REINVESTMENT ZONE ORDINANCE OR ORDER. (a) The ordinance or order designating an area as a reinvestment zone must:

(1) describe the boundaries of the zone with sufficient definiteness to identify with ordinary and reasonable certainty the territory included in the zone;

(2) create a board of directors for the zone and specify the number of directors of the board as provided by Section 311.009 or 311.0091, as applicable;

(3) provide that the zone take effect immediately upon passage of the ordinance or order;

(4) provide a date for termination of the zone;

(5) assign a name to the zone for identification, with the first zone created by a municipality or county designated as "Reinvestment Zone Number One, City (or Town, as applicable) of (name of municipality)," or "Reinvestment Zone Number One, (name of county) County," as applicable, and subsequently created zones assigned names in the same form numbered consecutively in the order of their creation;

(6) establish a tax increment fund for the zone; and

(7) contain findings that:

(A) improvements in the zone will significantly enhance the value of all the taxable real property in the zone and will be of general benefit to the municipality or county; and

(B) the area meets the requirements of Section 311.005.

(b) For purposes of complying with Subsection (a)(7)(A), the ordinance or order is not required to identify the specific parcels of real property to be enhanced in value.

(c) To designate a reinvestment zone under Section 311.005(a)(5), the governing body of a municipality or county must specify in the ordinance or order that the reinvestment zone is designated under that section.

SECTION 37. Section 311.005(a), Tax Code, is amended to read as follows:

(a) To be designated as a reinvestment zone, an area must:

(1) substantially arrest or impair the sound growth of the municipality or county creating the zone, retard the provision of housing accommodations, or constitute an economic or social liability and be a menace to the public health, safety, morals, or welfare in its present condition and use because of the presence of:

(A) a substantial number of substandard, slum, deteriorated, or deteriorating structures;

(B) the predominance of defective or inadequate sidewalk or street layout;

(C) faulty lot layout in relation to size, adequacy, accessibility, or usefulness;

(D) unsanitary or unsafe conditions;

(E) the deterioration of site or other improvements;

(F) tax or special assessment delinquency exceeding the fair value of the land;

(G) defective or unusual conditions of title; or

(H) conditions that endanger life or property by fire or other cause;

(2) be predominantly open and, because of obsolete platting, deterioration of structures or site improvements, or other factors, substantially impair or arrest the sound growth of the municipality or county; [~~or~~]

(3) be in a federally assisted new community located in the municipality or county or in an area immediately adjacent to a federally assisted new community; or

(5) be an area described in a petition requesting that the area be designated as a reinvestment zone, if the petition is submitted to the governing body of the municipality or county by the owners of property constituting at least 50 percent of the appraised value of the property in the area according to the most recent certified appraisal roll for the county in which the area is located.

SECTION 38. Section 311.007, Tax Code, is amended to read as follows:

Sec. 311.007. CHANGING BOUNDARIES OF EXISTING ZONE. (a) Subject to the limitations provided by Section 311.006, if applicable, the boundaries of an existing reinvestment zone may be reduced or enlarged by ordinance or resolution of the governing body of the municipality or by order or resolution of the governing body of the county that created the zone.

(b) The governing body of the municipality or county may enlarge an existing reinvestment zone to include an area described in a petition requesting that the area be included in the zone if the petition is submitted to the governing body of the municipality or county by the owners of property constituting at least 50 percent of the appraised value of the property in the area according to the most recent certified appraisal roll for the county in which the area is located. The composition of the board of directors of the zone continues to be governed by Section 311.009(a) or (b), whichever applied to the zone immediately before the enlargement of the zone, except that the membership of the board must conform to the requirements of the applicable subsection of Section 311.009 as applied to the zone after its enlargement. The provision of Section 311.006(b) relating to the amount of property used for residential purposes that may be included in the zone does not apply to the enlargement of a zone under this subsection.

SECTION 39. The heading to Section 311.008, Tax Code, is amended to read as follows:

Sec. 311.008. POWERS OF MUNICIPALITY OR COUNTY.

SECTION 40. Sections 311.008(a), (b), and (d), Tax Code, are amended to read as follows:

(a) In this section, "educational facility" includes equipment, real property, and other facilities, including a public school building, that are used or intended to be used jointly by the municipality or county and an independent school district.

(b) A municipality or county may exercise any power necessary and convenient to carry out this chapter, including the power to:

(1) cause project plans to be prepared, approve and implement the plans, and otherwise achieve the purposes of the plan;

(2) acquire real property by purchase, condemnation, or other means to implement project plans and sell that property on the terms and conditions and in the manner it considers advisable;

(3) enter into agreements, including agreements with bondholders, determined by the governing body of the municipality or county to be necessary or convenient to implement project plans and achieve their purposes, which agreements may include conditions, restrictions, or covenants that run with the land or that by other means regulate or restrict the use of land; and

(4) consistent with the project plan for the zone:

(A) acquire blighted, deteriorated, deteriorating, undeveloped, or inappropriately developed real property or other property in a blighted area or in a federally assisted new community in the zone for the preservation or restoration of historic sites, beautification or conservation, the provision of public works or public facilities, or other public purposes;

(B) acquire, construct, reconstruct, or install public works, facilities, or sites or other public improvements, including utilities, streets, street lights, water and sewer facilities, pedestrian malls and walkways, parks, flood and drainage facilities, or parking facilities, but not including educational facilities; or

(C) in a reinvestment zone created on or before September 1, 1999, acquire, construct, or reconstruct educational facilities in the municipality.

(d) A municipality or county may make available to the public on request financial information regarding the acquisition by the municipality or county of land in the zone when the municipality or county acquires the land.

SECTION 41. Sections 311.009(a), (b), (e), and (f), Tax Code, are amended to read as follows:

(a) Except as provided by Subsection (b), the board of directors of a reinvestment zone consists of at least five and not more than 15 members, unless more than 15 members are required to satisfy the requirements of this subsection.

Each taxing unit other than the [~~a~~] municipality or county that created the zone that levies taxes on real property in the zone may appoint one member of the board. A unit may waive its right to appoint a director. The governing body of the municipality or county that created the zone may appoint not more than 10 directors to the board; except that if there are fewer than five directors appointed by taxing units other than the municipality or county, the governing body of the municipality or county may appoint more than 10 members as long as the total membership of the board does not exceed 15.

(b) If the zone was designated under Section 311.005(a)(5), the board of directors of the zone consists of nine members. Each school district, [~~or~~] county, or municipality, other than the municipality or county that created the zone, that levies taxes on real property in the zone may appoint one member of the board if the school district, [~~or~~] county, or municipality has approved the payment of all or part of the tax increment produced by the unit. The member of the state senate in whose district the zone is located is a member of the board, and the member of the state house of representatives in whose district the zone is located is a member of the board, except that either may designate another individual to serve in the member's place at the pleasure of the member. If the zone is located in more than one senate or house district, this subsection applies only to the senator or representative in whose district a larger portion of the zone is located than any

other senate or house district, as applicable. The remaining members of the board are appointed by the governing body of the municipality or county that created the zone.

(e) To be eligible for appointment to the board by the governing body of the municipality or county that created the zone, an individual must:

(1) if the board is covered by Subsection (a):

(A) be a qualified voter of the municipality or county, as applicable; or

(B) be at least 18 years of age and own real property in the zone, whether or not the individual resides in the municipality or county; or

(2) if the board is covered by Subsection (b):

(A) be at least 18 years of age; and

(B) own real property in the zone or be an employee or agent of a person that owns real property in the zone.

(f) Each year the governing body of the municipality or county that created the zone shall appoint one member of the board to serve as chairman for a term of one year that begins on January 1 of the following year. The board of directors may elect a vice-chairman to preside in the absence of the chairman or when there is a vacancy in the office of chairman. The board may elect other officers as it considers appropriate.

SECTION 42. Section 311.010, Tax Code, is amended to read as follows:

Sec. 311.010. POWERS AND DUTIES OF BOARD OF DIRECTORS. (a) The board of directors of a reinvestment zone shall make recommendations to the governing body of the municipality or county that created the zone concerning the administration of this chapter in the zone. The governing body of the municipality by ordinance or resolution or the county by order or resolution may authorize the board to exercise any of the municipality's or county's powers with respect to the administration, management, or operation of the zone or the implementation of the project plan for the zone, except that the governing body may not authorize the board to:

(1) issue bonds;

(2) impose taxes or fees;

(3) exercise the power of eminent domain; or

(4) give final approval to the project plan.

(b) The board of directors of a reinvestment zone and the governing body of the municipality or county that creates a reinvestment zone may each enter into agreements as the board or the governing body considers necessary or convenient to implement the project plan and reinvestment zone financing plan and achieve their purposes. An agreement may provide for the regulation or restriction of the use of land by imposing conditions, restrictions, or covenants that run with the land. An agreement may during the term of the agreement dedicate, pledge, or otherwise provide for the use of revenue in the tax increment fund to pay any project costs that benefit the reinvestment zone, including project costs relating to the cost of buildings, schools, or other educational facilities owned by or on behalf of a school district, community college district, or other political subdivision of this state, railroad or transit facilities, affordable housing, the

remediation of conditions that contaminate public or private land or buildings, the preservation of the facade of a private or public building, or the demolition of public or private buildings. An agreement may dedicate revenue from the tax increment fund to pay the costs of providing affordable housing or areas of public assembly in or out of the zone. An agreement may dedicate revenue from the tax increment fund to pay a neighborhood enterprise association for providing services or carrying out projects authorized under Subchapters E and G, Chapter 2303, Government Code, in the zone. The term of an agreement with a neighborhood enterprise association may not exceed 10 years.

(c) Subject to the approval of the governing body of the municipality that created the zone, the board of a zone designated by the governing body of a municipality under Section 311.005(a)(5) may exercise the power granted by Chapter 211, Local Government Code, to the governing body of the municipality that created the zone to restrict the use or uses of property in the zone. The board may provide that a restriction adopted by the board continues in effect after the termination of the zone. In that event, after termination of the zone the restriction is treated as if it had been adopted by the governing body of the municipality.

(d) The board of directors of a reinvestment zone may exercise any power granted to a municipality or county by Section 311.008, except that:

(1) the municipality or county that created the reinvestment zone by ordinance, [~~or~~] resolution, or order may restrict any power granted to the board by this chapter; and

(2) the board may exercise a power granted to a municipality or county under Section 311.008(b)(2) [~~311.008(a)(2)~~] only with the consent of the governing body of the municipality or county.

(e) After the governing body of a municipality by ordinance or the governing body of a county by order creates a reinvestment zone under this chapter, the board of directors of the zone may exercise any power granted to a board under this chapter.

(f) The board of directors of a reinvestment zone and the governing body of the municipality or county that created the zone may enter into a contract with a local government corporation or a political subdivision to manage the reinvestment zone or implement the project plan and reinvestment zone financing plan for the term of the agreement. In this subsection, "local government corporation" means a local government corporation created by the municipality or county under Chapter 431, Transportation Code.

SECTION 43. Sections 311.011(a), (b), (d), (e), and (g), Tax Code, are amended to read as follows:

(a) The board of directors of a reinvestment zone shall prepare and adopt a project plan and a reinvestment zone financing plan for the zone and submit the plans to the governing body of the municipality or county that created the zone. The plans must be as consistent as possible with the preliminary plans developed for the zone before the creation of the board.

(b) The project plan must include:

(1) a map showing existing uses and conditions of real property in the zone and a map showing proposed improvements to and proposed uses of that property;

(2) proposed changes of zoning ordinances, the master plan of the municipality, building codes, [~~and~~] other municipal ordinances, and subdivision rules and regulations, if any, of the county, if applicable;

(3) a list of estimated nonproject costs; and

(4) a statement of a method of relocating persons to be displaced as a result of implementing the plan.

(d) The governing body of the municipality or county that created the zone must approve a project plan or reinvestment zone financing plan after its adoption by the board. The approval must be by ordinance, in the case of a municipality, or by order, in the case of a county, that finds that the plan is feasible and conforms to the master plan, if any, of the municipality or to subdivision rules and regulations, if any, of the county.

(e) The board of directors of the zone at any time may adopt an amendment to the project plan consistent with the requirements and limitations of this chapter. The amendment takes effect on approval by the governing body of the municipality or county that created the zone. That approval must be by ordinance, in the case of a municipality, or by order, in the case of a county. If an amendment reduces or increases the geographic area of the zone, increases the amount of bonded indebtedness to be incurred, increases or decreases the percentage of a tax increment to be contributed by a taxing unit, increases the total estimated project costs, or designates additional property in the zone to be acquired by the municipality or county, the approval must be by ordinance or order, as applicable, adopted after a public hearing that satisfies the procedural requirements of Sections 311.003(c) and (d).

(g) An amendment to the project plan or the reinvestment zone financing plan for a zone does not apply to a school district that participates in the zone unless the governing body of the school district by official action approves the amendment, if the amendment:

(1) has the effect of directly or indirectly increasing the percentage or amount of the tax increment to be contributed by the school district; or

(2) requires or authorizes the municipality or county creating the zone to issue additional tax increment bonds or notes.

SECTION 44. Sections 311.013(d), (f), and (k), Tax Code, are amended to read as follows:

(d) If the reinvestment zone is created on or after August 29, 1983, a taxing unit is not required to pay a tax increment into the tax increment fund of the zone after three years from the date the zone is created unless the following conditions exist or have been met within the three-year period:

(1) bonds have been issued for the zone under Section 311.015;

(2) the municipality or county that created the zone has acquired property in the zone pursuant to the project plan; or

(3) construction of improvements pursuant to the project plan has begun in the zone.

(f) A taxing unit is not required to pay into the tax increment fund any of its tax increment produced from property located in a reinvestment zone designated under Section 311.005(a) or in an area added to a reinvestment zone under Section 311.007 unless the taxing unit enters into an agreement to do so with the governing body of the municipality or county that created the zone. A taxing unit may enter into an agreement under this subsection at any time before or after the zone is created or enlarged. The agreement may include conditions for payment of that tax increment into the fund and must specify the portion of the tax increment to be paid into the fund and the years for which that tax increment is to be paid into the fund. The agreement and the conditions in the agreement are binding on the taxing unit, the municipality or county, and the board of directors of the zone.

(k) A school district is not required to pay into the tax increment fund any of its tax increment produced from property located in an area added to the reinvestment zone under Section 311.007(a) or (b) unless the governing body of the school district enters into an agreement to do so with the governing body of the municipality or county that created the zone[~~, including a municipality described by Subsection (h)~~]. The governing body of a school district may enter into an agreement under this subsection at any time before or after the zone is created or enlarged. The agreement may include conditions for payment of that tax increment into the fund and must specify the portion of the tax increment to be paid into the fund and the years for which that tax increment is to be paid into the fund. The agreement and the conditions in the agreement are binding on the school district, the municipality or county, and the board of directors of the zone.

SECTION 45. Sections 311.014(c) and (d), Tax Code, are amended to read as follows:

(c) Subject to an agreement with the holders of tax increment bonds or notes, money in a tax increment fund may be temporarily invested in the same manner as other funds of the municipality or county that created the zone.

(d) After all project costs and all tax increment bonds or notes issued for a reinvestment zone have been paid, and subject to any agreement with bondholders, any money remaining in the tax increment fund shall be paid to the municipality or county that created the zone and other taxing units levying taxes on property in the zone in proportion to the municipality's or county's and each other unit's respective share of the total amount of tax increments derived from taxable real property in the zone that were deposited in the fund during the fund's existence.

SECTION 46. Sections 311.016 and 311.017, Tax Code, are amended to read as follows:

Sec. 311.016. ANNUAL REPORT BY MUNICIPALITY OR COUNTY. (a) On or before the 90th day following the end of the fiscal year of the municipality or county, the governing body of a municipality or county shall submit to the chief executive officer of each taxing unit that levies property taxes on real property in a reinvestment zone created by the municipality or county a report on the status of the zone. The report must include:

(1) the amount and source of revenue in the tax increment fund established for the zone;

(2) the amount and purpose of expenditures from the fund;

(3) the amount of principal and interest due on outstanding bonded indebtedness;

(4) the tax increment base and current captured appraised value retained by the zone; and

(5) the captured appraised value shared by the municipality or county and other taxing units, the total amount of tax increments received, and any additional information necessary to demonstrate compliance with the tax increment financing plan adopted by the governing body of the municipality or county.

(b) The municipality or county shall send a copy of a report made under this section to:

(1) the attorney general; and

(2) the comptroller.

Sec. 311.017. TERMINATION OF REINVESTMENT ZONE. (a) A reinvestment zone terminates on the earlier of:

(1) the termination date designated in the ordinance or order, as applicable, creating the zone or an earlier termination date designated by an ordinance or order adopted subsequent to the ordinance or order creating the zone; or

(2) the date on which all project costs, tax increment bonds, and interest on those bonds have been paid in full.

(b) The tax increment pledged to the payment of bonds and interest on the bonds may be discharged and the reinvestment zone may be terminated if the municipality or county that created the zone deposits or causes to be deposited with a trustee or other escrow agent authorized by law funds in an amount that, together with the interest on the investment of the funds in direct obligations of the United States, will be sufficient to pay the principal of, premium, if any, and interest on all bonds issued on behalf of the reinvestment zone at maturity or at the date fixed for redemption of the bonds, and to pay any other amounts that may become due, including compensation due or to become due to the trustee or escrow agent.

SECTION 47. Sections 311.019(b) and (c), Tax Code, are amended to read as follows:

(b) A municipality or county that designates a reinvestment zone or approves a project plan or reinvestment zone financing plan under this chapter shall deliver to the comptroller before April 1 of the year following the year in which the zone is designated or the plan is approved a report containing:

(1) a general description of each zone, including:

(A) the size of the zone;

(B) the types of property located in the zone;

(C) the duration of the zone; and

(D) the guidelines and criteria established for the zone under Section 311.005;

(2) a copy of each project plan or reinvestment zone financing plan adopted; and

(3) any other information required by the comptroller to administer this section and Subchapter F, Chapter 111.

(c) A municipality or county that amends or modifies a project plan or reinvestment zone financing plan adopted under this chapter shall deliver a copy of the amendment or modification to the comptroller before April 1 of the year following the year in which the plan was amended or modified.

SECTION 48. Section 311.020, Tax Code, is amended to read as follows:

Sec. 311.020. STATE ASSISTANCE. (a) On request of the governing body of a municipality or county or of the presiding officer of the governing body, the comptroller may provide assistance to a municipality or county relating to the administration of this chapter.

(b) The Texas Department of Economic Development and the comptroller may provide technical assistance to a municipality or county regarding:

(1) the designation of reinvestment zones under this chapter; and

(2) the adoption and execution of project plans or reinvestment zone financing plans under this chapter.

SECTION 49. Section 281.0461, Health and Safety Code, and Section 83.004(b), Local Government Code, are repealed.

SECTION 50. The change in law made by this Act to Article 27.18, Code of Criminal Procedure, applies to any proceeding pending before a court on or after September 1, 2005.

SECTION 51. The changes in law made by this Act to Articles 14.06, 15.16, 15.17, 15.18, and 15.19, Code of Criminal Procedure, 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 when the offense was committed, and the former law is continued in effect for that purpose. For the purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before that date.

SECTION 52. The change in law made by this Act to Section 343.011(c), Health and Safety Code, applies only to a swimming pool constructed or installed on or after September 1, 2005, or located on property sold on or after September 1, 2005. A swimming pool constructed or installed before September 1, 2005, is governed by the law in effect immediately before the effective date of this Act until the property on which the pool is located is sold, and the former law is continued in effect for that purpose.

SECTION 53. The change in law made by this Act:

(1) to Sections 83.002 and 83.004(a), Local Government Code, applies only to a county treasurer whose term begins on or after the effective date of this Act; and

(2) to Section 83.004(c), Local Government Code, applies only to a county treasurer who enters upon the discharge of the duties of office on or after the effective date of this Act.

SECTION 54. (a) Except as provided by Subsection (b) of this section, this Act takes effect September 1, 2005.

(b) The provisions of this Act adding Subchapter C, Chapter 372, Local Government Code, take effect immediately if this Act receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, those provisions take effect September 1, 2005.

Representative R. Allen moved to adopt the conference committee report on **HB 2120**.

A record vote was requested.

The motion to adopt the conference committee report on **HB 2120** prevailed by (Record 980): 138 Yeas, 2 Nays, 1 Present, not voting.

Yeas — Allen, A.; Allen, R.; Alonzo; Anchia; Anderson; Bailey; Baxter; Berman; Blake; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Callegari; Campbell; Casteel; Castro; Chavez; Chisum; Cook, R.; Corte; Crabb; Crownover; Davis, J.; Davis, Y.; Dawson; Delisi; Denny; Deshotel; Driver; Dukes; Dunnam; Dutton; Eiland; Eissler; Elkins; Escobar; Farabee; Farrar; Flores; Flynn; Frost; Gallego; Gattis; Geren; Giddings; Gonzales; Gonzalez Toureilles; Goolsby; Griggs; Grusendorf; Guillen; Haggerty; Hamilton; Hamric; Harper-Brown; Hartnett; Hegar; Herrero; Hilderbran; Hill; Hochberg; Hodge; Homer; Hopson; Howard; Hughes; Hunter; Hupp; Isett; Jackson; 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; 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; Vo; West; Wong; Woolley; Zedler.

Nays — Burnam; Villarreal.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Goodman.

Absent — Coleman; Cook, B.; Edwards; Hardcastle; Hope; Jones, D.; Miller.

STATEMENTS OF VOTE

When Record No. 980 was taken, I was in the house but away from my desk. I would have voted yes.

Edwards

When Record No. 980 was taken, my vote failed to register. I would have voted yes.

Miller

REASONS FOR VOTE

I voted yes on this bill to support the development of the PGA Tour project in San Antonio. However, I believe an election should have been held to allow San Antonians to have a voice in the decision.

I have also agreed to support this legislation after extra protections and safeguards were added.

Castro

Whatever the merits of **HB 2120**, this bill fails on one major front: It does not require the referendum San Antonio citizens have demanded. While there is debate as to what type of development on this land would be most environmentally sound, citizens have been clear they want input when it comes to development over their water supply.

My vote against **HB 2120** is a vote against the decision by the 2002 San Antonio City Council to disregard the 107,000 signatures collected by citizens calling for a referendum on the PGA development. Provisions in **HB 2120** will enable Bexar County Commissioners Court to create an improvement district for the PGA development. Other provisions provide some important water protection and negotiating tools for Bexar County. For instance, **HB 2120** limits the golf course development to 15 percent impervious cover. Without the improvement district, the development owners could develop concentrated housing with no impervious cover limit.

Though the end goal of this legislation has significant merits, the means to this end violates the democratic principles every elected official should uphold.

Villarreal

HB 2161 - RULES SUSPENDED

Representative West moved to suspend all necessary rules to consider the conference committee report on **HB 2161** at this time.

The motion prevailed.

HB 2161 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative West submitted the following conference committee report on **HB 2161** :

Austin, Texas, May 28, 2005

The Honorable David Dewhurst
President of the Senate

The Honorable Tom Craddick
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the senate and the house of representatives on **HB 2161** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Seliger	West
Deuell	Crabb
Estes	Crownover
	Gonzalez Toureilles
	Howard
On the part of the senate	On the part of the house

HB 2161, A bill to be entitled An Act relating to the power of the Railroad Commission of Texas to adopt and enforce safety standards and practices applicable to the transportation by pipeline of certain substances and to certain pipeline facilities, the provision of severance tax credits and exemptions and other incentives and procedures for producing oil or gas from certain wells or plugging wells, and the procedure for computing severance taxes in connection with certain gas sales; imposing an administrative penalty.

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

SECTION 1. Section 81.116(d), Natural Resources Code, is amended to read as follows:

(d) The comptroller shall suspend collection of the fee in the manner provided by Section 91.111 [~~of this code~~]. The exemptions and reductions set out in Sections 202.052, 202.054, 202.056, 202.057, [~~and~~] 202.059, and 202.060, Tax Code, do not affect the fee imposed by this section.

SECTION 2. Section 81.117(d), Natural Resources Code, is amended to read as follows:

(d) The comptroller shall suspend collection of the fee in the manner provided by Section 91.111 [~~of this code~~]. The exemptions and reductions set out in Sections 201.053, 201.057, [~~and~~] 201.058, and 202.060, Tax Code, do not affect the fee imposed by this section.

SECTION 3. Section 89.044, Natural Resources Code, is amended to read as follows:

Sec. 89.044. RIGHT TO ENTER ON LAND. (a) The commission or its employees or agents, the operator, or the nonoperator, on proper identification, may enter the land of another for the purpose of plugging or replugging a well that has not been properly plugged.

(b) A prospective operator who has been authorized under Section 89.047 to conduct a surface inspection of a well, on proper identification, may enter the land of another for the sole purpose of conducting the inspection.

SECTION 4. Subchapter C, Chapter 89, Natural Resources Code, is amended by adding Sections 89.047 and 89.048 to read as follows:

Sec. 89.047. ORPHANED WELL REDUCTION PROGRAM. (a) In this section:

(1) "Depth of the well" means the vertical depth of a well as measured in linear feet from the surface to the lowest perforation of the casing of the well that is within the commission-designated correlative interval for the field for which the well is issued a permit.

(2) "Operator in good standing" means an operator who:

(A) has a commission-approved organization report;

(B) is the designated operator of at least one well within the jurisdiction of the commission;

(C) has filed with the commission under Section 91.104 a bond, letter of credit, or cash deposit in an amount sufficient to qualify to operate one or more additional wells; and

(D) is not the subject of a commission or court order regarding a violation of a commission rule with which the operator has not complied or a complaint that has been docketed by the commission alleging a violation of a commission rule.

(3) "Orphaned well" means a well:

(A) for which the commission has issued a permit;

(B) for which production of oil or gas or another activity under the jurisdiction of the commission has not been reported to the commission for the preceding 12 months; and

(C) whose operator's commission-approved organization report has lapsed.

(4) "Producing well" means a well classified by the commission as an oil or gas well in accordance with commission rules.

(5) "Service well" means a well for which the commission has issued a permit that is not a producing well. The term includes an injection, disposal, or brine mining well.

(b) A person who is considering assumption of operatorship and regulatory responsibility for an orphaned well may nominate the well under consideration by filing a request on a form prescribed by the commission notifying the commission that the person seeks authority to conduct a surface inspection of the well to determine whether the person desires to be designated by the commission as the operator of the well.

(c) If the person is an operator in good standing and the well is not already subject to a nomination, the commission shall accept the nomination and issue a written confirmation to the person of the person's authority to conduct a surface inspection of the nominated well for a stated period not to exceed 30 days.

(d) A person to whom a confirmation is issued under Subsection (c) may conduct a surface inspection of the well. The person must deliver written notice to the owner of record of the surface estate and any occupant of the tract on which the well is located at least three days before the date of the inspection. The notice must:

(1) identify the orphaned well;

(2) state the name, address, and telephone number of the person;

(3) state the date the person intends to conduct the surface inspection;

(4) state the name of at least one representative of the person who will participate in the surface inspection; and

(5) state that the person intends to inspect the orphaned well in accordance with this section for the purpose of assessing the current status and viability of the well.

(e) In conducting a surface inspection of the orphaned well, the person may visually inspect the well and all related equipment, tanks, and other facilities and may conduct noninvasive testing such as using a gauge to determine the pressure present at the wellhead but may not produce oil or gas from the well, reenter the

well, pull tubing from or perform any other type of downhole work on the well, conduct a salvage operation on the well, or remove any tangible item from the well site.

(f) The commission shall designate the person as the operator of the well if the person files with the commission:

(1) a factually supported claim based on a recognized legal theory to a continuing possessory right in the mineral estate accessed by the well, such as evidence of a current oil and gas lease or a recorded deed conveying a fee interest in the mineral estate;

(2) a completed certificate of compliance; and

(3) a nonrefundable fee in the amount of $250.

(g) A fee collected under Subsection (f) shall be deposited to the credit of the general revenue fund and may be appropriated only to the commission to be used to enforce the laws and rules concerning oil and gas conservation and waste and pollution prevention.

(h) A person who is designated as the operator of an orphaned well on or after January 1, 2006, and not later than December 31, 2007, is entitled to receive:

(1) a nontransferable exemption from severance taxes for all future production from the well as provided by Section 202.060, Tax Code;

(2) a nontransferable exemption from the fees provided by Sections 81.116 and 81.117 for all future production from the well; and

(3) a payment from the commission in an amount equal to the depth of the well multiplied by 50 cents for each foot of well depth if, not later than the third anniversary of the date the commission designates the person as the operator of the well, the person brings the well back into continuous active operation or plugs the well in accordance with commission rules.

(i) A well is considered to be in continuous active operation for purposes of Subsection (h)(3) if:

(1) the well is a producing well and the well has produced at least 10 barrels of oil or 100 mcf of gas per month for at least three consecutive months as shown in the records of the commission and as authorized by a permit issued by the commission; or

(2) the well is a service well and the well has been used for the disposal or injection of oil and gas wastes or another purpose related to the production of oil or gas for at least three consecutive months as shown in the records of the commission and as authorized by a permit issued by the commission.

(j) The commission shall make payments to operators under Subsection (h)(3) annually in the same order the commission determines the operators to be entitled to the payments. The aggregate amount of payments in a state fiscal year under that subsection may not exceed $500,000. An operator may not receive:

(1) more than one payment under that subsection for the same well; or

(2) cumulative payments in an amount that exceeds the amount of the bond, letter of credit, or cash deposit the operator has filed with the commission under Section 91.104.

Sec. 89.048. PLUGGING OF WELL BY SURFACE ESTATE OWNER. (a) In this section, "orphaned well" has the meaning assigned by Section 89.047.

(b) The owner of an interest in the surface estate of a tract of land on which an orphaned well is located may contract with a commission-approved well plugger to plug the well.

(c) If the surface estate owner enters into a contract under Subsection (b), the well plugger shall:

(1) not later than the 30th day before the date the well is plugged, mail notice of its intent to plug the well to the operator of the well at the operator's address as shown by the records of the commission;

(2) assume responsibility for the physical operation and control of the well as shown by a form the person files with the commission and the commission approves;

(3) file a bond, letter of credit, or cash deposit covering the well as required by Section 91.107; and

(4) plug the well in accordance with commission rules.

(d) On successful plugging of the well by the well plugger, the surface estate owner may submit documentation to the commission of the cost of the well-plugging operation. The commission shall reimburse the surface estate owner from money in the oil-field cleanup fund in an amount not to exceed 50 percent of the lesser of:

(1) the documented well-plugging costs; or

(2) the average cost incurred by the commission in the preceding 24 months in plugging similar wells located in the same general area.

(e) The commission shall adopt any rules reasonably necessary to implement this section.

SECTION 5. Section 91.112(a), Natural Resources Code, is amended to read as follows:

(a) Money in the fund may be used by the commission or its employees or agents for:

(1) conducting a site investigation or environmental assessment to determine:

(A) the nature and extent of contamination caused by oil and gas wastes or other substances or materials regulated by the commission under Section 91.101; and

(B) the measures that should be taken to control or clean up the wastes, substances, or materials described in Paragraph (A);

(2) controlling or cleaning up oil and gas wastes or other substances or materials regulated by the commission under Section 91.101 that are causing or are likely to cause the pollution of surface or subsurface water, consistent with Section 91.113;

(3) plugging abandoned wells and administering or enforcing permits, orders, and rules relating to the commission's authority to prevent pollution under this chapter, Chapter 89, or any other law administered or enforced by the commission under Title 3;

(4) implementing Subchapter N and enforcing rules, orders, and permits adopted or issued under that subchapter;

(5) implementing the voluntary cleanup program under Subchapter O; [~~and~~]

(6) preparing the report required under Subsection (b);

(7) making payments to eligible operators under Section 89.047; and

(8) making payments to eligible surface estate owners under Section 89.048.

SECTION 6. Section 117.012, Natural Resources Code, is amended by amending Subsection (a) and adding Subsections (n), (o), and (p) to read as follows:

(a) The commission shall adopt rules that include safety standards for and practices applicable to the intrastate transportation of hazardous liquids or carbon dioxide by pipeline and intrastate hazardous liquid or carbon dioxide pipeline facilities, including safety standards related to the prevention of damage to such a facility resulting from the movement of earth by a person in the vicinity of the facility, other than movement by tillage that does not exceed a depth of 16 inches.

(n) In this subsection, "telecommunications service" and "information service" have the meanings assigned by 47 U.S.C. Section 153. Notwithstanding Subsection (a), this title does not grant the commission jurisdiction or right-of-way management authority over a provider of telecommunications service or information service. A provider of telecommunications service or information service shall comply with all applicable safety standards, including those provided by Subchapter G, Chapter 756, Health and Safety Code.

(o) The power granted by Subsection (a) does not apply to:

(1) surface mining operations; or

(2) other entities or occupations if the commission determines in its rulemaking process that exempting those entities or occupations from rules adopted under that subsection:

(A) is in the public interest; or

(B) is not likely to cause harm to the safety and welfare of the public.

(p) The commission may not implement rules adopted under Subsection (a) regulating the movement of earth by a person in the vicinity of a facility until September 1, 2007. This subsection expires September 1, 2008.

SECTION 7. Section 201.053, Tax Code, is amended to read as follows:

Sec. 201.053. GAS NOT TAXED. The tax imposed by this chapter does not apply to gas:

(1) injected into the earth in this state, unless sold for that purpose;

(2) produced from oil wells with oil and lawfully vented or flared;

(3) used for lifting oil, unless sold for that purpose; or

(4) produced in this state from a well that qualifies under Section 202.056 or 202.060.

SECTION 8. Section 201.058(a), Tax Code, is amended to read as follows:

(a) The exemptions described by Sections 202.056, 202.057, [~~and~~] 202.059, and 202.060 apply to the taxes imposed by this chapter as authorized by and subject to the certifications and approvals required by those sections.

SECTION 9. Subchapter B, Chapter 201, Tax Code, is amended by adding Section 201.059 to read as follows:

Sec. 201.059. CREDITS FOR QUALIFYING LOW-PRODUCING WELLS. (a) In this section:

(1) "Commission" means the Railroad Commission of Texas.

(2) "Mcf" means 1,000 cubic feet of gas as measured in accordance with Section 91.052, Natural Resources Code.

(3) "Qualifying low-producing well" means a gas well whose production during a three-month period is no more than 90 mcf per day, excluding gas flared pursuant to the rules of the commission. For purposes of qualifying a gas well, production per well per day is determined by computing the average daily production from the well using the monthly well production report made to the commission.

(b) Each month, the comptroller shall certify the average taxable price of gas, adjusted to 2005 dollars, during the previous three months based on various price indices available to producers, including prices reported by Henry Hub, Houston Ship Channel, Mississippi Barge Transport, New York Mercantile Exchange, or other spot prices, as applicable. The comptroller shall publish certifications under this subsection in the Texas Register.

(c) An operator of a qualifying low-producing well is entitled to a 25 percent credit on the tax otherwise due on gas produced and saved from that well during a month if the average taxable price of gas certified by the comptroller under Subsection (b) for the previous three-month period is more than $3 per mcf but not more than $3.50 per mcf.

(d) An operator of a qualifying low-producing well is entitled to a 50 percent credit on the tax otherwise due on gas produced and saved from that well during a month if the average taxable price of gas certified by the comptroller under Subsection (b) for the previous three-month period is more than $2.50 per mcf but not more than $3 per mcf.

(e) An operator of a qualifying low-producing well is entitled to a 100 percent credit on the tax otherwise due on gas produced and saved from that well during a month if the average taxable price of gas certified by the comptroller under Subsection (b) for the previous three-month period is not more than $2.50 per mcf.

(f) If the tax is paid on gas at the full rate provided by Section 201.052, the person paying the tax is entitled to a credit against taxes imposed by this chapter or Chapter 202 on the amount overpaid. To receive the credit, the person must apply to the comptroller for the credit not later than the expiration of the applicable period for filing a tax refund under Section 111.104.

(g) This section expires September 1, 2007.

SECTION 10. Section 201.102, Tax Code, is amended to read as follows:

Sec. 201.102. CASH SALES. If gas is sold for cash only, the tax shall be computed on the producer's gross cash receipts. Payments from a purchaser of gas to a producer for the purpose of reimbursing the producer for taxes due under this chapter are not part of the gross cash receipts [~~unless the reimbursement amount for taxes due under this chapter is separately stated in the sales contract~~].

SECTION 11. Section 202.052(c), Tax Code, is amended to read as follows:

(c) The exemptions described by Sections 202.056, [~~and~~] 202.059, and 202.060 apply to oil produced in this state from a well that qualifies under Section 202.056, [~~or~~] 202.059, or 202.060, subject to the certifications and approvals required by those sections.

SECTION 12. Subchapter B, Chapter 202, Tax Code, is amended by adding Sections 202.058, 202.060, and 202.061 to read as follows:

Sec. 202.058. CREDITS FOR QUALIFYING LOW-PRODUCING OIL LEASES. (a) In this section:

(1) "Commission" means the Railroad Commission of Texas.

(2) "Qualifying low-producing oil lease" means a well classified as an oil well that is part of a lease whose production during a 90-day period is less than:

(A) 15 barrels of oil per day of production; or

(B) five percent recoverable oil per barrel of produced water.

(b) For purposes of qualifying a lease, production per well per day is determined by computing the average daily per well production from the lease using the monthly lease production report made to the commission. For purposes of qualifying a lease, production per well per day is measured by dividing the sum of lease production during the three-month period by the sum of the number of well-days, where a well-day is one well producing for one day. The operator of a lease that is eligible for a credit under this section only on the basis of Subsection (a)(2)(B) must pay to the comptroller a filing fee of $100 before the comptroller may authorize the credit.

(c) Each month, the comptroller shall certify the average taxable price of oil, adjusted to 2005 dollars, during the previous three months based on various price indices available to producers, including the reported Texas Panhandle Spot Price, West Texas Intermediate Crude Spot Price, New York Mercantile Exchange, or other spot prices, as applicable. The comptroller shall publish certifications under this subsection in the Texas Register.

(d) An operator of a qualifying low-producing lease is entitled to a 25 percent credit on the tax otherwise due on oil produced from that lease during a month if the average taxable price of oil certified by the comptroller under Subsection (c) for the previous three-month period is more than $25 per barrel but not more than $30 per barrel.

(e) An operator of a qualifying low-producing lease is entitled to a 50 percent credit on the tax otherwise due on oil produced from that lease during a month if the average taxable price of oil certified by the comptroller under Subsection (c) for the previous three-month period is more than $22 per barrel but not more than $25 per barrel.

(f) An operator of a qualifying low-producing lease is entitled to a 100 percent credit on the tax otherwise due on oil produced from that lease during a month if the average taxable price of oil certified by the comptroller under Subsection (c) for the previous three-month period is not more than $22 per barrel.

(g) If the tax is paid on oil at the full rate provided by Section 202.052, the person paying the tax is entitled to a credit against taxes imposed by this chapter or Chapter 201 on the amount overpaid. To receive the credit, the person must apply to the comptroller for the credit not later than the expiration of the applicable period for filing a tax refund under Section 111.104.

(h) This section expires September 1, 2007.

Sec. 202.060. EXEMPTION FOR OIL AND GAS FROM REACTIVATED ORPHANED WELLS. (a) In this section:

(1) "Commission" means the Railroad Commission of Texas.

(2) "Orphaned well" has the meaning assigned by Section 89.047, Natural Resources Code.

(b) The commission shall issue a certificate to a person who is designated by the commission under Section 89.047, Natural Resources Code, as the operator of an orphaned well. The certificate must identify the operator to whom and the well for which the certificate is issued.

(c) Hydrocarbons produced from the well identified in the certificate qualify for a severance tax exemption.

(d) The commission shall adopt all rules necessary to administer this section.

(e) To qualify for the tax exemption provided by this section, the person responsible for paying the tax must apply to the comptroller. The application must include a copy of the certificate issued by the commission. The comptroller shall approve the application if the person demonstrates that the hydrocarbon production is eligible for a tax exemption. The comptroller may require a person applying for the tax exemption to provide any relevant information necessary to administer this section. The comptroller may establish procedures to comply with this section.

(f) The exemption takes effect on the first day of the month following the month in which the comptroller approves the application.

(g) If the person to whom the certificate is issued ceases to be the operator of the well as shown by the records of the commission, the commission shall notify the comptroller. The exemption expires on the date the notice is received.

(h) A person who makes or subscribes an application, report, or other document and submits it to the commission to form the basis for an application for a tax exemption under this section, knowing that the application, report, or other document is untrue in a material fact, is subject to the penalties imposed by Chapters 85 and 91, Natural Resources Code.

(i) A person is liable to the state for a civil penalty if the person applies or attempts to apply the tax exemption authorized by this section for a well after the person to whom the certificate for the well was issued ceases to be the operator of the well as shown by the records of the commission. The amount of the penalty may not exceed the sum of:

(1) $10,000; and

(2) the difference between the amount of taxes paid or attempted to be paid and the amount of taxes due.

(j) The attorney general may recover a penalty under Subsection (i) in a suit brought on behalf of the state. Venue for the suit is in Travis County.

Sec. 202.061. TAX CREDIT FOR ENHANCED EFFICIENCY EQUIPMENT. (a) In this section:

(1) "Enhanced efficiency equipment" means equipment used in the production of oil that reduces the energy used to produce a barrel of fluid by 10 percent or more when compared to commonly available alternative equipment. The term does not include a motor or downhole pump. Equipment does not qualify as enhanced efficiency equipment unless an institution of higher education approved by the comptroller that is located in this state and that has an accredited petroleum engineering program evaluated the equipment and determined that the equipment does produce the required energy reduction.

(2) "Marginal well" means an oil well that produces 10 barrels of oil or less per day on average during a month.

(b) The taxpayer responsible for the payment of severance taxes on the production from a marginal well in this state on which enhanced efficiency equipment is installed and used is entitled to a credit in an amount equal to 10 percent of the cost of the equipment, provided that:

(1) the cumulative total of all severance tax credits authorized by this section may not exceed $1,000 for any marginal well;

(2) the enhanced efficiency equipment installed in a qualifying marginal well must have been purchased and installed not earlier than September 1, 2005, or later than September 1, 2009;

(3) the taxpayer must file an application with the comptroller for the credit and must demonstrate to the comptroller that the enhanced efficiency equipment has been purchased and installed in the marginal well within the period prescribed by Subdivision (2);

(4) the number of applications the comptroller may approve each state fiscal year may not exceed a number equal to one percent of the producing marginal wells in this state on September 1 of that state fiscal year, as determined by the comptroller; and

(5) the manufacturer of the enhanced efficiency equipment must obtain an evaluation of the product under Subsection (a).

(c) The taxpayer may carry any unused credit forward until the credit is used.

SECTION 13. Section 121.201, Utilities Code, is amended by amending Subsections (a) and (b) and adding Subsections (d), (e), and (f) to read as follows:

(a) The railroad commission [~~by rule~~] may:

(1) by rule prescribe or adopt safety standards for the transportation of gas and for gas pipeline facilities, including safety standards related to the prevention of damage to such a facility resulting from the movement of earth by a person in the vicinity of the facility, other than movement by tillage that does not exceed a depth of 16 inches;

(2) by rule require an operator that does not file operator organization information under Section 91.142, Natural Resources Code, to provide the information to the commission in the form of an application;

(3) by rule require record maintenance and reports;

(4) inspect records and facilities to determine compliance with [~~adopted~~] safety standards prescribed or adopted under Subdivision (1);

(5) make certifications and reports from time to time;

(6) seek designation by the United States secretary of transportation as an agent to conduct safety inspections of interstate gas pipeline facilities located in this state; and

(7) by rule take any other requisite action in accordance with 49 U.S.C. Section 60101 et seq., or a succeeding law.

(b) The power granted by Subsection (a):

(1) does not apply to the transportation of gas or to gas facilities subject to the exclusive control of the United States but applies to the transportation of gas and gas pipeline facilities in this state to the maximum degree permissible under 49 U.S.C. Section 60101 et seq., or a succeeding law; and

(2) is granted to provide exclusive state control over safety standards and practices applicable to the transportation of gas and gas pipeline facilities within the borders of this state to the maximum degree permissible under that law.

(d) In this subsection, "telecommunications service" and "information service" have the meanings assigned by 47 U.S.C. Section 153. Notwithstanding Subsection (a), this title does not grant the railroad commission jurisdiction or right-of-way management authority over a provider of telecommunications service or information service. A provider of telecommunications service or information service shall comply with all applicable safety standards, including those provided by Subchapter G, Chapter 756, Health and Safety Code.

(e) The power granted by Subsection (a) does not apply to:

(1) surface mining operations; or

(2) other entities or occupations if the railroad commission determines in its rulemaking process that exempting those entities or occupations from rules adopted under that subsection:

(A) is in the public interest; or

(B) is not likely to cause harm to the safety and welfare of the public.

(f) The railroad commission may not implement rules adopted under Subsection (a) until September 1, 2007. This subsection expires September 1, 2008.

SECTION 14. Sections 121.206(a) and (d), Utilities Code, are amended to read as follows:

(a) The railroad commission may assess an administrative penalty against a person who violates Section 121.201 [~~or Subchapter I~~] or a safety standard or other rule prescribed or [~~relating to the transportation of gas and gas pipeline facilities~~] adopted under that section [~~those provisions~~].

(d) The railroad commission by rule shall adopt guidelines to be used in determining the amount of a penalty under this subchapter. The guidelines shall include a penalty calculation worksheet that specifies the typical penalty for certain violations, circumstances justifying enhancement of a penalty and the amount of the enhancement, and circumstances justifying a reduction in a penalty and the amount of the reduction. The guidelines shall take into account:

(1) the person's history of previous violations of Section 121.201 or a safety standard or other rule prescribed or [~~relating to the transportation of gas and gas pipeline facilities~~] adopted under that section, including the number of previous violations;

(2) the seriousness of the violation and of any pollution resulting from the violation;

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

(4) the degree of culpability;

(5) the demonstrated good faith of the person charged; and

(6) any other factor the commission considers relevant.

SECTION 15. (a) Sections 201.059 and 202.058, Tax Code, as added by this Act, apply to gas and oil produced on or after the effective date of this Act. Gas and oil produced before the effective date of this Act are governed by the law in effect on the date the gas and oil were produced, and that law is continued in effect for that purpose.

(b) As soon as practicable after the effective date of this Act, the comptroller shall perform the initial certification determination required by Sections 201.059 and 202.058, Tax Code, as added by this Act. The initial certification determination must cover the three-month period beginning on June 1, 2005.

(c) Sections 201.059 and 202.058, Tax Code, as added by this Act, do not affect tax liability accruing before the effective date of this Act. That liability continues in effect as if this Act had not been enacted, and the former law is continued in effect for the collection of tax due and for civil and criminal enforcement of the liability for those taxes.

SECTION 16. The changes made by this Act to Section 201.102, Tax Code, apply to a refund claim or a determination under Chapter 111, Tax Code, for which the comptroller has not issued a final order or decision on or before the effective date of this Act without regard to whether the taxes that are the subject of the refund claim or determination are due before, on, or after the effective date of this Act.

SECTION 17. The Railroad Commission of Texas may not adopt safety standards under Section 121.201(a), Utilities Code, or Section 117.012(a), Natural Resources Code, as amended by this Act, until the Pipeline and Hazardous Materials Safety Administration of the United States Department of Transportation adopts the rules published at 69 Fed. Reg. 35279 (2004) (to be

codified at 49 C.F.R. Parts 192 and 195) (proposed June 3, 2004) or other rules pertaining to public education programs for hazardous liquid and gas pipeline operators.

SECTION 18. (a) The change in law made by this Act to Section 121.206, Utilities Code, applies only to a violation committed on or after the effective date of this Act. For purposes of this section, a violation is committed before the effective date of this Act if any element of the violation occurred before that date.

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

SECTION 19. (a) Except as provided by Subsection (b) of this section, this Act takes effect September 1, 2005.

(b) The following provisions take effect January 1, 2006:

(1) Sections 81.116(d), 81.117(d), 89.044, and 91.112(a), Natural Resources Code, as amended by this Act;

(2) Sections 89.047 and 89.048, Natural Resources Code, as added by this Act;

(3) Sections 201.053, 201.058(a), and 202.052(c), Tax Code, as amended by this Act; and

(4) Section 202.060, Tax Code, as added by this Act.

Representative West moved to adopt the conference committee report on **HB 2161**.

The motion to adopt the conference committee report on **HB 2161** 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.)

HR 2222 - ADOPTED
(by B. Keffer)

The following privileged resolution was laid before the house:

HR 2222

BE IT RESOLVED by the House of Representatives of the State of Texas, 79th Legislature, Regular Session, 2005, That House Rule 13, Section 9(a), be suspended in part as provided by House Rule 13, Section 9(f), to enable the conference committee appointed to resolve the differences on **SB 334** (the remedy provided for failure to disclose certain information in certain residential construction contracts) to consider and take action on the following matter:

House Rule 13, Section 9(a)(4), is suspended to permit the committee to add SECTIONS 1 and 3 to the bill to read as follows:

SECTION . Chapter 26, Civil Practice and Remedies Code, is amended by adding Subchapter C to read as follows:

SUBCHAPTER C. CERTAIN CLASS ACTIONS PROHIBITED

Sec. 26.151. FAILURE TO DISCLOSE CERTAIN INFORMATION IN RESIDENTIAL CONSTRUCTION CONTRACT. A cause of action under Section 27.007, Property Code, may not be the subject of a class action.

SECTION . The change in law made by Subchapter C, Chapter 26, Civil Practice and Remedies Code, as added by this Act, applies only to the certification of a class action on or after June 1, 2005. Certification of a class action before June 1, 2005, is governed by the law in effect immediately before the effective date of this Act, and that law is continued in effect for that purpose.

Explanation: The addition is necessary to ensure that on and after June 1, 2005, actions under Section 27.007, Property Code, are not maintained as class action suits.

HR 2222 was adopted.

SB 334 - RULES SUSPENDED

Representative B. Keffer moved to suspend all necessary rules to consider the conference committee report on **SB 334** at this time.

The motion prevailed.

SB 334 - POINT OF ORDER

Representative Keel raised a point of order against further consideration of **SB 334** under Rule 8, Section 3 of the House Rules and Article III, Section 35 of the Texas Constitution on the grounds that the bill contains more than one subject.

The speaker sustained the point of order.

The ruling precluded further consideration of **SB 334**.

HR 2267 - ADOPTED
(by Pitts)

The following privileged resolution was laid before the house:

HR 2267

BE IT RESOLVED by the House of Representatives of the State of Texas, 79th Legislature, Regular Session, 2005, That House Rule 13, Section 9(a), be suspended in part as provided by House Rule 13, Section 9(f), to enable the conference committee appointed to resolve the differences on **SB 1863** (certain fiscal matters affecting governmental entities; providing a penalty) to consider and take action on the following matters:

(1) House Rule 13, Section 9(a)(4), is suspended to permit the committee to add Article 5 to the bill to read as follows:

ARTICLE 5. EXTENDING STATE REIMBURSEMENT PROGRAM: PETROLEUM STORAGE TANKS

SECTION 5.01. Subsection (f), Section 26.351, Water Code, is amended to read as follows:

(f) The person performing corrective action under this section, if the release was reported to the commission on or before December 22, 1998, shall meet the following deadlines:

(1) a complete site assessment and risk assessment (including, but not limited to, risk-based criteria for establishing target concentrations), as determined by the executive director, must be received by the agency no later than September 1, 2002;

(2) a complete corrective action plan, as determined by the executive director and including, but not limited to, completion of pilot studies and recommendation of a cost-effective and technically appropriate remediation methodology, must be received by the agency no later than September 1, 2003. The person may, in lieu of this requirement, submit by this same deadline a demonstration that a corrective action plan is not required for the site in question under commission rules. Such demonstration must be to the executive director's satisfaction;

(3) for those sites found under Subdivision (2) to require a corrective action plan, that plan must be initiated and proceeding according to the requirements and deadlines in the approved plan no later than March 1, 2004;

(4) for sites which require either a corrective action plan or groundwater monitoring, a comprehensive and accurate annual status report concerning those activities must be submitted to the agency;

(5) for sites which require either a corrective action plan or groundwater monitoring, all deadlines set by the executive director concerning the corrective action plan or approved groundwater monitoring plan shall be met; and

(6) for sites that require either a corrective action plan or groundwater monitoring, have met all other deadlines under this subsection, and have submitted annual progress reports that demonstrate progress toward meeting closure requirements, a site closure request must be submitted to [~~requests for all sites where~~] the executive director [~~agreed in writing that no corrective action plan was required must be received by the agency~~] no later than September 1, 2007 [~~2005~~]. The request must be complete, as judged by the executive director.

SECTION 5.02. Subsection (b), Section 26.355, Water Code, is amended to read as follows:

(b) An owner or operator of an underground or aboveground storage tank from which a regulated substance is released is liable to the state unless:

(1) the release was caused by:

(A) [~~(1)~~] an act of God;

(B) [~~(2)~~] an act of war;

(C) [~~(3)~~] the negligence of the State of Texas or the United States; or

(D) [~~(4)~~] an act or omission of a third party; or

(2) the site at which the release occurred has been admitted into the petroleum storage tank state-lead program under Section 26.3573(r-1).

SECTION 5.03. Subsection (b), Section 26.35731, Water Code, is amended to read as follows:

(b) The commission has discretion whether to postpone considering, processing, or paying [~~may not consider, process, or pay~~] a claim for reimbursement from the petroleum storage tank remediation account for

corrective action work begun without prior commission approval after September 1, 1993, and filed with the commission prior to January 1, 2005 [~~without prior commission approval until all claims for reimbursement for corrective action work preapproved by the commission have been considered, processed, and paid~~].

SECTION 5.04. Section 26.3573, Water Code, is amended by amending Subsections (d), (r), and (s) and adding Subsection (r-1) to read as follows:

(d) The commission may use the money in the petroleum storage tank remediation account to pay:

(1) necessary expenses associated with the administration of the petroleum storage tank remediation account and the groundwater protection cleanup program[~~, not to exceed an amount equal to: 11.8 percent of the gross receipts of that account for FY02/03; 16.40 percent of the gross receipts of that account for FY04/05; and 21.1 percent of the gross receipts of that account for FY06/07~~];

(2) expenses associated with investigation, cleanup, or corrective action measures performed in response to a release or threatened release from a petroleum storage tank, whether those expenses are incurred by the commission or pursuant to a contract between a contractor and an eligible owner or operator as authorized by this subchapter; and

(3) subject to the conditions of Subsection (e) [~~of this section~~], expenses associated with investigation, cleanup, or corrective action measures performed in response to a release or threatened release of hydraulic fluid or spent oil from hydraulic lift systems or tanks located at a vehicle service and fueling facility and used as part of the operations of that facility.

(r) Except as provided by Subsection (r-1), the [~~The~~] petroleum storage tank remediation account may not be used to reimburse any person for corrective action performed after September 1, 2005.

(r-1) In this subsection, "state-lead program" means the petroleum storage tank state-lead program administered by the commission. The executive director shall grant an extension for corrective action reimbursement to a person who is an eligible owner or operator under Section 26.3571. The petroleum storage tank remediation account may be used to reimburse an eligible owner or operator for corrective action performed under an extension before August 31, 2007. Not later than July 1, 2007, an eligible owner or operator who is granted an extension under this subsection may apply to the commission in writing using a form provided by the commission to have the site subject to corrective action placed in the state-lead program. The eligible owner or operator must agree in the application to allow site access to state personnel and state contractors as a condition of placement in the state-lead program under this subsection. On receiving the application for placement in the state-lead program under this subsection, the executive director by order shall place the site in the state-lead program until the corrective action is completed to the satisfaction of the commission. An eligible owner or operator of a site that is placed in the state-lead program under this subsection is not liable to the commission for any costs related to the corrective action.

(s) The petroleum storage tank remediation account may not be used to reimburse any person for corrective action contained in a reimbursement claim filed with the commission after March 1, 2008 [~~2006~~].

SECTION 5.05. Subsection (b), Section 26.3574, Water Code, is amended to read as follows:

(b) A fee is imposed on the delivery of a petroleum product on withdrawal from bulk of that product as provided by this subsection. Each operator of a bulk facility on withdrawal from bulk of a petroleum product shall collect from the person who orders the withdrawal a fee in an amount determined as follows:

(1) $12.50 for each delivery into a cargo tank having a capacity of less than 2,500 gallons for the state fiscal year beginning September 1, 2001, and the state fiscal year beginning September 1, 2002 [~~FY 02 and FY 03~~]; and $10.00 for each delivery into a cargo tank having a capacity of less than 2,500 gallons for the state fiscal year beginning September 1, 2003, through the state fiscal year ending August 31, 2007 [~~FY 04 and FY 05; $5.00 for each delivery into a cargo tank having a capacity of less than 2,500 gallons for FY 06; and $2.00 for each delivery into a cargo tank having a capacity of less than 2,500 gallons for FY 07~~];

(2) $25.00 for each delivery into a cargo tank having a capacity of 2,500 gallons or more but less than 5,000 gallons for the state fiscal year beginning September 1, 2001, and the state fiscal year beginning September 1, 2002 [~~FY 02 and FY 03~~]; and $20.00 for each delivery into a cargo tank having a capacity of 2,500 gallons or more but less than 5,000 gallons for the state fiscal year beginning September 1, 2003, through the state fiscal year ending August 31, 2007 [~~FY 04 and FY 05; $10.00 for each delivery into a cargo tank having a capacity of 2,500 gallons or more but less than 5,000 gallons for FY 06; and $4.00 for each delivery into a cargo tank having a capacity of 2,500 gallons or more but less than 5,000 gallons for FY 07~~];

(3) $37.50 for each delivery into a cargo tank having a capacity of 5,000 gallons or more but less than 8,000 gallons for the state fiscal year beginning September 1, 2001, and the state fiscal year beginning September 1, 2002 [~~FY 02 and FY 03~~]; and $30.00 for each delivery into a cargo tank having a capacity of 5,000 gallons or more but less than 8,000 gallons for the state fiscal year beginning September 1, 2003, through the state fiscal year ending August 31, 2007 [~~FY 04 and FY 05; $15.00 for each delivery into a cargo tank having a capacity of 5,000 gallons or more but less than 8,000 gallons for FY 06; and $6.00 for each delivery into a cargo tank having a capacity of 5,000 gallons or more but less than 8,000 gallons for FY 07~~];

(4) $50.00 for each delivery into a cargo tank having a capacity of 8,000 gallons or more but less than 10,000 gallons for the state fiscal year beginning September 1, 2001, and the state fiscal year beginning September 1, 2002 [~~FY 02 and FY 03~~]; and $40.00 for each delivery into a cargo tank having a capacity of 8,000 gallons or more but less than 10,000 gallons for the state fiscal year beginning September 1, 2003, through the state fiscal year ending August 31, 2007 [~~FY 04 and FY 05; $20.00 for each delivery into a cargo tank having a~~

~~capacity of 8,000 gallons or more but less than 10,000 gallons for FY 06; and $8.00 for each delivery into a cargo tank having a capacity of 8,000 gallons or more but less than 10,000 gallons for FY 07~~]; and

(5) a $25.00 fee for each increment of 5,000 gallons or any part thereof delivered into a cargo tank having a capacity of 10,000 gallons or more for the state fiscal year beginning September 1, 2001, and the state fiscal year beginning September 1, 2002 [~~FY 02 and FY 03~~]; and $20.00 for each increment of 5,000 gallons or any part thereof delivered into a cargo tank having a capacity of 10,000 gallons or more for the state fiscal year beginning September 1, 2003, through the state fiscal year ending August 31, 2007 [~~FY 04 and FY 05; $10.00 for each increment of 5,000 gallons or any part thereof delivered into a cargo tank having a capacity of 10,000 gallons or more for FY 06; and $4.00 for each increment of 5,000 gallons or any part thereof delivered into a cargo tank having a capacity of 10,000 gallons or more for FY 07~~].

SECTION 5.06. Section 26.361, Water Code, is amended to read as follows:

Sec. 26.361. EXPIRATION OF REIMBURSEMENT PROGRAM. Notwithstanding any other provision of this subchapter, the reimbursement program established under this subchapter expires September 1, 2008 [~~2006~~]. On or after September 1, 2008 [~~2006~~], the commission may not use money from the petroleum storage tank remediation account to reimburse an eligible owner or operator for any expenses of corrective action or to pay the claim of a person who has contracted with an eligible owner or operator to perform corrective action.

SECTION 5.07. This article takes effect September 1, 2005.

Explanation: This change is necessary to add provisions to the bill that extend a state reimbursement program relating to petroleum storage tanks.

(2) House Rule 13, Section 9(a)(4), is suspended to permit the committee to add Article 6 to the bill to read as follows:

ARTICLE 6. DRUG PURCHASING FOR STATE AGENCIES

SECTION 6.01. Subchapter B, Chapter 531, Government Code, is amended by adding Section 531.080 to read as follows:

Sec. 531.080. JOINT PURCHASING OF PRESCRIPTION DRUGS AND OTHER MEDICATIONS. (a) Subject to Subsection (b), the commission and each health and human services agency authorized by the executive commissioner may enter into an agreement with one or more other states for the joint bulk purchasing of prescription drugs and other medications to be used in the Medicaid program, the state child health plan, or another program under the authority of the commission.

(b) An agreement under this section may not be entered into until:

(1) the commission determines that entering into the agreement would be feasible and cost-effective; and

(2) if appropriated money would be spent under the proposed agreement, the governor and the Legislative Budget Board grant prior approval to expend appropriated money under the proposed agreement.

(c) If an agreement is entered into, the commission shall adopt procedures applicable to an agreement and joint purchase required by this section. The procedures must ensure that this state receives:

(1) all prescription drugs and other medications purchased with money provided by this state; and

(2) an equitable share of any price benefits resulting from the joint bulk purchase.

(d) In determining the feasibility and cost-effectiveness of entering into an agreement under this section, the commission shall identify:

(1) the most cost-effective existing joint bulk purchasing agreement; and

(2) any potential groups of states with which this state could enter into a new cost-effective joint bulk purchasing agreement.

SECTION 6.02. Not later than January 15, 2006, the Health and Human Services Commission shall determine the feasibility and cost-effectiveness of entering into an agreement under Section 531.080, Government Code, as added by this article. If the commission determines that such action is feasible and cost-effective, the commission shall take action to enter into an agreement that takes effect March 1, 2006.

SECTION 6.03. If before implementing any provision of this article a state agency determines that a waiver or authorization from a federal agency is necessary for implementation of that provision, the agency affected by the provision shall request the waiver or authorization and may delay implementing that provision until the waiver or authorization is granted.

Explanation: This change is necessary to add provisions to the bill relating to drug purchasing for state agencies.

(3) House Rule 13, Section 9(a)(4), is suspended to permit the committee to add Article 7 to the bill to read as follows:

ARTICLE 7. CONTINUATION OF QUALITY ASSURANCE FEES

SECTION 7.01. Section 252.209, Health and Safety Code, is repealed.

Explanation: This change is necessary to add provisions to the bill relating to the continuation of certain quality assurance fees.

(4) House Rule 13, Section 9(a)(4), is suspended to permit the committee to add Article 8 to the bill to read as follows:

ARTICLE 8. TEXAS MOBILITY FUND

SECTION 8.01. Subchapter M, Chapter 201, Transportation Code, is amended by adding Section 201.9471 to read as follows:

Sec. 201.9471. TEMPORARY DISPOSITION OF MONEY ALLOCATED TO FUND. (a) Notwithstanding Sections 521.058, 521.313, 521.3466, 521.427, 522.029, 524.051, and 724.046, to the extent that those sections allocate money to the Texas mobility fund, in state fiscal year 2006 the comptroller shall deposit that money to the credit of the general revenue fund instead of to the credit of the Texas mobility fund.

(b) Notwithstanding Sections 521.313, 521.3466, 521.427, 522.029, 524.051, and 724.046, to the extent that those sections allocate money to the Texas mobility fund, in state fiscal year 2007 the comptroller shall deposit that money to the credit of the general revenue fund instead of to the credit of the Texas mobility fund.

(c) This section expires January 1, 2008.

SECTION 8.02. This article takes effect September 1, 2005.

Explanation: This change is necessary to add provisions to the bill relating to the Texas mobility fund.

(5) House Rule 13, Section 9(a)(4), is suspended to permit the committee to add Article 9 to the bill to read as follows:

ARTICLE 9. TELECOMMUNICATIONS INFRASTRUCTURE FUND

SECTION 9.01. Section 57.048, Utilities Code, is amended by adding Subsections (f)-(i) to read as follows:

(f) Notwithstanding any other provision of this title, a certificated telecommunications utility may recover from the utility's customers an assessment imposed on the utility under this subchapter after the total amount deposited to the credit of the fund, excluding interest and loan repayments, is equal to $1.5 billion, as determined by the comptroller. A certificated telecommunications utility may recover only the amount of the assessment imposed after the total amount deposited to the credit of the fund, excluding interest and loan repayments, is equal to $1.5 billion, as determined by the comptroller. The utility may recover the assessment through a monthly billing process.

(g) The comptroller shall publish in the Texas Register the date on which the total amount deposited to the credit of the fund, excluding interest and loan repayments, is equal to $1.5 billion.

(h) Not later than February 15 of each year, a certificated telecommunications utility that wants to recover the assessment under Subsection (f) shall file with the commission an affidavit or affirmation stating the amount that the utility paid to the comptroller under this section during the previous calendar year and the amount the utility recovered from its customers in cumulative payments during that year.

(i) The commission shall maintain the confidentiality of information the commission receives under this section that is claimed to be confidential for competitive purposes. The confidential information is exempt from disclosure under Chapter 552, Government Code.

SECTION 9.02. Section 57.0485, Utilities Code, is amended to read as follows:

Sec. 57.0485. ALLOCATION OF REVENUE [~~ACCOUNTS~~]. [~~(a)~~] The comptroller shall deposit [~~50 percent of~~] the money collected by the comptroller under Section 57.048 to the credit of the general revenue fund [~~public schools account in the fund. The comptroller shall deposit the remainder of the money collected by the comptroller under Section 57.048 to the credit of the qualifying entities account in the fund.~~

[~~(b) Interest earned on money in an account shall be deposited to the credit of that account~~].

SECTION 9.03. Section 57.051, Utilities Code, is amended to read as follows:

Sec. 57.051. SUNSET PROVISION. The Telecommunications Infrastructure Fund [~~Board~~] is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, [~~the board is abolished and~~] this subchapter expires September 1, 2011 [~~2005~~].

SECTION 9.04. Section 57.043 and Subsections (c) and (d), Section 57.048, Utilities Code, are repealed.

SECTION 9.05. If, on the day before the effective date of this article, the assessment prescribed by Section 57.048, Utilities Code, is imposed at a rate of less than 1.25 percent, the comptroller shall, on the effective date of this article, reset the rate of the assessment to 1.25 percent.

SECTION 9.06. This article takes effect July 1, 2005, if this Act receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for effect on that date, this article takes effect September 1, 2005.

Explanation: This change is necessary to add provisions to the bill relating to the Telecommunications Infrastructure Fund.

(6) House Rule 13, Section 9(a)(4), is suspended to permit the committee to add Article 10 to the bill to read as follows:

ARTICLE 10. COLLECTION OF CERTAIN COSTS, FEES, AND FINES IN CRIMINAL CASES

SECTION 10.01. Chapter 103, Code of Criminal Procedure, is amended by adding Article 103.0033 to read as follows:

Art. 103.0033. COLLECTION IMPROVEMENT PROGRAM. (a) In this article:

(1) "Office" means the Office of Court Administration of the Texas Judicial System.

(2) "Program" means the program to improve the collection of court costs, fees, and fines imposed in criminal cases, as developed and implemented under this article.

(b) This article applies only to:

(1) a county with a population of 50,000 or greater; and

(2) a municipality with a population of 100,000 or greater.

(c) Unless granted a waiver under Subsection (h), each county and municipality shall develop and implement a program that complies with the prioritized implementation schedule under Subsection (h). A county program must include district, county, and justice courts.

(d) The program must consist of:

(1) a component that conforms with a model developed by the office and designed to improve in-house collections through application of best practices; and

(2) a component designed to improve collection of balances more than 60 days past due, which may be implemented by entering into a contract with a private attorney or public or private vendor in accordance with Article 103.0031.

(e) Not later than June 1 of each year, the office shall identify those counties and municipalities that:

(1) have not implemented a program; and

(2) are able to implement a program before April 1 of the following year.

(f) The comptroller, in cooperation with the office, shall develop a methodology for determining the collection rate of counties and municipalities described by Subsection (e) before implementation of a program. The comptroller shall determine the rate for each county and municipality not later than the first anniversary of the county's or municipality's adoption of a program.

(g) The office shall:

(1) make available on the office's Internet website requirements for a program; and

(2) assist counties and municipalities in implementing a program by providing training and consultation, except that the office may not provide employees for implementation of a program.

(h) The office, in consultation with the comptroller, may:

(1) use case dispositions, population, revenue data, or other appropriate measures to develop a prioritized implementation schedule for programs; and

(2) determine whether it is not cost-effective to implement a program in a county or municipality and grant a waiver to the county or municipality.

(i) Each county and municipality shall at least annually submit to the office and the comptroller a written report that includes updated information regarding the program, as determined by the office in cooperation with the comptroller. The report must be in a form approved by the office in cooperation with the comptroller.

(j) The comptroller shall periodically audit counties and municipalities to verify information reported under Subsection (i) and confirm that the county or municipality is conforming with requirements relating to the program. The comptroller shall consult with the office in determining how frequently to conduct audits under this section.

SECTION 10.02. Section 133.058, Local Government Code, is amended by adding Subsection (e) to read as follows:

(e) A municipality or county may not retain a service fee if, during an audit under Section 133.059 of this code or Article 103.0033(j), Code of Criminal Procedure, the comptroller determines that the municipality or county is not in compliance with Article 103.0033, Code of Criminal Procedure. The municipality or county may continue to retain a service fee under this section on receipt of a written confirmation from the comptroller that the municipality or county is in compliance with Article 103.0033, Code of Criminal Procedure.

SECTION 10.03. Section 133.103, Local Government Code, is amended by amending Subsections (b) and (c) and adding Subsection (c-1) to read as follows:

(b) Except as provided by Subsection (c-1), the [~~The~~] treasurer shall send 50 percent of the fees collected under this section to the comptroller. The comptroller shall deposit the fees received to the credit of the general revenue fund.

(c) Except as provided by Subsection (c-1), the [~~The~~] treasurer shall deposit 10 percent of the fees collected under this section in the general fund of the county or municipality for the purpose of improving the efficiency of the administration of justice in the county or municipality. The county or municipality shall prioritize the needs of the judicial officer who collected the fees when making expenditures under this subsection and use the money deposited to provide for those needs.

(c-1) The treasurer shall send 100 percent of the fees collected under this section to the comptroller if, during an audit under Section 133.059 of this code or Article 103.0033(j), Code of Criminal Procedure, the comptroller determines that the municipality or county is not in compliance with Article 103.0033, Code of Criminal Procedure. The municipality or county shall continue to dispose of fees as otherwise provided by this section on receipt of a written confirmation from the comptroller that the municipality or county is in compliance with Article 103.0033, Code of Criminal Procedure.

SECTION 10.04. (a) Notwithstanding Subsection (e), Article 103.0033, Code of Criminal Procedure, as added by this article, not later than September 1, 2005, the Office of Court Administration of the Texas Judicial System shall identify those counties and municipalities that are able to implement a collection improvement program under Article 103.0033, Code of Criminal Procedure, as added by this article, before April 1, 2006. Beginning June 1, 2006, the Office of Court Administration of the Texas Judicial System shall comply with Subsection (e), Article 103.0033, Code of Criminal Procedure, as added by this article.

(b) Not later than September 1, 2005, the Office of Court Administration of the Texas Judicial System shall make available on the office's Internet website requirements for a program under Article 103.0033, Code of Criminal Procedure, as added by this article, in accordance with Subsection (g) of Article 103.0033.

Explanation: This change is necessary to add provisions to the bill relating to the collection of certain costs, fees, and fines in criminal cases.

(7) House Rule 13, Section 9(a)(4), is suspended to permit the committee to add Article 11 to the bill to read as follows:

ARTICLE 11. INTEREST ON CERTAIN TAX REFUNDS

SECTION 11.01. Section 111.064, Tax Code, is amended by amending Subsections (a), (c), and (f) and adding Subsection (c-1) to read as follows:

(a) Except as otherwise provided by this section, for a refund under this chapter [~~Subsections (b) and (c), in a comptroller's final decision on a claim for refund or in an audit~~], interest is at the rate that is the lesser of the annual rate of interest earned on deposits in the state treasury during December of the previous calendar year, as determined by the comptroller, or the rate set in Section 111.060, and accrues on the amount found to be erroneously paid for a period:

(1) beginning on the later of 60 days after the date of payment or the due date of the tax report; and

(2) ending on, as determined by the comptroller, either the date of allowance of credit on account of the comptroller's final decision or audit or a date not more than 10 days before the date of the refund warrant.

(c) For a refund claimed before September 1, 2005, and granted for a report period due on or after January 1, 2000, the rate of interest is the rate set in Section 111.060 [~~granted for a report period due on or after January 1, 2000, the rate of interest is the rate set in Section 111.060~~].

(c-1) A refund, without regard to the date claimed, for a report period due before January 1, 2000, does not accrue interest.

(f) A local revenue fund is not subject to Subsections (a)-(c-1) [~~(a)-(c)~~]. In this subsection, "local revenue fund" includes a court cost, a fee, a fine, or a similar charge collected by a municipality, a county, or a court of this state and remitted to the comptroller.

SECTION 11.02. This article takes effect September 1, 2005.

Explanation: This change is necessary to add provisions to the bill relating to interest on certain tax refunds.

(8) House Rule 13, Section 9(a)(4), is suspended to permit the committee to add Article 12 to the bill to read as follows:

ARTICLE 12. PUBLIC SCHOOL FACILITIES

SECTION 12.01. Section 46.033, Education Code, is amended to read as follows:

Sec. 46.033. ELIGIBLE BONDS. Bonds, including bonds issued under Section 45.006, are eligible to be paid with state and local funds under this subchapter if:

(1) the district made payments on the bonds during the 2004-2005 [~~2002-2003~~] school year or taxes levied to pay the principal of and interest on the bonds were included in the district's audited debt service collections for that school year; and

(2) the district does not receive state assistance under Subchapter A for payment of the principal and interest on the bonds.

SECTION 12.02. Subsection (c), Section 46.034, Education Code, is amended to read as follows:

(c) If the amount required to pay the principal of and interest on eligible bonds in a school year is less than the amount of payments made by the district on the bonds during the 2004-2005 [~~2002-2003~~] school year or the district's audited debt service collections for that school year, the district may not receive aid in excess of the amount that, when added to the district's local revenue for the school year, equals the amount required to pay the principal of and interest on the bonds.

Explanation: This change is necessary to add provisions to the bill relating to public school facilities.

(9) House Rule 13, Section 9(a)(4), is suspended to permit the committee to add Article 13 to the bill to read as follows:

ARTICLE 13. COMPENSATION FOR CERTAIN STATE EMPLOYEES WHO RETURN TO STATE EMPLOYMENT

SECTION 13.01. Section 659.042, Government Code, is amended to read as follows:

Sec. 659.042. EXCLUSIONS. The following are not entitled to longevity pay under this subchapter:

(1) a member of the legislature;

(2) an individual who holds a statewide office that is normally filled by vote of the people;

(3) an independent contractor or an employee of an independent contractor;

(4) a temporary employee;

(5) an officer or employee of a public junior college; [~~or~~]

(6) an academic employee of a state institution of higher education; or

(7) a state employee who retired from state employment on or after June 1, 2005, and who receives an annuity based wholly or partly on service as a state officer or state employee in a public retirement system, as defined by Section 802.001, that was credited to the state employee.

SECTION 13.02. Subsection (a), Section 659.043, Government Code, is amended to read as follows:

(a) A state employee is entitled to longevity pay to be included in the employee's monthly compensation if the employee:

(1) is a full-time state employee on the first workday of the month;

(2) is not on leave without pay on the first workday of the month; and

(3) has accrued at least two [~~three~~] years of lifetime service credit not later than the last day of the preceding month.

SECTION 13.03. Section 659.044, Government Code, as amended by Section 32, Chapter 1158, Acts of the 77th Legislature, Regular Session, 2001, and Section 104, Chapter 1158, Acts of the 77th Legislature, Regular Session, 2001, is reenacted and amended to read as follows:

Sec. 659.044. AMOUNT. (a) Except as provided by Subsections [~~Subsection~~] (e) and (f), the monthly amount of longevity pay is $20 for every two [~~three~~] years of lifetime service credit.

(b) The amount increases when the 4th, 6th, 8th [~~9th~~], 10th, 12th, 14th [~~15th~~], 16th, 18th, 20th [~~21st~~], 22nd, 24th, 26th [~~27th~~], 28th, 30th, 32nd [~~33rd~~], 34th, 36th, 38th [~~39th~~], 40th, and 42nd years of lifetime service credit are accrued.

(c) An increase is effective beginning with the month following the month in which the 4th, 6th, 8th [~~9th~~], 10th, 12th, 14th [~~15th~~], 16th, 18th, 20th [~~21st~~], 22nd, 24th, 26th [~~27th~~], 28th, 30th, 32nd [~~33rd~~], 34th, 36th, 38th [~~39th~~], 40th, and 42nd years of lifetime service credit are accrued.

(d) An employee may not receive from the state as longevity pay more than the amount determined under Subsection (a) or (e), as applicable, regardless of the number of positions the employee holds or the number of hours the employee works each week.

(e) This subsection applies only to an employee of the Texas Youth Commission who is receiving less than the maximum amount of hazardous duty pay that the commission may pay to the employee under Section 659.303. The employee's monthly amount of longevity pay is the sum of:

(1) $4 for each year of lifetime service credit, which may not include any period served in a hazardous duty position; and

(2) the lesser of:

(A) $4 for each year served in a hazardous duty position; or

(B) the difference between:

(i) $7 for each year served in a hazardous duty position; and

(ii) the amount paid by the commission for each year served in a hazardous duty position.

(f) A state employee who retired from state employment before June 1, 2005, and who returned to state employment before September 1, 2005, is entitled to receive longevity pay. The monthly amount of longevity pay the employee is entitled to receive equals the amount of longevity pay the employee was entitled to receive immediately before September 1, 2005. A state employee who retired from state employment before June 1, 2005, and who returns to state employment on or after September 1, 2005, is not entitled to receive longevity pay.

SECTION 13.04. Section 659.126, Government Code, is amended to read as follows:

Sec. 659.126. LOSS OF ELIGIBILITY TO RECEIVE BENEFIT REPLACEMENT PAY. (a) An eligible state employee who leaves state employment after August 31, 1995, for at least 30 consecutive days [~~12 consecutive months~~], on returning to state employment or on assuming a state office, is ineligible to receive benefit replacement pay.

(b) An eligible state-paid judge who leaves office after August 31, 1995, for at least 30 consecutive days [~~12 consecutive months~~], on return to state office or on accepting a state employment, is ineligible to receive benefit replacement pay.

(c) For purposes of Subsection (a), a state employee is not considered to have left state employment:

(1) while the state employee is on an unpaid leave of absence as provided by Section 661.909; or

(2) during a period of time the employee is not working for the state because the employee's employment with the state customarily does not include that period of time, such as a teacher whose employment does not invariably include the summer months.

(d) An eligible state employee who retired from state employment on or after June 1, 2005, and who receives an annuity based wholly or partly on service as a state officer or state employee in a public retirement system, as defined by Section 802.001, that was credited to the state employee is ineligible to receive benefit replacement pay.

SECTION 13.05. Section 661.152, Government Code, is amended by adding Subsection (l) to read as follows:

(l) For purposes of computing vacation leave under Subsection (d) for a state employee who retired from state employment on or after June 1, 2005, and who receives an annuity based wholly or partly on service as a state officer or state employee in a public retirement system, as defined by Section 802.001, that was credited to the state employee, years of total state employment includes only the length of state employment after the date the state employee retired.

SECTION 13.06. Subsections (a), (b), (c), and (g), Section 659.305, Government Code, are amended to read as follows:

(a) Except as provided by Subsection (b), the amount of a full-time state employee's hazardous duty pay for a particular month is the lesser of:

(1) $10 [~~$7~~] for each 12-month period of lifetime service credit accrued by the employee; or

(2) $300 [~~$210~~].

(b) This subsection applies only to a state employee whose compensation for services provided to the state during any month before August 1987 included hazardous duty pay that was based on total state service performed before May 29, 1987. The amount of a full-time state employee's hazardous duty pay for a particular month is the sum of:

(1) $10 [~~$7~~] for each 12-month period of state service credit the employee finished accruing before May 29, 1987; and

(2) $10 [~~$7~~] for each 12-month period of lifetime service credit that the employee accrued after the date, which must be before May 29, 1987, on which the employee finished accruing the last 12-month period of state service credit.

(c) The amount determined under Subsection (b)(2) may not exceed $300 [~~$210~~].

(g) A state employee may not receive more than $10 [~~$7~~] for each 12-month period of lifetime service credit, regardless of:

(1) the number of positions the employee holds; or

(2) the number of hours the employee works each week.

SECTION 13.07. (a) Except as provided by Subsection (b) of this section, the change in law made by this article to Section 659.126, Government Code, applies only to a state employee who leaves state employment on or after the effective date of this article. A state employee who leaves state employment before the effective date of this article is governed by the law as it existed on the date the employee left state employment and the former law is continued in effect for that purpose.

(b) A state employee who leaves state employment before the effective date of this article is ineligible to receive benefit replacement pay unless the employee returns to state employment before September 30, 2005.

SECTION 13.08. This article takes effect September 1, 2005.

Explanation: This change is necessary to add provisions to the bill relating to compensation for certain state employees who return to state employment.

(10) House Rule 13, Section 9(a)(4), is suspended to permit the committee to add Article 14 to the bill to read as follows:

ARTICLE 14. SYSTEM BENEFIT FUND

SECTION 14.01. Subsection (h), Section 39.903, Utilities Code, is amended to read as follows:

(h) The commission shall adopt rules for a retail electric provider to determine a reduced rate for eligible customers to be discounted off the standard retail service package as approved by the commission under Section 39.106, or the price to beat established by Section 39.202, whichever is lower. Municipally owned utilities and electric cooperatives shall establish a reduced rate for eligible customers to be discounted off the standard retail service package established under Section 40.053 or 41.053, as appropriate. The reduced rate for a retail electric provider shall result in a total charge that is at least 10 percent and, if sufficient money in the system benefit fund is available, up to 20 percent, lower than the amount the customer would otherwise be charged. To the extent the system benefit fund is insufficient to fund the initial 10 percent rate reduction, the commission may increase the fee to an amount not more than 65 cents per megawatt hour, as provided by Subsection (b). If the fee is set at 65 cents per megawatt hour or if the commission determines that appropriations are insufficient to fund the 10 percent rate reduction, the commission may reduce the rate reduction to less than 10 percent. For a municipally owned utility or electric cooperative, the reduced rate shall be equal to an amount that can be fully funded by that portion of the nonbypassable fee proceeds paid by the municipally owned utility or electric cooperative that is allocated to the utility or cooperative by the commission under Subsection (e) for programs for low-income customers of the utility or cooperative. The reduced rate for municipally owned utilities and electric cooperatives under this section is in addition to any rate reduction that may result from local programs for low-income customers of the municipally owned utilities or electric cooperatives.

Explanation: This change is necessary to add provisions to the bill relating to the system benefit fund.

(11) House Rule 13, Section 9(a)(4), is suspended to permit the committee to add Article 15 to the bill to read as follows:

ARTICLE 15. FUNDING OF THE COASTAL PROTECTION FUND AND THE USE OF MONEY IN THE FUND

SECTION 15.01. Section 40.152, Natural Resources Code, is amended by adding Subsection (c) to read as follows:

(c) Notwithstanding Subsection (a)(9) and the other provisions of this subchapter, the legislature may appropriate to the General Land Office for implementation of the coastal management program under Subchapter F, Chapter 33, and for erosion response projects under Subchapter H, Chapter 33, money from the fund in an amount that exceeds the amount of interest accruing to the fund annually. This subsection expires September 1, 2007.

SECTION 15.02. Subsections (a) through (d), Section 40.155, Natural Resources Code, are amended to read as follows:

(a) Except as otherwise provided in this section, the rate of the fee shall be 1-1/3 cents [~~two cents~~] per barrel of crude oil until the commissioner certifies that the unencumbered balance in the fund has reached $20 [~~$25~~] million. The

commissioner shall certify to the comptroller the date on which the unencumbered balance in the fund exceeds $20 [~~$25~~] million. The fee shall not be collected or required to be paid on or after the first day of the second month following the commissioner's certification to the comptroller that the unencumbered balance in the fund exceeds $20 [~~$25~~] million.

(b) If the unencumbered balance in the fund falls below $10 [~~$14~~] million, the commissioner shall certify such fact to the comptroller. On receiving the commissioner's certification, the comptroller shall resume collecting the fee until suspended in the manner provided in Subsection (a) of this section.

(c) Notwithstanding the provisions of Subsection (a) or (b) of this section, the fee shall be levied at the rate of four cents per barrel if the commissioner certifies to the comptroller a written finding of the following facts:

(1) the unencumbered balance in the fund is less than $20 [~~$25~~] million;

(2) an unauthorized discharge of oil in excess of 100,000 gallons has occurred within the previous 30 days; and

(3) expenditures from the fund for response costs and damages are expected to deplete the fund substantially.

(d) In the event of a certification to the comptroller under Subsection (c) of this section, the comptroller shall collect the fee at the rate of four cents per barrel until the unencumbered balance in the fund reaches $20 [~~$25~~] million or any lesser amount that the commissioner determines is necessary to pay response costs and damages without substantially depleting the fund. The commissioner shall certify to the comptroller the date on which the unencumbered balance in the fund exceeds $20 [~~$25~~] million or such other lesser amount. The fee shall not be collected or required to be paid on or after the first day of the second month following the commissioner's certification to the comptroller.

Explanation: This change is necessary to add provisions to the bill relating to the funding of the coastal protection fund and the use of money in the fund.

(12) House Rule 13, Section 9(a)(4), is suspended to permit the committee to add Article 16 to the bill to read as follows:

ARTICLE 16. REIMBURSEMENT OF EXCESSIVE OR UNFAIRLY DISCRIMINATORY RATES CHARGED BY CERTAIN INSURERS

SECTION 16.01. Article 5.144, Insurance Code, is amended by amending Subsection (b) and adding Subsections (b-1) and (b-2) to read as follows:

(b) Except as provided by Subsection (d) of this article, if the commissioner determines that an insurer has charged a rate for personal automobile insurance or residential property insurance that is excessive or unfairly discriminatory, as described by Article 5.13-2 [~~or 5.101~~] of this code, the commissioner may order the insurer to:

(1) issue a refund of the excessive or unfairly discriminatory portion of the premium, plus interest on that amount, directly to each affected policyholder if the amount of that portion of the premium is at least 7.5 percent of the total premium charged for the coverage; or

(2) if the amount of that portion of the premium is less than 7.5 percent:

(A) provide each affected policyholder who renews the policy a future premium discount in the amount of the excessive or unfairly discriminatory portion of the premium, plus interest on that amount; and

(B) provide each affected policyholder who does not renew or whose coverage is otherwise terminated a refund in the amount described by Subdivision (1) of this subsection.

(b-1) The rate for interest assessed under Subsection (b) of this article is the prime rate for the calendar year in which the order is issued plus six percent. For purposes of this subsection, the prime rate is the prime rate as published in The Wall Street Journal for the first day of the calendar year that is not a Saturday, Sunday, or legal holiday. The interest accrues beginning on the date on which the department first provides the insurer with formal written notice that the insurer's filed rate is excessive or unfairly discriminatory, as determined by the commissioner, and continues to accrue until the refund is paid. An insurer may not be required to pay any interest penalty or refund if the insurer prevails in a final appeal of the commissioner's order under Subchapter D, Chapter 36, of this code.

(b-2) An insurer may not claim a premium tax credit to which the insurer is otherwise entitled unless the insurer has complied with this article.

Explanation: This change is necessary to add provisions to the bill relating to reimbursement of excessive or unfairly discriminatory rates charged by insurers.

(13) House Rule 13, Section 9(a)(4), is suspended to permit the committee to add Article 17 to the bill to read as follows:

ARTICLE 17. CERTAIN PROVISIONS RELATING TO RETIREMENT SYSTEM CONTRIBUTIONS AND BENEFITS FOR RETIRED SCHOOL EMPLOYEES

SECTION 17.01. Section 825.404(a), Government Code, is amended to read as follows:

(a) During each fiscal year, the state shall contribute to the retirement system an amount equal to at least six and not more than 10 [~~eight~~] percent of the aggregate annual compensation of all members of the retirement system during that fiscal year.

SECTION 17.02. Section 1575.203(a), Insurance Code, is amended to read as follows:

(a) Each state fiscal year, each active employee shall, as a condition of employment, contribute to the fund an amount equal to 0.65 [~~0.5~~] percent of the employee's salary.

SECTION 17.03. The change in law made by this article to Section 1575.203, Insurance Code, takes effect September 1, 2005.

Explanation: This change is necessary to add provisions to the bill relating to certain benefits for retired school employees.

(14) House Rule 13, Section 9(a)(4), is suspended to permit the committee to add Article 18 to the bill to read as follows:

ARTICLE 18. COMPENSATION SUPPLEMENTATION FOR CERTAIN SCHOOL EMPLOYEES

SECTION 18.01. Sections 22.004(a), (b), (c), (i), and (j), Education Code, are amended to read as follows:

(a) A district shall participate in the uniform group coverage program established under Chapter 1579 [~~Article 3.50-7~~], Insurance Code, as provided by Subchapter D [~~Section 5~~] of that chapter [~~article~~].

(b) A district that does not participate in the program described by Subsection (a) shall make available to its employees group health coverage provided by a risk pool established by one or more school districts under Chapter 172, Local Government Code, or under a policy of insurance or group contract issued by an insurer, a company subject to Chapter 842, Insurance Code, or a health maintenance organization under Chapter 843, Insurance Code. The coverage must meet the substantive coverage requirements of Chapter 1251, Subchapter A, Chapter 1364, and Subchapter A, Chapter 1366 [~~Article 3.51-6~~], Insurance Code, and any other law applicable to group health insurance policies or contracts issued in this state. The coverage must include major medical treatment but may exclude experimental procedures. In this subsection, "major medical treatment" means a medical, surgical, or diagnostic procedure for illness or injury. The coverage may include managed care or preventive care and must be comparable to the basic health coverage provided under Chapter 1551, Insurance Code. The board of trustees of the Teacher Retirement System of Texas shall adopt rules to determine whether a school district's group health coverage is comparable to the basic health coverage specified by this subsection. The rules must provide for consideration of the following factors concerning the district's coverage in determining whether the district's coverage is comparable to the basic health coverage specified by this subsection:

(1) the deductible amount for service provided inside and outside of the network;

(2) the coinsurance percentages for service provided inside and outside of the network;

(3) the maximum amount of coinsurance payments a covered person is required to pay;

(4) the amount of the copayment for an office visit;

(5) the schedule of benefits and the scope of coverage;

(6) the lifetime maximum benefit amount; and

(7) verification that the coverage is issued by a provider licensed to do business in this state by the Texas Department of Insurance or is provided by a risk pool authorized under Chapter 172, Local Government Code, or that a district is capable of covering the assumed liabilities in the case of coverage provided through district self-insurance.

(c) The cost of the coverage provided under the program described by Subsection (a) shall be paid by the state, the district, and the employees in the manner provided by Subchapter F, Chapter 1579 [~~Article 3.50-7~~], Insurance Code. The cost of coverage provided under a plan adopted under Subsection (b)

shall be shared by the employees and the district using the contributions by the state described by Subchapter F, Chapter 1579 [~~Section 9, Article 3.50-7~~], Insurance Code, or Subchapter D [~~by Article 3.50-8, Insurance Code~~].

(i) Notwithstanding any other provision of this section, a district participating in the uniform group coverage program established under Chapter 1579 [~~Article 3.50-7~~], Insurance Code, may not make group health coverage available to its employees under this section after the date on which the program of coverages provided under Chapter 1579 [~~Article 3.50-7~~], Insurance Code, is implemented.

(j) This section does not preclude a district that is participating in the uniform group coverage program established under Chapter 1579 [~~Article 3.50-7~~], Insurance Code, from entering into contracts to provide optional insurance coverages for the employees of the district.

SECTION 18.02. Chapter 22, Education Code, is amended by adding Subchapter D to read as follows:

SUBCHAPTER D. COMPENSATION SUPPLEMENTATION

Sec. 22.101. DEFINITIONS. In this subchapter:

(1) "Cafeteria plan" means a plan as defined and authorized by Section 125, Internal Revenue Code of 1986.

(2) "Employee" means an active, contributing member of the Teacher Retirement System of Texas who:

(A) is employed by a district, other educational district whose employees are members of the Teacher Retirement System of Texas, participating charter school, or regional education service center;

(B) is not a retiree eligible for coverage under the program established under Chapter 1575, Insurance Code;

(C) is not eligible for coverage by a group insurance program under Chapter 1551 or 1601, Insurance Code; and

(D) is not an individual performing personal services for a district, other educational district that is a member of the Teacher Retirement System of Texas, participating charter school, or regional education service center as an independent contractor.

(3) "Participating charter school" means an open-enrollment charter school established under Subchapter D, Chapter 12, that participates in the program established under Chapter 1579, Insurance Code.

(4) "Regional education service center" means a regional education service center established under Chapter 8.

Sec. 22.102. AUTHORITY TO ADOPT RULES; OTHER AUTHORITY. (a) The agency may adopt rules to implement this subchapter.

(b) The agency may enter into interagency contracts with any other agency of this state for the purpose of assistance in implementing this subchapter.

Sec. 22.103. ELIGIBILITY; WAITING PERIOD. A person is not eligible for a monthly distribution under this subchapter before the 91st day after the first day the person becomes an employee.

Sec. 22.104. DISTRIBUTION BY AGENCY. Subject to the availability of funds, each month the agency shall deliver to each district, including a district that is ineligible for state aid under Chapter 42, each other educational district that is a member of the Teacher Retirement System of Texas, each participating charter school, and each regional education service center state funds in an amount, as determined by the agency, equal to the product of the number of eligible employees employed by the district, school, or service center multiplied by the amount specified in the General Appropriations Act for purposes of this subchapter and divided by 12. The agency shall distribute funding to only one entity for employees who are employed by more than one entity listed in this section.

Sec. 22.105. FUNDS HELD IN TRUST. All funds received by a district, other educational district, participating charter school, or regional education service center under this subchapter are held in trust for the benefit of the employees on whose behalf the district, school, or service center received the funds.

Sec. 22.106. RECOVERY OF DISTRIBUTIONS. The agency is entitled to recover from a district, other educational district, participating charter school, or regional education service center any amount distributed under this subchapter to which the district, school, or service center was not entitled.

Sec. 22.107. DETERMINATION BY AGENCY FINAL. A determination by the agency under this subchapter is final and may not be appealed.

Sec. 22.108. DISTRIBUTION BY SCHOOL. Each month, each district, other educational district that is a member of the Teacher Retirement System of Texas, participating charter school, and regional education service center must distribute to its eligible employees the funding received under this subchapter. To receive the monthly distribution, an individual must meet the definition of an employee under Section 22.101 for that month.

Sec. 22.109. USE OF SUPPLEMENTAL COMPENSATION. An employee may use a monthly distribution received under this subchapter for any employee benefit, including depositing the amount of the distribution into a cafeteria plan, if the employee is enrolled in a cafeteria plan, or using the amount of the distribution for health care premiums through a premium conversion plan. The employee may take the amount of the distribution as supplemental compensation.

Sec. 22.110. SUPPLEMENTAL COMPENSATION. An amount distributed to an employee under this subchapter must be in addition to the rate of compensation that:

(1) the district, other educational district, participating charter school, or regional education service center paid the employee in the preceding school year; or

(2) the district, school, or service center would have paid the employee in the preceding school year if the employee had been employed by the district, school, or service center in the same capacity in the preceding school year.

SECTION 18.03. Section 822.201(c), Government Code, is amended to read as follows:

(c) Excluded from salary and wages are:

(1) expense payments;

(2) allowances;

(3) payments for unused vacation or sick leave;

(4) maintenance or other nonmonetary compensation;

(5) fringe benefits;

(6) deferred compensation other than as provided by Subsection (b)(3);

(7) compensation that is not made pursuant to a valid employment agreement;

(8) payments received by an employee in a school year that exceed $5,000 for teaching a driver education and traffic safety course that is conducted outside regular classroom hours;

(9) the benefit replacement pay a person earns as a result of a payment made under Subchapter B or C, Chapter 661;

(10) any amount [~~contributions to a health reimbursement arrangement account~~] received by an employee under Subchapter D, Chapter 22, Education Code, former Article 3.50-8, Insurance Code, former Chapter 1580, Insurance Code, or Rider 9, page III-39, Chapter 1330, Acts of the 78th Legislature, Regular Session, 2003 (the General Appropriations Act); and

(11) any compensation not described by Subsection (b).

SECTION 18.04. Section 1579.253(b), Insurance Code, is amended to read as follows:

(b) The employee may pay the employee's contribution under this subsection from the amount distributed to the employee under Subchapter D, Chapter 22, Education Code [~~1580~~].

SECTION 18.05. Section 1581.702, Insurance Code, is amended to read as follows:

Sec. 1581.702. ADDITIONAL SUPPORT. The state shall provide additional support for a school district to which this section applies in an amount computed by multiplying the total amount of supplemental compensation received by district employees under Subchapter D, Chapter 22, Education Code, [~~1580~~] by 0.062.

SECTION 18.06. The following laws are repealed:

(1) Chapter 1580, Insurance Code;

(2) Section 57, Chapter 201, Acts of the 78th Legislature, Regular Session, 2003;

(3) Chapter 313, Acts of the 78th Legislature, Regular Session, 2003; and

(4) Section 1.01, Chapter 366, Acts of the 78th Legislature, Regular Session, 2003.

SECTION 18.07. The functions and duties of the Teacher Retirement System of Texas with respect to the compensation supplementation program established under Chapter 1580, Insurance Code, and other applicable law, and any appropriation relating to that program are transferred to the Texas Education

Agency. A reference in law to the Teacher Retirement System of Texas with respect to the compensation supplementation program means the Texas Education Agency.

SECTION 18.08. This article takes effect September 1, 2005.

Explanation: This change is necessary to add provisions to the bill relating to compensation supplementation for certain school employees.

(15) House Rule 13, Section 9(a)(4), is suspended to permit the committee to add Article 19 to the bill to read as follows:

ARTICLE 19. RETIREMENT SYSTEM CONTRIBUTIONS FOR CERTAIN MEMBERS OF THE TEACHER RETIREMENT SYSTEM OF TEXAS

SECTION 19.01. Subchapter E, Chapter 825, Government Code, is amended by adding Section 825.4041 to read as follows:

Sec. 825.4041. EMPLOYER PAYMENTS. (a) For purposes of this section, a new member is a person first employed on or after September 1, 2005, including a former member who withdrew retirement contributions under Section 822.003 and is reemployed on or after September 1, 2005.

(b) During each fiscal year, an employer shall pay an amount equal to the state contribution rate, as established by the General Appropriations Act for the fiscal year, applied to the aggregate compensation of new members of the retirement system, as described by Subsection (a), during their first 90 days of employment.

(c) On a monthly basis an employer shall:

(1) report to the retirement system, in a form prescribed by the system, a certification of the total amount of salary paid during the first 90 days of employment of a new member and the total amount of employer payments due under this section for the payroll periods; and

(2) retain information, as determined by the retirement system, sufficient to allow administration of this section, including information for each employee showing the applicable salary as well as aggregate compensation for the first 90 days of employment for new employees.

(d) A person who was hired before September 1, 2005, and was subject to a 90-day waiting period for membership in the retirement system becomes eligible to participate in the retirement system as a member starting September 1, 2005. For the purpose of this section, the member shall be treated as a new member for the remainder of the waiting period.

(e) The employer must remit the amount required under this section to the retirement system at the same time the employer remits the member's contribution. In computing the amount required to be remitted, the employer shall include compensation paid to an employee for the entire pay period that contains the 90th calendar day of new employment.

(f) At the end of each school year, the retirement system shall certify to the commissioner of education and to the state auditor:

(1) the name of each employer that has failed to remit, within the period required by Section 825.408, all payments required under this section for the school year; and

(2) the amounts of the unpaid required payments.

(g) If the commissioner of education or the state auditor receives a certification under Subsection (f), the commissioner or the state auditor shall direct the comptroller to withhold the amount certified, plus interest computed at the rate and in the manner provided by Section 825.408, from the first state money payable to the employer. The amount withheld shall be deposited to the credit of the appropriate accounts of the retirement system.

(h) The board of trustees shall take this section into consideration in adopting the biennial estimate of the amount necessary to pay the state's contributions to the retirement system.

SECTION 19.02. This Article takes September 1, 2005.

Explanation: This change is necessary to add provisions to the bill relating to retirement system contributions for certain members of the Teacher Retirement System of Texas.

(16) House Rule 13, Section 9(a)(2), is suspended to permit the committee to omit the following provisions from the bill that are not in disagreement:

ARTICLE __. COLLECTION OF MOTOR FUELS TAXES

SECTION __.01. Subdivisions (20) and (43), Section 162.001, Tax Code, are amended to read as follows:

(20) "Distributor" means a person who acquires motor fuel from a licensed supplier, permissive supplier, or another licensed distributor and who makes sales at wholesale and whose activities may also include sales at retail. The term includes a person engaged in the tax-free sale of dyed diesel fuel to marine vessels.

(43) "Motor fuel transporter" means a person who transports gasoline, diesel fuel, or gasoline blended fuel for hire outside the bulk transfer/terminal system by means of a transport vehicle, a railroad tank car, or a marine vessel.

SECTION __.02. Subsection (b), Section 162.004, Tax Code, is amended to read as follows:

(b) The shipping document issued by the terminal operator or operator of a bulk plant shall contain the following information and any other information required by the comptroller:

(1) the terminal control number of the terminal or physical address of the bulk plant from which the motor fuel was received;

(2) the name [~~and license number~~] of the purchaser;

(3) the date the motor fuel was loaded;

(4) the net gallons loaded, or the gross gallons loaded if the fuel was purchased from a bulk plant;

(5) the destination state of the motor fuel, as represented by the purchaser of the motor fuel or the purchaser's agent; and

(6) a description of the product being transported.

SECTION __.03. Subsection (a), Section 162.016, Tax Code, is amended to read as follows:

(a) A person may not import motor fuel to a destination in this state or export motor fuel to a destination outside this state by any means unless the person possesses a shipping document for that fuel created by the terminal or bulk plant at which the fuel was received. The shipping document must include:

(1) the name and physical address of the terminal or bulk plant from which the motor fuel was received for import or export;

(2) the name [~~and federal employer identification number, or the social security number if the employer identification number is not available,~~] of the carrier transporting the motor fuel;

(3) the date the motor fuel was loaded;

(4) the type of motor fuel;

(5) the number of gallons:

(A) in temperature-adjusted gallons if purchased from a terminal for export or import; or

(B) in temperature-adjusted gallons or in gross gallons if purchased from a bulk plant;

(6) the destination of the motor fuel as represented by the purchaser of the motor fuel and the number of gallons of the fuel to be delivered, if delivery is to only one state;

(7) the name[~~, federal employer identification number, license number, and physical address~~] of the purchaser of the motor fuel;

(8) the name of the person responsible for paying the tax imposed by this chapter, as given to the terminal by the purchaser if different from the licensed supplier or distributor; and

(9) any other information that, in the opinion of the comptroller, is necessary for the proper administration of this chapter.

SECTION __.04. Subsection (d), Section 162.113, Tax Code, is amended to read as follows:

(d) The supplier or permissive supplier shall [~~has the right~~], after notifying the comptroller of the licensed distributor's or licensed importer's failure to remit taxes under this section, [~~to~~] terminate the ability of the licensed distributor or licensed importer to defer the payment of gasoline tax. The supplier or permissive supplier shall reinstate without delay the right of the licensed distributor or licensed importer to defer the payment of gasoline tax after the comptroller provides to the supplier or permissive supplier notice that the licensed distributor or licensed importer is in good standing with the comptroller for the purposes of the gasoline tax imposed under this subchapter.

SECTION __.05. Section 162.115, Tax Code, is amended by adding Subsection (m-1) to read as follows:

(m-1) In addition to the records specifically required by this section, a license holder shall keep any other record required by the comptroller.

SECTION __.06. Subsections (a) and (d), Section 162.116, Tax Code, are amended to read as follows:

(a) The monthly return and supplements of each supplier and permissive supplier shall contain for the period covered by the return:

(1) [~~the number of net gallons of gasoline received by the supplier or permissive supplier during the month, sorted by product code, seller, point of origin, destination state, carrier, and receipt date;~~

[~~(2)~~] the number of net gallons of gasoline removed at a terminal rack during the month from the account of the supplier, sorted by product code, person receiving the gasoline, terminal code, and carrier;

(2) [~~(3)~~] the number of net gallons of gasoline removed during the month for export, sorted by product code, person receiving the gasoline, terminal code, destination state, and carrier;

(3) [~~(4)~~] the number of net gallons of gasoline removed during the month from a terminal located in another state for conveyance to this state, as indicated on the shipping document for the gasoline, sorted by product code, person receiving the gasoline, terminal code, and carrier;

(4) [~~(5)~~] the number of net gallons of gasoline the supplier or permissive supplier sold during the month in transactions exempt under Section 162.104, sorted by [~~product code, carrier,~~] purchaser[~~, and terminal code;~~

[~~(6) the number of net gallons of gasoline sold in the bulk transfer/terminal system in this state to any person not holding a supplier's or permissive supplier's license~~]; and

(5) [~~(7)~~] any other information required by the comptroller.

(d) For purposes of Subsection (c), all payments or credits in reduction of a customer's account must be applied ratably between motor fuels and other goods sold to the customer, and the credit allowed will be the tax on the number of gallons represented by the motor fuel portion of the credit. The comptroller may not require a supplier or permissive supplier to remit from a payment or credit in reduction of a customer's account any tax for which the supplier or permissive supplier was allowed to take a credit.

SECTION __.07. Section 162.118, Tax Code, is amended to read as follows:

Sec. 162.118. INFORMATION REQUIRED ON DISTRIBUTOR'S RETURN. The monthly return and supplements of each distributor shall contain for the period covered by the return:

(1) the number of net gallons of gasoline received by the distributor during the month, sorted by product code and[~~,~~] seller[~~, point of origin, destination state, carrier, and receipt date~~];

(2) the number of net gallons of gasoline removed at a terminal rack by the distributor during the month, sorted by product code, seller, and terminal code[~~, and carrier~~];

(3) the number of net gallons of gasoline removed by the distributor during the month for export, sorted by product code, terminal code, bulk plant address, destination state, and carrier;

(4) the number of net gallons of gasoline removed by the distributor during the month from a terminal located in another state for conveyance to this state, as indicated on the shipping document for the gasoline, sorted by product code, seller, terminal code, bulk plant address, and carrier;

(5) the number of net gallons of gasoline the distributor sold during the month in transactions exempt under Section 162.104, sorted by product code and purchaser; and

(6) any other information required by the comptroller.

SECTION __.08. Section 162.123, Tax Code, is amended to read as follows:

Sec. 162.123. INFORMATION REQUIRED ON BLENDER'S RETURN. The monthly return and supplements of each blender shall contain for the period covered by the return:

(1) [~~the number of net gallons of gasoline received by the blender during the month, sorted by product code, seller, point of origin, carrier, and receipt date;~~

[~~(2)~~] the number of net gallons of product blended with gasoline during the month, sorted by product code, type of blending agent if no product code exists, seller, and carrier;

[~~(3) the number of net gallons of blended gasoline sold during the month and the license number or name and address of the entity receiving the blended gasoline;~~] and

(2) [~~(4)~~] any other information required by the comptroller.

SECTION __.09. Section 162.127, Tax Code, is amended by adding Subsection (g) to read as follows:

(g) The comptroller shall issue a refund warrant to a distributor not later than the 60th day after the date the comptroller receives a valid refund claim from the distributor. If the comptroller does not issue the refund warrant by that date, the amount of the refund draws interest at the rate provided by Section 111.060 beginning on the 61st day after the date the comptroller receives the valid refund claim and ending on the date the comptroller issues the refund warrant.

SECTION __.10. Section 162.206, Tax Code, is amended by amending Subsection (c) and adding Subsections (c-1) and (h-1) to read as follows:

(c) A person may not make a tax-free purchase and a licensed supplier or distributor may not make a tax-free sale to a purchaser of any dyed diesel fuel under this section using a signed statement[~~:~~

[~~(1) for the purchase or the sale of more than 7,400 gallons of dyed diesel fuel in a single delivery; or~~

[~~(2)~~] in a calendar month in which the person has previously purchased from all sources or in which the licensed supplier has previously sold to that purchaser more than:

(1) [~~(A)~~] 10,000 gallons of dyed diesel fuel;

(2) [~~(B)~~] 25,000 gallons of dyed diesel fuel if the purchaser stipulates in the signed statement that all of the fuel will be consumed by the purchaser in the original production of, or to increase the production of, oil or gas and furnishes the supplier with a letter of exception issued by the comptroller; or

(3) [~~(C)~~] 25,000 gallons of dyed diesel fuel if the purchaser stipulates in the signed statement that all of the fuel will be consumed by the purchaser in agricultural off-highway equipment.

(c-1) The monthly limitations prescribed by Subsection (c) apply regardless of whether the dyed diesel fuel is purchased in a single transaction during that month or in multiple transactions during that month.

(h-1) For purposes of this section, the purchaser is considered to have furnished the signed statement to the licensed supplier or distributor if the supplier or distributor verifies that the purchaser has an end user number issued by the comptroller. The licensed supplier or distributor shall use the comptroller's Internet website or other materials provided or produced by the comptroller to verify this information.

SECTION __.11. Subsection (d), Section 162.214, Tax Code, is amended to read as follows:

(d) The supplier or permissive supplier shall [~~has the right~~], after notifying the comptroller of the licensed distributor's or licensed importer's failure to remit taxes under this section, [~~to~~] terminate the ability of the licensed distributor or licensed importer to defer the payment of diesel fuel tax. The supplier or permissive supplier shall reinstate without delay the right of the licensed distributor or licensed importer to defer the payment of diesel fuel tax after the comptroller provides to the supplier or permissive supplier notice that the licensed distributor or licensed importer is in good standing with the comptroller for the purposes of diesel fuel tax imposed under this subchapter.

SECTION __.12. Section 162.216, Tax Code, is amended by adding Subsection (m-1) to read as follows:

(m-1) In addition to the records specifically required by this section, a license holder shall keep any other record required by the comptroller.

SECTION __.13. Subsections (a) and (d), Section 162.217, Tax Code, are amended to read as follows:

(a) The monthly return and supplements of each supplier and permissive supplier shall contain for the period covered by the return:

(1) [~~the number of net gallons of diesel fuel received by the supplier or permissive supplier during the month, sorted by product code, seller, point of origin, destination state, carrier, and receipt date;~~

[~~(2)~~] the number of net gallons of diesel fuel removed at a terminal rack during the month from the account of the supplier, sorted by product code, person receiving the diesel fuel, terminal code, and carrier;

(2) [~~(3)~~] the number of net gallons of diesel fuel removed during the month for export, sorted by product code, person receiving the diesel fuel, terminal code, destination state, and carrier;

(3) [~~(4)~~] the number of net gallons of diesel fuel removed during the month from a terminal located in another state for conveyance to this state, as indicated on the shipping document for the diesel fuel, sorted by product code, person receiving the diesel fuel, terminal code, and carrier;

(4) [~~(5)~~] the number of net gallons of diesel fuel the supplier or permissive supplier sold during the month in transactions exempt under Section 162.204, sorted by [~~product code, carrier,~~] purchaser[~~, and terminal code;~~

[~~(6) the number of net gallons of diesel fuel sold in the bulk transfer/terminal system in this state to any person not holding a supplier's or permissive supplier's license~~]; and

(5) [~~(7)~~] any other information required by the comptroller.

(d) For the purpose of Subsection (c), all payments or credits in reduction of a customer's account must be applied ratably between motor fuels and other goods sold to the customer, and the credit allowed will be the tax on the number of gallons represented by the motor fuel portion of the credit. The comptroller may not require a supplier or permissive supplier to remit from a payment or credit in reduction of a customer's account any tax for which the supplier or permissive supplier was allowed to take a credit.

SECTION __.14. Section 162.219, Tax Code, is amended to read as follows:

Sec. 162.219. INFORMATION REQUIRED ON DISTRIBUTOR'S RETURN. The monthly return and supplements of each distributor shall contain for the period covered by the return:

(1) the number of net gallons of diesel fuel received by the distributor during the month, sorted by product code and[~~,~~] seller[~~, point of origin, destination state, carrier, and receipt date~~];

(2) the number of net gallons of diesel fuel removed at a terminal rack by the distributor during the month, sorted by product code, seller, and terminal code[~~, and carrier~~];

(3) the number of net gallons of diesel fuel removed by the distributor during the month for export, sorted by product code, terminal code, bulk plant address, destination state, and carrier;

(4) the number of net gallons of diesel fuel removed by the distributor during the month from a terminal located in another state for conveyance to this state, as indicated on the shipping document for the diesel fuel, sorted by product code, seller, terminal code, bulk plant address, and carrier;

(5) the number of net gallons of diesel fuel the distributor sold during the month in transactions exempt under Section 162.204, sorted by product code and by the entity receiving the diesel fuel;

(6) the number of net gallons of[~~,~~] dyed diesel fuel sold to a purchaser under a signed statement[~~,~~] or dyed diesel fuel sold to a dyed diesel fuel bonded user, sorted by product code and by the entity receiving the diesel fuel; and

(7) [~~(6)~~] any other information required by the comptroller.

SECTION __.15. Section 162.224, Tax Code, is amended to read as follows:

Sec. 162.224. INFORMATION REQUIRED ON BLENDER'S RETURN. The monthly return and supplements of each blender shall contain for the period covered by the return:

(1) [~~the number of net gallons of diesel fuel received by the blender during the month, sorted by product code, seller, point of origin, carrier, and receipt date;~~

[~~(2)~~] the number of net gallons of product blended with diesel fuel during the month, sorted by product code, type of blending agent if no product code exists, seller, and carrier;

[~~(3) the number of net gallons of blended diesel fuel sold during the month and the license number or name and address of the entity receiving the blended diesel fuel;~~] and

(2) [~~(4)~~] any other information required by the comptroller.

SECTION __.16. Section 162.227, Tax Code, is amended by adding Subsection (c-1) to read as follows:

(c-1) A license holder may take a credit on a return for the period in which the purchase occurred, and a person who does not hold a license may file a refund claim with the comptroller, if the license holder or person paid tax on diesel fuel and the diesel fuel is used in this state:

(1) as a feedstock or other component in the further manufacturing of tangible personal property for resale not as a motor fuel; or

(2) in the original production of oil or gas or to increase the production of oil or gas.

SECTION __.17. Section 162.229, Tax Code, is amended by adding Subsection (g) to read as follows:

(g) The comptroller shall issue a refund warrant to a distributor not later than the 60th day after the date the comptroller receives a valid refund claim from the distributor. If the comptroller does not issue the refund warrant by that date, the amount of the refund draws interest at the rate provided by Section 111.060 beginning on the 61st day after the date the comptroller receives the valid refund claim and ending on the date the comptroller issues the refund warrant.

SECTION __.18. Subsection (d), Section 162.230, Tax Code, is amended to read as follows:

(d) A supplier, [~~or~~] permissive supplier, or distributor that determines taxes were erroneously reported and remitted or that paid more taxes than were due to this state because of a mistake of fact or law may take a credit on the monthly tax report on which the error has occurred and tax payment made to the comptroller. The credit must be taken before the expiration of the applicable period of limitation as provided by Chapter 111.

SECTION __.19. Subsections (c) and (d), Section 162.404, Tax Code, are amended to read as follows:

(c) The prohibition under Section 162.403(32) does not apply to the tax-free sale or distribution of diesel fuel authorized by Section 162.204(a)(1) [~~162.204(1)~~], (2), or (3).

(d) The prohibition under Section 162.403(33) does not apply to the tax-free sale or distribution of gasoline under Section 162.104(a)(1) [~~162.104(1)~~], (2), or (3).

SECTION __.20. Subsection (h), Section 162.016, Tax Code, is repealed.

SECTION __.21. This article applies only to taxes imposed on or after the effective date of this article. Taxes imposed before the effective date of this article are governed by the law in effect on the date the taxes were imposed, and that law is continued in effect for that purpose.

SECTION __.22. This article takes effect September 1, 2005.

Explanation: This change is necessary to remove provisions from the bill relating to the collection of motor fuel taxes.

(17) House Rule 13, Section 9(a)(2), is suspended to permit the committee to omit the following provisions from the bill that are not in disagreement:

ARTICLE __. FEES FOR CERTAIN INSPECTIONS CONDUCTED BY THE COMMISSION ON JAIL STANDARDS

SECTION __.01. Section 511.0091, Government Code, is amended by adding Subsection (c-1) and amending Subsection (d) to read as follows:

(c-1) In addition to the other fees authorized by this section, the commission may set and collect a reasonable fee to cover the cost of performing any reinspection of a municipal or county jail that is conducted by the commission:

(1) following a determination by the commission that the jail is not in compliance with minimum standards;

(2) in response to a request by the operator of the jail; and

(3) before the operator of the jail has taken actions as necessary to ensure that the jail is in compliance with minimum standards.

(d) All money paid to the commission under this chapter is subject to Subchapter F, Chapter 404. Fees collected under Subsection (c-1) shall be deposited to the credit of a special account in the general revenue fund to be appropriated only to pay costs incurred by the commission in performing services under this section.

SECTION __.02. This article takes effect September 1, 2005.

Explanation: This change is necessary to remove provisions from the bill relating to fees for certain inspections conducted by the Commission on Jail Standards.

HR 2267 was adopted.

SB 1863 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Pitts submitted the conference committee report on **SB 1863**.

SB 1863 - POINT OF ORDER

Representative Thompson raised a point of order against further consideration of **SB 1863** under Rule 13, Section 10(b)(3) and Rule 13, Section 11 of the House Rules on the grounds that the analysis of the conference committee report is missing.

HR 2289 - NOTICE OF INTRODUCTION

Pursuant to the provisions of Rule 13, Section 9(f), of the House Rules, the speaker announced the introduction of **HR 2289**, suspending the limitations on the conferees for **HB 3540**.

SB 1863 - (consideration continued)

The speaker overruled the point of order.

SB 1863 - STATEMENT OF LEGISLATIVE INTENT

REPRESENTATIVE DELISI: Chairman Pitts, I know you're aware of the Tri-Care legislation that is in **SB 1863**, and I want to be sure that this legislation lines up with my legislation, which is already passed for maximum savings. So, is it your intent for the cost of the supplemental health care coverage paid by ERS to an employee who is eligible to participate in the ERS group benefits plan, and

who elects to receive primary coverage under the Tri-Care system, to be paid in the same manner that the cost of basic coverage is paid under Subchapter G, Chapter 1551, Insurance Code, so that the state is able to maximize cost savings?

REPRESENTATIVE PITTS: Yes, Diane. We would like to maximize the savings, and I understand your bill maximizes those savings. It is our intent to mirror this legislation with your bill.

DELISI: It does, indeed. Thank you very much.

REMARKS ORDERED PRINTED

Representative Delisi moved to print remarks between Representative Pitts and Representative Delisi.

The motion prevailed.

Representative Pitts moved to adopt the conference committee report on **SB 1863**.

A record vote was requested.

The motion to adopt the conference committee report on **SB 1863** prevailed by (Record 981): 89 Yeas, 53 Nays, 2 Present, not voting.

Yeas — Allen, R.; Anderson; Bailey; Baxter; Berman; Blake; Bonnen; Branch; Brown, B.; Brown, F.; Callegari; Campbell; Casteel; Chisum; Cook, B.; Cook, R.; Corte; Crabb; Crownover; Davis, J.; Dawson; Delisi; Denny; Deshotel; Driver; Dukes; Edwards; Eiland; Eissler; Elkins; Flores; Flynn; Gattis; Geren; Goolsby; Griggs; Grusendorf; Hamilton; Hamric; Hardcastle; Hartnett; Hegar; Hill; Hope; Howard; Hughes; Hunter; Hupp; Isett; Jackson; Jones, D.; Keel; Keffer, B.; Keffer, J.; Kolkhorst; Krusee; Kuempel; Laubenberg; Luna; Madden; McCall; Miller; Morrison; Mowery; Nixon; Orr; Otto; Paxton; Peña; Phillips; Pitts; Riddle; Ritter; Rose; Smith, T.; Smith, W.; Smithee; Solomons; Strama; Straus; Swinford; Taylor; Truitt; Van Arsdale; Villarreal; West; Wong; Woolley; Zedler.

Nays — Allen, A.; Alonzo; Anchia; Bohac; Burnam; Castro; Chavez; Coleman; Davis, Y.; Dunnam; Dutton; Escobar; Farabee; Farrar; Frost; Gallego; Giddings; Gonzales; Gonzalez Toureilles; Haggerty; Harper-Brown; Herrero; Hochberg; Hodge; Homer; Hopson; Jones, J.; King, P.; King, T.; Laney; Leibowitz; Martinez; Martinez Fischer; McClendon; McReynolds; Menendez; Moreno, P.; Naishtat; Noriega, M.; Oliveira; Olivo; Pickett; Puente; Quintanilla; Raymond; Reyna; Rodriguez; Solis; Thompson; Turner; Uresti; Veasey; Vo.

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

Absent, Excused — Goodman.

Absent — Guillen; Hilderbran; Merritt; Seaman.

STATEMENTS OF VOTE

When Record No. 981 was taken, my vote failed to register. I would have voted no.

Hilderbran

I was shown voting no on Record No. 981. I intended to vote yes.

McClendon

When Record No. 981 was taken, my vote failed to register. I would have voted no.

Merritt

I was shown voting present, not voting on Record No. 981. I intended to vote no.

Talton

I was shown voting yes on Record No. 981. I intended to vote no.

Taylor

REASON FOR VOTE

I would have voted no because I oppose the continuation of the TIF tax when the money is no longer being used for the purposes for which it was intended.

Guillen

MESSAGES FROM THE SENATE

Messages from the senate were received at this time (see the addendum to the daily journal, Messages from the Senate, Message Nos. 6 and 7).

(Dukes in the chair)

HB 872 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative West submitted the following conference committee report on **HB 872** :

Austin, Texas, May 28, 2005

The Honorable David Dewhurst
President of the Senate

The Honorable Tom Craddick
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the senate and the house of representatives on **HB 872** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Armbrister	West
Brimer	Corte
Lucio	Crabb

Whitmire
On the part of the senate

Gonzalez Toureilles
On the part of the house

HB 872, A bill entitled An Act relating to the rates and fees related to pipeline inspection and gas utility services.

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

SECTION 1. Section 104.301(a), Utilities Code, is amended to read as follows:

(a) A gas utility that has filed a rate case under Subchapter C within the preceding two years may file with the regulatory authority a tariff or rate schedule that provides for an interim adjustment in the utility's monthly customer charge or initial block rate to recover the cost of changes in the investment in service for gas utility services. The adjustment shall be allocated among the gas utility's classes of customers in the same manner as the cost of service was allocated among classes of customers in the utility's latest effective rates for the area in which the tariff or rate schedule is implemented. The gas utility shall file the tariff or rate schedule, or the annual adjustment under Subsection (c), with the regulatory authority at least 60 days before the proposed implementation date of the tariff, rate schedule, or annual adjustment. The gas utility shall provide notice of the tariff, rate schedule, or annual adjustment to affected customers by bill insert or direct mail not later than the 45th day after the date the utility files the tariff, rate schedule, or annual adjustment with the regulatory authority. During the 60-day period, the regulatory authority may act to suspend the implementation of the tariff, rate schedule, or annual adjustment for up to 45 days. After the issuance of a final order or decision by a regulatory authority in a rate case that is filed after the implementation of a tariff or rate schedule under this section, any change in investment that has been included in an interim adjustment in accordance with the tariff or rate schedule under this section shall no longer be subject to subsequent review for reasonableness or prudence. Until the issuance of a final order or decision by a regulatory authority in a rate case that is filed after the implementation of a tariff or rate schedule under this section, all amounts collected under the tariff or rate schedule before the filing of the rate case are subject to refund.

SECTION 2. Sections 121.211(d) and (g), Utilities Code, are amended to read as follows:

(d) The commission may assess each operator of a [~~investor-owned and each municipally-owned~~] natural gas distribution system subject to this chapter an annual inspection fee not to exceed 50 cents for each service line reported by the system on the Distribution Annual Report, Form RSPA F7100.1-1, due on March 15 of each year. The fee is due March 15 of each year.

(g) Each operator of a [~~investor-owned and municipally-owned~~] natural gas distribution system [~~company~~] and each natural gas master meter operator shall recover as a surcharge to its existing rates the amounts paid to the commission under this section. Amounts collected under this subsection by an investor-owned natural gas distribution system or a cooperatively owned natural gas distribution system [~~company~~] shall not be included in the revenue or gross receipts of the company for the purpose of calculating municipal franchise fees or any tax

imposed under Subchapter B, Chapter 182, Tax Code, or under Chapter 122. Those amounts are not subject to a sales and use tax imposed by Chapter 151, Tax Code, or Subtitle C, Title 3 [~~Chapters 321 through 327~~], Tax Code.

SECTION 3. This Act takes effect September 1, 2005.

HB 872 - POINT OF ORDER

Representative Y. Davis 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.

The chair overruled the point of order.

Representative West moved to adopt the conference committee report on **HB 872**.

A record vote was requested.

The motion to adopt the conference committee report on **HB 872** prevailed by (Record 982): 131 Yeas, 7 Nays, 2 Present, not voting.

Yeas — Allen, A.; Allen, R.; Alonzo; Anchia; Anderson; Bailey; Baxter; Berman; Blake; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Campbell; Casteel; Chavez; Chisum; Coleman; Cook, B.; Cook, R.; Crabb; Crownover; Davis, J.; Dawson; Delisi; Denny; Deshotel; Driver; 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; Hegar; Herrero; Hill; Hochberg; Hodge; Homer; Hope; Hopson; Hughes; 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; McClendon; McReynolds; Menendez; Merritt; Miller; Moreno, P.; Morrison; Mowery; Naishtat; Nixon; Noriega, M.; Oliveira; Orr; Otto; Paxton; Phillips; Pickett; Pitts; Puente; Quintanilla; Raymond; Riddle; Ritter; Rodriguez; Rose; Seaman; Smith, T.; Smith, W.; Smithee; Solis; Solomons; Strama; Straus; Swinford; Taylor; Truitt; Turner; Van Arsdale; Veasey; Villarreal; Vo; West; Wong; Woolley; Zedler.

Nays — Burnam; Davis, Y.; Jones, J.; Olivo; Reyna; Talton; Thompson.

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

Absent, Excused — Goodman.

Absent — Callegari; Castro; Corte; Dutton; Hilderbran; Howard; Peña; Uresti.

STATEMENTS OF VOTE

When Record No. 982 was taken, I was temporarily out of the house chamber. I would have voted yes.

Hilderbran

When Record No. 982 was taken, I was in the house but away from my desk. I would have voted yes.

Peña

SB 872 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Delisi submitted the conference committee report on **SB 872**.

Representative Delisi moved to adopt the conference committee report on **SB 872**.

A record vote was requested.

The motion to adopt the conference committee report on **SB 872** prevailed by (Record 983): 138 Yeas, 2 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; Campbell; Casteel; Castro; Chavez; Chisum; Coleman; Cook, B.; Cook, R.; Corte; Crabb; Crownover; Davis, J.; Dawson; Delisi; Denny; Deshotel; Driver; Dunnam; Dutton; Edwards; Eiland; Eissler; Elkins; Escobar; Farabee; Farrar; Flores; Flynn; Frost; Gattis; Geren; Giddings; Gonzales; Gonzalez Toureilles; Goolsby; Griggs; Grusendorf; Guillen; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Hegar; Herrero; Hill; Hochberg; Hodge; Homer; Hope; Hopson; Howard; Hughes; Hunter; Hupp; Isett; Jackson; Jones, D.; Jones, J.; Keel; Keffer, B.; Keffer, J.; King, P.; King, T.; Kolkhorst; Krusee; Kuempel; Laney; Laubenberg; Leibowitz; Madden; Martinez; Martinez Fischer; McCall; McClendon; McReynolds; Menendez; Merritt; Miller; Moreno, P.; Morrison; Mowery; Naishtat; Nixon; Noriega, M.; Oliveira; Olivo; Orr; Otto; Paxton; Peña; Pickett; Pitts; Puente; Quintanilla; Raymond; Reyna; Ritter; Rodriguez; Rose; Seaman; Smith, T.; Smith, W.; Solis; Solomons; Strama; Straus; Swinford; Talton; Taylor; Thompson; Truitt; Turner; Uresti; Van Arsdale; Veasey; Villarreal; Vo; West; Wong; Woolley; Zedler.

Nays — Phillips; Riddle.

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

Absent, Excused — Goodman.

Absent — Callegari; Davis, Y.; Gallego; Hilderbran; Luna; Smithee.

STATEMENTS OF VOTE

I was shown voting yes on Record No. 983. I intended to vote no.

Flores

When Record No. 983 was taken, I was temporarily out of the house chamber. I would have voted yes.

Hilderbran

I was shown voting yes on Record No. 983. I intended to vote no.

Rodriguez

SB 52 - RULES SUSPENDED

Representative Hupp moved to suspend all necessary rules to consider the conference committee report on **SB 52** at this time.

The motion prevailed.

SB 52 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Hupp submitted the conference committee report on **SB 52**.

Representative Hupp moved to adopt the conference committee report on **SB 52**.

The motion to adopt the conference committee report on **SB 52** 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: Herrero and Leibowitz recorded voting no.)

SB 1188 - RULES SUSPENDED

Representative Delisi moved to suspend all necessary rules to consider the conference committee report on **SB 1188** at this time.

The motion prevailed.

SB 1188 - POINT OF ORDER

Representative Dutton raised a point of order against further consideration of **SB 1188** under Rule 13, Section 11 of the House Rules on the grounds that the section by section analysis does not accurately reflect the contents of the conference committee report.

The point of order was withdrawn.

(Speaker in the chair)

ADDRESS BY REPRESENTATIVE KEEL ON A MATTER OF PERSONAL PRIVILEGE

The chair recognized Representative Keel who addressed the house on a matter of personal privilege, speaking as follows:

Members, as a matter of personal privilege, I wish to address you regarding the judicial pay raise bill, **SB 368** by Duncan. The bill left the house as a judicial pay raise bill. The senate subsequently placed amendments in the bill that make it much more than a judicial pay raise bill. I was dealt with in a bad faith manner regarding the amendments, and I believe the senate's conduct surrounding the issue on which I will be speaking to you affects the rights, dignity, and integrity of the house collectively.

SB 368 was amended in conference to impose an across-the-board new fee on persons convicted of criminal offenses, including the most minor of offenses. The creation of this fee would establish, for the first time in this state's jurisprudence history, a fee coupled specifically with funding the judiciary itself, directly dependent on a judge's finding of a defendant's guilt. Such a scheme

raises legitimate questions of the appearance of a judicial conflict of interest and a legitimate scholarly question regarding the impartiality of the judiciary's deliberations of guilt or innocence. Furthermore, the way the legislature was included in the pension increase brought criticism on the legislature, and embarrassingly so.

I had noticed fatal procedural and the offensive substantive aspects of **SB 368** when the bill was originally pending before the House Judiciary Committee. I made my objections clearly but privately known to the authors of the bill on both substantive and procedural grounds at that time, and the subject matter of the amendments I am discussing with you was left off of the version of the bill passed off the house floor for fear I'd call a point of order. I would like to note that during the entire process, the house sponsor, Representative Hartnett, treated me with nothing but courtesy and honesty. The amendments were returned to the bill in the house and senate conference only because Senator Ellis asked me to enter into an agreement with him, that in return for my acquiescence to the aspects of **SB 368** I found objectionable, including the fee imposition which had been spearheaded largely by Senator Ellis, that a bill important to me regarding improving standards for the representation of indigent defendants in capital cases, **HB 268**, would be allowed to advance in the senate, and he would furthermore not work against the bill in the senate. I took him at his word.

I believed the need for **HB 268** made swallowing **SB 368** and its offensive aspects tolerable balanced with the need for **HB 268**, which is of vital importance to the criminal jurisprudence of this state. It raises standards for the qualifications of counsel appointed to represent defendants facing the death penalty, our most serious criminal proceeding. Much more qualified and capable attorneys would become eligible to be assigned by judges to defend in these cases if **HB 268** passed, replacing the current limited crop, some of whom have been so bad that they've been declared ineffective. Current law would not prevent such lawyers from being appointed; **HB 268** would.

A small group of lawyers who wish to keep the current system, which restricts the pool of lawyers available for representing these defendants to fewer and less capable lawyers—who, by the way, have done an unremarkable job, to put it kindly, in representing defendants in capital cases—have successfully collaborated with Senator Ellis in lobbying the senate against my bill.

Senators Ellis and Duncan knew that my capitulation to the amendments to **SB 368** was based upon the agreement that **HB 268** would likewise be passed. Amazingly, it was the two of them who reneged on the agreement.

After going to great lengths to compromise and craft the bill to address every concern, even some that in my opinion were not legitimate, the house and senate conferees agreed on a final version of **HB 268** and the report was printed and distributed.

In the last 48 hours, while senate conferees were working on **HB 268**, it was confided to me by a member of the senate that Senator Ellis and his staff and Senator Duncan's staff were working senators to kill the bill behind the scenes. I

confirmed that information. I have likewise confirmed that Senator Ellis, in senate caucus this evening, claimed he'll filibuster **HB 268** if it is raised on the senate floor, effectively ending the opportunity for it to be raised.

The senate still holds within its power to discharge its conferees and adopt **SB 368** as it passed the house, a judicial pay raise absent the offensive senate amendments I have discussed with you. That could be done and they could still kill **HB 268** and there would be nothing I could do about it. The judicial pay raise as passed out of the house would be enrolled and my bill will have died on the senate floor.

They need to proceed with whatever course they deem wise regarding these two bills because, I can assure you, I will on this side of the dome. I will call a constitutional point of order in the house should **SB 368** be brought up on this floor for concurrence with the senate amendments, and I believe the point I have in mind will be sustained. Be advised that if the bill is raised and I call a constitutional point that is sustained, I believe the senate will no longer be able to legally discharge conferees, as the bill will have been stopped on a constitutional point, not just a House Rules point.

I have always operated in my legislative career with the understanding that the dignity of this process was inextricably connected to the ability of all of us to rely upon each other's word. I don't think any one of us in the house can passively accept deceitfulness of this sort as it is an insult not only to the individual house member, but to the entire house of representatives and to the legislative process itself. Thank you for your courtesy in letting me address you on this matter of personal privilege.

ADDRESS BY REPRESENTATIVE THOMPSON ON A MATTER OF PERSONAL PRIVILEGE

The chair recognized Representative Thompson who addressed the house on a matter of personal privilege, speaking as follows:

Mr. Speaker and members, I want to thank each and every one of you for supporting the personal needs alliance for the senior citizens this session. Today, when **SB 1** was considered, you know that was not a part of **SB 1**, and it was not a part of several other bills that hit the floor. But, I would like to read a letter that the governor sent, and he indicated in this letter, dated May 29, 2005, that he's finding the money in his budget to fund this program for the fiscal year of 2006-2007 of the biennium. I want to thank all of you for your support for making sure that this happened. I would like to thank the governor for finding the money. And, Mr. Speaker, I am going to take time to compliment you this session for working on this matter today, for working on this matter while this house is in session.

HR 2247 - ADOPTED (by Smithee)

The following privileged resolution was laid before the house:

HR 2247

BE IT RESOLVED by the House of Representatives of the State of Texas, 79th Legislature, Regular Session, 2005, That House Rule 13, Section 9(a), be suspended in part as provided by House Rule 13, Section 9(f), to enable the conference committee appointed to resolve the differences on **SB 14** (rates for certain property and casualty insurance) to consider and take action on the following matter:

House Rule 13, Section 9(a)(4), is suspended to permit the committee to add the following SECTION to the bill:

SECTION 6. Article 5.43(d), Insurance Code, is amended to read as follows:

(d) This article applies to an insurer that uses a tier classification or discount program that has a premium consequence based in whole or in part on claims experience without regard to whether any of the policies that continuously covered the policyholder, as described by Subsections (b)(1) and (2) of this article, was a different type of residential property insurance policy from the policy eligible for the discount.

Explanation: Amending Article 5.43(d), Insurance Code, is necessary to make certain that Article 5.43(d), Insurance Code, applies to insurers that use certain types of tier classifications or discount programs.

HR 2247 was adopted.

SB 14 - RULES SUSPENDED

Representative Smithee moved to suspend all necessary rules to consider the conference committee report on **SB 14** at this time.

The motion prevailed.

SB 14 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Smithee submitted the conference committee report on **SB 14**.

Representative Smithee moved to adopt the conference committee report on **SB 14**.

The motion to adopt the conference committee report on **SB 14** 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.)

SB 1188 - POINT OF ORDER

Representative Y. Davis raised a point of order against further consideration of **SB 1188** under Rule 13, Section 11 of the House Rules on the grounds that the conference committee report is missing the analysis showing the differences between the house and senate versions.

The point of order was withdrawn.

REMARKS ORDERED PRINTED

Representative Thompson moved to print remarks by Representative Keel.

The motion prevailed.

REMARKS ORDERED PRINTED

Representative Hegar moved to print remarks by Representative Thompson.

The motion prevailed.

SB 409 - RULES SUSPENDED

Representative P. King moved to suspend all necessary rules to consider the conference committee report on **SB 409** at this time.

The motion prevailed.

SB 409 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative P. King submitted the conference committee report on **SB 409**.

Representative P. King moved to adopt the conference committee report on **SB 409**.

The motion to adopt the conference committee report on **SB 409** 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.)

HB 925 - HOUSE DISCHARGES CONFEREES
HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS

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

HB 925, A bill to be entitled An Act relating to creating an interagency work group on border issues.

Representative Chavez moved to discharge the conferees and concur in the senate amendments to **HB 925**.

The motion to discharge conferees and 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 925**, Engrossed Version, by adding a new SECTION 2 to read as follows and renumbering accordingly.

SECTION 2. Subtitle F, Title 4, Government Code, is amended by adding Chapter 490 to read as follows:

CHAPTER 490. TEXAS-MEXICO STRATEGIC INVESTMENT COMMISSION

Sec. 490.001. DEFINITIONS. In this chapter:

(1) "Commission" means the Texas-Mexico Strategic Investment Commission.

(2) "Texas-Mexico border region" has the meaning assigned by Section 2056.002.

Sec. 490.002. PURPOSE. The ongoing economic stability and growth of Texas and the improved quality of life for all Texans is dependent in part on coordination with neighboring states. Texas and the Mexican border states of Chihuahua, Coahuila, Nuevo Leon, and Tamaulipas face common challenges in the areas of infrastructure, health care, access to and availability of water, economic development and trade, and environmental protection. The commission will encourage a collaborative approach between Texas and neighboring Mexican states in specific areas so as to better address challenges and plan for the future.

Sec. 490.003. TEXAS-MEXICO STRATEGIC INVESTMENT COMMISSION; MEMBERS. (a) The Texas-Mexico Strategic Investment Commission is established.

(b) The commission is composed of:

(1) the border commerce coordinator or a designee;

(2) the executive director of the Texas Department of Transportation or a designee;

(3) the executive administrator of the Texas Water Development Board or a designee;

(4) the commissioner of state health services or a designee;

(5) the chair of the Railroad Commission or a designee; and

(6) the executive director of the Texas Commission on Environmental Quality or a designee.

(c) The border commerce coordinator shall serve as the chair of the commission.

Sec. 490.004. FUNCTIONS OF COMMISSION. (a) The commission shall:

(1) represent government agencies within the Texas-Mexico border region to help reduce regulations by improving communication and cooperation between federal, state, and local governments;

(2) examine trade issues between the United States and Mexico;

(3) study the flow of commerce at ports of entry between this state and Mexico, including the movement of commercial vehicles across the border, and establish a plan to aid that commerce and improve the movement of those vehicles;

(4) work with federal officials to resolve transportation issues involving infrastructure, including roads and bridges, to allow for the efficient movement of goods and people across the border between Texas and Mexico;

(5) work with federal officials to create a unified federal agency process to streamline border crossing needs;

(6) identify problems involved with border truck inspections and related trade and transportation infrastructure;

(7) work to increase funding for the North American Development Bank to assist in the financing of water and wastewater facilities;

(8) explore the sale of excess electric power from Texas to Mexico;

(9) identify areas of environmental protection that need to be addressed cooperatively between Texas and the Mexican states;

(10) identify common challenges to health care on which all states can collaborate; and

(11) develop recommendations, when possible, for addressing border challenges.

(b) The commission shall work with local governments, metropolitan planning organizations, and other appropriate community organizations in the Texas Department of Transportation's Pharr, Laredo, and El Paso transportation districts, and with comparable entities in Mexican states bordering those districts, to address the unique planning and capacity needs of those areas. The commission shall assist those governments, organizations, and entities to identify and develop initiatives to address those needs.

(c) The commission shall work with industries and communities on both sides of the Texas-Mexico border to develop international industry cluster initiatives to capitalize on resources available in communities located adjacent to each other across the border.

(d) The commission may meet at least once a year with representatives from the Mexican states of Chihuahua, Coahuila, Nuevo Leon, and Tamaulipas during the Border Governors Conference to discuss issues and challenges of the Texas-Mexico border region and develop strategic collaborative approaches for addressing the challenges.

Sec. 490.005. FUNDING. (a) In addition to any amount appropriated by the legislature, the commission may request state agencies to apply for funds from the federal government or any other public or private entity. The commission may also solicit grants, gifts, and donations from private sources on the state's behalf. The use of a gift, grant, or donation solicited under this section must be consistent with the purposes of the commission.

(b) The commission shall review and may require reports of state agencies that receive appropriations, gifts, grants, donations, or endowments as a result of the commission's recommendations.

(c) A state agency may accept a gift, grant, donation, or endowment received as a result of the commission's recommendations.

Senate Amendment No. 2 (Senate Floor Amendment No. 1)

Amend **HB 925** by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION __. (a) Section 772.010, Government Code, as added by Chapters 429 and 1339, Acts of the 76th Legislature, Regular Session, 1999, is reenacted and amended to read as follows:

Sec. 772.010. BORDER COMMERCE COORDINATOR. (a) The governor shall designate a border commerce coordinator in the governor's office or the office of the secretary of state as determined by the governor. The coordinator shall:

(1) examine trade issues between the United States, Mexico, and Canada;

(2) act as an ombudsman for government agencies within the Texas and Mexico border region to help reduce regulations by improving communication and cooperation between federal, state, and local governments;

(3) study the flow of commerce at ports of entry between this state and Mexico, including the movement of commercial vehicles across the border,[;] and establish a plan to aid that commerce and improve the movement of those vehicles;

(4) [~~(3)~~] work with federal officials to resolve transportation issues involving infrastructure, including roads and bridges, to allow for the efficient movement of goods and people across the border between Texas and Mexico;

(5) [~~(4)~~] work with federal officials to create a unified federal agency process to streamline border crossing needs;

(6) [~~(5)~~] work to increase funding for the North American Development Bank to assist in the financing of water and wastewater facilities; and

(7) [~~(6)~~] explore the sale of excess electric power from Texas to Mexico.

(b) The governor shall appoint a border commerce coordinator to serve at the will of the governor in the governor's office or in the office of the secretary of state and may select the secretary of state as the coordinator.

(c) The coordinator shall work with the interagency work group established under Section 772.011, and with local governments, metropolitan planning organizations, and other appropriate community organizations adjacent to the border of this state with the United Mexican States, and with comparable entities in Mexican states adjacent to that border, to address the unique planning and capacity needs of those areas. The coordinator shall assist those governments, organizations, and entities to identify and develop intitiatives to adress those needs. Before January 1 of each year, the coordinator shall submit to the presiding officer of each house of the legislature a report of the coordinator's activities under this subsection during the preceding year.

(d) The coordinator shall:

(1) work with private industry and appropriate entities of Texas and the United States to require that low-sulfur fuel be sold along highways in Texas carrying increased traffic related to activities under the North American Free Trade Agreement; and

(2) work with representatives of the government of Mexico and the governments of those Mexican states bordering Texas to increase the use of low-sulfur fuel.

(b) Chapter 772, Government Code, is amended by adding Sections 772.0101 and 772.0102 to read as follows:

Sec. 772.0101. BORDER INSPECTION, TRADE, AND TRANSPORTATION ADVISORY COMMITTEE. (a) The border commerce coordinator shall establish and appoint the members of the Border Inspection, Trade, and Transportation Advisory Committee. The members must include representatives of the Texas Department of Transportation, the Department of Public Safety of the State of Texas, the Office of State-Federal Relations, the United States Department of Transportation, the Federal Motor Carrier Safety Administration, and other representatives of state and federal agencies involved

in border crossing issues. Chapter 2110 does not apply to the size, composition, or duration of the Border Inspection, Trade, and Transportation Advisory Committee.

(b) The coordinator shall work with the advisory committee and the interagency work group established under Section 772.011 to:

(1) identify problems involved with border truck inspections and related trade and transportation infrastructure; and

(2) develop recommendations for addressing those problems.

(c) The coordinator shall work with the advisory committee and appropriate agencies of Texas, the United States, and Mexico to develop initiatives to mitigate congestion at ports of entry at the Mexican border by conducting in Mexico inspections of trucks entering Texas. In developing the initiatives, the coordinator shall give consideration to similar initiatives proposed or implemented at the border of the United States and Canada.

(d) The coordinator shall report quarterly to the presiding officer of each house of the legislature on the the findings and recommendations of the advisory committee.

Sec. 772.0102. TRADE AND COMMERCE PLAN. (a) The border commerce coordinator shall develop, in conjunction with representatives of chambers of commerce, metropolitan planning organizations adjacent to the United Mexican States, and private industry groups, and with the advice of the interagency work group established under Section 772.011, a comprehensive trade and commerce plan for the region designed to:

(1) increase trade by attracting new business ventures;

(2) support expansion of existing industries; and

(3) address workforce training needs.

(b) The plan must cover five-year, 10-year, and 15-year periods.

(c) The coordinator shall work with industries and communities on both sides of the border to develop international industry cluster intiatives to capitalize on resources available in communities located adjacent to each other across the border.

(d) The coordinator shall conduct annual conferences of interested persons, working with chambers of commerce and universities of this state along the Texas and Mexico border region, and shall host those conferences at no cost to the coordinator. The purposes of the conferences are to:

(1) make the trade and commerce plan public;

(2) report on updated findings and progress of implementation of the plan; and

(3) develop new international industry cluster initiatives.

(c) This section takes effect only if a specific appropriation for the implementation of this section is provided in **SB 1** (General Appropriations Act), Acts of the 79th Legislature, Regular Session, 2005. If no specific appropriation is provided in the General Appropriations Act, this section has not effect.

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

Amend **HB 925** by adding the following section and numbering it appropriately:

SECTION .__. Section 502.054(a), Transportation Code is amended to read as follows

(a) The department, through its director, may enter into an agreement with an authorized officer of another jurisdiction, including another state of the United States, a foreign country or a state, province, territory, or possession of a foreign country, to provide for:

(1) the registration of vehicles by residents of this state and nonresidents on an allocation or mileage apportionment plan, as under the International Registration Plan; and

(2) the exemption from payment of registration fees by nonresidents if residents of this state are granted reciprocal exemptions.

Senate Amendment No. 4 (Senate Floor Amendment No. 3)

Amend **HB 925** in Section 1 of the bill, in added Section 772.011(c), Government Code (Senate committee printing page 3, line 57) as amended by House Committee Amendment No. 1 by Chavez (Senate committee printing page 2, lines 55-56), by striking "quarterly" and substituting "once each year".

Senate Amendment No. 5 (Senate Floor Amendment No. 4)

Amend **HB 925** by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION __. Subchapter A, Chapter 411, Government Code, is amended by adding Section 411.0197 to read as follows:

Sec. 411.0197. ADVISORY OVERSIGHT COMMUNITY OUTREACH COMMITTEE. (a) The commission shall establish an Advisory Oversight Community Outreach Committee in the department and may adopt rules for the implementation and operation of the committee. The committee shall meet at the times and places specified by commission rule or at the call of the presiding officer or any two members.

(b) The commission shall appoint the members of the committee, which must include border crossing bridge owners, persons serving in the capacity of director of entities governing ports of entry, community leaders, planning developers, mayors, or persons designated by mayors, of the major municipalities in the area of the border of this state and the United Mexican States, representatives of law enforcement agencies, and representatives of the general public.

(c) The commission shall designate the presiding officer of the committee from among the committee's members. The presiding officer serves at the will of the commission.

(d) The committee shall:

(1) document to the commission trade-related incidents involving department personnel;

(2) develop recommendations and strategies to improve community relations, department personnel conduct, and the truck inspection process at this state's ports of entry; and

(3) act as ombudsman between the department and the communities located and residents residing in the area of the border of this state and the United Mexican States and between the department and the deparment's personnel.

(e) In determining action to be taken on the information and recommendations received from the committee, the commission shall consider the importance of trade with the United Mexican States, the safety of the traveling public, preservation of the highway system, applicable federal laws and regulations, and the concerns expressed by communities.

(f) Not later than January 1 of each odd-numbered year the commission shall submit to the lieutenant governor, speaker of the house of representatives, and each other member of the legislature a report documenting the committee's recommendations and comments, incident reports received by the committee, and the actions taken by the commission and department to address those matters.

Senate Amendment No. 6 (Senate Floor Amendment No. 5)

Amend **HB 925** by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION ___. Section 112.003, Health and Safety Code, is amended to read as follows:

Sec. 112.003. POWERS AND DUTIES. (a) The foundation shall raise money from other foundations, governmental entities, and other sources to finance health programs [~~in this state~~] in areas adjacent to the border with the United Mexican States.

(b) The foundation shall:

(1) identify and seek potential partners in the private sector that will afford this state the opportunity to maintain or increase the existing levels of financing of health programs and activities;

(2) engage in outreach efforts to make the existence of the office known to potential partners throughout this area [~~state~~]; and

(3) perform any other function necessary to carry out the purposes of this section.

(c) The department shall review programs from all agencies under its control to determine which projects should be available to receive money under Subsection (a).

(d) The foundation has the powers necessary and convenient to carry out its duties.

SECTION ___. Section 112.004, Health and Safety Code, is amended to read as follows:

Sec. 112.004. ADMINISTRATION. (a) The foundation is governed by a board of five directors [~~appointed by the Texas Board of Health from individuals recommended by the commissioner~~]. Vacancies shall be filled by a vote of the board of directors of the foundation from individuals recommended by the department.

(b) Members of the board of directors serve for staggered terms of six years, with as near as possible to one-third of the members' terms expiring every two years.

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

(d) The board of directors shall ensure that the foundation remains eligible for an exemption from federal income tax under Section 501(a), Internal Revenue Code of 1986, as amended, by being listed as an exempt organization under Section 501(c)(3) of that code, as amended.

SB 408 - RULES SUSPENDED

Representative P. King moved to suspend all necessary rules to consider the conference committee report on **SB 408** at this time.

The motion prevailed.

SB 408 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative P. King submitted the conference committee report on **SB 408**.

Representative P. King moved to adopt the conference committee report on **SB 408**.

The motion to adopt the conference committee report on **SB 408** 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.)

SB 1188 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Delisi submitted the conference committee report on **SB 1188**.

Representative Delisi moved to adopt the conference committee report on **SB 1188**.

The motion to adopt the conference committee report on **SB 1188** 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.)

LETTER FROM THE GOVERNOR

May 29, 2005
The Honorable Dianne Delisi
Chair, Committee on Public Health
Texas House of Representatives
State Capitol, 1N.12
Austin, Texas 78701

Dear Chair Delisi:

Current law authorizes the Department of Aging and Disability Services to increase the personal needs allowance under Human Resources Code, Sec. 32.024, without further legislative action.

I have discussed exercise of this authority with Commissioner Hawkins and am advised that a total of $13 million in general revenue would allow an increase of $45 to $60 per month for the FY06-07 biennium. I intend to propose a budget execution order to the Legislative Budget Board directing use of an additional $13 million for this purpose during FY06-07 biennium.

Sincerely,

Rick Perry
Governor

SB 805 - RULES SUSPENDED

Representative Taylor moved to suspend all necessary rules to consider the conference committee report on **SB 805** at this time.

The motion prevailed.

SB 805 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Taylor submitted the conference committee report on **SB 805**.

Representative Taylor moved to adopt the conference committee report on **SB 805**.

The motion to adopt the conference committee report on **SB 805** 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.)

SB 809 - RULES SUSPENDED

Representative Taylor moved to suspend all necessary rules to consider the conference committee report on **SB 809** at this time.

The motion prevailed.

SB 809 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Taylor submitted the conference committee report on **SB 809**.

Representative Taylor moved to adopt the conference committee report on **SB 809**.

The motion to adopt the conference committee report on **SB 809** 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: Herrero and Leibowitz recorded voting no.)

HB 2423 - RULES SUSPENDED

Representative Puente moved to suspend all necessary rules to consider the conference committee report on **HB 2423** at this time.

The motion prevailed.

HB 2423 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Puente submitted the following conference committee report on **HB 2423** :

Austin, Texas, May 29, 2005

The Honorable David Dewhurst
President of the Senate

The Honorable Tom Craddick
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the senate and the house of representatives on **HB 2423** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Armbrister	Puente
Jackson	Geren
Lucio	Hardcastle
Madla	
On the part of the senate	On the part of the house

HB 2423, A bill to be entitled An Act relating to discrimination by a groundwater conservation district against landowners whose land is enrolled or participating in a federal conservation program.

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

SECTION 1. Section 36.001, Water Code, is amended by adding Subdivision (4-a) to read as follows:

(4-a) "Federal conservation program" means the Conservation Reserve Program of the United States Department of Agriculture, or any successor program.

SECTION 2. Section 36.002, Water Code, is amended to read as follows:

Sec. 36.002. OWNERSHIP OF GROUNDWATER. The ownership and rights of the owners of the land and their lessees and assigns in groundwater are hereby recognized, and nothing in this code shall be construed as depriving or divesting the owners or their lessees and assigns of the ownership or rights, except as those rights may be limited or altered by rules promulgated by a district. A rule promulgated by a district may not discriminate between owners of land that is irrigated for production and owners of land or their lessees and assigns whose land that was irrigated for production is enrolled or participating in a federal conservation program.

SECTION 3. Section 36.101(a), Water Code, is amended to read as follows:

(a) A district may make and enforce rules, including rules limiting groundwater production based on tract size or the spacing of wells, to provide for conserving, preserving, protecting, and recharging of the groundwater or of a groundwater reservoir or its subdivisions in order to control subsidence, prevent degradation of water quality, or prevent waste of groundwater and to carry out the powers and duties provided by this chapter. During the rulemaking process the board shall consider all groundwater uses and needs and shall develop rules

which are fair and impartial and that do not discriminate between land that is irrigated for production and land that was irrigated for production and enrolled or participating in a federal conservation program. Any rule of a district that discriminates between land that is irrigated for production and land that was irrigated for production and enrolled or participating in a federal conservation program is void.

SECTION 4. Section 36.113, Water Code, is amended by adding Subsections (h) and (i) to read as follows:

(h) In issuing a permit for an existing or historic use, a district may not discriminate between land that is irrigated for production and land or wells on land that was irrigated for production and enrolled or participating in a federal conservation program.

(i) A permitting decision by a district is void if:

(1) the district makes its decision in violation of Subsection (h); and

(2) the district would have reached a different decision if the district had treated land or wells on land that was irrigated for production and enrolled or participating in a federal conservation program the same as land irrigated for production.

SECTION 5. Not later than the 90th day after the effective date of this Act, the Hudspeth County Underground Water Conservation District No. 1 shall amend to bring into compliance with Sections 36.002 and 36.101(a), Water Code, as amended by this Act, any rule enacted before the effective date of this Act that is void under Section 36.101(a), Water Code, as amended by this Act.

SECTION 6. (a) Except as provided by Section 5 and Subsection (b) of this section, the changes in law made by this Act apply only to a rule adopted by a groundwater conservation district on or after the effective date of this Act or to a permit issued or an application filed pursuant to a rule adopted on or after the effective date of this Act.

(b) The changes in law made by this Act apply to:

(1) an application filed with the Hudspeth County Underground Water Conservation District No. 1 that is pending on the effective date of this Act; or

(2) a permit decision by the Hudspeth County Underground Water Conservation District No. 1 that is not final on the effective date of this Act.

SECTION 7. This Act takes effect September 1, 2005.

Representative Puente moved to adopt the conference committee report on **HB 2423**.

The motion to adopt the conference committee report on **HB 2423** 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.)

HB 2129 - RULES SUSPENDED

Representative Bonnen moved to suspend all necessary rules to consider the conference committee report on **HB 2129** at this time.

The motion prevailed.

HB 2129 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Bonnen submitted the following conference committee report on **HB 2129** :

Austin, Texas, May 29, 2005

The Honorable David Dewhurst
President of the Senate

The Honorable Tom Craddick
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the senate and the house of representatives on **HB 2129** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Estes	Bonnen
Hinojosa	Geren
Madla	Hamric
	Ritter
	West
On the part of the senate	On the part of the house

HB 2129, A bill to be entitled An Act relating to energy-saving measures that reduce the emission of air contaminants.

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

SECTION 1. Section 382.0215, Health and Safety Code, is amended by amending Subsections (a), (b), and (f) and adding Subsections (a-1) and (h) to read as follows:

(a) In this section:

(1) "Emissions[~~, "emissions~~] event" means an upset event, or unscheduled maintenance, startup, or shutdown activity, from a common cause that results in the unauthorized emissions of air contaminants from one or more [~~an~~] emissions points at a regulated entity [~~point~~].

(2) "Regulated entity" means all regulated units, facilities, equipment, structures, or sources at one street address or location that are owned or operated by the same person. The term includes any property under common ownership or control identified in a permit or used in conjunction with the regulated activity at the same street address or location.

(a-1) Maintenance, startup, and shutdown activities shall not be considered unscheduled only if the activity will not and does not result in the emission of at least a reportable quantity of unauthorized emissions of air contaminants and the activity is recorded as may be required by commission rule, or if the activity will result in the emission of at least a reportable quantity of unauthorized emissions and:

(1) the owner or operator of the regulated entity [~~facility~~] provides any prior notice or final report that the commission, by rule, may establish;

(2) the notice or final report includes the information required in Subsection (b)(3); and

(3) the actual emissions do not exceed the estimates submitted in the notice by more than a reportable quantity.

(b) The commission shall require the owner or operator of a regulated entity [~~facility~~] that experiences emissions events:

(1) to maintain a record of all emissions events at the regulated entity [~~facility~~] in the manner and for the periods prescribed by commission rule;

(2) to notify the commission in a single report for each emissions event, as soon as practicable but not later than 24 hours after discovery of the emissions event, of an emissions event resulting in the emission of a reportable quantity of air contaminants as determined by commission rule; and

(3) to report to the commission in a single report for each emissions event, not later than two weeks after the occurrence of an emissions event that results in the emission of a reportable quantity of air contaminants as determined by commission rule, all information necessary to evaluate the emissions event, including:

(A) the name of the owner or operator of the reporting regulated entity [~~facility~~];

(B) the location of the reporting regulated entity [~~facility~~];

(C) the date and time the emissions began;

(D) the duration of the emissions;

(E) the nature and measured or estimated quantity of air contaminants emitted, including the method of calculation of, or other basis for determining, the quantity of air contaminants emitted;

(F) the processes and equipment involved in the emissions event;

(G) the cause of the emissions; and

(H) any additional information necessary to evaluate the emissions event.

(f) An owner or operator of a regulated entity [~~facility~~] required by Section 382.014 to submit an annual emissions inventory report and which has experienced no emissions events during the relevant year must include as part of the inventory a statement that the regulated entity [~~facility~~] experienced no emissions events during the prior year. An owner or operator of a regulated entity [~~facility~~] required by Section 382.014 to submit an annual emissions inventory report must include the total annual emissions from all emissions events in categories as established by commission rule.

(h) The commission may allow operators of pipelines, gathering lines, and flowlines to treat all such facilities under common ownership or control in a particular county as a single regulated entity for the purpose of assessment and regulation of emissions events.

SECTION 2. Section 386.056, Health and Safety Code, is amended by adding Subsection (e) to read as follows:

(e) The commission shall assure that emission reduction credits may be received in the Houston-Galveston nonattainment area for energy efficiency and urban heat island programs in connection with the State Implementation Plan for the eight-hour ozone standard.

SECTION 3. Section 386.252(a), Health and Safety Code, is amended to read as follows:

(a) Money in the fund may be used only to implement and administer programs established under the plan and shall be allocated as follows:

(1) for the diesel emissions reduction incentive program, 87.5 percent of the money in the fund, of which not more than 10 percent may be used for on-road diesel purchase or lease incentives;

(2) for the new technology research and development program, 9.5 percent of the money in the fund, of which up to $250,000 is allocated for administration, up to $200,000 is allocated for a health effects study, $500,000 is to be deposited in the state treasury to the credit of the clean air account created under Section 382.0622 to supplement funding for air quality planning activities in affected counties, and not less than 20 percent is to be allocated each year to support research related to air quality for the Houston-Galveston-Brazoria and Dallas-Fort Worth nonattainment areas by a nonprofit organization based in Houston of which $216,000 each year shall be contracted to the Energy Systems Laboratory at the Texas Engineering Experiment Station for the development and annual calculation of creditable statewide emissions reductions obtained through wind and other renewable energy resources for the State Implementation Plan;

(3) for administrative costs incurred by the commission and the laboratory, three percent.

SECTION 4. Chapter 388, Health and Safety Code, is amended by adding Section 388.012 to read as follows:

Sec. 388.012. DEVELOPMENT OF ALTERNATIVE ENERGY-SAVING METHODS. The laboratory shall develop at least three alternative methods for achieving a 15 percent greater potential energy savings in residential, commercial, and industrial construction than the potential energy savings of construction that is in minimum compliance with Section 388.003. The alternative methods:

(1) may include both prescriptive and performance-based approaches, such as the approach of the United States Environmental Protection Agency's Energy Star qualified new home labeling program; and

(2) must include an estimate of:

(A) the implementation costs and energy savings to consumers; and

(B) the related emissions reductions.

SECTION 5. Chapter 447, Government Code, is amended by adding Section 447.012 to read as follows:

Sec. 447.012. APPLIANCE STANDARDS. The state energy conservation office shall determine the feasibility and cost-benefit to consumers of setting appliance standards for appliances that are not currently regulated for energy efficiency in this state, if the office determines that the new standards would reduce the emission of air contaminants. The office may not consider the feasibility and cost-benefit to consumers of setting appliance standards for air conditioning systems under this section.

SECTION 6. Chapter 31, Utilities Code, is amended by adding Section 31.005 to read as follows:

Sec. 31.005. CUSTOMER-OPTION PROGRAMS. (a) This section applies to:

(1) a municipally owned electric utility;

(2) an electric cooperative;

(3) an electric utility;

(4) a power marketer;

(5) a retail electric provider; and

(6) a transmission and distribution utility.

(b) An entity to which this section applies shall consider establishing customer-option programs that encourage the reduction of air contaminant emissions, such as:

(1) an appliance retirement and recycling program;

(2) a solar water heating market transformation program;

(3) an air conditioning tune-up program;

(4) a program that allows the use of on-site energy storage as an eligible efficiency measure in existing programs;

(5) a program that encourages the deployment of advanced electricity meters;

(6) a program that encourages the installation of cool roofing materials;

(7) a program that establishes lighting limits;

(8) a distributed energy generation technology program; and

(9) a program that encourages the use of high-efficiency building distribution transformers and variable air volume fan controls.

SECTION 7. Section 39.107, Utilities Code, is amended by amending Subsections (a) and (b) and adding Subsection (h) to read as follows:

(a) On introduction of customer choice in a service area, metering services for the area shall continue to be provided by the transmission and distribution utility affiliate of the electric utility that was serving the area before the introduction of customer choice. Metering services provided to commercial and industrial customers that are required by the independent system operator to have an interval data recorder meter may [~~shall~~] be provided on a competitive basis [~~beginning on January 1, 2004~~].

(b) Metering services provided to residential customers and to nonresidential customers other than those required by the independent system operator to have an interval data recorder meter shall continue to be provided by the transmission and distribution utility affiliate of the electric utility that was serving the area before the introduction of customer choice [~~until the later of September 1, 2005, or the date on which at least 40 percent of those residential customers are taking service from unaffiliated retail electric providers~~]. Retail electric providers serving residential and nonresidential customers other than those required by the independent system operator to have an interval data recorder meter may request that the transmission and distribution utility provide specialized meters, meter features, or add-on accessories so long as they are technically feasible and generally available in the market and provided that the

retail electric provider pays the differential cost of such a meter or accessory. Metering and billing services provided to residential customers shall be governed by the customer safeguards adopted by the commission under Section 39.101. All meter data, including all data generated, provided, or otherwise made available, by advanced meters and meter information networks, shall belong to a customer, including data used to calculate charges for service, historical load data, and any other proprietary customer information. A customer may authorize its data to be provided to one or more retail electric providers under rules and charges established by the commission.

(h) The commission shall establish a nonbypassable surcharge for an electric utility or transmission and distribution utility to use to recover reasonable and necessary costs incurred in deploying advanced metering and meter information networks to residential customers and nonresidential customers other than those required by the independent system operator to have an interval data recorder meter. The commission shall ensure that the nonbypassable surcharge reflects a deployment of advanced meters that is no more than one-third of the utility's total meters over each calendar year and shall ensure that the nonbypassable surcharge does not result in the utility recovering more than its actual, fully allocated meter and meter information network costs. The expenses must be allocated to the customer classes receiving the services, based on the electric utility's most recently approved tariffs.

SECTION 8. (a) In recognition that advances in digital and communications equipment and technologies, including new metering and meter information technologies, have the potential to increase the reliability of the regional electrical network, encourage dynamic pricing and demand response, make better use of generation assets and transmission and generation assets, and provide more choices for consumers, the legislature encourages the adoption of these technologies by electric utilities in this state.

(b) The Public Utility Commission of Texas shall study the efforts of electric utilities to benefit from the use of advanced metering and metering information networks. The commission shall present to the legislature on or before September 30 of each even-numbered year a report detailing those efforts and identifying changes in this state's policies that may be necessary to remove barriers to the use of advanced metering and metering information networks or of other advanced transmission and distribution technologies. On or before September 30, 2010, the commission shall:

(1) evaluate whether advances in technology, changes in the market, or other unanticipated factors would allow meters or various meter-related products or services to be provided more efficiently or more effectively through competition; and

(2) make recommendations for legislation the commission considers appropriate.

SECTION 9. This Act takes effect September 1, 2005.

Representative Bonnen moved to adopt the conference committee report on **HB 2129**.

The motion to adopt the conference committee report on **HB 2129** 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.)

HR 2239 - ADOPTED
(by Driver)

The following privileged resolution was laid before the house:

HR 2239

BE IT RESOLVED by the House of Representatives of the State of Texas, 79th Legislature, Regular Session, 2005, That House Rule 13, Section 9(a), be suspended in part as provided by House Rule 13, Section 9(f), to enable the conference committee appointed to resolve the differences on **HB 1068** (collection and analysis of evidence and testimony based on forensic analysis, crime laboratory accreditation, DNA testing, and the creation and maintenance of DNA records; providing a penalty) to consider and take action on the following matters:

(1) House Rule 13, Section 9(a)(2), is suspended to permit the committee to omit amended Section 411.142(b), Government Code. The omitted language reads as follows:

(b)(1) The director may maintain a [the] DNA database in the department's crime laboratory in Austin or another suitable location.

(2) The director may maintain a separate database containing a name or other personally identifying information cross-referenced and searchable by name, code, or other identifier.

(3) A CODIS DNA database:

(A) may not store a name or other personally identifying information;

(B) must be compatible with the national DNA index system to the extent required by the FBI to permit the useful exchange and storage of DNA records or information derived from those records; and

(C) may store a code, file, or reference number to another information system only if the director determines the information is necessary to:

(i) generate an investigative lead or exclusion;

(ii) support the statistical interpretation of a test result; or

(iii) allow for the successful implementation of a DNA database.

(4) A non-CODIS DNA database:

(A) may store a name or other personally identifying information; and

(B) must be compatible with the national DNA index system to the extent possible to permit the useful exchange and storage of DNA records or information derived from those records.

Explanation: The change is necessary to permit the continuation of current law.

(2) House Rule 13, Section 9(a)(1), is suspended to permit the committee to add text to amended Section 411.142(g)(1), Government Code, to read as follows:

(1) an individual [~~a person~~] described by this subchapter, including Section 411.1471, 411.148, or 411.150;

Explanation: The change is necessary to clarify that the DNA records of an individual described by Section 411.1471, Government Code, may be contained in the DNA database.

(3) House Rule 13, Section 9(a)(1), is suspended to permit the committee to add text to amended Section 411.148(f), Government Code, to read as follows:

(f) [~~The institutional division shall obtain the sample or specimen from an inmate confined in another penal institution as soon as practicable if the Board of Pardons and Paroles informs the division that the inmate is likely to be paroled before being admitted to the division. The administrator of the other penal institution shall cooperate with the institutional division as necessary to allow the institutional division to perform its duties under this section~~.

[~~(c) The institutional division shall:~~

[~~(1) preserve each blood sample or other specimen collected;~~

[~~(2) maintain a record of the collection of the sample or specimen; and~~

[~~(3) send the sample or specimen to the director for scientific analysis under this subchapter.~~

[~~(d) An inmate may not be held past a statutory release date if the inmate fails or refuses to provide a blood sample or other specimen under this section. A penal institution may take other lawful administrative action against the inmate.~~

[~~(c)~~] The Texas Department of Criminal Justice and the Texas Youth Commission, as appropriate, [~~institutional division~~] shall notify the director that an individual [~~inmate~~] described by Subsection (a) is to be released from custody [~~the institutional division~~] not earlier than the 120th day before the individual's [~~inmate's~~] release date and not later than the 90th day before the individual's [~~inmate's~~] release date. The Texas Youth Commission shall notify the director that an individual described by Subsection (a) is to be released from custody not earlier than the 10th day before the individual's release date. The Texas Department of Criminal Justice and the Texas Youth Commission, in consultation with the director, shall determine the form of the notification described by this subsection.

Explanation: The change is necessary to require the Texas Youth Commission to notify the director of the Department of Public Safety of the release from custody of certain individuals not earlier than the 10th day before the date each individual is to be released.

(4) House Rule 13, Section 9(a)(2), is suspended to permit the committee to omit amended Section 411.150, Government Code. The omitted text reads as follows:

Sec. 411.150. COURT–ORDERED DNA RECORDS [~~OF CERTAIN JUVENILES~~]. (a) A magistrate or court may order a suspect or defendant to provide one or more DNA samples to a criminal justice agency for the purpose of creating a DNA record if the individual:

(1) is the target of an evidentiary search warrant seeking the sample under Article 18.02(10), Code of Criminal Procedure, for any offense;

(2) is released on any form of bail or bond after arrest for a felony offense; or

(3) is indicted or waives indictment for a felony offense.

(b) A court shall order a defendant to provide one or more samples to a criminal justice agency for the purpose of creating a DNA record if the individual is placed on community supervision or deferred adjudication for a felony offense.

(c) A magistrate or court:

(1) shall order a sheriff, deputy sheriff, or other peace officer or employee representing a local law enforcement agency or a community supervision and corrections department to collect or cause to be collected one or more samples from an individual as required or permitted under this section unless a DNA sample has already been obtained under this subchapter; and

(2) shall order the sample to be forwarded to the director.

(d) An employee of a criminal justice agency may collect a sample from an individual under this section if the employee complies with each rule adopted by the director under this subchapter, including collecting, preserving, maintaining a record of the collection of, and forwarding the sample to the director. This subsection does not authorize an otherwise unqualified person to collect a blood sample.

(e) If in consultation with the director it is determined that an acceptable sample has already been received from an individual, additional samples are not required unless requested by the director. [~~(a) A juvenile who is committed to the Texas Youth Commission shall provide one or more blood samples or other specimens taken by or at the request of the commission for the purpose of creating a DNA record if the juvenile has not already provided the required specimen under other state law and if the juvenile is ordered by a juvenile court to give the sample or specimen or is committed to the commission for an adjudication as having engaged in delinquent conduct that violates:~~

[~~(1) an offense:~~

[~~(A) under Section 19.02, Penal Code (murder), or Section 22.02, Penal Code (aggravated assault);~~

[~~(B) under Section 30.02, Penal Code (burglary), if the offense is punishable under Subsection (c)(2) or (d) of that section; or~~

[~~(C) for which the juvenile is required to register as a sex offender under Chapter 62, Code of Criminal Procedure; or~~

[~~(2) a penal law if the juvenile has previously been convicted of or adjudicated as having engaged in:~~

[~~(A) a violation of a penal law described in Subsection (a)(1); or~~

[~~(B) a violation of a penal law under federal law or the laws of another state that involves the same conduct as a violation of a penal law described by Subsection (a)(1).~~

[~~(b) The department, in conjunction with the Texas Youth Commission, shall adopt rules regarding the collection, preservation, and shipment of a blood sample or other specimen of a juvenile described by this section.~~

[~~(c) The Texas Youth Commission shall:~~

[~~(1) obtain blood samples or other specimens from juveniles under this section;~~

[~~(2) preserve each sample or other specimen collected;~~

[~~(3) maintain a record of the collection of the sample or specimen; and~~

[~~(4) send the sample or specimen to the director for scientific analysis under this subchapter.~~

[~~(d) A medical staff employee of the Texas Youth Commission may obtain a voluntary sample or specimen from any juvenile.~~

[~~(e) An employee of the Texas Youth Commission may use force against a juvenile required to provide a sample under this section when and to the degree the employee reasonably believes the force is immediately necessary to obtain the sample or specimen.~~

[~~(f) The Texas Youth Commission may contract with an individual or entity for the provision of phlebotomy services under this section.~~]

Explanation: The change is necessary to permit the continuation of current law.

(5) House Rule 13, Section 9(a)(2), is suspended to permit the committee to omit Sections 411.155 and 411.156, Government Code. The omitted language reads as follows:

Sec. 411.155. OFFENSE: REFUSAL TO PROVIDE SAMPLE. (a) A person commits an offense if the person knowingly fails or refuses to provide a DNA sample and the person:

(1) is required to provide a sample under this subchapter; and

(2) receives notification of the requirement to provide the sample.

(b) An offense under this section is a felony of the third degree.

Sec. 411.156. LIABILITY. (a) This section applies to a person:

(1) ordering, collecting with or without force, preserving, possessing, transmitting, receiving, analyzing, releasing, disclosing, using, or maintaining a DNA sample or record under this subchapter; or

(2) administering this subchapter.

(b) A person described in Subsection (a) is immune from civil liability for any act or omission resulting in death, damage, or injury if the person:

(1) acts in the course of duties under this subchapter or a rule adopted under this subchapter;

(2) reasonably believes the person's act or omission was in substantial compliance with this subchapter or a rule adopted under this subchapter; and

(3) collects the sample in a reasonable manner according to generally accepted medical or other professional practices.

Explanation: The change is necessary to prevent the creation of an offense based on the refusal to provide a DNA sample and the imposition of liability on certain individuals.

(6) House Rule 13, Section 9(a)(3), is suspended to permit the committee to add text to amended Article 17.47, Code of Criminal Procedure, to read as follows:

Art. 17.47. CONDITIONS REQUIRING SUBMISSION OF SPECIMEN. (a) A magistrate may [~~shall~~] require as a condition of release on bail or bond of a defendant [~~described by Section 411.1471(a), Government Code,~~] that the defendant provide to a local law enforcement agency one or more specimens for the purpose of creating a DNA record under Subchapter G, Chapter 411, Government Code.

(b) A magistrate shall require as a condition of release on bail or bond of a defendant described by Section 411.1471(a), Government Code, that the defendant provide to a local law enforcement agency one or more specimens for the purpose of creating a DNA record under Subchapter G, Chapter 411, Government Code.

Explanation: The change is necessary to require the provision of a DNA sample by certain defendants.

(7) House Rule 13, Section 9(a)(1), is suspended to permit the committee to change the text of amended Subdivision (19), Subsection (a), Section 11, Article 42.12, Code of Criminal Procedure, to read as follows:

(19) Reimburse a law enforcement agency for the analysis, storage, or disposal of raw materials, controlled substances, chemical precursors, drug paraphernalia, or other materials seized in connection with the offense;

Explanation: The change is necessary to permit the continuation of current law.

(8) House Rule 13, Section 9(a)(2), is suspended to permit the committee to omit amended Subsections (a) and (h), Article 102.020, Code of Criminal Procedure. The omitted language reads as follows:

(a) A person shall pay $160 [~~$250~~] as a court cost on conviction of or adjudication for an offense described in Section 411.148 [~~listed in Section 411.1471(a)(1)~~], Government Code, to reimburse the department for services provided under Subchapter G, Chapter 411, Government Code. Payment of a court cost under this article shall be required as a condition of community supervision under Article 42.12[~~, and $50 as a court cost on conviction of an offense listed in Section 411.1471(a)(3) of that code~~].

(h) The comptroller shall deposit 90 [~~35~~] percent of the funds received under this article in the state treasury to the credit of the state highway fund and 10 [~~65~~] percent of the funds received under this article to the credit of an institution administering the functions of the Missing Persons DNA Database as described by Section 105.451, Education Code [~~the criminal justice planning account in the general revenue fund~~].

Explanation: The change is necessary to prevent the imposition of additional costs on conviction that are related to the regulation of DNA samples and forensic labs.

(9) House Rule 13, Section 9(a)(2), is suspended to permit the committee to omit Section 411.1471, Government Code, from the list of sections to be repealed.

Explanation: The change is necessary to permit the continuation of current law.

(10) House Rule 13, Section 9(a)(1), is suspended to permit the committee to change the text of Subsections (a) and (c) of SECTION 22 to read as follows:

SECTION 22. (a) The change in law made by this Act applies to:

(1) evidence tested or offered into evidence on or after the effective date of this Act; and

(2) an individual who, on or after the effective date of this Act:

(A) is confined in a penal institution operated by or under contract with the Texas Department of Criminal Justice as described in Section 411.148(a)(1)(B), Government Code, as amended by this Act;

(B) is confined in a facility operated by or under contract with the Texas Youth Commission after adjudication for conduct constituting a felony as described in Section 411.148(a)(2), Government Code, as amended by this Act;

(C) voluntarily submits or causes to be submitted a DNA sample as described in Section 411.149, Government Code, as amended by this Act; or

(D) is ordered by a magistrate or court to provide a DNA sample under Subsection G, Chapter 411, Government Code.

(c) As required by Section 411.148, Government Code, as amended by this Act, the Texas Youth Commission shall collect a DNA sample from a juvenile committed to the Texas Youth Commission for a felony from whom a DNA sample was not required before the effective date of this Act or from a juvenile previously committed to the Texas Youth Commission for a felony. The commission shall collect the sample during the initial examination or at any other reasonable time determined by the commission.

Explanation: The change is necessary to conform the transition language to the substantive provisions of the bill.

HR 2239 was adopted.

HB 1068 - RULES SUSPENDED

Representative Driver moved to suspend all necessary rules to consider the conference committee report on **HB 1068** at this time.

The motion prevailed.

HB 1068 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Driver submitted the following conference committee report on **HB 1068** :

Austin, Texas, May 28, 2005

The Honorable David Dewhurst
President of the Senate

The Honorable Tom Craddick
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the senate and the house of representatives on **HB 1068** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Hinojosa	Driver
Eltife	Corte
Harris	Madden
Seliger	McCall
Whitmire	
On the part of the senate	On the part of the house

HB 1068, A bill to be entitled An Act relating to the collection and analysis of evidence and testimony based on forensic analysis, crime laboratory accreditation, DNA testing, and the creation and maintenance of DNA records; providing a penalty.

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

SECTION 1. Chapter 38, Code of Criminal Procedure, is amended by adding Article 38.01 to read as follows:

Art. 38.01. TEXAS FORENSIC SCIENCE COMMISSION

Sec. 1. CREATION. The Texas Forensic Science Commission is created.

Sec. 2. DEFINITION. In this article, "forensic analysis" has the meaning assigned by Article 38.35(a).

Sec. 3. COMPOSITION. (a) The commission is composed of the following nine members:

(1) four members appointed by the governor:

(A) two of whom must have expertise in the field of forensic science;

(B) one of whom must be a prosecuting attorney that the governor selects from a list of 10 names submitted by the Texas District and County Attorneys Association; and

(C) one of whom must be a defense attorney that the governor selects from a list of 10 names submitted by the Texas Criminal Defense Lawyers Association;

(2) three members appointed by the lieutenant governor:

(A) one of whom must be a faculty member or staff member of The University of Texas who specializes in clinical laboratory medicine selected from a list of 10 names submitted to the lieutenant governor by the chancellor of The University of Texas System;

(B) one of whom must be a faculty member or staff member of Texas A&M University who specializes in clinical laboratory medicine selected from a list of 10 names submitted to the lieutenant governor by the chancellor of The Texas A&M University System;

(C) one of whom must be a faculty member or staff member of Texas Southern University who has expertise in pharmaceutical laboratory research selected from a list of 10 names submitted to the lieutenant governor by the chancellor of Texas Southern University; and

(3) two members appointed by the attorney general:

(A) one of whom must be a director or division head of the University of North Texas Health Science Center at Fort Worth Missing Persons DNA Database; and

(B) one of whom must be a faculty or staff member of the Sam Houston State University College of Criminal Justice and have expertise in the field of forensic science or statistical analyses selected from a list of 10 names submitted to the lieutenant governor by the chancellor of Texas State University System.

(b) Each member of the commission serves a two-year term. The term of the members appointed under Subsections (a)(1) and (2) expires on September 1 of each odd-numbered year. The term of the members appointed under Subsection (a)(3) expires on September 1 of each even-numbered year.

(c) The governor shall designate a member of the commission to serve as the presiding officer.

Sec. 4. DUTIES. (a) The commission shall:

(1) develop and implement a reporting system through which accredited laboratories, facilities, or entities report professional negligence or misconduct;

(2) require all laboratories, facilities, or entities that conduct forensic analyses to report professional negligence or misconduct to the commission; and

(3) investigate, in a timely manner, any allegation of professional negligence or misconduct that would substantially affect the integrity of the results of a forensic analysis conducted by an accredited laboratory, facility, or entity.

(b) An investigation under Subsection (a)(3):

(1) must include the preparation of a written report that identifies and also describes the methods and procedures used to identify:

(A) the alleged negligence or misconduct;

(B) whether negligence or misconduct occurred; and

(C) any corrective action required of the laboratory, facility, or entity; and

(2) may include one or more:

(A) retrospective reexaminations of other forensic analyses conducted by the laboratory, facility, or entity that may involve the same kind of negligence or misconduct; and

(B) follow-up evaluations of the laboratory, facility, or entity to review:

(i) the implementation of any corrective action required under Subdivision (1)(C); or

(ii) the conclusion of any retrospective reexamination under Paragraph (A).

(c) The commission by contract may delegate the duties described by Subsections (a)(1) and (3) to any person the commission determines to be qualified to assume those duties.

(d) The commission may require that a laboratory, facility, or entity investigated under this section pay any costs incurred to ensure compliance with Subsection (b)(1).

(e) The commission shall make all investigation reports completed under Subsection (b)(1) available to the public. A report completed under Subsection (b)(1), in a subsequent civil or criminal proceeding, is not prima facie evidence of the information or findings contained in the report.

Sec. 5. REIMBURSEMENT. A member of the commission may not receive compensation but is entitled to reimbursement for the member's travel expenses as provided by Chapter 660, Government Code, and the General Appropriations Act.

Sec. 6. ASSISTANCE. The Texas Legislative Council, the Legislative Budget Board, and The University of Texas at Austin shall assist the commission in performing the commission's duties.

Sec. 7. SUBMISSION. The commission shall submit any report received under Section 4(a)(2) and any report prepared under Section 4(b)(1) to the governor, the lieutenant governor, and the speaker of the house of representatives not later than December 1 of each even-numbered year.

SECTION 2. Article 38.35, Code of Criminal Procedure, is amended to read as follows:

Art. 38.35. FORENSIC ANALYSIS OF EVIDENCE; ADMISSIBILITY. (a) In this article:

(1) "Crime laboratory" includes a public or private laboratory or other entity that conducts a forensic analysis subject to this article.

(2) "Criminal action" includes an investigation, complaint, arrest, bail, bond, trial, appeal, punishment, or other matter related to conduct proscribed by a criminal offense.

(3) "Director" means the public safety director of the Department of Public Safety.

(4) "Forensic analysis" means a medical, chemical, toxicologic, ballistic, or other expert examination or test performed on physical evidence, including DNA evidence, for the purpose of determining the connection of the evidence to a criminal action. The term includes an examination or test requested by a law enforcement agency, prosecutor, criminal suspect or defendant, or court. The term does not include:

(A) latent print examination;

(B) a test of a specimen of breath under Chapter 724, Transportation Code; [~~or~~]

(C) digital evidence;

(D) an examination or test excluded by rule under Section 411.0205(c), Government Code;

(E) a presumptive test performed for the purpose of determining compliance with a term or condition of community supervision or parole and conducted by or under contract with a community supervision and corrections department, the parole division of the Texas Department of Criminal Justice, or the Board of Pardons and Paroles; or

(F) an expert examination or test conducted principally for the purpose of scientific research, medical practice, civil or administrative litigation, or other purpose unrelated to determining the connection of physical evidence to a criminal action.

(5) [~~(2)~~] "Physical evidence" means any tangible object, thing, or substance relating to a criminal action [~~offense~~].

(b) A law enforcement agency, prosecutor, or court may request [~~procure~~] a forensic analysis by a crime laboratory of physical evidence if the evidence was obtained in connection with the requesting entity's [~~agency's~~] investigation or disposition of a criminal action and the requesting entity:

(1) controls the evidence;

(2) submits the evidence to the laboratory; or

(3) consents to the analysis [~~offense~~].

(c) A law enforcement agency, other governmental agency, or private entity performing a forensic analysis of physical evidence may require the requesting law enforcement agency to pay a fee for such analysis.

(d)(1) Except as provided by Subsection (e), a forensic analysis of physical [~~Physical~~] evidence under this article [~~subjected to a forensic analysis,~~] and expert testimony relating to [~~regarding~~] the evidence are[~~, under this article is~~] not admissible in a criminal action [~~case~~] if, at the time of the analysis [~~or the time the evidence is submitted to the court~~], the crime laboratory [~~or other entity~~] conducting the analysis was not accredited by the director [~~Department of Public Safety~~] under Section 411.0205, Government Code.

(2) If before the date of the analysis the director issues a certificate of accreditation under Section 411.0205, Government Code, to a crime laboratory conducting the analysis, the certificate is prima facie evidence that the laboratory was accredited by the director at the time of the analysis.

(e) A forensic analysis of physical evidence under this article and expert testimony relating to the evidence are not inadmissible in a criminal action based solely on the accreditation status of the crime laboratory conducting the analysis if the laboratory:

(A) except for making proper application, was eligible for accreditation by the director at the time of the examination or test; and

(B) obtains accreditation from the director before the time of testimony about the examination or test.

(f) This article does not apply to the portion of an autopsy conducted by a medical examiner or other forensic pathologist who is a licensed physician.

[~~Notwithstanding Subsection (d), physical evidence subjected to a forensic analysis under this article is not inadmissible in a criminal case based solely on the accreditation status of the crime laboratory or other entity conducting the analysis if the laboratory or entity:~~

[~~(1) has preserved one or more separate samples of the physical evidence for use by the defense attorney or use under order of the convicting court; and~~

[~~(2) has agreed to preserve those samples until all appeals in the case are final. This subsection expires September 1, 2005.~~]

SECTION 3. Section 411.0205, Government Code, is amended to read as follows:

Sec. 411.0205. CRIME LABORATORY ACCREDITATION PROCESS. (a) In this section, "crime laboratory," "forensic analysis," and "physical evidence" have the meanings assigned by Article 38.35, Code of Criminal Procedure[~~, and "DNA laboratory" has the meaning assigned by Section 411.141~~].

(b) The director by rule:

(1) shall establish an accreditation process for crime laboratories[~~, including DNA laboratories,~~] and other entities conducting forensic analyses of physical evidence for use in criminal proceedings; and

(2) may modify or remove a crime laboratory exemption under this section if the director determines that the underlying reason for exemption no longer applies.

(b-1) As part of the accreditation process established and implemented under Subsection (b), the director may:

(1) establish minimum standards that relate to the timely production of a forensic analysis to the agency requesting the analysis and that are consistent with this article and code;

(2) validate or approve specific forensic methods or methodologies; and

(3) establish procedures, policies, and practices to improve the quality of forensic analyses conducted in this state.

(b-2) The director may require that a laboratory, facility, or entity required to be accredited under this section pay any costs incurred to ensure compliance with the accreditation process.

(c) The director by rule may exempt from the accreditation process established under Subsection (b) a crime laboratory [~~or other entity~~] conducting a forensic analysis or a type of analysis, examination, or test [~~of physical evidence for use in criminal proceedings~~] if the director determines that:

(1) independent accreditation is unavailable or inappropriate for the laboratory [~~or entity~~] or the type of analysis, examination, or test performed by the laboratory [~~or entity~~];

(2) the type of analysis, examination, or test performed by the laboratory [~~or entity~~] is admissible under a well-established rule of evidence or a statute other than Article 38.35, Code of Criminal Procedure; [~~and~~]

(3) the type of analysis, examination, or test performed by the laboratory [~~or entity~~] is routinely conducted outside of a crime laboratory [~~or other applicable entity~~] by a person other than an employee of the crime laboratory; or

(4) the laboratory:

(A) is located outside this state or, if located in this state, is operated by a governmental entity other than the state or a political subdivision of the state; and

(B) was accredited at the time of the analysis under an accreditation process with standards that meet or exceed the relevant standards of the process established by the director under Subsection (b) [~~or other applicable entity~~].

(d) The director may at any reasonable time enter and inspect the premises or audit the records, reports, procedures, or other quality assurance matters of a crime laboratory that is accredited or seeking accreditation under this section.

(e) The director may collect costs incurred under this section for accrediting, inspecting, or auditing a crime laboratory.

(f) If the director provides a copy of an audit or other report made under this section, the director may charge $6 for the copy, in addition to any other cost permitted under Chapter 552 or a rule adopted under that chapter.

(g) Funds collected under this section shall be deposited in the state treasury to the credit of the state highway fund, and money deposited to the state highway fund under this section may be used only to defray the cost of administering this section or Subchapter G.

SECTION 4. Section 411.141, Government Code, is amended to read as follows:

Sec. 411.141. DEFINITIONS. In this subchapter:

(1) "CODIS" means the FBI's Combined DNA Index System. The term includes the national DNA index system sponsored by the FBI.

(2) "Conviction" includes conviction by a jury or a court, a guilty plea, a plea of nolo contendere, or a finding of not guilty by reason of insanity.

(3) "Criminal justice agency" has the meaning assigned by Article 60.01, Code of Criminal Procedure.

(4) "DNA" means deoxyribonucleic acid.

(5) [~~(2)~~] "DNA database" means one or more databases that contain [~~the database that contains~~] forensic DNA records maintained by the director.

(6) [~~(3)~~] "DNA laboratory" means a laboratory that performs forensic DNA analysis on samples or specimens derived from a human body, physical evidence, or a crime scene. The term includes a department crime laboratory facility that conducts forensic DNA analysis.

(7) [~~(4)~~] "DNA record" means the results of a forensic DNA analysis performed by a DNA laboratory. The term includes a DNA profile and related records, which may include a code or other identifying number referenced to a separate database to locate:

(A) the originating entity; and

(B)[~~,~~] if known, the name and other personally identifying information concerning the individual [~~of the person~~] who is the subject of the analysis.

(8) "DNA sample" means a blood sample or other biological sample or specimen provided by an individual under this subchapter or submitted to the director under this subchapter for DNA analysis or storage.

(9) [~~(5)~~] "FBI" means the Federal Bureau of Investigation.

(10) "Forensic analysis" has the meaning assigned by Article 38.35, Code of Criminal Procedure.

(11) [~~(6)~~] "Institution of higher education" has the meaning assigned by Section 61.003, Education Code.

(12) [~~(7) "Institutional division" means the institutional division of the Texas Department of Criminal Justice.~~

[~~(8)~~] "Penal institution" has the meaning assigned by Section 1.07, Penal Code.

SECTION 5. Sections 411.142(c), (d), (g), and (h), Government Code, are amended to read as follows:

(c) The director may receive, analyze, store, and destroy a record or DNA sample [~~, blood sample, or other specimen~~] for the purposes described by Section 411.143.

(d) The DNA database must be capable of classifying, matching, and storing the results of analyses of DNA [~~and other biological molecules~~].

(g) The DNA database may contain DNA records for the following:

(1) an individual [~~a person~~] described by this subchapter, including Section 411.1471, 411.148, or 411.150;

(2) a biological specimen of a deceased victim of a crime;

(3) a biological specimen that is legally obtained in the investigation of a crime, regardless of origin;

(4) results of testing ordered by a court under this subchapter, Article 64.03, Code of Criminal Procedure, or other law permitting or requiring the creation of a DNA record;

(5) an unidentified missing person, or unidentified skeletal remains or body parts;

(6) a close biological relative of a person who has been reported missing to a law enforcement agency;

(7) a person at risk of becoming lost, such as a child or a person declared by a court to be mentally incapacitated, if the record is required by court order or a parent, conservator, or guardian of the person consents to the record; or

(8) an unidentified person, if the record does not contain personal identifying information.

(h) The director [~~department~~] shall establish standards for DNA analysis by the DNA laboratory that meet or exceed the current standards for quality assurance and proficiency testing for forensic DNA analysis issued by the FBI. The DNA database may contain only DNA records of DNA analyses performed according to the standards adopted by the director [~~department~~].

SECTION 6. Section 411.143, Government Code, is amended by amending Subsections (a), (b), and (c) and adding Subsection (g) to read as follows:

(a) The principal purpose of the DNA database is to assist a federal, state, or local criminal justice agency [~~or law enforcement agencies~~] in the investigation or prosecution of sex-related offenses or other offenses in which biological evidence is recovered.

(b) In criminal cases, the purposes of the DNA database are only for use in the investigation of an offense, the exclusion or identification of suspects or offenders, and the prosecution or defense of the case.

(c) Other purposes of the database include:

(1) assisting in the recovery or identification of human remains from a disaster or for humanitarian purposes;

(2) assisting in the identification of living or deceased missing persons; [~~and~~]

(3) if personal identifying information is removed:

(A) establishing a population statistics database; and

(B) assisting in identification research, forensic validation studies, or forensic [~~and~~] protocol development; and

(4) retesting to validate or update the original analysis or [~~(C)~~] assisting in database or DNA laboratory quality control.

(g) A party contracting to carry out a function of another entity under this subchapter shall comply with:

(1) a requirement imposed by this subchapter on the other entity, unless the party or other entity is exempted by the director; and

(2) any additional requirement imposed by the director on the party.

SECTION 7. Section 411.144, Government Code, is amended to read as follows:

Sec. 411.144. REGULATION OF DNA LABORATORIES; PENALTIES. (a) The director by rule shall establish procedures for a DNA laboratory or criminal justice [~~or law enforcement~~] agency in the collection, preservation, shipment, analysis, and use of a DNA sample [~~blood sample or other specimen~~] for forensic DNA analysis in a manner that permits the exchange of DNA evidence between DNA laboratories and the use of the evidence in a criminal case.

(b) A DNA laboratory or criminal justice [~~or law enforcement~~] agency shall follow the procedures:

(1) established by the director under this section; and

(2) specified by the FBI, including use of comparable test procedures, laboratory equipment, supplies, and computer software.

(c) The director may at any reasonable time enter and inspect the premises or audit the records, reports, procedures, or other quality assurance matters of any DNA laboratory that:

(1) provides DNA records [~~or DNA forensic analyses~~] to the director [~~department~~] under this subchapter; or

(2) conducts forensic analysis.

(d) A DNA laboratory conducting a forensic DNA analysis under this subchapter shall:

(1) forward the DNA record of the analysis to the director at the department's crime laboratory or another location as required by the director [~~department~~]; and

(2) comply with this subchapter and rules adopted under this subchapter.

(e) [~~If a DNA laboratory violates this subchapter or a rule adopted under this subchapter, the director may prohibit the laboratory from exchanging DNA records with another DNA laboratory or criminal justice or law enforcement agency. A DNA laboratory prohibited from exchanging DNA records under this subsection may petition the director for a hearing to show cause why the laboratory's authority to exchange DNA records should be reinstated.~~]

[~~(f)~~] The director is the Texas liaison for DNA data, records, evidence, and other related matters between:

(1) the FBI; and

(2) a DNA laboratory or a criminal justice [~~or law enforcement~~] agency.

(f) [~~(g)~~] The director may:

(1) conduct DNA analyses; or

(2) contract with a laboratory, state agency, private entity, or institution of higher education for services to perform DNA analyses for the director [~~department~~].

[~~(h) The institutional division may:~~

[~~(1) collect a blood sample or other specimen for forensic DNA analysis; or~~

[~~(2) contract with a laboratory, state agency, private entity, or institution of higher education for services to collect a sample or other specimen under this subchapter.~~]

SECTION 8. Section 411.145, Government Code, is amended to read as follows:

Sec. 411.145. FEES. (a) The director may collect a reasonable fee under this subchapter for:

(1) [~~for~~] the DNA analysis of a DNA sample [~~blood sample or other specimen~~] submitted voluntarily to the director [~~department~~]; or

(2) [~~for~~] providing population statistics data or other appropriate research data.

(b) If the director provides a copy of an audit or other report made under this subchapter, the director may charge $6 for the copy, in addition to any other cost permitted under Chapter 552 or a rule adopted under that chapter.

(c) A fee collected under this section shall be deposited in the state treasury to the credit of the state highway fund, and money deposited to the state highway fund under this section and under Articles 42.12 and [~~Article~~] 102.020(h), Code of Criminal Procedure, may be used only to defray the cost of administering this subchapter and Section 411.0205.

SECTION 9. Section 411.146, Government Code, is amended to read as follows:

Sec. 411.146. DNA SAMPLES [~~BLOOD SAMPLES OR OTHER SPECIMENS~~]. (a) The director may not accept a DNA record or DNA sample collected [~~blood sample or other specimen taken~~] from an individual [~~a person~~] who at the time of collection is alive, unless the director reasonably believes the sample was [~~is not deceased that is~~] submitted voluntarily or as required by this subchapter and is:

(1) a blood sample [~~Section 411.148 or 411.150 unless the sample or specimen is~~] collected in a medically approved manner by:

(A) [~~(1)~~] a physician, registered nurse, licensed vocational nurse, licensed clinical laboratory technologist; or

(B) an individual [~~(2) another person~~] who is trained to properly collect blood samples under this subchapter; or

(2) a specimen other than a blood sample collected:

(A) in a manner approved by the director by rule adopted under this section; and

(B) by an individual who is trained to properly collect the specimen under this subchapter [~~or other specimens and supervised by a licensed physician~~].

(b) [~~A person collecting a blood sample or other specimen under this section may not be held liable in any civil or criminal action if the person collects the sample or specimen in a reasonable manner according to generally accepted medical or other professional practices.~~

[~~(c)~~] The director shall provide at no cost to a person collecting a DNA sample as described by Subsection (a) the collection kits, [~~specimen vials, mailing tubes and~~] labels, report forms, [~~and~~] instructions, and training for collection of DNA [~~blood~~] samples [~~or other specimens~~] under this section.

(c)(1) The director shall adopt rules regarding the collection, preservation, shipment, and analysis of a DNA database sample under this subchapter, including the type of sample or specimen taken.

(2) A criminal justice agency permitted or required to collect a DNA sample for forensic DNA analysis under this subchapter:

(A) may collect the sample or contract with a phlebotomist, laboratory, state agency, private entity, or institution of higher education for services to collect the sample at the time determined by the agency; and

(B) shall:

(i) preserve each sample collected until it is forwarded to the director under Subsection (d); and

(ii) maintain a record of the collection of the sample.

(d) A criminal justice agency that [~~person who~~] collects a DNA [~~blood~~] sample [~~or other specimen~~] under this section shall send the sample [~~or specimen~~] to:

(1) the director at the department's crime laboratory; or

(2) another location as required by the director by rule.

(e) A DNA laboratory may analyze a DNA [~~blood~~] sample collected under this section [~~or other DNA specimen~~] only:

(1) to type the genetic markers contained in the sample [~~or specimen~~];

(2) for criminal justice or [~~and~~] law enforcement purposes; or

(3) for other purposes described by this subchapter.

(f) If possible, a second DNA sample [~~specimen~~] must be collected [~~obtained~~] from an individual [~~a suspect~~] in a criminal investigation if forensic DNA evidence is necessary for use as substantive evidence in the investigation, prosecution, or defense of a case.

SECTION 10. Section 411.147, Government Code, is amended to read as follows:

Sec. 411.147. ACCESS TO DNA DATABASE INFORMATION. (a) The director by rule shall establish procedures:

(1) to prevent unauthorized access to the DNA database; and

(2) to release from the DNA database a DNA sample, analysis, record, or other information maintained under this subchapter [~~DNA records, specimens, or analyses from the DNA database~~].

(b) The director may adopt rules relating to the internal disclosure, access, or use of a sample[~~, specimen,~~] or DNA record in [~~the department or~~] a DNA laboratory.

(c) The director [~~department~~] may release a DNA sample, analysis, or record only:

(1) to a criminal justice agency for criminal justice or law enforcement identification purposes;

(2) for a judicial proceeding, if otherwise admissible under law;

(3) for criminal defense purposes to a defendant, if related to the case in which the defendant is charged or released from custody under Article 17.47, Code of Criminal Procedure, or other court order; or

(4) for another purpose:

(A) described in Section 411.143; or

(B) required under federal law as a condition for obtaining federal funding [~~if personally identifiable information is removed, for:~~

[~~(A) a population statistics database;~~

[~~(B) identification research and protocol development; or~~

[~~(C) quality control~~].

(d) The director may release a record of the number of requests made for a defendant's individual DNA record and the name of the requesting person.

(e) A criminal justice [~~law enforcement~~] agency may have access to a DNA sample for a law enforcement purpose [~~specimens~~] through:

(1) the agency's laboratory; or

(2) a laboratory used by the agency [~~for law enforcement purposes~~].

(f) The director shall maintain a record of requests made under this section.

SECTION 11. Section 411.148, Government Code, as amended by Chapters 211 and 1509, Acts of the 77th Legislature, Regular Session, 2001, is reenacted and amended to read as follows:

Sec. 411.148. MANDATORY DNA RECORD [~~RECORDS OF CERTAIN INMATES~~]. (a) This section applies to:

(1) an individual who is:

(A) ordered by a magistrate or court to provide a sample under Section 411.150 or 411.154 or other law; or

(B) confined in a penal institution operated by or under contract with the Texas Department of Criminal Justice; or

(2) a juvenile who is, after an adjudication for conduct constituting a felony, confined in a facility operated by or under contract with the Texas Youth Commission.

(b) An individual described by Subsection (a) [~~inmate serving a sentence for a felony in the institutional division~~] shall provide one or more DNA [~~blood~~] samples [~~or other specimens~~] for the purpose of creating a DNA record.

(c) A criminal justice agency shall collect a sample ordered by a magistrate or court in compliance with the order.

(d) If an individual described by Subsection (a)(1)(B) is received into custody by the Texas Department of Criminal Justice, that department [~~(b) The institutional division~~] shall collect [~~obtain~~] the sample [~~or specimen~~] from the individual [~~an inmate of the division~~] during the diagnostic process or at another time determined by the Texas Department of Criminal Justice.

(e) If an individual described by Subsection (a)(2) is received into custody by the Texas Youth Commission, the youth commission shall collect the sample from the individual during the initial examination or at another time determined by the youth commission.

(f) [~~The institutional division shall obtain the sample or specimen from an inmate confined in another penal institution as soon as practicable if the Board of Pardons and Paroles informs the division that the inmate is likely to be paroled before being admitted to the division. The administrator of the other penal institution shall cooperate with the institutional division as necessary to allow the institutional division to perform its duties under this section.~~

[~~(c) The institutional division shall:~~

[~~(1) preserve each blood sample or other specimen collected;~~

[~~(2) maintain a record of the collection of the sample or specimen; and~~

[~~(3) send the sample or specimen to the director for scientific analysis under this subchapter.~~

[~~(d) An inmate may not be held past a statutory release date if the inmate fails or refuses to provide a blood sample or other specimen under this section. A penal institution may take other lawful administrative action against the inmate.~~

[~~(e)~~] The Texas Department of Criminal Justice [~~institutional division~~] shall notify the director that an individual [~~inmate~~] described by Subsection (a) is to be released from custody [~~the institutional division~~] not earlier than the 120th day before the individual's [~~inmate's~~] release date and not later than the 90th day before the individual's [~~inmate's~~] release date. The Texas Youth Commission shall notify the director that an individual described by Subsection (a) is to be released from custody not earlier than the 10th day before the individual's release date. The Texas Department of Criminal Justice and the Texas Youth Commission, in consultation with the director, shall determine the form of the notification described by this subsection.

(g) [~~(f)~~] A medical staff employee of a criminal justice agency [~~the institutional division~~] may collect [~~obtain~~] a voluntary sample [~~or specimen~~] from an individual at any time [~~inmate~~].

(h) [~~(g)~~] An employee of a criminal justice agency [~~the institutional division~~] may use force against an individual [~~inmate~~] required to provide a DNA sample under this section when and to the degree the employee reasonably believes the force is immediately necessary to collect [~~obtain~~] the sample [~~or specimen~~].

(i)(1) [~~(h)~~] The Texas Department of Criminal Justice as soon as practicable shall cause a sample to be collected from an individual described by Subsection (a)(1)(B) if:

(A) the individual is confined in another penal institution after sentencing and before admission to the department; and

(B) the department determines that the individual is likely to be released before being admitted to the department.

(2) The administrator of the other penal institution shall cooperate with the Texas Department of Criminal Justice as necessary to allow the Texas Department of Criminal Justice to perform its duties under this subsection.

(j)(1) The Texas Youth Commission as soon as practicable shall cause a sample to be collected from an individual described by Subsection (a)(2) if:

(A) the individual is detained in another juvenile detention facility after adjudication and before admission to the youth commission; and

(B) the youth commission determines the individual is likely to be released before being admitted to the youth commission.

(2) The administrator of the other juvenile detention facility shall cooperate with the Texas Youth Commission as necessary to allow the youth commission to perform its duties under this subsection [~~may contract with an individual or entity for the provision of phlebotomy services under this section~~].

(k) When a criminal justice agency of this state agrees to accept custody of an individual from another state or jurisdiction under an interstate compact or a reciprocal agreement with a local, county, state, or federal agency, the acceptance is conditional on the individual providing a DNA sample under this subchapter if the individual was convicted of a felony.

(l) If, in consultation with the director, it is determined that an acceptable sample has already been received from an individual, additional samples are not required unless requested by the director.

[~~(i) Notwithstanding Subsection (a), if at the beginning of a fiscal year the executive director of the Texas Department of Criminal Justice determines that sufficient funds have not been appropriated to the department to obtain a sample from each inmate otherwise required to provide a sample under Subsection (a), the executive director shall direct the institutional division to give priority to obtaining samples from inmates ordered by a court to give the sample or specimen or serving sentences for:~~

[~~(1) an offense:~~

[~~(A) under Section 19.02, Penal Code (murder), or Section 22.02, Penal Code (aggravated assault);~~

[~~(B) under Section 30.02, Penal Code (burglary), if the offense is punishable under Subsection (c)(2) or (d) of that section; or~~

[~~(C) for which the inmate is required to register as a sex offender under Chapter 62, Code of Criminal Procedure; or~~

[~~(2) any offense if the inmate has previously been convicted of or adjudicated as having engaged in:~~

[~~(A) an offense described in Subdivision (1); or~~

[~~(B) an offense under federal law or laws of another state that involves the same conduct as an offense described by Subdivision (1).~~]

SECTION 12. Section 411.149, Government Code, is amended to read as follows:

Sec. 411.149. VOLUNTARY DNA RECORD [~~SUBMISSION OF BLOOD SAMPLES~~]. An individual, including an individual required to provide a DNA sample under this subchapter, [~~A person~~] may at any time voluntarily provide or cause to be provided to a criminal justice agency a sample to be forwarded [~~submit a blood sample or other specimen~~] to the director [~~department~~] for the purpose of creating a DNA record under this subchapter.

SECTION 13. Section 411.151, Government Code, is amended to read as follows:

Sec. 411.151. EXPUNCTION OR REMOVAL OF DNA RECORDS. (a) The director shall expunge a DNA record of an individual from a [~~person from the~~] DNA database if the person:

(1) notifies the director in writing that the DNA record has been ordered to be expunged under this section or Chapter 55, Code of Criminal Procedure, and provides the director with a certified copy of the court order that expunges the DNA record; or

(2) provides the director with a certified copy of a court order issued under Section 58.003, Family Code, that seals the juvenile record of the adjudication that resulted in the DNA record.

(b) A person may petition for the expunction of a DNA record under the procedures established under Article 55.02, Code of Criminal Procedure, if the person is entitled to the expunction of records relating to the offense to which the DNA record is related under Article 55.01, Code of Criminal Procedure.

(c) This section does not require the director to expunge a record or destroy a sample if the director determines that the individual is otherwise required to submit a DNA sample under this subchapter.

(d) The director by rule may permit administrative removal of a record, sample, or other information erroneously included in a database.

SECTION 14. Section 411.152, Government Code, is amended to read as follows:

Sec. 411.152. RULES. (a) The director may adopt rules permitted by this subchapter that are necessary to administer or enforce this subchapter but shall adopt a rule expressly required by this subchapter.

(b) The director by rule may release or permit access to information to confirm or deny whether an individual has a preexisting record under this subchapter. After receiving a request regarding an individual whose DNA record has been expunged or removed under Section 411.151, the director shall deny the preexisting record.

(c) The director by rule may exempt:

(1) a laboratory conducting non-human forensic DNA analysis from a rule adopted under this subchapter; and

(2) certain categories of individuals from a requirement to provide an additional sample after an acceptable DNA record exists for the individual.

(d) The director by rule may determine whether a DNA sample complies with a collection provision of this subchapter.

SECTION 15. Section 411.153, Government Code, as amended by Chapters 1490 and 1509, Acts of the 77th Legislature, Regular Session, 2001, is reenacted and amended to read as follows:

Sec. 411.153. CONFIDENTIALITY OF [~~POSTCONFINEMENT~~] DNA RECORDS. (a) A DNA record stored in the DNA database is confidential and is not subject to disclosure under the public information [~~open records~~] law, Chapter 552.

(b) A person commits an offense if the person knowingly discloses information in a DNA record or information related to a DNA analysis of a sample collected [~~blood specimen taken~~] under this subchapter [~~Section 411.148 or 411.150 except as authorized by this chapter~~].

(c) An offense under this section [~~subsection~~] is a state jail felony.

(d) [~~(c)~~] A violation under this section constitutes official misconduct.

SECTION 16. Section 411.154(b), Government Code, is amended to read as follows:

(b) The court may issue an order requiring a person:

(1) to act in compliance with this subchapter or a rule adopted under this subchapter;

(2) to refrain from acting in violation of this subchapter or a rule adopted under this subchapter;

(3) to provide a DNA sample [~~give a blood sample or other specimen~~]; or

(4) if the person has already provided a DNA sample [~~given a blood sample or other specimen~~], to provide [~~give~~] another sample if good cause is shown.

SECTION 17. Article 17.47, Code of Criminal Procedure, is amended to read as follows:

Art. 17.47. CONDITIONS REQUIRING SUBMISSION OF SPECIMEN. (a) A magistrate may [~~shall~~] require as a condition of release on bail or bond of a defendant [~~described by Section 411.1471(a), Government Code,~~] that the defendant provide to a local law enforcement agency one or more specimens for the purpose of creating a DNA record under Subchapter G, Chapter 411, Government Code.

(b) A magistrate shall require as a condition of release on bail or bond of a defendant described by Section 411.1471(a), Government Code, that the defendant provide to a local law enforcement agency one or more specimens for the purpose of creating a DNA record under Subchapter G, Chapter 411, Government Code.

SECTION 18. Sections 11(a) and (e), Article 42.12, Code of Criminal Procedure, are amended to read as follows:

(a) The judge of the court having jurisdiction of the case shall determine the conditions of community supervision and may, at any time, during the period of community supervision alter or modify the conditions. The judge may impose any reasonable condition that is designed to protect or restore the community,

protect or restore the victim, or punish, rehabilitate, or reform the defendant. Conditions of community supervision may include, but shall not be limited to, the conditions that the defendant shall:

(1) Commit no offense against the laws of this State or of any other State or of the United States;

(2) Avoid injurious or vicious habits;

(3) Avoid persons or places of disreputable or harmful character;

(4) Report to the supervision officer as directed by the judge or supervision officer and obey all rules and regulations of the community supervision and corrections department;

(5) Permit the supervision officer to visit him at his home or elsewhere;

(6) Work faithfully at suitable employment as far as possible;

(7) Remain within a specified place;

(8) Pay his fine, if one be assessed, and all court costs whether a fine be assessed or not, in one or several sums;

(9) Support his dependents;

(10) Participate, for a time specified by the judge in any community-based program, including a community-service work program under Section 16 of this article;

(11) Reimburse the county in which the prosecution was instituted for compensation paid to appointed counsel for defending him in the case, if counsel was appointed, or if he was represented by a county-paid public defender, in an amount that would have been paid to an appointed attorney had the county not had a public defender;

(12) Remain under custodial supervision in a community corrections facility, obey all rules and regulations of such facility, and pay a percentage of his income to the facility for room and board;

(13) Pay a percentage of his income to his dependents for their support while under custodial supervision in a community corrections facility;

(14) Submit to testing for alcohol or controlled substances;

(15) Attend counseling sessions for substance abusers or participate in substance abuse treatment services in a program or facility approved or licensed by the Texas Commission on Alcohol and Drug Abuse;

(16) With the consent of the victim of a misdemeanor offense or of any offense under Title 7, Penal Code, participate in victim-defendant mediation;

(17) Submit to electronic monitoring;

(18) Reimburse the general revenue fund for any amounts paid from that fund to a victim, as defined by Article 56.01 of this code, of the defendant's offense or if no reimbursement is required, make one payment to the fund in an amount not to exceed $50 if the offense is a misdemeanor or not to exceed $100 if the offense is a felony;

(19) Reimburse a law enforcement agency for the analysis, storage, or disposal of raw materials, controlled substances, chemical precursors, drug paraphernalia, or other materials seized in connection with the offense;

(20) Pay all or part of the reasonable and necessary costs incurred by the victim for psychological counseling made necessary by the offense or for counseling and education relating to acquired immune deficiency syndrome or human immunodeficiency virus made necessary by the offense;

(21) Make one payment in an amount not to exceed $50 to a crime stoppers organization as defined by Section 414.001, Government Code, and as certified by the Crime Stoppers Advisory Council;

(22) Submit a DNA [~~blood~~] sample [~~or other specimen~~] to the Department of Public Safety under Subchapter G, Chapter 411, Government Code, for the purpose of creating a DNA record of the defendant; and

(23) In any manner required by the judge, provide public notice of the offense for which the defendant was placed on community supervision in the county in which the offense was committed.

(e) A judge granting community supervision to a defendant required to register as a sex offender under Chapter 62 shall require that the defendant, as a condition of community supervision:

(1) register under that chapter; and

(2) submit a DNA [~~blood~~] sample [~~or other specimen~~] to the Department of Public Safety under Subchapter G, Chapter 411, Government Code, for the purpose of creating a DNA record of the defendant, unless the defendant has already submitted the required sample [~~specimen~~] under other state law.

SECTION 19. The following are repealed:

(1) Sections 411.0206, 411.1472, 411.1481, 411.1531, and 411.1532, Government Code; and

(2) Section 481.160(f), Health and Safety Code.

SECTION 20. (a) Initial appointments to the Texas Forensic Science Commission must be made not later than the 60th day after the effective date of this Act.

(b) Of the initial members of the Texas Forensic Science Commission:

(1) the members appointed under Subdivision (1) and (2), Subsection (a), Section 3, Article 38.01, Code of Criminal Procedure, as added by this Act, serve terms expiring September 1, 2007; and

(2) the other members serve terms expiring September 1, 2006.

(c) A member whose term expires on September 1, 2006, is eligible to be reappointed for a two-year term as provided by Subsection (b), Section 3, Article 38.01, Code of Criminal Procedure, as added by this Act.

SECTION 21. Article 38.35, Code of Criminal Procedure, as amended by this Act, applies only to the admissibility of physical evidence in a criminal proceeding that commences on or after the effective date of this Act. The admissibility of physical evidence in a criminal proceeding that commenced before the effective date of this Act is governed by the law in effect at the time the proceeding commenced, and that law is continued in effect for that purpose.

SECTION 22. (a) The change in law made by this Act applies to:

(1) evidence tested or offered into evidence on or after the effective date of this Act; and

(2) an individual who, on or after the effective date of this Act:

(A) is confined in a penal institution operated by or under contract with the Texas Department of Criminal Justice as described in Section 411.148(a)(1)(B), Government Code, as amended by this Act;

(B) is confined in a facility operated by or under contract with the Texas Youth Commission after adjudication for conduct constituting a felony as described in Section 411.148(a)(2), Government Code, as amended by this Act;

(C) voluntarily submits or causes to be submitted a DNA sample as described in Section 411.149, Government Code, as amended by this Act; or

(D) is ordered by a magistrate or court to provide a DNA sample under Subsection G, Chapter 411, Government Code.

(b) As required by Section 411.148, Government Code, as amended by this Act, the Texas Department of Criminal Justice shall collect a DNA sample from an inmate serving a sentence for a felony from whom a DNA sample was not required before the effective date of this Act. The department shall collect the sample during the diagnostic process or at any other reasonable time determined by the department.

(c) As required by Section 411.148, Government Code, as amended by this Act, the Texas Youth Commission shall collect a DNA sample from a juvenile committed to the Texas Youth Commission for a felony from whom a DNA sample was not required before the effective date of this Act or from a juvenile previously committed to the Texas Youth Commission for a felony. The commission shall collect the sample during the initial examination or at any other reasonable time determined by the commission.

SECTION 23. This Act takes effect September 1, 2005.

Representative Driver moved to adopt the conference committee report on **HB 1068**.

The motion to adopt the conference committee report on **HB 1068** 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.)

HR 2216 - ADOPTED
(by Denny)

The following privileged resolution was laid before the house:

HR 2216

BE IT RESOLVED by the House of Representatives of the State of Texas, 79th Legislature, Regular Session, 2005, That House Rule 13, Section 9(a), be suspended in part as provided by House Rule 13, Section 9(f), to enable the conference committee appointed to resolve the differences on **HB 2309** (certain election processes and procedures) to consider and take action on the following matter:

House Rule 13, Section 9(a)(4), is suspended to permit the committee to add language to the statute validating and recreating the Lake Cities Municipal Utility Authority (Section 6(b), Chapter 1137, Acts of the 76th Legislature, Regular

Session, 1999) to allow the governing body of the authority to be elected at large by place and to repeal a prior obsolete statute governing the operations of the authority to read as follows:

SECTION 1.26. (a) Section 6(b), Chapter 1137, Acts of the 76th Legislature, Regular Session, 1999, is amended to read as follows:

(b) Each director is [~~Directors are~~] elected at large to one of five numbered places by the qualified voters residing within the boundaries of LCMUA.

(b) The directors serving on the effective date of this section shall draw lots to determine in which place each director serves. The two directors whose terms expire in 2006 shall draw lots for places 1 and 2. The three directors whose terms expire in 2008 shall draw lots for places 3, 4, and 5. At the directors election in 2006 a candidate may file for place 1 or 2. At the directors election in 2008, a candidate may file for place 3, 4, or 5.

(c) Chapter 312, Acts of the 58th Legislature, Regular Session, 1963, is repealed.

Explanation: This change is necessary to allow the Lake Cities Municipal Utility Authority to elect its board of directors at large by place and to repeal an obsolete statute creating the authority.

HR 2216 was adopted.

HB 2309 - RULES SUSPENDED

Representative Denny moved to suspend all necessary rules to consider the conference committee report on **HB 2309** at this time.

The motion prevailed.

HB 2309 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Denny submitted the following conference committee report on **HB 2309** :

Austin, Texas, May 28, 2005

The Honorable David Dewhurst
President of the Senate

The Honorable Tom Craddick
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the senate and the house of representatives on **HB 2309** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Jackson	Denny
Lucio	Anderson
Madla	Bohac
	Nixon
	Straus
On the part of the senate	On the part of the house

HB 2309, A bill to be entitled An Act relating to certain election processes and procedures.

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

ARTICLE 1. GENERAL CHANGES IN ELECTION LAW

SECTION 1.01. Section 2.051, Election Code, is amended to read as follows:

Sec. 2.051. APPLICABILITY OF SUBCHAPTER. (a) Except as provided by Sections 2.055 and 2.056, this subchapter applies only to an election for officers of a political subdivision other than a county in which write-in votes may be counted only for names appearing on a list of write-in candidates and in which:

(1) each candidate for an office that [~~whose name~~] is to appear on the ballot is unopposed, except as provided by Subsection (b); and

(2) no proposition is to appear on the ballot.

(b) In the case of an election in which any members of the political subdivision's governing body are elected from territorial units such as single-member districts, this subchapter applies to the election in a particular territorial unit if each candidate for an office that [~~whose name~~] is to appear on the ballot in that territorial unit is unopposed and no at-large proposition or opposed at-large race is to appear on the ballot. This subchapter applies to an unopposed at-large race in such an election regardless of whether an opposed race is to appear on the ballot in a particular territorial unit.

SECTION 1.02. Section 2.052(a), Election Code, is amended to read as follows:

(a) The authority responsible for having the official ballot prepared shall certify in writing that a candidate is unopposed for election to an office if, were the election held, only the votes cast for that candidate in the election for that office may be counted[~~:~~

[~~(1) only one candidate's name is to be placed on the ballot for that office under Section 52.003; and~~

[~~(2) no candidate's name is to be placed on a list of write-in candidates for that office under applicable law~~].

SECTION 1.03. Section 2.055(a), Election Code, is amended to read as follows:

(a) The secretary of state may declare an unopposed candidate elected to fill a vacancy in the legislature if:

(1) each candidate for an office that [~~whose name~~] is to appear on the ballot is unopposed; and

(2) no proposition is to appear on the ballot [~~; and~~

[~~(3) no candidate's name is to be placed on a list of write-in candidates for that office under Subchapter D, Chapter 146~~].

SECTION 1.04. Section 2.056(c), Election Code, is amended to read as follows:

(c) A certifying authority may declare a candidate elected to an office of the state or county government if, were the election held, only the votes cast for that candidate in the election for that office may be counted[~~:~~

[~~(1) the candidate is the only person whose name is to appear on the ballot for that office; and~~

[~~(2) no candidate's name is to be placed on a list of write-in candidates for that office under Subchapter B, Chapter 146~~].

SECTION 1.05. Chapter 4, Election Code, is amended by adding Section 4.008 to read as follows:

Sec. 4.008. NOTICE TO COUNTY CLERK. The governing body of a political subdivision, other than a county, that orders an election shall deliver notice of the election to the county clerk of each county in which the political subdivision is located not later than the 60th day before election day.

SECTION 1.06. Section 11.001, Election Code, is amended to read as follows:

Sec. 11.001. ELIGIBILITY TO VOTE. (a) Except as otherwise provided by law, to be eligible to vote in an election in this state, a person must:

(1) be a qualified voter as defined by Section 11.002 on the day the person offers to vote;

(2) be a resident of the territory covered by the election for the office or measure on which the person desires to vote; and

(3) satisfy all other requirements for voting prescribed by law for the particular election.

(b) For a person who resides on property located in more than one territory described by Subsection (a)(2), the person shall choose in which territory the residence of the person is located.

SECTION 1.07. Section 16.0921(c), Election Code, is amended to read as follows:

(c) The registrar may not deliver a confirmation notice resulting from a sworn statement filed after the 75th day before the date of the general election for state and county officers until after the date of that election. This subsection does not apply to a person who submits a registration application [~~registers~~] after the 75th day and prior to the 30th day before the general election for state and county officers.

SECTION 1.08. Effective January 1, 2006, Section 19.002(d), Election Code, is amended to read as follows:

(d) The comptroller may not issue a warrant if on June 1 of the year in which the warrant is to be issued the most recent notice received by the comptroller from the secretary of state under Section 18.065 indicates that the registrar is not in substantial compliance with Section 15.083 [~~14.025~~], 16.032, 18.042, or 18.065 [~~18.063~~] or with rules implementing the registration service program.

SECTION 1.09. Section 31.0021(a), Election Code, is amended to read as follows:

(a) On forms designed and furnished by the secretary of state for an application for a place on the ballot [~~or a designation of a campaign treasurer~~], the secretary shall include a brief summary of:

(1) the nepotism prohibition imposed by Chapter 573, Government Code; and

(2) a list of the specific kinds of relatives that are included within the prohibited degrees of relationship prescribed by Chapter 573, Government Code.

SECTION 1.10. Section 31.092, Election Code, is amended by adding Subsection (d) to read as follows:

(d) In a contract authorized by Subsection (b), the county election officer may not prevent the county chair or the chair's designee from supervising the conduct of the primary election, including the tabulation of results, as required by Chapter 172.

SECTION 1.11. (a) Section 42.006(a), Election Code, is amended to read as follows:

(a) Except as otherwise provided by this section, a county election precinct must contain at least 100 but not more than 5,000 [~~2,000~~] registered voters.

(b) Section 42.006(d), Election Code, is repealed.

SECTION 1.12. Section 51.005(c), Election Code, is amended to read as follows:

(c) The secretary of state shall prescribe procedures for determining the number of provisional ballots [~~ballot stubs~~] to be provided.

SECTION 1.13. Subchapter B, Chapter 65, Election Code, is amended by adding Section 65.060 to read as follows:

Sec. 65.060. DISCLOSURE OF SOCIAL SECURITY, DRIVER'S LICENSE, OR PERSONAL IDENTIFICATION NUMBER ON PROVISIONAL BALLOT AFFIDAVIT. A social security number, Texas driver's license number, or number of a personal identification card issued by the Department of Public Safety furnished on a provisional ballot affidavit is confidential and does not constitute public information for purposes of Chapter 552, Government Code. The general custodian of election records shall ensure that a social security number, Texas driver's license number, or number of a personal identification card issued by the Department of Public Safety is excluded from disclosure.

SECTION 1.14. Section 67.004, Election Code, is amended by adding Subsection (b-1) to read as follows:

(b-1) The tabulation in Subsection (b) must also include for each precinct the total number of voters who cast a ballot for a candidate or for or against a measure in the election. The secretary of state shall prescribe any procedures necessary to implement this subsection.

SECTION 1.15. (a) Sections 67.017(a), (b), and (c), Election Code, are amended to read as follows:

(a) After each election for a statewide office or the office of United States representative, state senator, or state representative, the county clerk shall prepare a report of the number of votes, including early voting votes, received in each county election precinct for each candidate for each of those offices. In a presidential election year, the report must include the number of votes received in each precinct for each set of candidates for president and vice-president of the United States. For any other election, the presiding officer of the canvassing authority shall prepare a report of the precinct results as contained in the election register.

(b) The county clerk or presiding officer shall deliver the report to the secretary of state not later than the 30th day after election day in an electronic format prescribed by the secretary of state.

(c) The report may be:

(1) an electronic [~~a transcribed or photographic~~] copy of the precinct returns;

(2) an electronic [~~a transcribed or photographic~~] copy of the tabulation prepared by the local canvassing authority; or

(3) in any other electronic form approved by the secretary of state.

(b) The changes in law made by this section apply only to an election held on or after January 1, 2006.

(c) Not later than January 1, 2006, the secretary of state shall prescribe an electronic format on which a county clerk or a presiding officer of a canvassing authority shall submit the report required under Section 67.017, Election Code, as amended by this section.

SECTION 1.16. (a) Sections 68.051(a) and (b), Election Code, are amended to read as follows:

(a) Not later than January [~~February~~] 1 of each even–numbered [~~odd-numbered~~] year, the lieutenant governor, speaker of the house of representatives, and secretary of state shall each appoint six persons to serve on an elections advisory committee in connection with the tabulation and reporting of election results under this chapter.

(b) Each member of the committee serves a two-year term beginning on January [~~February~~] 1 of even-numbered [~~odd-numbered~~] years.

(b) The term of an appointed member of the elections advisory committee serving on the effective date of this section ends on December 31, 2005.

SECTION 1.17. Section 85.005, Election Code, is amended by adding Subsection (d) to read as follows:

(d) In an election ordered by a city, early voting by personal appearance at the main early voting polling place shall be conducted for at least 12 hours:

(1) on one weekday, if the early voting period consists of less than six weekdays; or

(2) on two weekdays, if the early voting period consists of six or more weekdays.

SECTION 1.18. Section 86.007(f), Election Code, is amended to read as follows:

(f) If the envelope does not bear the cancellation mark or receipt mark as required by Subsection (e)(3), a delivery under Subsection (d)(1) is presumed to be timely if the other requirements under this section are met. Section 1.006 does not apply to Subsection (d)(3) [~~(d)(3)(A)~~].

SECTION 1.19. Section 87.041(e), Election Code, is amended to read as follows:

(e) In making the determination under Subsection (b)(2), the board may also compare the signatures with the signature on the voter's registration application to confirm that the signatures are those of the same person [~~match~~] but may not use the registration application signature to determine that the signatures are not those of the same person [~~do not match~~].

SECTION 1.20. Section 87.042(c), Election Code, is amended to read as follows:

(c) The ballot envelope must [~~may~~] be placed in a separate container if:

(1) the ballots are to be counted at a central counting station; or

(2) the procedure for counting the early voting votes cast by personal appearance is different from that for counting the votes cast by mail.

SECTION 1.21. Section 101.004, Election Code, is amended by amending Subsections (i) and (k) and adding Subsection (l) to read as follows:

(i) Except as provided by Subsection (l), for [~~For~~] purposes of determining the date a federal postcard application is submitted to the early voting clerk, an application is considered to be submitted on the date it is placed and properly addressed in the United States mail. The date indicated by the post office cancellation mark is considered to be the date the application was placed in the mail unless proven otherwise. For purposes of an application made under Subsection (e):

(1) an application that does not contain a cancellation mark is considered to be timely if it is received by the early voting clerk on or before the 22nd day before election day; and

(2) if the 30th day before the date of an election is a Saturday, Sunday, or legal state or national holiday, an application is considered to be timely if it is submitted to the early voting clerk on or before the next regular business day.

(k) If the applicant submits the missing information before the time prescribed by Subsection (e)(1), the applicant is entitled to receive a full ballot to be voted by mail under this chapter. If the applicant submits the missing information after the time prescribed by Subsection (e)(1), the applicant is entitled to receive a full ballot to be voted by mail for the next election that occurs:

(1) in the same calendar year; and

(2) after the 30th day [~~at least 30 days~~] after the date the information is submitted.

(l) For purposes of determining the end of the period that an application may be submitted under Subsection (f)(1), an application is considered to be submitted at the time it is received by the early voting clerk.

SECTION 1.22. Section 146.0301(a), Election Code, is amended to read as follows:

(a) A write-in candidate may not withdraw from the election after the 57th [~~46th~~] day before election day.

SECTION 1.23. Section 146.083, Election Code, is amended to read as follows:

Sec. 146.083. FILING DEADLINE. A declaration of write-in candidacy must be filed not later than 5 p.m. on [~~of the fifth day after~~] the date an application for a place on the ballot is required to be filed.

SECTION 1.24. Section 272.009(b), Election Code, is amended to read as follows:

(b) If the number of election clerks appointed under Subsection (a) is insufficient to serve the needs of the Spanish-speaking voters in the election, the authority appointing election judges for the election [~~holding the election~~] shall appoint at least one clerk who is fluent in both English and Spanish to serve at a

central location to provide assistance for Spanish-speaking voters. On a primary election day, the county chairs of each party holding a primary shall each appoint one clerk under this subsection.

SECTION 1.25. (a) Section 277.002(a), Election Code, is amended to read as follows:

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

(1) contain in addition to the signature:

(A) the signer's printed name;

(B) the signer's:

(i) date of birth [~~and residence address~~]; or

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

(C) the signer's residence address; and

(D) the date of signing; and

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

(b) The change in law made by this section applies only to a petition filed on or after the effective date of this section. A petition filed before the effective date of this section is governed by the law in effect when the petition was filed, and the former law is continued in effect for that purpose.

SECTION 1.26. (a) Section 6(b), Chapter 1137, Acts of the 76th Legislature, Regular Session, 1999, is amended to read as follows:

(b) Each director is [~~Directors are~~] elected at large to one of five numbered places by the qualified voters residing within the boundaries of LCMUA.

(b) The directors serving on the effective date of this section shall draw lots to determine in which place each director serves. The two directors whose terms expire in 2006 shall draw lots for places 1 and 2. The three directors whose terms expire in 2008 shall draw lots for places 3, 4, and 5. At the directors election in 2006 a candidate may file for place 1 or 2. At the directors election in 2008, a candidate may file for place 3, 4, or 5.

(c) Chapter 312, Acts of the 58th Legislature, Regular Session, 1963, is repealed.

ARTICLE 2. REPEAL OF OBSOLETE PROVISIONS REGARDING THE USE OF MECHANICAL VOTING MACHINES AND PUNCH-CARD BALLOTS

SECTION 2.01. Section 85.034(a), Election Code, is amended to read as follows:

(a) Early voting by personal appearance by a voter who is voting outside the early voting polling place under Section 64.009 shall be conducted in accordance with this section if voting at the early voting polling place is by voting machine [~~or voting device unless the early voting clerk chooses to transport a voting device to the voter~~].

SECTION 2.02. Section 104.001, Election Code, is amended to read as follows:

Sec. 104.001. ELIGIBILITY. A qualified voter in whose precinct polling place voting is conducted by voting machine [~~or voting device~~] is eligible to vote by the early voting procedure provided by this chapter if the voter has a sickness or physical condition that prevents the voter from voting in the regular manner without personal assistance or a likelihood of injuring the voter's health.

SECTION 2.03. Section 111.005(c), Election Code, is amended to read as follows:

(c) If an electronic system ballot is used, the restricted ballot shall be prepared by marking[~~, punching,~~] or otherwise identifying an official early voting ballot so that votes on offices and propositions stating measures on which the voter is not entitled to vote may not be counted.

SECTION 2.04. Section 121.003, Election Code, is amended to read as follows:

Sec. 121.003. DEFINITIONS. In this title:

(1) "Voting system" means a method of casting and processing votes that is designed to function wholly or partly by use of mechanical, electromechanical, or electronic apparatus and includes the procedures for casting and processing votes and the programs, operating manuals, tabulating cards, printouts, and other software necessary for the system's operation.

(2) "Electronic voting system" means a voting system in which the ballots are automatically counted and the results automatically tabulated by use of electronically operated apparatus.

(3) "Voting machine" means an apparatus on which voters cast their votes, that records each vote, and that furnishes a total of the number of votes cast for the candidates and for and against the measures.

(4) [~~"Mechanical voting machine" means a voting machine that is designed to function by the manual operation of a lever or other device on the machine without the aid of electrical power.~~

[~~(5) "Voting device" means an apparatus that is designed for use with punch card ballots, that holds the punch card ballot label, and that enables a voter to position the ballot for voting.~~

[~~(6)~~] "Voting system equipment" means any kind of mechanical, electromechanical, or electronic apparatus for use in a voting system.

(5) [~~(7)~~] "Automatic tabulating equipment" means equipment, other than a voting machine, that compiles vote totals by ballot sorting, ballot reading, ballot scanning, or electronic data processing.

(6) [~~(8)~~] "Public counter" means a registering device that cumulatively records the number of voters casting votes on a voting machine and that is constructed and installed on the machine in a way that provides an unobstructed view of the recorded number.

(7) [~~(9)~~] "Protective counter" means a registering device that permanently records the cumulative number of times that a voting machine has been operated and that is installed in the machine in a way that prevents resetting the device.

(8) [~~(10)~~] "Registering counter" means a registering device on a voting machine that records the votes cast for a particular candidate or for or against a particular measure.

[~~(11) "Mechanical machine ballot label" means the cardboard or other material listing the candidates and propositions that is attached to a mechanical voting machine to enable voters to make their choices.~~

[~~(12) "Punch-card ballot label" means the paper or other material listing the candidates and propositions that is designed for use with punch-card ballots to enable voters to make their choices.~~

[~~(13) "Voting system ballot label" means a punch-card ballot label or a mechanical machine ballot label.~~]

(9) [~~(14)~~] "Electronic system ballot" means a ballot designed for use with an electronic voting system.

(10) [~~(15)~~] "Punch-card ballot" means an electronic system ballot in the form of a tabulating card.

(11) [~~(16)~~] "Voting system ballot" means a ballot designed for use with a voting system.

(12) [~~(17)~~] "Direct recording electronic voting machine" or "DRE" means a voting machine that is designed to allow a direct vote on the machine by the manual touch of a screen, monitor, or other device and that records the individual votes and vote totals electronically.

SECTION 2.05. Section 122.033, Election Code, is amended to read as follows:

Sec. 122.033. ADDITIONAL REQUIREMENTS FOR APPROVAL OF VOTING MACHINE. [~~(a)~~] In addition to other requirements for approval, a voting machine must be equipped with:

(1) a security system capable of preventing operation of the machine;

(2) registering counters that can be secured against access;

(3) a public counter; and

(4) a protective counter.

[~~(b) The security system for a mechanical voting machine must be a lock and key system.~~]

SECTION 2.06. Section 123.033(e), Election Code, is amended to read as follows:

(e) The maximum amount that may be charged for leasing equipment to a county executive committee for a general or runoff primary is:

(1) [~~$16 for each mechanical voting machine;~~

[~~(2)~~] $5 for each unit of electronic voting system equipment installed at a polling place; and

(2) [~~(3)~~] $5 for each unit of other equipment not specified by this subsection.

SECTION 2.07. Section 124.001, Election Code, is amended to read as follows:

Sec. 124.001. STRAIGHT-PARTY ARRANGEMENT. In an election in which voters are entitled to cast straight-party votes, the voting system ballot [~~and ballot label~~] shall be arranged to permit the voters to do so.

SECTION 2.08. Section 124.002, Election Code, is amended to read as follows:

Sec. 124.002. MANNER OF INDICATING PARTY ALIGNMENT. (a) In an election in which a candidate's name is to appear on the ballot as the nominee of a political party, the voting system ballot [~~and ballot label, as applicable,~~] shall be arranged:

(1) in party columns in the same manner as for a regular paper ballot on which a party nominee appears; or

(2) by listing the office titles in a vertical column in the same manner as for a regular paper ballot on which a party nominee does not appear, except that the nominees' party alignments shall be indicated next to their names.

(b) The order in which party nominees listed by office title appear on a voting system ballot [~~or ballot label~~] is determined in accordance with the same priorities and in the same manner as for party nominees listed in party columns, with the changes appropriate to the circumstances.

SECTION 2.09. Sections 124.003(a), (c), and (d), Election Code, are amended to read as follows:

(a) Any unopposed candidates may be listed separately under the heading "Uncontested Races" on a voting system ballot [~~or ballot label~~].

(c) Candidates listed under the uncontested races heading may be arranged in a manner requiring voting on them as one or more blocs, but only if an additional ballot [~~or ballot label~~] would otherwise be necessary to accommodate all the candidates and propositions to be listed.

(d) The requirement that the ballot [~~or ballot label~~] be arranged to permit straight-party voting does not apply to candidates listed under the uncontested races heading.

SECTION 2.10. Section 124.063, Election Code, is amended to read as follows:

Sec. 124.063. INSTRUCTIONS REQUIRED ON BALLOT. (a) An electronic system ballot on which a voter indicates a vote by making a mark on [~~punching a hole in~~] the ballot must contain the following instruction if candidates are to be voted on: "Vote for the candidate of your choice in each race by making a mark [~~punch hole~~] in the space provided adjacent to the name of that candidate." If a proposition appears on the ballot, the ballot must contain the following instruction: "Make a mark [~~punch hole~~] in the space provided beside the statement indicating the way you desire to vote."

(b) [~~An electronic system ballot on which a voter indicates a vote by making a mark on the ballot must comply with Subsection (a), with the substitution of "mark" for "punch hole."~~]

[~~(c)~~] The instructions prescribed by Subsection [~~Subsections~~] (a) [~~and (b)~~] shall be changed appropriately if the election has only one race, more than one candidate is to be elected in a race, or other circumstances require an alteration of the instructions.

(c) [~~(d) An electronic system ballot on which a voter indicates a vote by punching a hole in the ballot must contain the following instruction following the other required instructions: "Check your ballot after voting to make sure that the holes are actually punched through."~~

[~~(e)~~] The electronic system ballot must contain instructions for casting a write-in vote. The secretary of state shall prescribe the wording of the instructions.

(d) [~~(f)~~] The electronic system ballot for an election in which straight-party voting is allowed must contain the instruction prescribed by Section 52.071(b) with the language relating to placing an "X" in the party square changed as appropriate to accommodate the method by which the voter indicates a vote.

[~~(g) The instructions required by this section may be placed on the punch-card ballot label instead of on the punch-card ballot.~~]

SECTION 2.11. Section 125.001, Election Code, is amended to read as follows:

Sec. 125.001. ALLOCATION OF EQUIPMENT AMONG POLLING PLACES. The authority responsible for allocating election supplies among the polling places for an election shall determine the number of voting machines[~~, voting devices,~~] or units of other voting system equipment to be installed at each polling place based on:

(1) the number of votes cast at the polling place in previous, similar elections;

(2) the number of registered voters eligible to vote at a polling place;

(3) the number of units of equipment available; and

(4) any other factors the authority determines are relevant.

SECTION 2.12. Section 125.007, Election Code, is amended to read as follows:

Sec. 125.007. ASSISTING VOTER. If a voter who is voting with a voting machine [~~or voting device~~] is physically unable to operate the machine [~~or device~~], the voter is entitled to assistance under the applicable provisions for assisting voters using regular paper ballots.

SECTION 2.13. Section 125.061(a), Election Code, is amended to read as follows:

(a) Before opening a polling place for voting on election day, the presiding judge shall inspect [~~each voting device and~~] any [~~other~~] electronic voting system equipment installed at the polling place to determine whether it is installed and functioning properly.

SECTION 2.14. Section 127.1301, Election Code, is amended to read as follows:

Sec. 127.1301. TALLYING, TABULATING, AND REPORTING [~~PUNCH-CARD OR~~] CENTRALLY COUNTED OPTICAL SCAN BALLOT UNDERVOTES AND OVERVOTES. In an election using [~~punch-card or~~] centrally counted optical scan ballots, the undervotes and overvotes on those ballots shall be tallied, tabulated, and reported by race and by election precinct in the form and manner prescribed by the secretary of state.

SECTION 2.15. Section 212.112(a), Election Code, is amended to read as follows:

(a) Subject to Subsection (d), the amount of the recount deposit is determined by the number of precincts for which a recount is requested in the document that the deposit accompanies, in accordance with the following schedule:

(1) five times the maximum hourly rate of pay for election judges, for a precinct in which:

(A) regular paper ballots were used;

(B) electronic voting system ballots, other than [~~punch-card ballots or~~] printed images of ballots cast using direct recording electronic voting machines, are to be recounted manually; or

(C) both write-in votes and voting system votes are to be recounted;

(2) 10 times the maximum hourly rate of pay for election judges, for a precinct in which[~~:~~

[~~(A) punch-card ballots are to be recounted manually; or~~

[~~(B)~~] printed images of ballots cast using direct recording electronic voting machines are to be recounted manually;

(3) three times the maximum hourly rate of pay for election judges, for a precinct in which ballots are to be recounted by automatic tabulating equipment and no write-in votes are to be recounted; and

(4) two times the maximum hourly rate of pay for election judges, for a precinct in which:

(A) voting machines were used and no write-in votes are to be recounted; or

(B) only the write-in votes cast in connection with a voting system are to be recounted.

SECTION 2.16. Section 214.002(b), Election Code, is amended to read as follows:

(b) The count shall be made, and the correctness of the tally lists shall be certified, in the same manner as an original count of regular paper ballots, except that[~~:~~

[~~(1)~~] only two tally lists are prepared[~~; and~~

[~~(2) Section 127.130(d) applies to a count of punch-card ballots~~].

SECTION 2.17. Section 221.008, Election Code, is amended to read as follows:

Sec. 221.008. EXAMINATION OF SECURED BALLOTS AND EQUIPMENT. A tribunal hearing an election contest may cause secured ballot boxes, voting machines, [~~voting devices,~~] or other equipment used in the election to be unsecured to determine the correct vote count or any other fact that the tribunal considers pertinent to a fair and just disposition of the contest.

SECTION 2.18. Section 272.005(b), Election Code, is amended to read as follows:

(b) Except as provided by Section 272.006, ballots [~~and voting system ballot labels~~] must be printed with all ballot instructions, office titles, column headings, proposition headings, and propositions appearing in English and Spanish.

SECTION 2.19. Section 272.006(a), Election Code, is amended to read as follows:

(a) In an election precinct in which use of bilingual election materials is required, bilingual printing of the ballot [~~or voting system ballot label~~] is not required if a Spanish translation of the ballot is posted in each voting station and a statement in Spanish is placed on the ballot [~~or ballot label~~] informing the voter that the translation is posted in the station.

SECTION 2.20. Section 272.007(c), Election Code, is amended to read as follows:

(c) The authority responsible for having the official ballot prepared for an election other than a primary election or an election ordered by the governor shall prepare the Spanish translation of the contents of the ballot [~~or voting system ballot label~~].

SECTION 2.21. The following provisions of the Election Code are repealed:

(1) Sections 123.001(d), 123.0331, 124.061, 125.061(c), and 127.130(d) and (e);

(2) Subchapter E, Chapter 87;

(3) Subchapter B, Chapter 124;

(4) Subchapter B, Chapter 125;

(5) Chapter 126;

(6) Subchapter G, Chapter 127; and

(7) Subchapter B, Chapter 214.

ARTICLE 3. EFFECTIVE DATE

SECTION 3.01. (a) Except as otherwise provided by this Act, this Act takes effect September 1, 2005.

(b) Article 2 of this Act takes effect January 1, 2006.

(c) A change in law made by this Act that affects the holding of an election applies only to an election ordered on or after the effective date of the change.

Representative Denny moved to adopt the conference committee report on **HB 2309**.

The motion to adopt the conference committee report on **HB 2309** 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.)

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. 8).

HR 2259 - ADOPTED
(by J. Keffer)

The following privileged resolution was laid before the house:

HR 2259

BE IT RESOLVED by the House of Representatives of the State of Texas, 79th Legislature, Regular Session, 2005, That House Rule 13, Section 9(a), be suspended in part as provided by House Rule 13, Section 9(f), to enable the conference committee appointed to resolve the differences on **HB 2233** (state and certain local fiscal matters; providing a penalty) to consider and take action on the following matter:

House Rule 13, Sections 9(a)(3) and (4), are suspended to permit the conference committee to add the following:

SECTION 125.5. Section 162.227, Tax Code, is amended by adding Subsection (c-1) to read as follows:

(c-1) A license holder may take a credit on a return for the period in which the purchase occurred, and a person who does not hold a license may file a refund claim with the comptroller, if the license holder or person paid tax on diesel fuel and the diesel fuel is used in this state:

(1) as a feedstock or other component in the further manufacturing of tangible personal property for resale not as a motor fuel; or

(2) in the original production of oil or gas or to increase the production of oil or gas.

Explanation: This change is necessary to add provisions to the bill related to eligibility for credits for diesel fuel taxes paid.

HR 2259 was adopted.

HB 2233 - RULES SUSPENDED

Representative J. Keffer moved to suspend all necessary rules to consider the conference committee report on **HB 2233** at this time.

The motion prevailed.

HB 2233 - POINT OF ORDER

Representative Keel raised a point of order against further consideration of **HB 2233** under Rule 8, Sections 3 and 33 of the House Rules and Article III, Section 35 of the Texas Constitution on the grounds that the bill violates the one subject rule.

The speaker sustained the point of order.

The ruling precluded further consideration of **HB 2233**.

HR 2270 - ADOPTED
(by Krusee)

The following privileged resolution was laid before the house:

HR 2270

BE IT RESOLVED by the House of Representatives of the State of Texas, 79th Legislature, Regular Session, 2005, That House Rule 13, Section 9(a), be suspended in part as provided by House Rule 13, Section 9(f), to enable the conference committee appointed to resolve the differences on **HB 2702** (construction, acquisition, financing, maintenance, management, operation, ownership, and control of transportation facilities and the progress, improvement, and safety of transportation in this state) to consider and take action on the following matters:

(1) House Rule 13, Section 9(a)(4), is suspended to permit the committee to add the following to Section 91.054, Transportation Code:

(c) The department may not enter into a comprehensive development agreement with a private entity under this chapter that provides for the lease or use of rights-of-way or related property by the private entity to construct, operate, or maintain a facility that is unrelated to the operation of the rail facility or system.

Explanation: The addition is necessary to address the differences between the conferees on the issue of comprehensive development agreements for facilities that are unrelated to the operation of a rail facility or system by the Texas Department of Transportation.

(2) House Rule 13, Section 9(a)(4), is suspended to permit the committee to add the following to Section 203.092, Transportation Code:

(a-1) Notwithstanding Subsection (a), the department and the utility shall share equally the cost of the relocation of a utility facility that is made before September 1, 2007, and required by the improvement of a nontolled highway to add one or more tolled lanes. This subsection expires September 1, 2007.

(a-2) Notwithstanding Subsection (a), the department and the utility shall share equally the cost of the relocation of a utility facility that is made before September 1, 2007, and required for the improvement of a nontolled highway that has been converted to a turnpike project or toll project. This subsection expires September 1, 2007.

(a-3) Notwithstanding Subsection (a), the department and the utility shall share equally the cost of the relocation of a utility facility that is made before September 1, 2007, and required for the construction of a new location of a turnpike project or toll project or the expansion of a new location of a turnpike project or toll project. This subsection expires September 1, 2007.

Explanation: The addition is necessary to address the differences between the conferees on the issue of the payment of utility relocation costs when the relocation is required because of construction related to toll lanes, turnpike projects, or toll projects.

(3) House Rule 13, Section 9(a)(4), is suspended to permit the committee to add the following to Section 223.201(a), Transportation Code:

(5) state highway improvement project financed wholly or partly with the proceeds of private activity bonds, as defined by Section 141(a), Internal Revenue Code of 1986.

Explanation: The addition is necessary to allow the Texas Department of Transportation to enter into a comprehensive development agreement to design, develop, finance, construct, maintain, repair, operate, extend, or expand a state highway improvement project financed wholly or partly with the proceeds of private activity bonds, as defined by Section 141(a), Internal Revenue Code of 1986.

(4) House Rule 13, Section 9(a)(4), is suspended to permit the committee to add the following to Section 223.201, Transportation Code:

(g) The department may combine in a comprehensive development agreement under this subchapter a toll project and a rail facility as defined by Section 91.001.

Explanation: The addition is necessary to allow the Texas Department of Transportation to combine in a comprehensive development agreement a toll project and a rail facility.

(5) House Rule 13, Section 9(a)(4), is suspended to permit the committee to add the following to Section 223.203, Transportation Code:

(e-1) Notwithstanding the requirements of this section, the department may prequalify a private entity to submit a detailed proposal to provide services under a design-build contract. The department is not required to publish a request under Subsection (c) for a design-build contract, and may enter into a design-build contract based solely on an evaluation of detailed proposals submitted in response to a request under Subsection (f) by prequalified private entities. The commission shall adopt rules establishing criteria for the prequalification of a private entity that include the precertification requirements applicable to providers of engineering services and the qualification requirements for bidders on highway construction contracts. Rules for design-build projects adopted pursuant to this subsection shall also provide for an expedited selection process that includes design innovation as a selection criterion.

(e-2) In this section, "design-build contract" means a comprehensive development agreement that includes the design and construction of a turnpike project, does not include the financing of a turnpike project, and may include the acquisition, maintenance, or operation of a turnpike project.

Explanation: The addition is necessary to address the differences between the conferees on the issue of the prequalification of private entities for design-build contracts for certain highway projects.

(6) House Rule 13, Section 9(a)(4), is suspended to permit the committee to add the following to Section 223.206, Transportation Code:

(d) The department may not enter into a comprehensive development agreement with a private entity under this subchapter or Section 227.023 that provides for the lease, license, or other use of rights-of-way or related property by the private entity for the purpose of constructing, operating, or maintaining an ancillary facility that is used for commercial purposes.

Explanation: The addition is necessary to address the differences between the conferees on the issue of comprehensive development agreements by the Texas Department of Transportation relating to the use of rights-of-way for certain ancillary facilities.

(7) House Rule 13, Section 9(a)(4), is suspended to permit the committee to add the following SECTION to the bill:

SECTION 2.100. Notwithstanding any law to the contrary, neither the Texas Department of Transportation nor a regional mobility authority may acquire property, enter into a contract, grant a franchise, or lease or license property for the purpose of constructing or operating an ancillary facility to be used for a commercial purpose under Chapter 228 or 370, Transportation Code. This section does not apply to a segment of highway under the jurisdiction of a regional mobility authority if the regional mobility authority awarded a comprehensive development agreement for the improvement of that segment before September 1, 2005. This segment does not apply to a segment of the state highway system in Travis or Williamson County if the Texas Department of Transportation awarded an exclusive development agreement for the improvement of that section before September 1, 2005. This section expires September 1, 2007.

Explanation: The addition is necessary to address the differences between the conferees on the issue of the acquisition of property, granting a franchise, or leasing or licensing property for the purpose of constructing or operating an ancillary facility by certain entities.

(8) House Rule 13, Section 9(a)(4), is suspended to permit the committee to add the following to SECTION 8.02 of the bill:

(b) Before the executive director of the Texas Department of Transportation or the director's designee may authorize a person to use a state-operated aircraft, the person must sign an affidavit stating that the person is traveling on official state business. On filing of the affidavit, the person may be authorized to use state-operated aircraft for official state business for a period of one year. A member of the legislature is not required to receive any other additional authorization to use a state-operated aircraft.

Explanation: The addition is necessary to address the differences between the conferees on issues relating to the State Aircraft Pooling Board.

HR 2270 was adopted.

HB 2702 - RULES SUSPENDED

Representative Krusee moved to suspend all necessary rules to consider the conference committee report on **HB 2702** at this time.

The motion prevailed.

HB 2702 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Krusee submitted the following conference committee report on **HB 2702** :

Austin, Texas, May 28, 2005

The Honorable David Dewhurst
President of the Senate

The Honorable Tom Craddick
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the senate and the house of representatives on **HB 2702** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Ellis	Hill
Fraser	Hegar
Staples	Phillips
	R. Cook
	Krusee
On the part of the senate	On the part of the house

HB 2702, A bill to be entitled An Act relating to the construction, acquisition, financing, maintenance, management, operation, ownership, and control of transportation facilities and the progress, improvement, policing, and safety of transportation in this state; providing a penalty.

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

ARTICLE 1. RAIL FACILITIES

SECTION 1.01. Section 91.001, Transportation Code, is amended by amending Subdivision (6) and adding Subdivision (13) to read as follows:

(6) "Rail facility" means real or personal property, or any interest in that property, that is determined to be necessary or convenient for the provision of a freight or passenger rail facility or system, including commuter rail, intercity rail, [~~and~~] high-speed rail, and tri-track. The term includes all property or interests necessary or convenient for the acquiring, providing, using, or equipping of a rail facility or system, including rights-of-way, trackwork, train controls, stations, and maintenance facilities.

(13) "Tri-track" means a triangular monorail beam guideway:

(A) constructed at a grade above surface modes of transportation;

(B) for use by dual-mode vehicles capable of using the guideway or a highway; and

(C) with entrances accessible from and exits accessible to highways.

SECTION 1.02. Section 91.004, Transportation Code, is amended to read as follows:

Sec. 91.004. GENERAL POWERS. (a) The department may:

(1) plan and make policies for the location, construction, maintenance, and operation of a rail facility or system in this state;

(2) acquire, finance, construct, maintain, and subject to Section 91.005, operate a passenger or freight rail facility, individually or as one or more systems;

(3) for the purpose of acquiring or financing a rail facility or system, accept a grant or loan from a:

(A) department or agency of the United States;

(B) department, agency, or political subdivision of this state; or

(C) public or private person;

(4) contract with a public or private person to finance, construct, maintain, or operate a rail facility under this chapter; or

(5) perform any act necessary to the full exercise of the department's powers under this chapter.

(b) Except as provided by Subsection (c), money appropriated or allocated by the United States for the construction and maintenance in this state of rail facilities owned by any public or private entity shall be administered by the commission and may be spent only under the supervision of the department.

(c) Subsection (b) does not apply to money appropriated or allocated:

(1) to a transit authority described by Chapter 451, a transportation authority described by Chapter 452 or 460, or a transit department described by Chapter 453; or

(2) for use by:

(A) a port authority or navigation district created or operating under Section 52, Article III, or Section 59, Article XVI, Texas Constitution; or

(B) a district created under Chapter 623, Acts of the 67th Legislature, Regular Session, 1981 (Article 6550c, Vernon's Texas Civil Statutes).

SECTION 1.03. Section 91.051, Transportation Code, is amended to read as follows:

Sec. 91.051. AWARDING OF CONTRACTS. Except for a contract entered into under Section 91.052, 91.054, or 91.102 [~~Unless otherwise provided by this subchapter~~], a contract made by the department for the construction, maintenance, or operation of a rail facility must be let by a competitive bidding procedure in which the contract is awarded to the lowest responsible bidder that complies with the department's criteria.

SECTION 1.04. Subchapter C, Chapter 91, Transportation Code, is amended by adding Section 91.054 to read as follows:

Sec. 91.054. COMPREHENSIVE DEVELOPMENT AGREEMENTS. (a) To the extent and in the manner that the department may enter into a comprehensive development agreement under Chapter 223, the department may enter into a comprehensive development agreement under this chapter that provides for the financing, design, acquisition, construction, maintenance, or operation of a rail facility or system. All provisions of Chapter 223 relating to comprehensive development agreements apply to comprehensive development agreements for facilities under this chapter, including provisions relating to the confidentiality of information. Claims arising under a comprehensive development agreement are subject to Section 201.112.

(b) The department may combine in a comprehensive development agreement under this chapter a rail facility or system and a toll project as defined by Section 201.001.

(c) The department may not enter into a comprehensive development agreement with a private entity under this chapter that provides for the lease or use of rights-of-way or related property by the private entity to construct, operate, or maintain a facility that is unrelated to the operation of the rail facility or system.

SECTION 1.05. Section 91.071(b), Transportation Code, is amended to read as follows:

(b) The [~~Each fiscal year, the total amount disbursed by the~~] department may not spend money from the general revenue [~~state highway~~] fund to implement this chapter except pursuant to a line-item appropriation [~~may not exceed $12.5 million~~]. [~~This subsection does not apply to:~~

[~~(1) the acquisition of abandoned rail facilities described in Section 91.007;~~

[~~(2) funding derived from the issuance of bonds, private investment, and donations;~~

[~~(3) federal funds from the Federal Railroad Administration, from the Federal Transit Administration, or authorized and appropriated by the United States Congress for a specific project;~~

[~~(4) grants awarded by the governor from the Texas Enterprise Fund; and~~

[~~(5) grading and bed preparation.~~]

SECTION 1.06. Section 91.074(c), Transportation Code, is amended to read as follows:

(c) The department may contract with a person for the use of all or part of a rail facility or system or may lease or sell all or part of a rail facility or system, including all or any part of the right-of-way adjoining trackwork, for any purpose, including placing on the adjoining right-of-way a storage or transfer facility, warehouse, garage, parking facility, telecommunication line or facility, restaurant, or gas station. Any portion of a rail facility or system that is used or leased by a private person under this subsection for a commercial purpose is not exempt from ad valorem taxation and is subject to local zoning regulations and building standards.

SECTION 1.07. Subchapter D, Chapter 91, Transportation Code, is amended by adding Section 91.075 to read as follows:

Sec. 91.075. PASS-THROUGH FARES. (a) In this section, "pass-through fare" means:

(1) a per passenger fee or a per passenger mile fee that is determined by the number of passengers using a passenger rail facility; or

(2) a fee that is determined based on the number of carloads or commodity tonnages shipped using a freight rail facility.

(b) The department may enter into an agreement with a public or private entity that provides for the payment of pass-through fares to the public or private entity as reimbursement for the acquisition, design, development, financing, construction, relocation, maintenance, or operation of a passenger rail facility or a freight rail facility by the entity.

(c) The department may use any available funds for the purpose of making a pass-through fare payment under this section, including funds from the state infrastructure bank.

(d) The commission may adopt rules necessary to implement this section. Rules adopted under this subsection may include criteria for:

(1) determining the amount of pass-through fares to be paid under this section; and

(2) allocating the risk that ridership on a passenger rail facility or carloads or commodity tonnages shipped on a freight rail facility will be higher or lower than the parties to an agreement under this section anticipated in entering into the agreement.

SECTION 1.08. Effective October 1, 2005, Article 6445, Revised Statutes, is amended to read as follows:

Art. 6445. POWER AND AUTHORITY. (a) Power and authority are hereby conferred upon the Texas Department of Transportation [~~Railroad Commission of Texas~~] over all railroads, and suburban, belt and terminal railroads, and over all public wharves, docks, piers, elevators, warehouses, sheds, tracks and other property used in connection therewith in this State, and over all persons, associations and corporations, private or municipal, owning or operating such railroad, wharf, dock, pier, elevator, warehouse, shed, track or other property to fix, and it is hereby made the duty of the said department [~~Commission~~] to adopt all necessary rates, charges and regulations, to govern and regulate such railroads, persons, associations and corporations, and to correct abuses and prevent unjust discrimination in the rates, charges and tolls of such railroads, persons, associations and corporations, and to fix division of rates, charges and regulations between railroads and other utilities and common carriers where a division is proper and correct, and to prevent any and all other abuses in the conduct of their business and to do and perform such other duties and details in connection therewith as may be provided by law.

(b) All powers and duties of the Railroad Commission of Texas that relate primarily to railroads and the regulation of railroads are transferred to the Texas Department of Transportation.

(c) A reference in law to the Railroad Commission of Texas that relates primarily to railroads and the regulation of railroads means the Texas Department of Transportation.

SECTION 1.09. (a) On October 1, 2005:

(1) all powers, duties, obligations, rights, contracts, leases, records, assets, property, funds, and appropriations of the Railroad Commission of Texas that relate primarily to railroads and the regulation of railroads are transferred to the Texas Department of Transportation;

(2) all rules, policies, forms, procedures, and decisions of the Railroad Commission of Texas that relate primarily to railroads and the regulation of railroads are continued in effect as rules, policies, forms, procedures, and decisions of the Texas Department of Transportation, until superseded by a rule or other appropriate action of the Texas Department of Transportation;

(3) any investigation, complaint, action, contested case, or other proceeding involving the Railroad Commission of Texas that relates primarily to railroads and the regulation of railroads is transferred without change in status to the Texas Department of Transportation, and the Texas Department of Transportation assumes, without a change in status, the position of the Railroad Commission of Texas in any investigation, complaint, action, contested case, or other proceeding that relates primarily to railroads and the regulation of railroads involving the Railroad Commission of Texas; and

(4) all employees of the Railroad Commission of Texas that perform duties relating primarily to railroads and the regulation of railroads become employees of the Texas Department of Transportation.

(b) The transfer of the powers and duties of the Railroad Commission of Texas that relate primarily to railroads and the regulation of railroads to the Texas Department of Transportation does not affect the validity of a right, privilege, or obligation accrued, a contract or acquisition made, any liability incurred, a permit or license issued, a penalty, forfeiture, or punishment assessed, a rule adopted, a proceeding, investigation, or remedy begun, a decision made, or other action taken by or in connection with the Railroad Commission of Texas.

SECTION 1.10. As soon as possible after the effective date of this Act but before October 1, 2005, the Railroad Commission of Texas shall determine and report to the Texas Department of Transportation on:

(1) which obligations, contracts, records, assets, and property of the Railroad Commission of Texas relate primarily to railroads and the regulation of railroads; and

(2) which employees of the Railroad Commission of Texas perform duties that relate primarily to railroads and the regulation of railroads.

ARTICLE 2. HIGHWAYS

SECTION 2.01. Section 201.001, Transportation Code, is amended to read as follows:

Sec. 201.001. DEFINITIONS. (a) In this title:

(1) "Commission" means the Texas Transportation Commission.

(2) "Department" means the Texas Department of Transportation.

(3) "Director" means the executive director of the Texas Department of Transportation.

(b) In this subtitle, "toll project" means one or more tolled lanes of a highway or an entire toll highway constructed, maintained, or operated as a part of the state highway system and any improvement, extension, or expansion to the highway, including:

(1) a facility to relieve traffic congestion and promote safety;

(2) a bridge, tunnel, overpass, underpass, interchange, entrance plaza, approach, toll booth, toll plaza, service road, ramp, or service center;

(3) an administration, storage, or other building, operations center, maintenance or other facility, equipment, or system the department considers necessary to operate the project;

(4) property rights, easements, and interests the department acquires to construct, maintain, or operate the project;

(5) a parking area or structure, rest stop, park, and any other improvement or amenity the department considers necessary, useful, or beneficial for the operation and maintenance of the project; and

(6) a nontolled facility that is appurtenant to and necessary for the efficient operation and maintenance of the project, including a connector, service road, access road, ramp, interchange, bridge, or tunnel.

SECTION 2.02. Section 201.1055, Transportation Code, is amended to read as follows:

Sec. 201.1055. AGREEMENTS WITH PRIVATE ENTITIES. (a) Notwithstanding any other law, including Subchapter A, Chapter 2254, Government Code, Chapters 2165, 2166, and 2167, Government Code, and Sections 202.052, 202.053, 203.051, 203.052, and 223.001 of this code, the department and a private entity that offers the best value to the state may enter into an agreement for the [~~that includes~~]:

(1) acquisition, [~~both~~] design, [~~and~~] construction, or renovation, including site development, of a building or other facility required to support department operations [~~district office headquarters facility~~] located on real property owned or acquired by the department [~~in a county with a population of 3.3 million or more~~]; or

(2) acquisition from the private entity of real property, a building, or other facility required to support department operations that is constructed on the real property in exchange for department-owned real property, including any improvements [~~a lease of department-owned real property in a district that includes a county with a population of 3.3 million or more to the private entity;~~

[~~(3) a provision authorizing the private entity to construct and retain ownership of a building on property leased to the entity under Subdivision (2); and~~

[~~(4) a provision under which the department agrees to enter into an agreement to lease with an option or options to purchase a building constructed on property leased to the entity under Subdivision (2)~~].

(b) A project described by this section that is not wholly paid for by an exchange of department-owned real property may be financed in accordance with Section 1232.111, Government Code.

(c) Notwithstanding Section 202.024, the commission may authorize the executive director to execute a deed exchanging department-owned real property under Subsection (a)(2).

(d) The commission shall notify the Bond Review Board and Texas Public Finance Authority of the proposed transaction not less than 45 days before the date the commission signs an agreement under this section providing for the exchange of department-owned real property under Subsection (a)(2).

(e) An agreement under this section providing for the exchange of department-owned real property under Subsection (a)(2) that has an appraised value greater than the appraised value of real property and improvements acquired by the department under the agreement must require the private entity to compensate the department for the difference. Any compensation paid by a private entity must be deposited to the credit of the state highway fund and is exempt from the application of Section 403.095, Government Code.

SECTION 2.03. Section 201.113, Transportation Code, is amended by adding Subsection (c) to read as follows:

(c) An agreement entered into under this section may provide that an improvement of a portion of the state highway system by a regional tollway authority is governed by the provisions of Chapter 366 applicable to the performance of the same function for a turnpike project under that chapter and the

rules and procedures adopted by the regional tollway authority under that chapter, in lieu of the laws, rules, or procedures applicable to the department for the performance of the same function.

SECTION 2.04. Sections 201.115(a), (b), and (c), Transportation Code, are amended to read as follows:

(a) The commission may authorize the department to borrow money from any source to carry out the functions of the department.

(b) A loan under this section may be in the form of an agreement, note, contract, or other form as determined by the commission and may contain any provisions the commission considers appropriate, except:

(1) the term of the loan may not exceed two years;

(2) the amount of the loan, combined with any amounts outstanding on other loans under this section, may not exceed an amount that is two times the average monthly revenue deposited to the state highway fund for the 12 months preceding the month of the loan; and

(3) the loan may not create general obligation of the state and is payable only as authorized by legislative appropriation.

(c) If the department [~~commission~~] borrows money by the issuance of notes, the notes shall be considered a state security for purposes of Chapter 1231, Government Code [~~issued in accordance with the requirements of Subchapter N, except that the maturity limitations in Subsection (b) supersede the maturity limitations in Section 201.963~~].

SECTION 2.05. Section 201.615, Transportation Code, is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

(a) The department shall consider the following factors when developing transportation projects that involve the construction, reconstruction, rehabilitation, or resurfacing of a highway, other than a maintenance resurfacing project:

(1) the extent to which the project promotes safety;

(2) the durability of the project;

(3) the economy of maintenance of the project;

(4) the impact of the project on:

(A) the natural and artificial environment;

(B) the scenic and aesthetic character of the area in which the project is located;

(C) preservation efforts; and

(D) each affected local community and its economy; [~~and~~]

(5) the access for other modes of transportation, including those that promote physically active communities; and

(6) except as provided by Subsection (c), the aesthetic character of the project, including input from each affected local community.

(c) Subsection (a)(6) does not apply to transportation projects that involve the rehabilitation or resurfacing of a bridge or highway.

SECTION 2.06. Section 202.112, Transportation Code, is amended by adding Subsection (d) to read as follows:

(d) An option to acquire property purchased under this section or Section 227.041 may not expire later than the fifth anniversary of the date the option was purchased and may be renewed for subsequent periods that expire not later than the fifth anniversary of the date the option was renewed, by agreement of the commission and the grantor of the option or the grantor's heirs or assigns.

SECTION 2.07. Section 203.004, Transportation Code, is transferred to Subchapter H, Chapter 201, Transportation Code, redesignated as Section 201.617, Transportation Code, and amended to read as follows:

Sec. 201.617 [~~203.004~~]. [~~CONTRACTS FOR MANAGEMENT OF PROPERTY USED FOR~~] MITIGATION OF ADVERSE ENVIRONMENTAL IMPACTS. (a) If authorized by an applicable regulatory authority, to mitigate an adverse environmental impact that is a direct result of a state highway improvement project, the [~~The~~] department may:

(1) pay a fee to an appropriate public agency or private entity in lieu of acquiring or agreeing to manage property;

(2) transfer real property to an appropriate public agency or private entity with or without monetary consideration if the property is used or is proposed to be used for mitigation purposes; or

(3) contract with any public or private entity for the management of property owned by the department and used for [~~the~~] mitigation purposes [~~of an adverse environmental impact directly resulting from the construction or maintenance of a state highway~~].

(a-1) Before the commission may acquire by purchase or condemnation real property to mitigate an adverse environmental impact that is a direct result of a state highway improvement project, the department shall, if authorized by an applicable regulatory authority, offer to purchase a conservation easement from the owner of the real property. If the landowner does not accept the offer to execute a conservation easement before the 61st day after the date the offer is made, the department may acquire the property by purchase or condemnation.

(b) A contract under this section is not subject to Chapter 771, Government Code.

(c) In this section, "management" [~~"management," in connection with property,~~] means administration, control, or maintenance that is required by an agency of the United States.

SECTION 2.08. Section 201.943, Transportation Code, is amended by adding Subsection (l) to read as follows:

(l) Obligations may not be issued if the commission or the department requires that toll roads be included in a regional mobility plan in order for a local authority to receive an allocation from the fund.

SECTION 2.09. Subchapter K, Chapter 201, Transportation Code, is amended by adding Section 201.907 to read as follows:

Sec. 201.907. CONTRACT FOR ENFORCEMENT. The department or a public or private entity contracted to operate a toll project may contract with an agency of this state or a local governmental entity for the services of peace officers employed by the agency or entity to enforce laws related to:

(1) the regulation and control of vehicular traffic on a state highway; and

(2) the payment of the proper toll on a toll project.

SECTION 2.10. Section 203.052(b), Transportation Code, is amended to read as follows:

(b) Property necessary or convenient to a state highway for purposes of Subsection (a) includes an interest in real property, a property right, or a material that the commission determines is necessary or convenient to:

(1) protect a state highway;

(2) drain a state highway;

(3) divert a stream, river, or other watercourse from the right-of-way of a state highway;

(4) store materials or equipment for use or used in the construction or maintenance of a state highway;

(5) construct or operate a warehouse or other facility used in connection with the construction, maintenance, or operation of a state highway;

(6) lay out, construct, or maintain a roadside park;

(7) lay out, construct, or maintain a parking lot that will contribute to maximum use of a state highway with the least possible congestion;

(8) mitigate an adverse environmental effect that directly results from construction or maintenance of a state highway; [~~or~~]

(9) provide a location for an ancillary facility that is anticipated to generate revenue for use in the design, development, financing, construction, maintenance, or operation of a toll project, including a gas station, garage, store, hotel, restaurant, or other commercial facility;

(10) construct or operate a toll booth, toll plaza, service center, or other facility used in connection with the construction, maintenance, or operation of a toll project; or

(11) accomplish any other purpose related to the location, construction, improvement, maintenance, beautification, preservation, or operation of a state highway.

SECTION 2.11. Section 203.0521, Transportation Code, is amended to read as follows:

Sec. 203.0521. ACQUISITION OF REMAINDER. (a) If a proposed acquisition of a tract of real property under Section 203.052 would leave the owner of the property a remainder of the tract, the department may negotiate for and purchase the remainder or any part of a severed real property if the department and the owner agree on terms for the purchase. The department [~~commission~~] shall offer, except as provided by Subsection (f), to purchase a [~~the~~] remainder if the department [~~commission~~] determines that:

(1) the remainder has little or no value or utility to the owner; or

(2) the entire tract could be acquired for substantially the same compensation as the partial tract.

(b) In acquiring real property under Section 203.051, if the acquisition severs an owner's real property, the department shall pay:

(1) the value of the property acquired; and

(2) the damages to the remainder of the owner's property caused by the severance, including damages caused by the inaccessibility of one tract from the other [~~The department may acquire the remainder under this section only if the owner of the property consents to the acquisition of the remainder~~].

(b-1) If a portion of a tract or parcel of real property that, for the then current tax year was appraised for ad valorem tax purposes under a law enacted under Section 1-d or 1-d-1, Article VIII, Texas Constitution, and that is outside the municipal limits or the extraterritorial jurisdiction of a municipality with a population of 25,000 or more is condemned for state highway purposes, the special commissioners shall consider the loss of reasonable access to or from the remaining property in determining the damage to the property owner.

(c) Instead of a single fixed payment for real property purchased under Subsection (a) for a toll project, the department may agree to a payment to the owner in the form of:

(1) an intangible legal right to receive a percentage of identified revenue attributable to the applicable segment of the toll project; or

(2) a right to use, without charge, a segment or part of the toll project [~~The department is not required to make an offer on a remainder if an appraisal or environmental investigation indicates the presence of hazardous materials or substances~~].

(d) A right to receive revenue under Subsection (c)(1) is subject to any pledge of the revenue under the terms of a trust agreement securing bonds issued for the applicable segment of the toll project.

(e) The department and its designated agents may enter the real property [~~a remainder~~] to conduct an appraisal, survey, or environmental investigation to determine whether the department will offer to acquire the real property [~~remainder~~].

(f) The department is not required under Subsection (a) to make an offer on a remainder if an appraisal or environmental investigation indicates the presence of hazardous materials or substances.

SECTION 2.12. Section 203.055, Transportation Code, is amended to read as follows:

Sec. 203.055. ACQUISITION OF RIGHTS IN PUBLIC REAL PROPERTY [~~CONVEYANCE OF PROPERTY BELONGING TO POLITICAL SUBDIVISION OR PUBLIC AGENCY~~]. (a) The governing body of a political subdivision or public agency that owns or is in charge of public real property may consent to the use of the property for highway purposes.

(b) The governing body of a political subdivision or public agency may, without advertisement, convey the title to or rights or easements [~~a right~~] in real property that the department needs[~~:~~

[~~(1) is owned by the political subdivision or public agency; and~~

[~~(2) may be acquired by the commission under this subchapter~~] for highway purposes.

(c) Notwithstanding any law to the contrary, at the request of the department, a political subdivision or a state agency may lease, lend, grant, or convey to the department real property, including a highway or real property

currently devoted to public use, that may be necessary or appropriate to accomplish the department's purposes. The political subdivision or state agency may lease, lend, grant, or convey the property:

(1) on terms the subdivision or agency determines reasonable and fair; and

(2) without advertisement, court order, or other action or formality other than the regular and formal action of the subdivision or agency concerned.

[~~(b) In this section, "political subdivision" includes a county or municipality.~~]

SECTION 2.13. Sections 361.137, 361.138, 361.233, and 361.142, Transportation Code, are transferred to Subchapter D, Chapter 203, Transportation Code, redesignated as Sections 203.066, 203.067, 203.068, and 203.069, Transportation Code, and amended to read as follows:

Sec. 203.066 [~~361.137~~]. DECLARATION OF TAKING FOR TOLL PROJECT. (a) This section and Section 203.067 apply only to a taking for a toll project.

(b) The department may file a declaration of taking with the clerk of the court:

(1) in which the department files a condemnation petition under Chapter 21, Property Code; or

(2) to which the case is assigned.

(c) [~~(b)~~] The department may file the declaration of taking concurrently with or subsequent to the petition but may not file the declaration after the special commissioners have made an award in the condemnation proceeding.

(d) [~~(c)~~] The department may not file a declaration of taking before the completion of:

(1) all environmental documentation, including a final environmental impact statement or a record of decision, that is required by federal or state law;

(2) all public hearings and meetings, including those held in connection with the environmental process and under Sections 201.604 and 203.021, that are required by federal or state law; [~~and~~]

(3) all notifications required by Section 203.022; and

(4) if the property contains a business, farm, or ranch, a written notification to the property owner that the occupants:

(A) will not be required to move before the 90th day after the date of the notice; and

(B) will receive, not later than the 30th day before the date by which the property must be vacated, a written notice specifying the date by which the property must be vacated.

(e) [~~(d)~~] The declaration of taking must include:

(1) a specific reference to the legislative authority for the condemnation;

(2) a description and plot plan of the real property to be condemned, including the following information if applicable:

(A) the municipality in which the property is located;

(B) the street address of the property; and

(C) the lot and block number of the property;

(3) a statement of the property interest to be condemned;

(4) the name and address of each property owner that the department can obtain after reasonable investigation and a description of the owner's interest in the property; and

(5) a statement that immediate possession of all or part of the property to be condemned is necessary for the timely construction of a toll [~~turnpike~~] project.

(f) [~~(d-1)~~] A deposit to the registry of the court of an amount equal to the appraised value, as determined by the department, of the property to be condemned must accompany the declaration of taking.

(g) [~~(e)~~] The date on which the declaration is filed is the date of taking for the purpose of assessing damages to which a property owner is entitled.

(h) The filing of a declaration of taking does not affect the special commissioners' hearing or any other proceeding [~~(f) After a declaration of taking is filed, the case shall proceed as any other case in eminent domain~~] under Chapter 21, Property Code.

Sec. 203.067 [~~361.138~~]. POSSESSION OF PROPERTY FOR TOLL PROJECT. (a) Immediately on the filing of a declaration of taking under Section 203.066, the department shall serve a copy of the declaration on each person possessing an interest in the condemned property by a method prescribed by Section 21.016(d), Property Code. The department shall file evidence of the service with the clerk of the court. On filing of that evidence, the department may take possession of the property pending the litigation.

(b) If the condemned property is a homestead or a portion of a homestead as defined by Section 41.002, Property Code, the department may not take possession sooner than the 91st day after the date of service under Subsection (a).

(c) A property owner or tenant who refuses to vacate the property or yield possession is subject to forcible entry and detainer under Chapter 24, Property Code.

Sec. 203.068 [~~361.233~~]. RIGHT OF ENTRY FOR TOLL PROJECT. (a) The department and its authorized agents may enter any real property, water, or premises in this state to make a survey, sounding, drilling, or examination it determines necessary or appropriate for the purposes of the development of a toll project [~~this chapter~~].

(b) An entry under this section is not:

(1) a trespass; or

(2) an entry under a pending condemnation proceeding.

(c) The department shall make reimbursement for any actual damages to real property, water, or premises that result from an activity described by Subsection (a).

Sec. 203.069 [~~361.142~~]. COVENANTS, CONDITIONS, RESTRICTIONS, OR LIMITATIONS. Covenants, conditions, restrictions, or limitations affecting property acquired in any manner by the department are not binding against the department and do not impair the department's ability to use the property for a purpose authorized by this chapter. The beneficiaries of the

covenants, conditions, restrictions, or limitations are not entitled to enjoin the department from using the property for a purpose authorized under this chapter, but this section does not affect the right of a person to seek damages to the person's property under Section 17, Article I, Texas Constitution.

SECTION 2.14. Section 203.092, Transportation Code, is amended by amending Subsection (a) and adding Subsections (a-1), (a-2), and (a-3) to read as follows:

(a) A utility shall make a relocation of a utility facility at the expense of this state if[~~:~~

[~~(1)~~] relocation of the utility facility is required by improvement of:

(1) a highway in this state established by appropriate authority as part of the National System of Interstate and Defense Highways and the relocation is eligible for federal participation; [~~or~~]

(2) [~~relocation of the utility facility is required by improvement of~~] any segment of the state highway system and the utility has a compensable property interest in the land occupied by the facility to be relocated; or

(3) a segment of the state highway system that was designated by the commission as a turnpike project or toll project before September 1, 2005.

(a-1) Notwithstanding Subsection (a), the department and the utility shall share equally the cost of the relocation of a utility facility that is made before September 1, 2007, and required by the improvement of a nontolled highway to add one or more tolled lanes. This subsection expires September 1, 2007.

(a-2) Notwithstanding Subsection (a), the department and the utility shall share equally the cost of the relocation of a utility facility that is made before September 1, 2007, and required for the improvement of a nontolled highway that has been converted to a turnpike project or toll project. This subsection expires September 1, 2007.

(a-3) Notwithstanding Subsection (a), the department and the utility shall share equally the cost of the relocation of a utility facility that is made before September 1, 2007, and required for the construction on a new location of a turnpike project or toll project or the expansion of such a turnpike project or toll project. This subsection expires September 1, 2007.

SECTION 2.15. Section 221.001(1), Transportation Code, is amended to read as follows:

(1) "Highway" includes a tolled or nontolled public road or part of a tolled or nontolled public road and a bridge, culvert, building, or other necessary structure related to a public road.

SECTION 2.16. Subchapter B, Chapter 222, Transportation Code, is amended by adding Section 222.035 to read as follows:

Sec. 222.035. PRIVATE ACTIVITY BONDS. (a) In this section, "private activity bond" has the meaning assigned by Section 141(a), Internal Revenue Code of 1986.

(b) If the attorney general makes a determination that the United States Congress has enacted legislation amending the Internal Revenue Code of 1986 to include highway facilities or surface freight transfer facilities among the types of facilities for which private activity bonds may be used:

(1) the determination shall be published in the Texas Register; and

(2) Subsections (d), (e), (f), and (g) take effect on the 30th day after the date on which the attorney general's determination is published in the Texas Register.

(c) The attorney general shall monitor federal legislation for purposes of this section.

(d) The department shall establish and administer a program for private activity bonds issued for highway facilities or surface freight transfer facilities in this state.

(e) The program, at a minimum, must include a process by which the department and the Bond Review Board receive and evaluate applications for issuance of private activity bonds for highway facilities or surface freight transfer facilities.

(f) The department shall adopt rules to administer the program established under this section.

(g) To the extent that private activity bonds for highway facilities or surface freight transfer facilities are subject to the state ceiling under Section 146, Internal Revenue Code of 1986, the issuance of bonds for those facilities is governed by Chapter 1372, Government Code.

SECTION 2.17. Section 222.103(h), Transportation Code, is amended to read as follows:

(h) Money granted by the department each fiscal year under this section may not exceed an amount that, together with the money granted for the preceding four fiscal years, results in an average annual expenditure of $2 billion [~~$800 million~~]. This limitation does not apply to money required to be repaid.

SECTION 2.18. Section 222.104, Transportation Code, is amended to read as follows:

Sec. 222.104. PASS-THROUGH TOLLS. (a) In this section, "pass-through toll" means a per vehicle fee or a per vehicle mile fee that is determined by the number of vehicles using a highway.

(b) The department may enter into an agreement with a public or private entity that provides for the payment of pass-through tolls to the public or private entity as reimbursement for the design, development, financing, construction, maintenance, or operation of a toll or nontoll facility on the state highway system by the public or private entity.

(c) The department may enter into an agreement with a private entity that provides for the payment of pass-through tolls to the department as reimbursement for the department's design, development, financing, construction, maintenance, or operation of a toll or nontoll facility on the state highway system that is financed by the department.

(d) The department and a regional mobility authority, a regional tollway authority, or a county acting under Chapter 284 may enter into an agreement [~~with a regional mobility authority, a regional tollway authority, or a county acting under Chapter 284~~] that provides for:

(1) the payment of pass-through tolls to the authority or county as compensation for the payment of all or a portion of the costs of maintaining a state highway or a portion of a state highway transferred to the authority or county after being converted to a toll facility [~~of the authority or county~~] that the department estimates it would have incurred if the highway had not been converted; or

(2) the payment by the authority or county of pass-through tolls to the department as reimbursement for all or a portion of the costs incurred by the department to design, develop, finance, construct, and maintain a state highway or a portion of a state highway transferred to the authority or county after being converted to a toll facility.

(e) [~~(d)~~] The department may use any available funds for the purpose of making a pass-through toll payment under this section.

(f) A regional mobility authority, a regional tollway authority, or a county acting under Chapter 284 is authorized to secure and pay its obligations under an agreement under this section from any lawfully available funds.

(g) [~~(e)~~] The commission may adopt rules necessary to implement this section. Rules adopted under this subsection may include [~~establish~~] criteria for:

(1) determining the amount of pass-through tolls to be paid under this section; and

(2) allocating the risk that traffic volume will be higher or lower than the parties to an agreement under this section anticipated in entering the agreement.

(h) Money repaid to the department under this section shall be deposited to the credit of the fund from which the money was originally provided and is exempt from the application of Section 403.095, Government Code.

(i) To the maximum extent permitted by law, the department may delegate the full responsibility for design, bidding, and construction, including oversight and inspection, to a municipality, county, regional mobility authority, or regional tollway authority with which the department enters into an agreement under this section.

(j) An agreement under this section must provide that the municipality, county, regional mobility authority, or regional tollway authority is required to meet state design criteria, construction specifications, and contract administration procedures unless the department grants an exception.

(k) An agreement under this section must prescribe the roles and responsibilities of the parties and establish time frames for any department reviews or approvals in a manner that will, to the maximum extent possible, expedite the development of the project.

SECTION 2.19. Subchapter E, Chapter 222, Transportation Code, is amended by adding Section 222.1045 to read as follows:

Sec. 222.1045. CONTRACTS OF CERTAIN PUBLIC ENTITIES. (a) In this section, "public entity" means a municipality, county, regional mobility authority, or regional tollway authority.

(b) A public entity may contract with a private entity to act as the public entity's agent in:

(1) the design, financing, maintenance, operation, or construction, including oversight and inspection, of a toll or nontoll facility under Section 222.104(b); or

(2) the maintenance of a state highway or a portion of a state highway subject to an agreement under Section 222.104(d)(1).

(c) A public entity shall:

(1) select a private entity under Subsection (b) on the basis of the private entity's qualifications and experience; and

(2) enter into a project development agreement with the private entity.

(d) A private entity selected shall comply with Chapter 1001, Occupations Code, and all laws related to procuring engineering services and construction bidding that are applicable to the public entity that selected the private entity.

(e) A public entity may assign the public entity's right to payment of pass-through tolls under Section 222.104(b) or (d)(1) to the private entity.

SECTION 2.20. Sections 223.041(b), (c), and (d), Transportation Code, are amended to read as follows:

(b) The department, in setting a minimum level of expenditures in these engineering-related activities that will be paid to the private sector providers, shall provide that [~~index the level of expenditures from the amount set by rider in the General Appropriations Act enacted by the 75th Legislature at its regular session in 1997, expressed as a percentage of the total funds appropriated in Strategy A.1.1. Plan/Design/Manage.~~

[~~(c) Beginning in fiscal year 2000, the department shall increase its expenditures to private sector providers for engineering-related services at least one percentage point per year until~~] the expenditure level for a state fiscal year in all strategies paid to private sector providers for all department engineering-related services for transportation projects is not less than [~~reaches a minimum of~~] 35 percent of the total funds appropriated in Strategy A.1.1. Plan/Design/Manage and Strategy A.1.2. of the General Appropriations Act for that state fiscal biennium. The department shall attempt to make expenditures for engineering-related services with private sector providers under this subsection with historically underutilized businesses, as defined by Section 2161.001, Government Code, in an amount consistent with the applicable provisions of the Government Code, any applicable state disparity study, and in accordance with the good-faith-effort procedures outlined in the rules adopted by the Texas Building and Procurement [~~General Services~~] Commission.

[~~(d) The commission shall provide for hearings at which private sector complaints relating to the selection process are heard.~~]

SECTION 2.21. Chapter 223, Transportation Code, is amended by adding Subchapter E to read as follows:

SUBCHAPTER E. COMPREHENSIVE DEVELOPMENT AGREEMENTS

Sec. 223.201. AUTHORITY. (a) Subject to Section 223.202, the department may enter into a comprehensive development agreement with a private entity to design, develop, finance, construct, maintain, repair, operate, extend, or expand a:

(1) toll project;

(2) facility or a combination of facilities on the Trans-Texas Corridor;

(3) state highway improvement project that includes both tolled and nontolled lanes and may include nontolled appurtenant facilities;

(4) state highway improvement project in which the private entity has an interest in the project; or

(5) state highway improvement project financed wholly or partly with the proceeds of private activity bonds, as defined by Section 141(a), Internal Revenue Code of 1986.

(b) In this subchapter, "comprehensive development agreement" means an agreement that, at a minimum, provides for the design and construction, rehabilitation, expansion, or improvement of a project described in Subsection (a) and may also provide for the financing, acquisition, maintenance, or operation of a project described in Subsection (a).

(c) The department may negotiate provisions relating to professional and consulting services provided in connection with a comprehensive development agreement.

(d) Money disbursed by the department under a comprehensive development agreement is not included in the amount:

(1) required to be spent in a state fiscal biennium for engineering and design contracts under Section 223.041; or

(2) appropriated in Strategy A.1.1. Plan/Design/Manage of the General Appropriations Act for that biennium for the purpose of making the computation under Section 223.041.

(e) The department may authorize the investment of public and private money, including debt and equity participation, to finance a function described by this section.

(f) The authority to enter into comprehensive development agreements provided by this section expires on August 31, 2011.

(g) The department may combine in a comprehensive development agreement under this subchapter a toll project and a rail facility as defined by Section 91.001.

Sec. 223.202. LIMITATION ON DEPARTMENT FINANCIAL PARTICIPATION. The amount of money disbursed by the department from the state highway fund and the Texas mobility fund during a federal fiscal year to pay the costs under comprehensive development agreements may not exceed 40 percent of the obligation authority under the federal-aid highway program that is distributed to this state for that fiscal year.

Sec. 223.203. PROCESS FOR ENTERING INTO COMPREHENSIVE DEVELOPMENT AGREEMENTS. (a) If the department enters into a comprehensive development agreement, the department shall use a competitive procurement process that provides the best value for the department. The department may accept unsolicited proposals for a proposed project or solicit proposals in accordance with this section.

(b) The department shall establish rules and procedures for accepting unsolicited proposals that require the private entity to include in the proposal:

(1) information regarding the proposed project location, scope, and limits;

(2) information regarding the private entity's qualifications, experience, technical competence, and capability to develop the project; and

(3) any other information the department considers relevant or necessary.

(c) The department shall publish a notice advertising a request for competing proposals and qualifications in the Texas Register that includes the criteria to be used to evaluate the proposals, the relative weight given to the criteria, and a deadline by which proposals must be received if:

(1) the department decides to issue a request for qualifications for a proposed project; or

(2) the department authorizes the further evaluation of an unsolicited proposal.

(d) A proposal submitted in response to a request published under Subsection (c) must contain, at a minimum, the information required by Subsections (b)(2) and (3).

(e) The department may interview a private entity submitting an unsolicited proposal or responding to a request under Subsection (c). The department shall evaluate each proposal based on the criteria described in the request for competing proposals and qualifications and may qualify or shortlist private entities to submit detailed proposals under Subsection (f). The department must qualify or shortlist at least two private entities to submit detailed proposals for a project under Subsection (f) unless the department does not receive more than one proposal or one response to a request under Subsection (c).

(e-1) Notwithstanding the requirements of this section, the department may prequalify a private entity to submit a detailed proposal to provide services under a design-build contract. The department is not required to publish a request under Subsection (c) for a design-build contract, and may enter into a design-build contract based solely on an evaluation of detailed proposals submitted in response to a request under Subsection (f) by prequalified private entities. The commission shall adopt rules establishing criteria for the prequalification of a private entity that include the precertification requirements applicable to providers of engineering services and the qualification requirements for bidders on highway construction contracts. Rules for design-build projects adopted pursuant to this subsection shall also provide for an expedited selection process that includes design innovation as a selection criterion.

(e-2) In this section, "design-build contract" means a comprehensive development agreement that includes the design and construction of a turnpike project, does not include the financing of a turnpike project, and may include the acquisition, maintenance, or operation of a turnpike project.

(f) The department shall issue a request for detailed proposals from all private entities qualified or shortlisted under Subsection (e) or prequalified under Subsection (e-1) if the department proceeds with the further evaluation of a proposed project. A request under this subsection may require additional information relating to:

(1) the private entity's qualifications and demonstrated technical competence;

(2) the feasibility of developing the project as proposed;

(3) engineering or architectural designs;

(4) the private entity's ability to meet schedules;

(5) a financial plan, including costing methodology and cost proposals; or

(6) any other information the department considers relevant or necessary.

(g) In issuing a request for proposals under Subsection (f), the department may solicit input from entities qualified under Subsection (e) or any other person. The department may also solicit input regarding alternative technical concepts after issuing a request under Subsection (f).

(h) The department shall evaluate each proposal based on the criteria described in the request for detailed proposals and select the private entity whose proposal offers the apparent best value to the department.

(i) The department may enter into negotiations with the private entity whose proposal offers the apparent best value.

(j) If at any point in negotiations under Subsection (i) it appears to the department that the highest ranking proposal will not provide the department with the overall best value, the department may enter into negotiations with the private entity submitting the next highest ranking proposal.

(k) The department may withdraw a request for competing proposals and qualifications or a request for detailed proposals at any time. The department may then publish a new request for competing proposals and qualifications.

(l) The department may require that an unsolicited proposal be accompanied by a nonrefundable fee sufficient to cover all or part of its cost to review the proposal.

(m) The department shall pay an unsuccessful private entity that submits a responsive proposal in response to a request for detailed proposals under Subsection (f) a stipulated amount in exchange for the work product contained in that proposal. The stipulated amount must be stated in the request for proposals and may not exceed the value of any work product contained in the proposal that can, as determined by the department, be used by the department in the performance of its functions. The use by the department of any design element contained in an unsuccessful proposal is at the sole risk and discretion of the department and does not confer liability on the recipient of the stipulated amount under this section. After payment of the stipulated amount:

(1) the department owns with the unsuccessful proposer jointly the rights to, and may make use of any work product contained in, the proposal, including the technologies, techniques, methods, processes, ideas, and information contained in the project design; and

(2) the use by the unsuccessful proposer of any portion of the work product contained in the proposal is at the sole risk of the unsuccessful proposer and does not confer liability on the department.

(n) The department may prescribe the general form of a comprehensive development agreement and may include any matter the department considers advantageous to the department. The department and the private entity shall finalize the specific terms of a comprehensive development agreement.

(o) Subchapter A of this chapter and Chapter 2254, Government Code, do not apply to a comprehensive development agreement entered into under this subchapter.

Sec. 223.204. CONFIDENTIALITY OF INFORMATION. (a) To encourage private entities to submit proposals under this subchapter, the following information is confidential, is not subject to disclosure, inspection, or copying under Chapter 552, Government Code, and is not subject to disclosure, discovery, subpoena, or other means of legal compulsion for its release until a final contract for a proposed project is entered into:

(1) all or part of a proposal that is submitted by a private entity for a comprehensive development agreement, except information provided under Sections 223.203(b)(1) and (2), unless the private entity consents to the disclosure of the information;

(2) supplemental information or material submitted by a private entity in connection with a proposal for a comprehensive development agreement, unless the private entity consents to the disclosure of the information or material; and

(3) information created or collected by the department or its agent during consideration of a proposal for a comprehensive development agreement.

(b) After the department completes its final ranking of proposals under Section 223.203(h), the final rankings of each proposal under each of the published criteria are not confidential.

Sec. 223.205. PERFORMANCE AND PAYMENT SECURITY. (a) Notwithstanding Section 223.006 and the requirements of Subchapter B, Chapter 2253, Government Code, the department shall require a private entity entering into a comprehensive development agreement under this subchapter to provide a performance and payment bond or an alternative form of security in an amount sufficient to:

(1) ensure the proper performance of the agreement; and

(2) protect:

(A) the department; and

(B) payment bond beneficiaries who have a direct contractual relationship with the private entity or a subcontractor of the private entity to supply labor or material.

(b) A performance and payment bond or alternative form of security shall be in an amount equal to the cost of constructing or maintaining the project.

(c) If the department determines that it is impracticable for a private entity to provide security in the amount described by Subsection (b), the department shall set the amount of the bonds or the alternative forms of security.

(d) A payment or performance bond or alternative form of security is not required for the portion of an agreement that includes only design or planning services, the performance of preliminary studies, or the acquisition of real property.

(e) The amount of the payment security must not be less than the amount of the performance security.

(f) In addition to or instead of a performance and payment bond, the department may require one or more of the following alternative forms of security:

(1) a cashier's check drawn on a financial entity specified by the department;

(2) a United States bond or note;

(3) an irrevocable bank letter of credit; or

(4) any other form of security determined suitable by the department.

(g) The department by rule shall prescribe requirements for an alternative form of security provided under this section.

Sec. 223.206. OWNERSHIP OF HIGHWAY. (a) A state highway or another facility described by Section 223.201(a) that is the subject of a comprehensive development agreement with a private entity, including the facilities acquired or constructed on the project, is public property and shall be owned by the department.

(b) Notwithstanding Subsection (a), the department may enter into an agreement that provides for the lease of rights-of-way, the granting of easements, the issuance of franchises, licenses, or permits, or any lawful uses to enable a private entity to construct, operate, and maintain a project, including supplemental facilities. At the termination of the agreement, the highway or other facilities are to be in a state of proper maintenance as determined by the department and shall be returned to the department in satisfactory condition at no further cost.

(c) A highway asset or toll project that is used or leased by a private entity under Section 202.052 or 228.053 for a commercial purpose is not exempt from ad valorem taxation and is subject to local zoning regulations and building standards.

(d) The department may not enter into a comprehensive development agreement with a private entity under this subchapter or Section 227.023 that provides for the lease, license, or other use of rights-of-way or related property by the private entity for the purpose of constructing, operating, or maintaining an ancillary facility that is used for commercial purposes.

Sec. 223.207. LIABILITY FOR PRIVATE OBLIGATIONS. The department may not incur a financial obligation for a private entity that designs, develops, finances, constructs, maintains, or operates a state highway or other facility under this subchapter. The state or a political subdivision of the state is not liable for any financial or other obligations of a project solely because a private entity constructs, finances, or operates any part of the project.

Sec. 223.208. TERMS OF PRIVATE PARTICIPATION. (a) The department shall negotiate the terms of private participation under this subchapter, including:

(1) methods to determine the applicable cost, profit, and project distribution among the private participants and the department;

(2) reasonable methods to determine and classify toll rates and responsibility for the setting of tolls;

(3) acceptable safety and policing standards; and

(4) other applicable professional, consulting, construction, operation, and maintenance standards, expenses, and costs.

(b) A comprehensive development agreement entered into under this subchapter or Section 227.023(c) may include any provision that the department considers appropriate, including provisions:

(1) providing for the purchase by the department, under terms and conditions agreed to by the parties, of the interest of a private participant in the comprehensive development agreement and related property, including any interest in a highway or other facility designed, developed, financed, constructed, operated, or maintained under the comprehensive development agreement;

(2) establishing the purchase price for the interest of a private participant in the comprehensive development agreement and related property, which price may be determined in accordance with the methodology established by the parties in the comprehensive development agreement;

(3) providing for the payment of obligations incurred pursuant to the comprehensive development agreement, including any obligation to pay the purchase price for the interest of a private participant in the comprehensive development agreement, from any lawfully available source, including securing such obligations by a pledge of revenues of the commission or the department derived from the applicable project, which pledge shall have such priority as the department may establish;

(4) permitting the private participant to pledge its rights under the comprehensive development agreement;

(5) concerning the private participant's right to operate and collect revenue from the project; and

(6) restricting the right of the commission or the department to terminate the private participant's right to operate and collect revenue from the project unless and until any applicable termination payments have been made.

(c) The department may enter into a comprehensive development agreement under this subchapter or under Section 227.023(c) with a private participant only if the project is identified in the department's unified transportation program or is located on a transportation corridor identified in the statewide transportation plan.

(d) Section 223.207 does not apply to the obligations of the department under a comprehensive development agreement.

(e) Notwithstanding anything in Section 201.112 or other law to the contrary, and subject to compliance with the dispute resolution procedures set out in the comprehensive development agreement, an obligation of the commission or the department under a comprehensive development agreement entered into

under this subchapter or Section 227.023(c) to make or secure payments to a person because of the termination of the agreement, including the purchase of the interest of a private participant or other investor in a project, may be enforced by mandamus against the commission, the department, and the comptroller in a district court of Travis County, and the sovereign immunity of the state is waived for that purpose. The district courts of Travis County shall have exclusive jurisdiction and venue over and to determine and adjudicate all issues necessary to adjudicate any action brought under this subsection. The remedy provided by this subsection is in addition to any legal and equitable remedies that may be available to a party to a comprehensive development agreement.

(f) A comprehensive development agreement entered into under this subchapter or Section 227.023(c) and any obligations incurred, issued, or owed under the agreement does not constitute a state security under Chapter 1231, Government Code.

(g) If the department enters into a comprehensive development agreement with a private participant that includes the collection by the private participant of tolls for the use of a toll project, the private participant shall submit to the department for approval:

(1) the methodology for:

(A) the setting of tolls; and

(B) increasing the amount of the tolls;

(2) a plan outlining methods the private participant will use to collect the tolls, including:

(A) any charge to be imposed as a penalty for late payment of a toll; and

(B) any charge to be imposed to recover the cost of collecting a delinquent toll; and

(3) any proposed change in an approved methodology for the setting of a toll or a plan for collecting the toll.

(h) Except as provided by this section, a comprehensive development agreement with a private participant that includes the collection by the private participant of tolls for the use of a toll project may be for a term not longer than 50 years. The comprehensive development agreement may be for a term not longer than 70 years if the agreement:

(1) contains an explicit mechanism for setting the price for the purchase by the department of the interest of the private participant in the comprehensive development agreement and related property, including any interest in a highway or other facility designed, developed, financed, constructed, operated, or maintained under the agreement; and

(2) outlines the benefit the state will derive from having a term longer than 50 years.

Sec. 223.209. RULES, PROCEDURES, AND GUIDELINES GOVERNING SELECTION AND NEGOTIATING PROCESS. (a) The commission shall adopt rules, procedures, and guidelines governing selection of a developer for a comprehensive development agreement and negotiations to

promote fairness, obtain private participants in projects, and promote confidence among those participants. The rules must contain criteria relating to the qualifications of the participants and the award of the contracts.

(b) The department shall have up-to-date procedures for participation in negotiations under this subchapter.

(c) The department has exclusive judgment to determine the terms of an agreement.

SECTION 2.22. Section 224.151(9), Transportation Code, is amended to read as follows:

(9) "Restricted lane" includes:

(A) a high occupancy vehicle lane;

(B) a toll lane under Section 228.007 [~~224.154~~]; and

(C) an exclusive lane.

SECTION 2.23. Subchapter B, Chapter 225, Transportation Code, is amended by adding Section 225.061 to read as follows:

Sec. 225.061. SPEAKER JIMMY TURMAN ROAD. (a) Farm-to-Market Road 68 in Fannin County is designated as Speaker Jimmy Turman Road.

(b) The department shall design and construct markers indicating the road number, the designation as Speaker Jimmy Turman Road, and any other appropriate information.

(c) Except as provided by Subsection (d), the department shall erect a marker at each end of the road and at appropriate intermediate sites along the road.

(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 received under Subsection (d) shall be deposited to the credit of the state highway fund.

SECTION 2.24. Section 227.001(9), Transportation Code, is amended to read as follows:

(9) "Turnpike" has the meaning assigned to toll [~~turnpike~~] project under Section 201.001(b) [~~361.001~~].

SECTION 2.25. Subchapter A, Chapter 227, Transportation Code, is amended by adding Section 227.004 to read as follows:

Sec. 227.004. ENVIRONMENTAL DOCUMENTATION. (a) The department shall include in a draft or final environmental impact statement prepared as part of the environmental review of a Trans-Texas Corridor project information detailing:

(1) the reasons for the immediate and future needs of the project;

(2) the reasonableness of and necessity for the project; and

(3) after a segment of the project has advanced:

(A) the reasons for the immediate and future needs for each mode of transportation in that segment of the project; and

(B) the reasonableness and necessity for each mode of transportation in that segment of the project.

(b) After receiving approval from the federal government, the department shall:

(1) post the final environmental impact statement on the department's Internet website, along with information concerning where a copy of the environmental impact statement may be reviewed or obtained; and

(2) provide notice to each state senator and representative who represents all or part of the area in which a segment of the project is located, and the commissioners court of each county in which a segment of the project is located, that the environmental impact statement is available on the department's Internet website.

SECTION 2.26. Section 227.021, Transportation Code, is amended by adding Subsection (f) to read as follows:

(f) The department may not limit the public's direct access to or from the Trans-Texas Corridor with the intent to benefit the economic viability of an ancillary facility.

SECTION 2.27. Section 227.023, Transportation Code, is amended by amending Subsection (c) and adding Subsections (d), (e), and (f) to read as follows:

(c) To the extent and in the manner that the department may enter into comprehensive development agreements under Chapter 223 [~~361 with regard to turnpikes~~], the department may enter into a comprehensive development agreement under this chapter that provides for the financing, development, design, construction, or operation of a facility or a combination of facilities on the Trans-Texas Corridor. All provisions of Chapter 223 [~~361~~] relating to comprehensive development agreements [~~for turnpikes~~] apply to comprehensive development agreements for facilities under this chapter, including provisions relating to the confidentiality of information. Claims arising under a comprehensive development agreement are subject to Section 201.112.

(d) Property that is licensed or leased to a private entity under Section 227.082 for a commercial purpose is not exempt from ad valorem taxation and is subject to local zoning regulations and building standards.

(e) If a contract between the department and a private entity includes the collection by the private entity of a fee for the use of a facility or a combination of facilities that are part of the Trans-Texas Corridor, the private entity shall submit to the department for approval:

(1) the methodology for:

(A) the setting of the amount of a fee; and

(B) increasing the amount of the fee;

(2) a plan outlining methods the entity will use to collect the fee, including:

(A) any charge to be imposed as a penalty for late payment of the fee; and

(B) any charge to be imposed to recover the cost of collecting a delinquent fee; and

(3) any proposed change in an approved methodology for the setting of the amount of a fee or a plan for collecting the fee.

(f) A contract with a private entity that includes the collection by the private entity of a fee for the use of a facility may not be for a term longer than 50 years.

SECTION 2.28. Section 227.028(a), Transportation Code, is amended to read as follows:

(a) Subject to Section 201.617(a-1), the [~~The~~] department may acquire, maintain, hold, restore, enhance, develop, or redevelop property for the purpose of mitigating a past, present, or future adverse environmental effect arising from the construction or operation of any part of the Trans-Texas Corridor without regard to whether the need for mitigation is established for a particular project.

SECTION 2.29. Section 227.029(b), Transportation Code, is amended to read as follows:

(b) If the department finds it necessary to change the location of a portion of a facility, it shall reconstruct the facility at a [~~the~~] location that the department determines restores the utility of the facility [~~to be most favorable~~]. The reconstructed facility must be of substantially the same type and in as good condition as the original facility. The department shall determine and pay the cost of the reconstruction and any damage incurred in changing the location of a facility.

SECTION 2.30. Subchapter C, Chapter 227, Transportation Code, is amended by adding Sections 227.032, 227.033, and 227.034 to read as follows:

Sec. 227.032. HIGHWAYS INTERSECTING TRANS-TEXAS CORRIDOR. (a) The department shall ensure that, at each intersection of a segment of a state highway that is designated as part of the Trans-Texas Corridor and a segment of a highway that is designated as an interstate highway, state highway, or United States highway, the Trans-Texas Corridor and the interstate highway, state highway, or United States highway are directly accessible to each other.

(b) The department shall make every reasonable effort to connect a segment of a state highway that is designated as part of the Trans-Texas Corridor with significant farm-to-market and ranch-to-market roads and major county and city arterials included in the locally adopted long-range transportation plan as determined by the department, taking into consideration:

(1) financial feasibility;

(2) advice solicited from:

(A) county commissioners courts;

(B) governing bodies of municipalities; and

(C) metropolitan planning organizations;

(3) circuity of travel for landowners;

(4) access for emergency vehicles; and

(5) traffic volume.

Sec. 227.033. GROUNDWATER. (a) After receipt of an unsolicited proposal or after soliciting proposals to construct a facility for the transportation of groundwater from the county in which the groundwater is pumped or extracted, but not later than the 90th calendar day before entering into a lease

agreement, license agreement, or franchise agreement for the use of any part of the Trans-Texas Corridor for that purpose, the department shall provide written notice of the proposal or the solicitation to:

(1) each groundwater conservation district, subsidence district, or other local water authority having territory in the county in which the groundwater is pumped or extracted; and

(2) the commissioners court of the county in which the groundwater is pumped or extracted.

(b) The department may not pump or extract, or allow the pumping or extracting, of groundwater from the right-of-way of the Trans-Texas Corridor unless the groundwater is needed for the construction, operation, or maintenance of a facility other than a public utility facility. If a well drilled and operated on the Trans-Texas Corridor is located inside the boundaries of a groundwater conservation district or a subsidence district, the well is subject to the rules of the district.

Sec. 227.034. PROHIBITION AGAINST LIMITING OR PROHIBITING CONSTRUCTION OF TRANSPORTATION PROJECTS. (a) A contract for the acquisition, construction, maintenance, or operation of a facility on the Trans-Texas Corridor may not contain a provision that limits or prohibits construction or operation of a highway or other transportation project that is:

(1) included in the unified transportation program of the department in effect at the time the contract is executed;

(2) a project of a local government; or

(3) constructed or operated for the safety of pedestrian or vehicular traffic.

(b) In this section, "transportation project" has the meaning assigned by Section 370.003.

SECTION 2.31. Section 227.041, Transportation Code, is amended by amending Subsections (a) and (b) and adding Subsections (b-1), and (d), and (e) to read as follows:

(a) Except as otherwise provided by this subchapter, the commission has the same powers and duties relating to the condemnation and acquisition of real property for a facility of the Trans-Texas Corridor that the commission and the department have relating to the condemnation or purchase of real property under Subchapter D, Chapter 203, [~~361, and Section 361.233~~] for a toll [~~turnpike~~] project. The commission may purchase an option to purchase property, other than real property, a property right, or a right-of-way used for a public utility facility, that the commission is considering for possible use as part of the Trans-Texas Corridor even if it has not been finally decided that the Trans-Texas Corridor will be located on that property. An option to purchase may be purchased along alternative potential routes for the Trans-Texas Corridor even if only one of those potential routes will be selected as the final route.

(b) An interest in real property or a property right is necessary or convenient for the construction or operation of a facility if it is located in or contiguous to an existing or planned segment of the Trans-Texas Corridor or is

needed for mitigation of adverse environmental effects, and if its acquisition will further the primary purposes of the Trans-Texas Corridor. Primary purposes include:

(1) providing right-of-way or a location for a facility;

(2) providing land for mitigation of adverse environmental effects;

(3) providing buffer zones for scenic or safety purposes;

(4) allowing for possible future expansion of any facility; and

(5) providing a location for a gas station, convenience store, or similar facility [~~generating revenue, directly or indirectly, for use in constructing or operating the Trans-Texas Corridor from or for ancillary facilities that directly benefit users of the Trans-Texas Corridor~~].

(b-1) The commission may not acquire property for an ancillary facility that will be used for commercial purposes, except to provide a location between the main lanes of a highway or between a highway and a department rail facility for a gas station, convenience store, or similar facility that:

(1) provides services to and directly benefits users of the Trans-Texas Corridor; and

(2) is not located within 10 miles of an intersection of a segment of a state highway that is designated as part of the Trans-Texas Corridor and a segment of a state highway that is designated as an interstate highway.

(d) If the commission acquires property not immediately needed for department purposes, the department is encouraged to acquire an option to purchase the property under Subsection (a) or to lease back purchased land under Section 227.043 to continue the agricultural or recreational use of the property.

(e) The commission may not condemn property contiguous to an existing or planned segment of the Trans-Texas Corridor for an ancillary facility.

SECTION 2.32. Subchapter D, Chapter 227, Transportation Code, is amended by adding Section 227.047 to read as follows:

Sec. 227.047. ALTERNATIVE ACCESS TO SEVERED PROPERTY. If the department acquires a tract for the Trans-Texas Corridor that severs an owner's property, the department may allow the owner to build, in compliance with federal law, an alternative access between the severed tracts below the tract acquired by the department. An owner must obtain department approval of the design specifications of the alternative access.

SECTION 2.32A. Subchapter D, Chapter 227, Transportation Code, is amended by adding Section 227.0415 to read as follows:

Sec. 227.0415. DEVELOPMENT RIGHTS. (a) In connection with the acquisition of property located in an existing or planned segment of the Trans-Texas Corridor for the purpose of providing a location for an ancillary facility to be used for a commercial purpose, the owner of the property to be acquired may elect to retain the right to develop the property in accordance with the department's development plans. If more than one person owns an interest in the property, the election under this subsection must be made by unanimous written consent of all persons who own an interest in the property.

(b) If the owner does not develop the property within the time period set out in the department's development plans, the department may acquire the development rights for the property by purchase or condemnation.

(c) Property that is developed by the owner under this section is not exempt from ad valorem taxation and is subject to local zoning regulations and building standards.

SECTION 2.33. Section 227.062(c), Transportation Code, is amended to read as follows:

(c) The [~~Each fiscal year, the total amount disbursed by the~~] department may not spend money from the general revenue fund [~~out of state and federal funds shall not exceed $25 million~~] for the construction or purchase of non-highway facilities on the Trans-Texas Corridor except pursuant to a line-item appropriation. [~~This subsection does not apply to funds derived from the issuance of bonds, private investment, donations, the Federal Transit Administration, or the Federal Railroad Administration. This subsection also does not apply to:~~

[~~(1) activities that are subject to the limitation in Subsection (a); and~~

[~~(2) activities described in Subsection (b)(1).~~]

SECTION 2.33A. Section 227.082, Transportation Code, is amended by amending Subsections (c) and (d) and adding Subsection (f) to read as follows:

(c) The department may grant an exclusive or nonexclusive license to access or use any portion of the Trans-Texas Corridor [~~for any purpose~~]. A license granted under this section may be for a definite or indefinite term. The department may not grant an exclusive license to access or use a highway on the Trans-Texas Corridor. The department may not grant an exclusive license for use of the Trans-Texas Corridor by an owner of a public utility facility if the exclusive use is prohibited by other law.

(d) Property may be leased or a franchise or license granted for any purpose reasonably necessary for the effective[~~, including~~] use or operation of a facility and to provide a location between the main lanes of a highway or between a highway and a department rail facility for a gas station, convenience store, or a similar facility that:

(1) provides services to and directly benefits users of the Trans-Texas Corridor; and

(2) is not located within 10 miles of an intersection of a segment of a state highway that is designated as part of the Trans-Texas Corridor and a segment of a state highway that is designated as an interstate highway [~~as a facility and use for unrelated commercial, industrial, or agricultural purpose~~].

(f) The department may lease property or grant a franchise or license under this section only if each agreement has been approved by the commissioners court of the county in which the property, facility, or other part of the Trans-Texas Corridor is located. This subsection does not apply to a lease of property or a grant of a franchise or license to a private entity for the purpose of operating a highway, turnpike, rail facility, or utility facility under a comprehensive development agreement.

SECTION 2.34. Subtitle B, Title 6, Transportation Code, is amended by adding Chapter 228, and Sections 361.001, 361.301, 361.307, and 361.032, Transportation Code, are transferred to Chapter 228, Transportation Code, designated as Subchapter A, and amended to read as follows:

CHAPTER 228. STATE HIGHWAY TOLL PROJECTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 228.001 [~~361.001~~]. DEFINITIONS. In this chapter:

(1) "Air quality project" means a project or program of the department or another governmental entity that the commission determines will mitigate or prevent air pollution caused by the construction, maintenance, or use of public roads. [~~"Authority" means the Texas Turnpike Authority division of the Texas Department of Transportation.~~]

(2) "Bond" means bonds, notes, or other obligations issued under Subchapter C or another law with respect to a toll project or system. [~~"Owner" includes a person having title to or an interest in any property, rights, easements, and interests authorized to be acquired under this chapter.~~]

(3) "Region" means:

(A) a metropolitan statistical area and any county contiguous to that metropolitan statistical area; or

(B) two adjacent districts of the department.

(4) "System" means a toll project or any combination of toll projects designated as a system under Section 228.010.

(5) "Toll [~~"Turnpike~~] project" has the meaning assigned by Section 201.001(b) [~~means a toll highway constructed, maintained, or operated under this chapter as part of the state highway system and any improvement, extension, or expansion to the highway and includes:~~

[~~(A) a facility to relieve traffic congestion and promote safety;~~

[~~(B) a bridge, tunnel, overpass, underpass, interchange, entrance plaza, approach, toll house, service road, ramp, or service station;~~

[~~(C) an administration, storage, or other building the department considers necessary to operate the project;~~

[~~(D) property rights, easements, and interests the department acquires to construct or operate the project;~~

[~~(E) a parking area or structure, rest stop, park, and any other improvement or amenity the department considers necessary, useful, or beneficial for the operation of a turnpike project; and~~

[~~(F) a toll free facility that is appurtenant to and necessary for the efficient operation of a turnpike project, including a service road, access road, ramp, interchange, bridge, or tunnel~~].

(6) "Transportation project" means:

(A) a tolled or nontolled state highway improvement project;

(B) a toll project eligible for department cost participation under Section 222.103;

(C) the acquisition, construction, maintenance, or operation of a rail facility or system under Chapter 91;

(D) the acquisition, construction, maintenance, or operation of a state-owned ferry under Subchapter A, Chapter 342;

(E) a public transportation project under Chapter 455 or 456;

(F) the establishment, construction, or repair of an aviation facility under Chapter 21; and

(G) a passenger rail project of another governmental entity. [~~(4) "Regional tollway authority" means a regional tollway authority created under Chapter 366.~~]

Sec. 228.002 [~~361.301~~]. AGREEMENTS WITH PUBLIC [~~OR PRIVATE~~] ENTITIES [~~TO CONSTRUCT, MAINTAIN, REPAIR, AND OPERATE TURNPIKE PROJECTS~~]. (a) The [~~Notwithstanding Section 361.231 and Subchapter A, Chapter 2254, Government Code, the~~] department may enter into an agreement with a public [~~or private~~] entity[~~, including a toll road corporation,~~] to permit the entity, independently or jointly with the department, to design, develop, finance, construct, maintain, repair, or [~~and~~] operate a toll project [~~turnpike projects~~].

(b) An agreement entered into under this section with a regional tollway authority governed by Chapter 366 may provide that a function described by Subsection (a) that is performed by a regional tollway authority is governed by the provisions of Chapter 366 applicable to the performance of the same function for a turnpike project under that chapter and the rules and procedures adopted by the regional tollway authority under that chapter, in lieu of the laws, rules, or procedures applicable to the department for the performance of the same function. [~~The department may authorize the investment of public and private money, including debt and equity participation, to finance a function described by this section.~~]

Sec. 228.003 [~~361.307~~]. AGREEMENTS WITH [~~PRIVATE ENTITIES AND~~] OTHER GOVERNMENTAL AGENCIES. (a) The department [~~and a private entity jointly~~] may, with the approval of the commission, enter into an agreement with another governmental agency or entity, including a federal agency, an agency of this or another state, including the United Mexican States or a state of the United Mexican States, or a political subdivision, to independently or jointly provide services, to study the feasibility of a toll [~~turnpike~~] project, or to finance, construct, operate, and maintain a toll [~~turnpike~~] project. The department must obtain the approval of the governor to enter into an agreement with an agency of another state, the United Mexican States, or a state of the United Mexican States.

(b) If the department enters into an agreement with a private entity, including a comprehensive development agreement under Subchapter E, Chapter 223, the department and the private entity may jointly enter into an agreement under Subsection (a). [~~The department may not enter into an agreement with the United Mexican States or a state of the United Mexican States without the approval of the governor.~~]

Sec. 228.004. PROMOTION OF TOLL PROJECT. [~~361.032. GENERAL POWERS AND DUTIES. (a) The commission shall adopt rules for the implementation and administration of this chapter.~~

[~~(b)~~] The department may[~~:~~

[~~(1) construct, maintain, repair, and operate turnpike projects in this state;~~

[~~(2) acquire, hold, and dispose of property in the exercise of its powers and the performance of its duties under this chapter;~~

[~~(3) with the approval of the governor and the commission, enter into contracts or operating agreements with similar authorities or agencies of another state, including a state of the United Mexican States;~~

[~~(4) enter into contracts or agreements necessary or incidental to its duties and powers under this chapter;~~

[~~(5) employ consulting engineers, accountants, construction and financial experts, superintendents, managers, and other employees and agents the department considers necessary and set their compensation;~~

[~~(6) receive grants for the construction of a turnpike project and receive contributions of money, property, labor, or other things of value from any source to be used for the purposes for which the grants or contributions are made;~~

[~~(7)~~] notwithstanding Chapter 2113, Government Code, engage in marketing, advertising, and other activities to promote the development and use of toll [~~turnpike~~] projects and may enter into contracts or agreements necessary to procure marketing, advertising, or other promotional services from outside service providers[~~; and~~

[~~(8) do all things necessary or appropriate to carry out the powers expressly granted by this chapter~~].

SECTION 2.35. Subchapter A, Chapter 228, Transportation Code, is amended by adding Sections 228.005 and 228.0055 to read as follows:

Sec. 228.005. REVENUE OF TOLL PROJECT OR SYSTEM. Except as provided by Subchapter C, toll revenue or other revenue derived from a toll project or system that is collected or received by the department under this chapter, and a payment received by the department under a comprehensive development agreement for a toll project or system:

(1) shall be deposited in the state highway fund; and

(2) is exempt from the application of Section 403.095, Government Code.

Sec. 228.0055. USE OF CONTRACT PAYMENTS. Payments received by the department under a comprehensive development agreement may be used by the department to finance the construction, maintenance, or operation of a transportation project or air quality project in the region.

SECTION 2.36. Sections 361.189 and 224.154, Transportation Code, are transferred to Subchapter A, Chapter 228, Transportation Code, redesignated as Sections 228.006 and 228.007, Transportation Code, and amended to read as follows:

Sec. 228.006 [~~361.189~~]. USE OF SURPLUS REVENUE. (a) The commission shall [~~by order may~~] authorize the use of surplus revenue of a toll [~~turnpike~~] project or system to pay the costs of a transportation [~~another turnpike~~] project, highway project, or air quality project within a department district in which any part of the toll project is located [~~the region~~].

(b) The commission may not revise the formula as provided in the department's unified transportation program, or its successor document, in a manner that results in a decrease of a district's allocation because of a payment under Subsection (a).

(c) The commission [~~in the order prescribe terms for the use of the revenue, including the pledge of the revenue, but~~] may not take an action under this section that violates, impairs, or is inconsistent with a bond order, trust agreement, or indenture governing the use of the surplus revenue.

Sec. 228.007 [~~224.154~~]. TOLL LANES. (a) Subject to Section 228.201 [~~Notwithstanding any law of this state relating to charging tolls on existing free public highways, and subject to Section 224.1541(d)~~], the commission may by order authorize the department to charge a toll for the use of one or more lanes of a state highway [~~facility~~], including a high occupancy vehicle lane designated under Section 224.153 or an exclusive lane designated under Section 224.1541[~~, for the purposes of congestion mitigation~~].

(b) If the commission authorizes the department to charge a toll under Subsection (a), the department may enter into an agreement with a regional tollway authority described in Chapter 366, a transit authority described in Chapter 451, 452, or 453, a coordinated county transportation authority under Chapter 460, a regional mobility authority under Chapter 370 [~~361~~], a county acting under Chapter 284, or a transportation corporation:

(1) to design, construct, operate, or maintain a toll lane under this section; and

(2) to charge a toll for the use of one or more lanes of a state highway facility under this section.

(c) The commission may by order authorize the department or the entity contracted to operate the toll lane to set the amount of toll charges. Any toll charges shall be imposed in a reasonable and nondiscriminatory manner.

(d) [~~Revenue generated from toll charges and collection fees assessed by the department in connection with a toll lane shall be deposited in the state highway fund and may be used only for projects for the improvement of the state highway system.~~] Revenue generated from toll charges and collection fees assessed by an entity with whom the department contracts under this section shall be allocated as required by the terms of the agreement.

[~~(e) The powers granted by this section are subject to the restrictions of 23 U.S.C. Section 129.~~]

SECTION 2.37. Section 224.1541(d), Transportation Code, is transferred to Subchapter A, Chapter 228, Transportation Code, redesignated as Section 228.008, Transportation Code, and amended to read as follows:

Sec. 228.008. TOLLS ON EXCLUSIVE LANE. [~~(d)~~] The department may not charge a toll for the use of an exclusive lane unless:

(1) the lanes or multilane facility adjacent to the exclusive lane is tolled; or

(2) a vehicle that is authorized to use the tolled exclusive lane is authorized to use nontolled adjacent lanes or an adjacent nontolled multilane facility.

SECTION 2.38. Section 361.033, Transportation Code, is transferred to Subchapter A, Chapter 228, Transportation Code, redesignated as Section 228.009, Transportation Code, and amended to read as follows:

Sec. 228.009 [~~361.033~~]. AUDIT. Notwithstanding any other law to the contrary, the department shall have an independent certified public accountant audit the department's books and accounts for each toll project or system [~~activities under this chapter~~] at least annually. The audit shall be conducted in accordance with the requirements of any trust agreement securing bonds issued under Subchapter C [~~this chapter~~] that is in effect at the time of the audit. The cost of the audit may be treated as part of the cost of construction or operation of a toll project or system [~~turnpike project~~]. This section does not affect the ability of a state agency to audit the department's books and accounts.

SECTION 2.39. Subchapter A, Chapter 228, Transportation Code, is amended by adding Section 228.010 to read as follows:

Sec. 228.010. ESTABLISHMENT OF TOLL SYSTEMS. (a) If the commission determines that the mobility needs of a region of this state could be most efficiently and economically met by jointly operating two or more toll projects in that region as one operational and financial enterprise, it may create a system composed of those projects. The commission may create more than one system in a region and may combine two or more systems in a region into one system. The department may finance, acquire, construct, and operate additional toll projects in the region as additions to or expansions of a system if the commission determines that the toll project could most efficiently and economically be acquired or constructed if it were part of the system and that the addition will benefit the system.

(b) The revenue of a system shall be accounted for separately and may not be commingled with the revenue of a toll project that is not part of the system or with the revenue of another system.

SECTION 2.40. Chapter 228, Transportation Code, is amended by adding Subchapter B to read as follows:

SUBCHAPTER B. USE AND OPERATION OF TOLL PROJECTS OR SYSTEMS

Sec. 228.051. DESIGNATION. Subject to Section 228.201, the commission by order may designate one or more lanes of a segment of the state highway system as a toll project or system.

Sec. 228.052. OPERATION OF TOLL PROJECT OR SYSTEM. The department may enter into an agreement with one or more persons to provide, on terms approved by the department, personnel, equipment, systems, facilities, and services necessary to operate a toll project or system, including the operation of toll plazas and lanes and customer service centers and the collection of tolls.

SECTION 2.41. Sections 361.179, 361.252, 361.253, 361.254, 361.255, and 361.256, Transportation Code, are transferred to Subchapter B, Chapter 228, Transportation Code, redesignated as Sections 228.053, 228.054, 228.055, 228.056, 228.057, and 228.058, Transportation Code, and amended to read as follows:

Sec. 228.053 [~~361.179~~]. REVENUE. (a) The department may:

(1) impose tolls for the use of each toll [~~turnpike~~] project or system and the different segments or parts of each [~~turnpike~~] project or system; and

(2) notwithstanding anything in Chapter 202 to the contrary, contract with a person for the use of part of a toll [~~turnpike~~] project or system or lease part of a toll [~~turnpike~~] project or system for a gas station, garage, store, hotel, restaurant, railroad tracks, utilities, and telecommunications facilities and equipment and set the terms for the use or lease.

(b) The tolls shall be set so that, at a minimum, the aggregate of tolls from the toll [~~turnpike~~] project or system:

(1) provides a fund sufficient with other revenue and contributions, if any, to pay:

(A) the cost of maintaining, repairing, and operating the project or system; and

(B) the principal of and interest on the bonds issued under Subchapter C for the project or system as those bonds become due and payable; and

(2) creates reserves for the purposes listed under Subdivision (1).

(c) The tolls are not subject to supervision or regulation by any other state agency.

(d) The tolls and other revenue derived from the toll [~~turnpike~~] project or system for which bonds were issued, except the part necessary to pay the cost of maintenance, repair, and operation and to provide reserves for those costs as may be provided in the order authorizing the issuance of the bonds or in the trust agreement securing the bonds, shall be set aside at regular intervals as may be provided in the order or trust agreement in a sinking fund that is pledged to and charged with the payment of:

(1) interest on the bonds as it becomes due;

(2) principal of the bonds as it becomes due;

(3) necessary charges of paying agents for paying principal and interest; and

(4) the redemption price or the purchase price of bonds retired by call or purchase as provided by the bonds.

(e) Use and disposition of money to the credit of the sinking fund are subject to the order authorizing the issuance of the bonds or to the trust agreement.

(f) The revenue and disbursements for each toll [~~turnpike~~] project or system shall be kept separately. The revenue from one [~~turnpike~~] project may not be used to pay the cost of another project except as authorized by Sections 228.0055 and 228.006 [~~Section 361.189~~].

(g) Money in the sinking fund, less the reserve provided by the order or trust agreement, if not used within a reasonable time to purchase bonds for cancellation, shall be applied to the redemption of bonds at the applicable redemption price.

Sec. 228.054 [~~361.252~~]. FAILURE OR REFUSAL TO PAY TOLL; OFFENSE. (a) The operator of a vehicle, other than an authorized emergency vehicle, that is driven or towed through a toll collection facility shall pay the proper toll.

(b) The operator of a vehicle who drives or tows a vehicle through a toll collection facility and does not pay the proper toll commits an offense.

(c) An offense under this section is a misdemeanor punishable by a fine not to exceed $250.

(d) In this section, "authorized emergency vehicle" has the meaning assigned by Section 541.201.

Sec. 228.055 [~~361.253~~]. ADMINISTRATIVE FEE; NOTICE; OFFENSE. (a) In the event of nonpayment of the proper toll as required by Section 228.054 [~~361.252~~], on issuance of a written notice of nonpayment, the registered owner of the nonpaying vehicle is liable for the payment of both the proper toll and an administrative fee.

(b) The department may impose and collect the administrative fee, so as to recover the cost of collecting the unpaid toll, not to exceed $100. The department shall send a written notice of nonpayment to the registered owner of the vehicle at that owner's address as shown in the vehicle registration records of the department by first class mail [~~not later than the 30th day after the date of the alleged failure to pay~~] and may require payment not sooner than the 30th day after the date the notice was mailed. The registered owner shall pay a separate toll and administrative fee for each event of nonpayment under Section 228.054 [~~361.252~~].

(c) The registered owner of a vehicle for which the proper toll was not paid who is mailed a written notice of nonpayment under Subsection (b) and fails to pay the proper toll and administrative fee within the time specified by the notice of nonpayment commits an offense. Each failure to pay a toll or administrative fee under this subsection is a separate offense.

(d) It is an exception to the application of Subsection (a) or (c) if the registered owner of the vehicle is a lessor of the vehicle and not later than the 30th day after the date the notice of nonpayment is mailed provides to the department a copy of the rental, lease, or other contract document covering the vehicle on the date of the nonpayment under Section 228.054 [~~361.252~~], with the name and address of the lessee clearly legible. If the lessor provides the required information within the period prescribed, the department may send a notice of nonpayment to the lessee at the address shown on the contract document by first class mail before the 30th day after the date of receipt of the required information from the lessor. The lessee of the vehicle for which the proper toll was not paid who is mailed a written notice of nonpayment under this subsection and fails to pay the proper toll and administrative fee within the time specified by the notice of nonpayment commits an offense. The lessee shall pay a separate toll and administrative fee for each event of nonpayment. Each failure to pay a toll or administrative fee under this subsection is a separate offense.

(e) It is an exception to the application of Subsection (a) or (c) if the registered owner of the vehicle transferred ownership of the vehicle to another person before the event of nonpayment under Section 228.054 [~~361.252~~] occurred, submitted written notice of the transfer to the department in accordance with Section 520.023, and, before the 30th day after the date the notice of nonpayment is mailed, provides to the department the name and address of the person to whom the vehicle was transferred. If the former owner of the vehicle provides the required information within the period prescribed, the department may send a notice of nonpayment to the person to whom ownership of the vehicle was transferred at the address provided the former owner by first class mail before the 30th day after the date of receipt of the required information from the former owner. The subsequent owner of the vehicle for which the proper toll was not paid who is mailed a written notice of nonpayment under this subsection and fails to pay the proper toll and administrative fee within the time specified by the notice of nonpayment commits an offense. The subsequent owner shall pay a separate toll and administrative fee for each event of nonpayment under Section 228.054 [~~361.252~~]. Each failure to pay a toll or administrative fee under this subsection is a separate offense.

(f) An offense under this section is a misdemeanor punishable by a fine not to exceed $250.

(g) The court in which a person is convicted of an offense under this section shall also collect the proper toll and administrative fee and forward the toll and fee to the department for deposit in the depository bank used for that purpose.

(h) In this section, "registered owner" means the owner of a vehicle as shown on the vehicle registration records of the department or the analogous department or agency of another state or country.

(i) The department may contract, in accordance with Section 2107.003, Government Code, with a person to collect the unpaid toll and administrative fee before referring the matter to a court with jurisdiction over the offense.

Sec. 228.056 [~~361.254~~]. PRESUMPTIONS; PRIMA FACIE EVIDENCE; DEFENSES. (a) In the prosecution of an offense under Section 228.054 [~~361.252~~] or 228.055 [~~361.253~~], proof that the vehicle was driven or towed through the toll collection facility without payment of the proper toll may be shown by a video recording, photograph, electronic recording, or other appropriate evidence, including evidence obtained by automated enforcement technology.

(b) In the prosecution of an offense under Section 228.055(c) [~~361.253(c)~~], (d), or (e):

(1) it is presumed that the notice of nonpayment was received on the fifth day after the date of mailing;

(2) a computer record of the department of the registered owner of the vehicle is prima facie evidence of its contents and that the defendant was the registered owner of the vehicle when the underlying event of nonpayment under Section 228.054 [~~361.252~~] occurred; and

(3) a copy of the rental, lease, or other contract document covering the vehicle on the date of the underlying event of nonpayment under Section 228.054 [~~361.252~~] is prima facie evidence of its contents and that the defendant was the lessee of the vehicle when the underlying event of nonpayment under Section 228.054 [~~361.252~~] occurred.

(c) It is a defense to prosecution under Section 228.055(c) [~~361.253(e)~~], (d), or (e) that the motor vehicle in question was stolen before the failure to pay the proper toll occurred and had not been recovered before the failure to pay occurred, but only if the theft was reported to the appropriate law enforcement authority before the earlier of:

(1) the occurrence of the failure to pay; or

(2) eight hours after the discovery of the theft.

Sec. 228.057 [~~361.255~~]. ELECTRONIC TOLL COLLECTION [~~USE AND RETURN OF TRANSPONDERS~~]. (a) For purposes of this section, a "transponder" means a device, placed on or within an automobile, that is capable of transmitting information used to assess or to collect tolls. A transponder is "insufficiently funded" when there are no remaining funds in the account in connection with which the transponder was issued.

(b) Any peace officer of this state may seize a stolen or insufficiently funded transponder and return it to the department, except that an insufficiently funded transponder may not be seized sooner than the 30th day after the date the department has sent a notice of delinquency to the holder of the account.

(c) The department may enter into an agreement with one or more persons to market and sell transponders for use on department toll roads.

(d) The department may charge reasonable fees for administering electronic toll collection customer accounts.

(e) Electronic toll collection customer account information, including contact and payment information and trip data, is confidential and not subject to disclosure under Chapter 552, Government Code.

(f) A contract for the acquisition, construction, maintenance, or operation of a toll project must ensure the confidentiality of all electronic toll collection customer account information under Subsection (e).

Sec. 228.058 [~~361.256~~]. AUTOMATED ENFORCEMENT TECHNOLOGY. (a) To aid in the collection of tolls and in the enforcement of toll violations, the department may use automated enforcement technology that it determines is necessary, including automatic vehicle license plate identification photography and video surveillance, by electronic imaging or photographic copying.

(b) Automated enforcement technology approved by the department under Subsection (a) may be used only for the purpose of producing, depicting, photographing, or recording an image of a license plate attached to the front or rear of a vehicle.

(c) This section does not authorize the use of automated enforcement technology for any other purpose.

(d) Evidence obtained from technology approved by the department under Subsection (a) may not be used in the prosecution of an offense other than under Section 228.054 [~~361.252~~] or 228.055 or in the prosecution of a capital offense [~~361.253~~].

SECTION 2.42. Sections 361.004, 361.171, 361.172, 361.173, 361.174, 361.1751, 361.1752, 361.1753, 361.176, 361.177, 361.178, 361.183, 361.185, 361.186, 361.187, and 361.188, Transportation Code, are transferred to Chapter 228, Transportation Code, designated as Subchapter C, and amended to read as follows:

SUBCHAPTER C. TOLL REVENUE BONDS

Sec. 228.101 [~~361.004~~]. CONSTRUCTION COSTS. (a) The cost of [~~acquisition,~~] construction, improvement, extension, or expansion of a toll [~~turnpike~~] project or system under this chapter includes the cost of:

(1) the actual acquisition, design, development, planning, financing, construction, improvement, extension, or expansion of the project or system;

(2) acquisition of real property, rights-of-way, property rights, easements, and interests;

(3) the acquisition of machinery, [~~and~~] equipment, software, and intellectual property;

(4) interest before, during, and for one year after construction, improvement, extension, or expansion;

(5) traffic estimates, engineering, [~~and~~] legal and other advisory services, plans, specifications, surveys, appraisals, cost and revenue estimates, and other expenses necessary or incident to determining the feasibility of the construction, improvement, extension, or expansion;

(6) necessary or incidental administrative, legal, and other expenses;

(7) financing; and

(8) placement of the project or system in operation and expenses related to the initial operation of the [~~turnpike~~] project or system.

(b) Costs attributable to a toll [~~turnpike~~] project or system for which bonds are issued that are incurred before the issuance of the bonds may be reimbursed from the proceeds of the sale of the bonds.

Sec. 228.102 [~~361.171~~]. ISSUANCE OF [~~TURNPIKE REVENUE~~] BONDS. (a) The commission by order may authorize the issuance of toll [~~turnpike~~] revenue bonds to pay all or part of the cost of a toll [~~turnpike~~] project or system. [~~Each project shall be financed and built by a separate bond issue.~~] The proceeds of a bond issue may be used solely for the payment of the project or system for which the bonds were issued and may not be divided between or among two or more projects. Each project is a separate undertaking, the cost of which shall be determined separately.

(b) As determined in the order authorizing the issuance, the bonds of each issue shall:

(1) be dated;

(2) bear interest at the rate or rates provided by the order and beginning on the dates provided by the order and as authorized by law, or bear no interest;

(3) mature at the time or times provided by the order, not exceeding 40 years from their date or dates; and

(4) be made redeemable before maturity, at the price or prices and under the terms provided by the order.

(c) The commission may sell the bonds at public or private sale in the manner and for the price it determines to be in the best interest of the department.

(d) The proceeds of each bond issue shall be disbursed in the manner and under the restrictions, if any, the commission provides in the order authorizing the issuance of the bonds or in the trust agreement securing the bonds.

(e) If the proceeds of a bond issue are less than the toll [~~turnpike~~] project or system cost, additional bonds may be issued in the same manner to pay the costs of a [~~turnpike~~] project or system. Unless otherwise provided in the order authorizing the issuance of the bonds or in the trust agreement securing the bonds, the additional bonds are on a parity with and are payable, without preference or priority, from the same fund as the bonds first issued. In addition, the commission may issue bonds for a [~~turnpike~~] project or system secured by a lien on the revenue of the [~~turnpike~~] project or system subordinate to the lien on the revenue securing other bonds issued for the [~~turnpike~~] project or system.

(f) If the proceeds of a bond issue exceed the cost of the toll [~~turnpike~~] project or system for which the bonds were issued, the surplus shall be segregated from the other money of the commission and used only for the purposes specified in the order authorizing the issuance.

(g) In addition to other permitted uses, the proceeds of a bond issue may be used to pay costs incurred before the issuance of the bonds, including costs of environmental review, design, planning, acquisition of property, relocation assistance, construction, and operation.

(h) Bonds issued and delivered under this subchapter [~~chapter~~] and interest coupons on the bonds are a security under Chapter 8, Business & Commerce Code.

(i) Bonds issued under this subchapter [~~chapter~~] and income from the bonds, including any profit made on the sale or transfer of the bonds, are exempt from taxation in this state.

Sec. 228.103 [~~361.172~~]. APPLICABILITY OF OTHER LAW; CONFLICTS. All laws affecting the issuance of bonds by governmental entities, including Chapters 1201, 1202, 1204, 1207, and 1371, Government Code, apply to bonds issued under this subchapter [~~chapter~~]. To the extent of a conflict between those laws and this subchapter [~~chapter~~], the provisions of this subchapter [~~chapter~~] prevail.

Sec. 228.104 [~~361.173~~]. PAYMENT OF BONDS; CREDIT OF STATE NOT PLEDGED. (a) The principal of, interest on, and any redemption premium on bonds issued by the commission under this subchapter [~~chapter~~] are payable solely from:

(1) the revenue of the toll [~~turnpike~~] project or system for which the bonds are issued, including tolls pledged to pay the bonds;

(2) the proceeds of bonds issued for the [~~turnpike~~] project or system;

(3) the amounts deposited in a debt service reserve fund as required by the trust agreement securing bonds issued for the [~~turnpike~~] project or system; [~~and~~]

(4) amounts received under a credit agreement relating to the [~~turnpike~~] project or system for which the bonds are issued;

(5) surplus revenue of another project or system as authorized by Section 228.006; and

(6) amounts received by the department:

(A) as pass-through tolls under Section 222.104;

(B) under an agreement with a local governmental entity entered into under Section 228.254;

(C) under other agreements with a local governmental entity relating to the project or system for which the bonds are issued; and

(D) under a comprehensive development agreement entered into under Section 223.201.

(b) Bonds issued under this subchapter [~~chapter~~] do not constitute a debt of the state or a pledge of the faith and credit of the state. Each bond must contain on its face a statement to the effect that:

(1) the state, the commission, and the department are not obligated to pay the bond or the interest on the bond from a source other than the amount pledged to pay the bond and the interest on the bond; and

(2) the faith and credit and the taxing power of the state are not pledged to the payment of the principal of or interest on the bond.

(c) The commission and the department may not incur financial obligations that cannot be paid from tolls or revenue derived from owning or operating toll [~~turnpike~~] projects or systems or from money provided by law.

Sec. 228.105 [~~361.174~~]. SOURCES OF PAYMENT OF AND SECURITY FOR TOLL REVENUE [~~TURNPIKE PROJECT~~] BONDS. Notwithstanding any other provisions of this subchapter, toll revenue [~~chapter, turnpike project~~] bonds issued by the commission may:

(1) be payable from and secured by:

(A) payments made under an agreement with a local governmental entity as provided by Section 228.254 [~~Subchapter A, Chapter 362~~];

(B) the proceeds of bonds issued for the toll [~~turnpike~~] project or system; [~~or~~]

(C) amounts deposited in a debt service reserve fund as required by the trust agreement securing bonds issued for the [~~turnpike~~] project or system; or

(D) surplus revenue of another toll project or system as authorized by Section 228.006; and

(2) state on their faces any pledge of revenue or taxes and any security for the bonds under the agreement.

Sec. 228.106 [~~361.1751~~]. INTERIM BONDS. (a) The commission may, before issuing definitive bonds, issue interim bonds, with or without coupons, exchangeable for definitive bonds.

(b) An order authorizing interim bonds may provide that the interim bonds recite that the bonds are issued under this subchapter [~~chapter~~]. The recital is conclusive evidence of the validity and the regularity of the bonds' issuance.

Sec. 228.107 [~~361.1752~~]. EFFECT OF LIEN. (a) A lien on or a pledge of revenue, a contract payment, or a pledge of money to the payment of bonds issued under this subchapter is valid and effective in accordance with Chapter 1208, Government Code, and [~~from a turnpike project or on a reserve, replacement, or other fund established in connection with a bond issued under this chapter~~]:

(1) is enforceable in any court at the time of payment for and delivery of the bond;

(2) applies to each item on hand or subsequently received;

(3) applies without physical delivery of an item or other act; and

(4) is enforceable in any court against any person having a claim, in tort, contract, or other remedy, against the commission or the department without regard to whether the person has notice of the lien or pledge.

(b) An order authorizing the issuance of bonds is not required to be recorded except in the regular records of the department.

Sec. 228.108 [~~361.1753~~]. APPROVAL OF BONDS BY ATTORNEY GENERAL. (a) The commission shall submit to the attorney general for examination the record of proceedings relating to bonds authorized under this subchapter [~~chapter~~]. The record shall include the bond proceedings and any contract securing or providing revenue for the payment of the bonds.

(b) If the attorney general determines that the bonds, the bond proceedings, and any supporting contract are authorized by law, the attorney general shall approve the bonds and deliver to the comptroller:

(1) a copy of the legal opinion of the attorney general stating the approval; and

(2) the record of proceedings relating to the authorization of the bonds.

(c) On receipt of the legal opinion of the attorney general and the record of proceedings relating to the authorization of the bonds, the comptroller shall register the record of proceedings.

(d) After approval by the attorney general, the bonds, the bond proceedings, and any supporting contract are valid, enforceable, and incontestable in any court or other forum for any reason and are binding obligations according to their terms for all purposes.

Sec. 228.109 [~~361.176~~]. TRUST AGREEMENT. (a) Bonds issued under this subchapter [~~chapter~~] may be secured by a trust agreement between the commission and a corporate trustee that is a trust company or a bank that has the powers of a trust company.

(b) A trust agreement may pledge or assign the tolls and other revenue to be received but may not convey or mortgage any part of a toll [~~turnpike~~] project or system.

(c) A trust agreement may not evidence a pledge of the revenue of a toll [~~turnpike~~] project or system except:

(1) to pay the cost of maintaining, repairing, and operating the project or system;

(2) to pay the principal of, interest on, and any redemption premium on the bonds as they become due and payable;

(3) to create and maintain reserves for the purposes described by Subdivisions (1) and (2), as prescribed by Section 228.053 [~~361.179~~]; and

(4) as otherwise provided by law.

(d) Notwithstanding Subsection (c), surplus revenue may be used for a transportation or air quality [~~another turnpike~~] project as authorized by Section 228.006 [~~361.189~~].

(e) A trust agreement may:

(1) set forth the rights and remedies of the bondholders and the trustee;

(2) restrict the individual right of action by bondholders as is customary in trust agreements or trust indentures securing corporate bonds and debentures; and

(3) contain provisions the commission determines reasonable and proper for the security of the bondholders.

(f) The expenses incurred in carrying out a trust agreement may be treated as part of the cost of operating the toll [~~turnpike~~] project or system.

Sec. 228.110 [~~361.177~~]. PROVISIONS PROTECTING AND ENFORCING RIGHTS AND REMEDIES OF BONDHOLDERS. A trust agreement or order providing for the issuance of bonds may contain provisions to protect and enforce the rights and remedies of the bondholders, including:

(1) covenants establishing the commission's duties relating to:

(A) the acquisition of property;

(B) the design, development, financing, construction, improvement, expansion, maintenance, repair, operation, and insurance of the toll [~~turnpike~~] project or system in connection with which the bonds were authorized; and

(C) the custody, safeguarding, and application of money;

(2) covenants prescribing events that constitute default;

(3) [~~covenants prescribing terms on which any or all of the bonds become or may be declared due before maturity;~~

[~~(4)~~] covenants relating to the rights, powers, liabilities, or duties that arise on the breach of a duty of the commission, including the right of the trustee to bring actions against the commission or the department in any state court to enforce the covenants in the agreement, and the sovereign immunity of the state is waived for that purpose; and

(4) [~~(5)~~] provisions for the employment of consulting engineers in connection with the construction or operation of the [~~turnpike~~] project or system.

Sec. 228.111 [~~361.178~~]. FURNISHING OF INDEMNIFYING BONDS OR PLEDGE OF SECURITIES. A bank or trust company incorporated under the laws of this state that acts as depository of the proceeds of bonds or of revenue may furnish indemnifying bonds or pledge securities that the department requires.

Sec. 228.112 [~~361.183~~]. FEASIBILITY STUDY BY MUNICIPALITY, COUNTY, OR PRIVATE GROUP. (a) One or more municipalities, one or more counties, a combination of municipalities and counties, or a private group or combination of individuals in this state may pay all or part of the expenses of studying the cost and feasibility and any other expenses relating to:

(1) the preparation and issuance of toll [~~turnpike~~] revenue bonds for the construction of a proposed toll [~~turnpike~~] project or system;

(2) the improvement, extension, or expansion of an existing project or system; or

(3) the use of private participation under Subchapter E, Chapter 223 [~~I~~].

(b) Money spent under Subsection (a) for a proposed toll project or system [~~turnpike~~] is reimbursable, with the consent of the commission, to the person paying the expenses out of the proceeds from toll [~~turnpike~~] revenue bonds issued for or other proceeds that may be used for the financing, design, development, construction, improvement, extension, expansion, or operation of the project.

Sec. 228.113 [~~361.185~~]. TRUST FUND. (a) All money received under this subchapter [~~chapter~~], whether as proceeds from the sale of bonds or as revenue, is a trust fund to be held and applied as provided by this subchapter [~~chapter~~]. Notwithstanding any other law, including Section 9, Chapter 1123, Acts of the 75th Legislature, Regular Session, 1997, and without the prior approval of the comptroller, funds held under this subchapter [~~chapter~~] shall be held in trust by a banking institution chosen by the department or, at the discretion of the department, in trust in the state treasury outside the general revenue fund.

(b) The order authorizing the issuance of bonds or the trust agreement securing the bonds shall provide that an officer to whom or a bank or trust company to which the money is paid shall act as trustee of the money and shall hold and apply the money for the purpose of the order or trust agreement, subject to this subchapter [~~chapter~~] and the order or trust agreement.

Sec. 228.114 [~~361.186~~]. REMEDIES. Except to the extent restricted by a trust agreement, a holder of a bond issued under this subchapter [~~chapter~~] and a trustee under a trust agreement may:

(1) protect and enforce by a legal proceeding in any court a right under:

(A) this subchapter [~~chapter~~] or another law of this state;

(B) the trust agreement; or

(C) the order authorizing the issuance of the bond; and

(2) compel the performance of a duty this subchapter [~~chapter~~], the trust agreement, or the order requires the commission or the department or an officer of the commission or the department to perform, including the imposing of tolls.

Sec. 228.115 [~~361.187~~]. EXEMPTION FROM TAXATION OR ASSESSMENT. (a) The commission is exempt from taxation of or assessments on:

(1) a toll [~~turnpike~~] project or system;

(2) property the department acquires or uses under this subchapter [~~chapter~~]; or

(3) income from property described by Subdivision (1) or (2).

(b) Bonds issued under this subchapter [~~chapter~~] and income from the bonds, including any profit made on the sale or transfer of the bonds, are exempt from taxation in this state.

Sec. 228.116 [~~361.188~~]. VALUATION OF BONDS SECURING DEPOSIT OF PUBLIC FUNDS. Bonds of the commission may secure the deposit of public funds of the state or a political subdivision of the state to the extent of the lesser of the face value of the bonds or their market value.

SECTION 2.43. Subchapter C, Chapter 228, Transportation Code, is amended by adding Section 228.117 to read as follows:

Sec. 228.117. FUNDING FOR DEPARTMENT DISTRICT. The commission may not revise the formula as provided in the department's unified transportation program, or its successor document, in a manner that results in a decrease of a district's allocation because revenue bonds are issued for a toll project located within the department district.

SECTION 2.44. Subchapter H, Chapter 361, Transportation Code, is transferred to Chapter 228, Transportation Code, redesignated as Subchapter D, and amended to read as follows:

SUBCHAPTER D [~~H~~]. TRANSFER OF TOLL [~~TURNPIKE~~] PROJECT

[~~Sec. 361.281. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to:~~

[~~(1) a county with a population of more than 1.5 million;~~

[~~(2) a local government corporation serving a county with a population of more than 1.5 million;~~

[~~(3) an adjacent county in a joint turnpike authority with a county with a population of more than 1.5 million;~~

[~~(4) a municipality with a population of more than 170,000 that is adjacent to the United Mexican States;~~

[~~(5) a regional tollway authority created under Chapter 366; or~~

[~~(6) a regional mobility authority organized under Chapter 370 or Section 361.003, as that section existed before June 22, 2003.~~]

Sec. 228.151 [~~361.282~~]. LEASE, SALE, OR TRANSFER [~~CONVEYANCE~~] OF TOLL [~~TURNPIKE~~] PROJECT OR SYSTEM. (a) The department may lease, sell, or transfer [~~convey~~] in another manner a toll [~~turnpike~~] project or system, including a nontolled state highway or a segment of a nontolled state highway converted to a toll project under Subchapter E, to a governmental entity that has the authority to operate a tolled highway [~~county, a municipality, regional tollway authority, regional mobility authority,~~] or a local government corporation created under Chapter 431.

(b) The commission and the governor must approve the transfer of the toll [~~turnpike~~] project or system as being in the best interests of the state and the entity receiving the [~~turnpike~~] project or system.

Sec. 228.152 [~~361.283~~]. DISCHARGE OF OUTSTANDING BONDED INDEBTEDNESS. An agreement to lease, sell, or convey a toll [~~turnpike~~] project or system under Section 228.151 [~~361.282~~] must provide for the discharge and final payment or redemption of the department's outstanding bonded indebtedness for the project or system.

Sec. 228.153 [~~361.284~~]. REPAYMENT OF DEPARTMENT'S EXPENDITURES. (a) Except as provided by Subsection (b), an agreement to lease, sell, or convey a toll [~~turnpike~~] project or system under Section 228.151 [~~361.282~~] must provide for the repayment of any expenditures of the department for the financing, design, development, construction, operation, or [~~and~~] maintenance of the highway [~~project~~] that have not been reimbursed with the proceeds of bonds issued for the highway [~~project~~].

(b) The commission may waive repayment of all or a portion of the expenditures if it finds that the transfer will result in substantial net benefits to the state, the department, and the public that equal or exceed the amount of repayment waived.

Sec. 228.154 [~~361.285~~]. APPROVAL OF AGREEMENT BY ATTORNEY GENERAL. (a) An agreement for the lease, sale, or conveyance of a toll [~~turnpike~~] project or system under this subchapter shall be submitted to the attorney general for approval as part of the records of proceedings relating to the issuance of bonds of the governmental entity [~~county, municipality, regional tollway authority, regional mobility authority, or local government corporation~~].

(b) If the attorney general determines that the agreement is in accordance with law, the attorney general shall approve the agreement and deliver to the commission a copy of the legal opinion of the attorney general stating that approval.

SECTION 2.45. Chapter 228, Transportation Code, is amended by adding Subchapter E to read as follows:

SUBCHAPTER E. LIMITATION ON TOLL FACILITY DETERMINATION; CONVERSION OF NONTOLLED STATE HIGHWAY

Sec. 228.201. LIMITATION ON TOLL FACILITY DESIGNATION. (a) Except as provided by Section 228.2015, the department may not operate a nontolled state highway or a segment of a nontolled state highway as a toll project, and may not transfer a highway or segment to another entity for operation as a toll project, unless:

(1) the commission by order designated the highway or segment as a toll project before the contract to construct the highway or segment was awarded;

(2) the highway or segment was open to traffic as a turnpike project on or before September 1, 2005;

(3) the project was designated as a toll project in a plan or program of a metropolitan planning organization on or before September 1, 2005;

(4) the highway or segment is reconstructed so that the number of nontolled lanes on the highway or segment is greater than or equal to the number in existence before the reconstruction;

(5) a facility is constructed adjacent to the highway or segment so that the number of nontolled lanes on the converted highway or segment and the adjacent facility together is greater than or equal to the number in existence on the converted highway or segment before the conversion;

(6) subject to Subsection (b), the highway or segment was open to traffic as a high-occupancy vehicle lane on May 1, 2005; or

(7) the commission converts the highway or segment to a toll facility by:

(A) making the determination required by Section 228.202;

(B) conducting the hearing required by Section 228.203; and

(C) obtaining county and voter approval as required by Sections 228.207 and 228.208.

(b) The department may operate or transfer a high-occupancy vehicle lane under Subsection (a)(6) as a tolled lane only if the department or other entity operating the lane allows vehicles occupied by a specified number of passengers to use the lane without paying a toll.

Sec. 228.2015. LIMITATION TRANSITION. (a) Notwithstanding Section 228.201, the department may operate a nontolled state highway or a segment of a nontolled state highway as a toll project if:

(1) a construction contract was awarded for the highway or segment before September 1, 2005;

(2) the highway or segment had not at any time before September 1, 2005, been open to traffic; and

(3) the commission designated the highway or segment as a toll project before the earlier of:

(A) the date the highway or segment is opened to traffic; or

(B) September 1, 2005.

(b) This section expires September 1, 2006.

SECTION 2.46. Section 362.0041, Transportation Code, is transferred to Subchapter E, Chapter 228, Transportation Code, redesignated as Sections 228.202-228.208, and amended to read as follows:

Sec. 228.202 [~~362.0041~~]. COMMISSION DETERMINATION [~~CONVERSION OF PROJECTS~~]. The [~~(a) Except as provided in Subsections (d) and (g), the~~] commission may by order convert a nontolled state highway or a segment of a nontolled state highway [~~the free state highway system~~] to a toll project [~~facility~~] if it determines that the conversion will improve overall mobility in the region or is the most feasible and economic means to accomplish necessary expansion, improvements, or extensions to that segment of the state highway system.

Sec. 228.203. PUBLIC HEARING. [~~(b)~~] Prior to converting a state highway or a segment of a [~~the~~] state highway [~~system~~] under this subchapter [~~section~~], the commission shall conduct a public hearing for the purpose of receiving comments from interested persons concerning the proposed conversion [~~transfer~~]. Notice of the hearing shall be published in the Texas Register, one or more newspapers of general circulation, and a newspaper, if any, published in the county or counties in which the involved highway is located.

Sec. 228.204. RULES. [~~(c)~~] The commission shall adopt rules implementing this subchapter [~~section~~], including criteria and guidelines for the approval of a conversion of a highway.

Sec. 228.205. QUEEN ISABELLA CAUSEWAY. [~~(d)~~] The commission may not convert the Queen Isabella Causeway in Cameron County to a toll project [~~facility~~].

Sec. 228.206. TOLL REVENUE. [~~(c) Subchapter G, Chapter 361, applies to a highway converted to a toll facility under this section.~~

[~~(f)~~] Toll revenue collected under this section:

(1) shall be deposited in the state highway fund;

(2) may be used by the department to finance the improvement, extension, expansion, or operation of the converted segment of highway and may not be collected except for those purposes; and

(3) is exempt from the application of Section 403.095, Government Code.

Sec. 228.207. COUNTY AND VOTER APPROVAL. [~~(g)~~] The commission may only convert a state highway or a segment of a [~~the~~] state highway [~~system~~] under this subchapter [~~section~~] if the conversion is approved by:

(1) the commissioners court of each county within which the highway or segment is located; and

(2) the qualified voters who vote in an election under Section 228.208 and who reside in the limits of:

(A) a county if any part of the highway or segment to be converted is located in an unincorporated area of the county; or

(B) a municipality in which the highway or segment to be converted is wholly located.

Sec. 228.208. ELECTION TO APPROVE CONVERSION. (a) If notified by the department of the proposed conversion of a highway or segment under this subchapter, and after approval of the conversion by the appropriate commissioners courts as required by Section 228.207(1), the commissioners court of each county described by Section 228.207(2)(A) or the governing body of a municipality described by Section 228.207(2)(B), as applicable, shall call an election for the approval or disapproval of the conversion.

(b) If a county or municipality orders an election, the county or municipality shall publish notice of the election in a newspaper of general circulation published in the county or municipality at least once each week for three consecutive weeks, with the first publication occurring at least 21 days before the date of the election.

(c) An order or resolution ordering an election and the election notice required by Subsection (b) must show, in addition to the requirements of the Election Code, the location of each polling place and the hours that the polls will be open.

(d) The proposition submitted in the election must distinctly state the highway or segment proposed to be converted and the limits of that highway or segment.

(e) At an election ordered under this section, the ballots shall be printed to permit voting for or against the proposition: "The conversion of (highway) from (beginning location) to (ending location) to a toll project."

(f) A proposed conversion is approved only if it is approved by a majority of the votes cast.

(g) A notice of the election and a certified copy of the order canvassing the election results shall be sent to the commission.

SECTION 2.47. Sections 362.001, 362.003, 362.006, and 362.007, Transportation Code, are transferred to Chapter 228, Transportation Code, designated as Subchapter F, and amended to read as follows:

SUBCHAPTER F. JOINT TOLL PROJECTS

Sec. 228.251 [~~362.001~~]. DEFINITIONS. In this subchapter:

(1) [~~(2)~~] "Bonds" includes certificates, notes, and other obligations of an issuer authorized by statute, municipal home-rule charter, or the Texas Constitution.

(2) [~~(3) "Cost" means those costs included under Section 361.004.~~

[~~(4)~~] "Local governmental entity" means a political subdivision of the state, including a municipality or a county, a political subdivision of a county, a group of adjoining counties, a defined district, or a nonprofit corporation, including a transportation corporation created under Chapter 431.

[~~(5) "Turnpike project" has the meaning assigned by Section 361.001.~~]

Sec. 228.252 [~~362.003~~]. APPLICABILITY OF OTHER LAW; CONFLICTS. (a) This subchapter [~~chapter~~] is cumulative of all laws affecting the issuance of bonds by local governmental entities, particularly, but not by way of limitation, provisions of Chapters 1201 and 1371, Government Code, and Subchapters A-C, Chapter 1207, Government Code, are applicable to and apply to all bonds issued under this subchapter [~~chapter~~], regardless of any classification of any such local governmental entities thereunder; provided, however, in the event of any conflict between such laws and this subchapter [~~chapter~~], the provisions of this subchapter [~~chapter~~] prevail.

(b) This subchapter [~~chapter~~] is cumulative of all laws affecting the commission, the department, and the local governmental entities, except that in the event any other law conflicts with this subchapter [~~chapter~~], the provisions of this subchapter [~~chapter~~] prevail. Chapters 1201 and 1371, Government Code, and Subchapters A, B, and C, Chapter 1207, Government Code, apply to bonds issued by the commission under this subchapter [~~chapter~~].

(c) The department may enter into all agreements necessary or convenient to effectuate the purposes of this subchapter [~~chapter~~].

Sec. 228.253 [~~362.006~~]. USE OF FEDERAL FUNDS. The department may use federal funds for any purpose described by this subchapter.

Sec. 228.254 [~~362.007~~]. AGREEMENTS BETWEEN AUTHORITY AND LOCAL GOVERNMENTAL ENTITIES. (a) Under authority of Section 52, Article III, Texas Constitution, a local governmental entity other than a nonprofit corporation may, upon the required vote of the qualified voters, in addition to all other debts, issue bonds or enter into and make payments under agreements with the department, not to exceed 40 years in term, in any amount not to exceed one-fourth of the assessed valuation of real property within the local governmental entity, except that the total indebtedness of any municipality shall never exceed the limits imposed by other provisions of the constitution, and levy

and collect taxes to pay the interest thereon and provide a sinking fund for the redemption thereof, for the purposes of construction, maintenance, and operation of toll [~~turnpike~~] projects or systems of the department, or in aid thereof.

(b) In addition to Subsection (a), a local governmental entity may, within any applicable constitutional limitations, agree with the department to issue bonds or enter into and make payments under an agreement to construct, maintain, or operate any portion of a toll [~~turnpike~~] project or system of the department.

(c) To make payments under an agreement under Subsection (b) or pay the interest on bonds issued under Subsection (b) and to provide a sinking fund for the bonds or the contract, a local governmental entity may:

(1) pledge revenue from any available source, including annual appropriations;

(2) levy and collect taxes; or

(3) provide for a combination of Subdivisions (1) and (2).

(d) The term of an agreement under this section may not exceed 40 years.

(e) Any election required to permit action under this subchapter must be held in conformance with Chapter 1251, Government Code, or other law applicable to the local governmental entity.

SECTION 2.48. Section 284.001(3), Transportation Code, is amended to read as follows:

(3) "Project" means a causeway, bridge, tunnel, turnpike, highway, or any combination of those facilities, including:

(A) a necessary overpass, underpass, interchange, entrance plaza, toll house, service station, approach, fixture, and accessory and necessary equipment that has been designated as part of the project by order of a county;

(B) necessary administration, storage, and other buildings that have been designated as part of the project by order of a county; and

(C) all property rights, easements, and related interests acquired.

SECTION 2.49. Section 284.008, Transportation Code, is amended by amending Subsection (c) and adding Subsection (d) to read as follows:

(c) Except as provided by Subsection (d), a [~~A~~] project becomes a part of the state highway system and the commission shall maintain the project without tolls when:

(1) all of the bonds and interest on the bonds that are payable from or secured by revenues of the project have been paid; or

(2) a sufficient amount for the payment of all bonds and the interest on the bonds to maturity has been set aside in a trust fund held for the benefit of the bondholders.

(d) Before construction on a project under this chapter begins, a county may request that the commission adopt an order stating that the project will not become part of the state highway system under Subsection (c). If the commission adopts the order:

(1) Section 362.051 does not apply to the project;

(2) the project must be maintained by the county; and

(3) the project will not become part of the state highway system unless the county transfers the project under Section 284.011.

SECTION 2.50. Subchapter A, Chapter 284, Transportation Code, is amended by adding Section 284.011 to read as follows:

Sec. 284.011. TRANSFER OF PROJECT TO DEPARTMENT. (a) A county may transfer to the department a project under this chapter that has outstanding bonded indebtedness if the commission:

(1) agrees to the transfer; and

(2) agrees to assume the outstanding bonded indebtedness.

(b) The commission may assume the outstanding bonded indebtedness only if the assumption:

(1) is not prohibited under the terms of an existing trust agreement or indenture securing bonds or other obligations issued by the commission for another project;

(2) does not prevent the commission from complying with covenants of the commission under an existing trust agreement or indenture; and

(3) does not cause a rating agency maintaining a rating on outstanding obligations of the commission to lower the existing rating.

(c) If the commission agrees to the transfer under Subsection (a), the county shall convey the project and any real property acquired to construct or operate the project to the department.

(d) At the time of a conveyance under this section, the commission shall designate the project as part of the state highway system. After the designation, the county has no liability, responsibility, or duty to maintain or operate the project.

SECTION 2.51. Subchapter A, Chapter 284, Transportation Code, is amended by adding Section 284.012 to read as follows:

Sec. 284.012. TRANSFER OF ASSETS. (a) A county, acting through the commissioners court of the county, may submit a request to the commission for authorization to create a regional mobility authority under Chapter 370 and to transfer all projects under this chapter to the regional mobility authority if:

(1) the creation of the regional mobility authority and transfer of projects is not prohibited under the bond proceedings applicable to the projects;

(2) adequate provision has been made for the assumption by the regional mobility authority of all debts, obligations, and liabilities of the county arising out of the transferred projects; and

(3) the commissioners courts of any additional counties to be part of the regional mobility authority have approved the request.

(b) The county may submit to the commission a proposed structure for the initial board of directors of the regional mobility authority and a method for appointment to the board of directors at the creation of the regional mobility authority. Subsequent appointments to the board of directors are subject to the requirements of Subchapter F, Chapter 370.

(c) After commission authorization, the county may transfer each of its projects under this chapter to the regional mobility authority to the extent authorized by the Texas Constitution if property and contract rights in the projects and bonds issued for the projects are not affected unfavorably.

(d) The commission shall adopt rules governing the creation of a regional mobility authority and the transfer of projects under this section.

SECTION 2.52. Section 284.061(c), Transportation Code, is amended to read as follows:

(c) Except as provided by Section 284.0615 [~~361.1375~~], if applicable, the county is entitled to immediate possession of property subject to a condemnation proceeding brought by the county after:

(1) a tender of a bond or other security in an amount sufficient to secure the owner for damages; and

(2) the approval of the bond or security by the court.

SECTION 2.53. Subchapter C, Chapter 284, Transportation Code, is amended by adding Section 284.0615 to read as follows:

Sec. 284.0615. DECLARATION OF TAKING BY CERTAIN COUNTIES. (a) This section applies only to a county with a population of 3.3 million or more.

(b) If, in connection with a project under this chapter, the commissioners court of the county authorizes the county to proceed in the manner provided by Section 203.066:

(1) the county may file a declaration of taking and proceed in the manner provided by that section on the project; and

(2) a reference to the department in that section means the county.

SECTION 2.54. Section 284.064, Transportation Code, is amended by adding Subsections (d) and (e) to read as follows:

(d) If a county enters into an agreement with a person that includes the collection by the person of tolls for the use of a project, the person shall submit to the county for approval:

(1) the methodology for:

(A) the setting of tolls; and

(B) increasing the amount of the tolls;

(2) a plan outlining methods the person will use to collect the tolls, including:

(A) any charge to be imposed as a penalty for late payment of a toll; and

(B) any charge to be imposed to recover the cost of collecting a delinquent toll; and

(3) any proposed change in an approved methodology for the setting of a toll or a plan for collecting the toll.

(e) An agreement with a person that includes the collection by the person of tolls for the use of a project may not be for a term longer than 50 years.

SECTION 2.55. Subchapter C, Chapter 284, Transportation Code, is amended by adding Section 284.0665 to read as follows:

Sec. 284.0665. COMPENSATION OF OPERATING BOARD MEMBERS. (a) In this section, "performing the duties of the operating board" means substantive performance of the management or business of a project:

(1) including participation in:

(A) board and committee meetings;

(B) other activities involving the substantive deliberation of business; and

(C) pertinent educational programs related to a project; and

(2) not including routine or ministerial activities such as the execution of documents, self-preparation for meetings, or other activities requiring a minimal amount of time.

(b) This section applies only to an operating board:

(1) appointed by a local government corporation; or

(2) that is a local government corporation.

(c) A member of an operating board is entitled to receive as compensation not more than $150 a day for each day the member actually spends performing the duties of the operating board.

(d) The operating board shall set a limit on the amount of compensation a member of the operating board may receive in a year under this section not to exceed $7,200.

(e) In addition to Subsection (c), a member of the operating board is entitled to reimbursement of actual and necessary expenses incurred in performing duties of the operating board.

(f) To receive compensation or reimbursement under this section, a member of the operating board must file a verified statement with the local government corporation:

(1) showing the number of days the member actually spent performing duties of the operating board; and

(2) including a general description of the duties performed for each day of service.

SECTION 2.56. Section 284.067(c), Transportation Code, is amended to read as follows:

(c) Any [~~Each~~] county into which the project extends, by condemnation or another method under general law, may acquire the property necessary for the project, except that a county may not condemn property in another county until after the resolution required by Subsection (a) is adopted. The county issuing the bonds may use the bond proceeds to acquire property necessary for the project in any county into which the project extends.

SECTION 2.57. Section 366.004(a), Transportation Code, is amended to read as follows:

(a) The cost of acquisition, construction, improvement, extension, or expansion of a turnpike project or system under this chapter includes the cost of:

(1) the actual acquisition, construction, improvement, extension, or expansion of the turnpike project or system;

(2) the acquisition of real property, rights-of-way, property rights, easements, and other interests in real property;

(3) machinery and equipment;

(4) interest payable before, during, and after acquisition, construction, improvement, extension, or expansion as provided in the bond proceedings;

(5) traffic estimates, revenue estimates, engineering and legal services, plans, specifications, surveys, appraisals, construction cost estimates, and other expenses necessary or incidental to determining the feasibility of the construction, improvement, extension, or expansion;

(6) necessary or incidental administrative, legal, and other expenses;

(7) compliance with laws, regulations, and administrative rulings;

(8) financing; [~~and~~]

(9) the assumption of debts, obligations, and liabilities of an entity relating to a turnpike project or system transferred to an authority by that entity; and

(10) [~~(9)~~] expenses related to the initial operation of the turnpike project or system.

SECTION 2.58. Section 366.033, Transportation Code, is amended by amending Subsection (b) and adding Subsections (k) and (l) to read as follows:

(b) Rules adopted by the authority must be published in a newspaper with general circulation in the area in which the authority is located once each week for two consecutive weeks after adoption of the rule. The notice must contain a condensed statement of the substance of the rule and must advise that a copy of the complete text of the rule is filed in the principal office of the authority where the text may be read by any person. A rule takes effect 10 days after the date of the second publication of the notice under this subsection [~~comply with the procedures in Subchapter B, Chapter 2001, Government Code, and are subject to Section 2001.038, Government Code, except that the action may be brought only in a district court of a county located in the authority~~].

(k) If an authority enters into a contract or agreement to design, finance, construct, operate, maintain, or perform any other function for a turnpike project, system, or improvement authorized by law on behalf of a local governmental entity, the commission, the department, a regional mobility authority, or any other entity, the contract or agreement may provide that the authority, in performing the function, is governed by the applicable provisions of this chapter and the rules and procedures adopted by the authority under this chapter, in lieu of the laws, rules, or procedures applicable to the other party for the performance of the same function.

(l) An authority, acting through its board, may agree with another entity to acquire a turnpike project or system from that entity and to assume any debts, obligations, and liabilities of the entity relating to a turnpike project or system transferred to the authority.

SECTION 2.59. Subchapter B, Chapter 366, Transportation Code, is amended by adding Section 366.036 to read as follows:

Sec. 366.036. TRANSFER OF TURNPIKE PROJECT OR SYSTEM. (a) An authority may transfer any of its turnpike projects or systems to one or more local governmental entities if:

(1) the authority has commitments from the governing bodies of the local governmental entities to assume jurisdiction over the transferred projects or systems;

(2) property and contract rights in the transferred projects or systems and bonds issued for the projects or systems are not affected unfavorably;

(3) the transfer is not prohibited under the bond proceedings applicable to the transferred projects or systems;

(4) adequate provision has been made for the assumption of all debts, obligations, and liabilities of the authority relating to the transferred projects or systems by the local governmental entities assuming jurisdiction over the transferred projects or systems;

(5) the local governmental entities are authorized to assume jurisdiction over the transferred projects or systems and to assume the debts, obligations, and liabilities of the authority relating to the transferred projects or systems; and

(6) the transfer has been approved by the commissioners court of each county that is part of the authority.

(b) An authority may transfer to one or more local governmental entities any traffic estimates, revenue estimates, plans, specifications, surveys, appraisals, and other work product developed by the authority in determining the feasibility of the construction, improvement, extension, or expansion of a turnpike project or system, and the authority's rights and obligations under any related agreements, if the requirements of Subsections (a)(1) and (6) are met.

(c) A local governmental entity shall, using any lawfully available funds, reimburse any expenditures made by an authority from its feasibility study fund or otherwise to pay the costs of work product transferred to the local governmental entity under Subsection (b) and any other amounts expended under related agreements transferred to the local governmental entity. The reimbursement may be made over time, as determined by the local governmental entity and the authority.

SECTION 2.60. Section 366.169(c), Transportation Code, is amended to read as follows:

(c) Except as provided by Section 228.201 [~~366.035~~], the state or a local governmental entity may convey, grant, or lease to an authority real property, including highways and other real property already devoted to public use and rights or easements in real property, that may be necessary or convenient to accomplish the authority's purposes, including the construction or operation of a turnpike project. A conveyance, grant, or lease under this section may be made without advertising, court order, or other action other than the normal action of the state or local governmental entity necessary for a conveyance, grant, or lease.

SECTION 2.61. Section 366.179, Transportation Code, is amended by adding Subsection (d) to read as follows:

(d) Transponder customer account information, including contact and payment information and trip data, is confidential and not subject to disclosure under Chapter 552, Government Code.

SECTION 2.62. Section 370.003, Transportation Code, is amended by amending Subdivision (14) and adding Subdivisions (16)-(19) to read as follows:

(14) "Transportation project" means:

(A) a turnpike project;

(B) a system;

(C) a passenger or freight rail facility, including:

(i) tracks;

(ii) a rail line;

(iii) switching, signaling, or other operating equipment;

(iv) a depot;

(v) a locomotive;

(vi) rolling stock;

(vii) a maintenance facility; and

(viii) other real and personal property associated with a rail operation;

(D) a roadway with a functional classification greater than a local road or rural minor collector;

(E) a ferry;

(F) an airport, other than an airport that on September 1, 2005, was served by one or more air carriers engaged in scheduled interstate transportation, as those terms were defined by 14 C.F.R. Section 1.1 on that date;

(G) a pedestrian or bicycle facility;

(H) an intermodel hub;

(I) an automated conveyor belt for the movement of freight;

(J) a border crossing inspection station;

(K) an air quality improvement initiative;

(L) a public utility facility; [~~and~~]

(M) a transit system; and

(N) if applicable, projects and programs listed in the most recently approved state implementation plan for the area covered by the authority, including an early action compact.

(16) "Mass transit" means the transportation of passengers and hand-carried packages or baggage of a passenger by any means of surface, overhead, or underground transportation, other than an aircraft or taxicab.

(17) "Service area" means the county or counties in which an authority or transit provider has established a transit system.

(18) "Transit provider" means an entity that provides mass transit for the public and that was created under Chapter 451, 452, 453, 454, 457, 458, or 460.

(19) "Transit system" means:

(A) property owned or held by an authority for mass transit purposes; and

(B) facilities necessary, convenient, or useful for:

(i) the use of or access to mass transit by persons or vehicles; or

(ii) the protection or environmental enhancement of mass transit.

SECTION 2.63. Section 370.004(a), Transportation Code, is amended to read as follows:

(a) The cost of acquisition, construction, improvement, extension, or expansion of a transportation project under this chapter includes the cost of:

(1) the actual acquisition, construction, improvement, extension, or expansion of the transportation project;

(2) the acquisition of real property, rights-of-way, property rights, easements, and other interests in real property;

(3) machinery and equipment;

(4) interest payable before, during, and for not more than three years after acquisition, construction, improvement, extension, or expansion as provided in the bond proceedings;

(5) traffic estimates, revenue estimates, engineering and legal services, plans, specifications, surveys, appraisals, construction cost estimates, and other expenses necessary or incidental to determining the feasibility of the acquisition, construction, improvement, extension, or expansion;

(6) necessary or incidental administrative, legal, and other expenses;

(7) compliance with laws, regulations, and administrative rulings, including any costs associated with necessary environmental mitigation measures;

(8) financing; [~~and~~]

(9) the assumption of debts, obligations, and liabilities of an entity relating to a transportation project transferred to an authority by that entity; and

(10) expenses related to the initial operation of the transportation project.

SECTION 2.64. Section 370.031, Transportation Code, is amended by adding Subsection (c) to read as follows:

(c) A municipality that borders the United Mexican States and has a population of 105,000 or more has the same authority as a county, within its municipal boundaries, to create and participate in an authority. A municipality creating or participating in an authority has the same powers and duties as a county participating in an authority, the governing body of the municipality has the same powers and duties as the commissioners court of a county participating in an authority, and an elected member of the municipality's governing body has the same powers and duties as a commissioner of a county that is participating in an authority.

SECTION 2.65. Section 370.033, Transportation Code, is amended by amending Subsection (m) and adding Subsections (o), (p), and (q) to read as follows:

(m) If an authority receives money from the general revenue fund, the Texas Mobility Fund, or the state highway fund it may use the money only to acquire, design, finance, construct, operate, or maintain a turnpike project under Section 370.003(14)(A) or (D) or a transit system under Section 370.351.

(o) Except as provided in Subchapter J, an authority may not provide mass transit services in the service area of another transit provider that has taxing authority and has implemented it anywhere in the service area unless the service is provided under a written agreement with the transit provider or under Section 370.186.

(p) Before providing public transportation or mass transit services in the service area of any other existing transit provider, including a transit provider operating under Chapter 458, an authority must first consult with that transit provider. An authority shall ensure there is coordination of services provided by the authority and an existing transit provider, including a transit provider operating under Chapter 458. An authority is ineligible to participate in the formula or discretionary program under Chapter 456 unless there is no other transit provider, including a transit provider operating under Chapter 458, providing public transportation or mass transit services in the service area of the authority.

(q) An authority, acting through its board, may agree with another entity to acquire a transportation project or system from that entity and to assume any debts, obligations, and liabilities of the entity relating to a transportation project or system transferred to the authority.

SECTION 2.66. Subchapter B, Chapter 370, Transportation Code, is amended by adding Section 370.039 to read as follows:

Sec. 370.039. TRANSFER OF TRANSPORTATION PROJECT OR SYSTEM. (a) An authority may transfer any of its transportation projects or systems to one or more governmental entities if:

(1) the authority has commitments from the governing bodies of the governmental entities to assume jurisdiction over the transferred projects or systems;

(2) property and contract rights in the transferred projects or systems and bonds issued for the projects or systems are not affected unfavorably;

(3) the transfer is not prohibited under the bond proceedings applicable to the transferred projects or systems;

(4) adequate provision has been made for the assumption of all debts, obligations, and liabilities of the authority relating to the transferred projects or systems by the governmental entities assuming jurisdiction over the transferred projects or systems;

(5) the governmental entities are authorized to assume jurisdiction over the transferred projects or systems and to assume the debts, obligations, and liabilities of the authority relating to the transferred projects or systems; and

(6) the transfer has been approved by the commissioners court of each county that is part of the authority.

(b) An authority may transfer to one or more governmental entities any traffic estimates, revenue estimates, plans, specifications, surveys, appraisals, and other work product developed by the authority in determining the feasibility of the construction, improvement, extension, or expansion of a transportation project or system, and the authority's rights and obligations under any related agreements, if the requirements of Subsections (a)(1) and (6) are met.

(c) A governmental entity shall, using any lawfully available funds, reimburse any expenditures made by an authority from its feasibility study fund or otherwise to pay the costs of work product transferred to the governmental entity under Subsection (b) and any other amounts expended under related agreements transferred to the governmental entity. The reimbursement may be made over time, as determined by the governmental entity and the authority.

SECTION 2.67. Section 366.302, Transportation Code, is amended by adding Subsections (f) and (g) to read as follows:

(f) If an authority enters into an agreement with a private entity that includes the collection by the private entity of tolls for the use of a turnpike project or system, the private entity shall submit to the authority for approval:

(1) the methodology for:

(A) the setting of tolls; and

(B) increasing the amount of the tolls;

(2) a plan outlining methods the entity will use to collect the tolls, including:

(A) any charge to be imposed as a penalty for late payment of a toll; and

(B) any charge to be imposed to recover the cost of collecting a delinquent toll; and

(3) any proposed change in an approved methodology for the setting of a toll or a plan for collecting the toll.

(g) An agreement with a private entity that includes the collection by the private entity of tolls for the use of a turnpike project or system may not be for a term longer than 50 years.

SECTION 2.68. Section 370.163(a), Transportation Code, is amended to read as follows:

(a) Except as otherwise provided by this subchapter, the governing body of an authority has the same powers and duties relating to the condemnation and acquisition of real property for a transportation project that the commission and the department have under Subchapter D, Chapter 203, [~~361, and Section 361.233~~] relating to the condemnation or purchase of real property for a toll [~~turnpike~~] project. [~~Notwithstanding Section 361.135(a), the concurrence of the commission is not a prerequisite to the exercise of the power of condemnation by the governing body of the authority.~~]

SECTION 2.69. Section 370.168(c), Transportation Code, is amended to read as follows:

(c) Except as provided by Section 228.201 [~~370.035~~], this state or a local government may convey, grant, or lease to an authority real property, including highways and other real property devoted to public use and rights or easements in real property, that may be necessary or convenient to accomplish a purpose of the authority, including the construction or operation of a transportation project. A conveyance, grant, or lease under this section may be made without advertising, court order, or other action other than the normal action of this state or local government necessary for a conveyance, grant, or lease.

SECTION 2.70. Section 370.177(i), Transportation Code, is amended to read as follows:

(i) In the prosecution of an offense under this section, proof that the vehicle passed through a toll collection facility without payment of the proper toll together with proof that the defendant was the registered owner or the driver of the vehicle when the failure to pay occurred, establishes the nonpayment of the registered owner. The proof may be by testimony of a peace officer or authority employee, video surveillance, or any other reasonable evidence, including evidence obtained by automated enforcement technology that the authority determines is necessary, including automated enforcement technology described by Sections 228.058(a) and (b).

SECTION 2.71. Section 370.178, Transportation Code, is amended by adding Subsection (d) to read as follows:

(d) Transponder customer account information, including contact and payment information and trip data, is confidential and not subject to disclosure under Chapter 552, Government Code.

SECTION 2.72. Section 370.186, Transportation Code, is amended by amending Subsection (a) and adding Subsections (c) and (d) to read as follows:

(a) Except as provided by Subsection (c), an [~~An~~] authority may not construct, maintain, or operate a turnpike or toll project in an area having a governmental entity established under Chapter 284 or 366 unless the governmental entity and the authority enter into a written agreement specifying the terms and conditions under which the project shall be undertaken. An authority may not construct, maintain, or operate a transportation project that another governmental entity has determined to be a project under Chapter 451, 452, or 460 unless the governmental entity and the authority enter into a written agreement specifying the terms and conditions under which the project shall be undertaken.

(c) Subsection (a) does not apply to a turnpike or toll project located in a county in which a regional tollway authority has transferred under Section 366.036 or 366.172:

(1) all turnpike projects of the regional tollway authority that are located in the county; and

(2) all work product developed by the regional tollway authority in determining the feasibility of the construction, improvement, extension, or expansion of a turnpike project to be located in the county.

(d) An authority may not construct, maintain, or operate a passenger rail facility within the boundaries of an intermunicipal commuter rail district created under Article 6550c-1, Vernon's Texas Civil Statutes, as those boundaries existed on September 1, 2005, unless the district and the authority enter into a written agreement specifying the terms and conditions under which the project will be undertaken.

SECTION 2.73. Sections 370.251(c) and (d), Transportation Code, are amended to read as follows:

(c) If permitted under the constitution of this state, directors [~~Directors~~] serve staggered six-year terms, with the terms of no more than one-third of the directors expiring on February 1 of each odd-numbered year. If six-year terms are not permitted under the constitution, directors serve two-year terms, with the terms of not more than one-half of the directors expiring on February 1 of each year.

(d) If six-year terms are permitted under the constitution of this state, one [~~One~~] director appointed to the initial board of an authority by the commissioners court of a county shall be designated by the court to serve a term of two years and one director designated to serve a term of four years. If six-year terms are not permitted under the constitution, one director appointed to the initial board of an authority by the commissioners court of a county shall be designated by the court to serve a term of one year and one director designated to serve a term of two years. If one or more directors are subsequently appointed to the board, the directors other than the subsequent appointees shall determine the length of the appointees' terms, to comply with Subsection (c).

SECTION 2.74. Section 370.252, Transportation Code, is amended by adding Subsection (f) to read as follows:

(f) In addition to the prohibitions and restrictions of this section, directors are subject to Chapter 171, Local Government Code.

SECTION 2.75. Section 370.262(a), Transportation Code, is amended to read as follows:

(a) Chapter 551, Government Code, does not prohibit any open or closed meeting of the board, a committee of the board, or the staff, or any combination of the board or staff, from being held by telephone conference call. The board may hold an open or closed meeting by telephone conference call subject to the requirements of Sections 551.125(c)-(f), Government Code, but is not subject to the requirements of Subsection (b) of that section.

SECTION 2.76. Chapter 370, Transportation Code, is amended by adding Subchapters I and J to read as follows:

SUBCHAPTER I. TRANSIT SYSTEMS

Sec. 370.351. TRANSIT SYSTEMS. (a) An authority may construct, own, operate, and maintain a transit system.

(b) An authority shall determine each transit route, including transit route changes.

(c) This chapter does not prohibit an authority, municipality, or transit provider from providing any service that complements a transit system, including providing parking garages, special transportation for persons who are disabled or elderly, or medical transportation services.

Sec. 370.352. PUBLIC HEARING ON FARE AND SERVICE CHANGES. (a) In this section:

(1) "Service change" means any addition or deletion resulting in the physical realignment of a transit route or a change in the type or frequency of service provided in a specific, regularly scheduled transit route.

(2) "Transit revenue vehicle mile" means one mile traveled by a transit vehicle while the vehicle is available to public passengers.

(3) "Transit route" means a route over which a transit vehicle travels that is specifically labeled or numbered for the purpose of picking up or discharging passengers at regularly scheduled stops and intervals.

(4) "Transit route mile" means one mile along a transit route regularly traveled by transit vehicles while available to public passengers.

(b) Except as provided by Section 370.353, an authority shall hold a public hearing on:

(1) a fare change;

(2) a service change involving:

(A) 25 percent or more of the number of transit route miles of a transit route; or

(B) 25 percent or more of the number of transit revenue vehicle miles of a transit route, computed daily, for the day of the week for which the change is made; or

(3) the establishment of a new transit route.

(c) An authority shall hold the public hearing required by Subsection (b) before the cumulative amount of service changes in a fiscal year equals a percentage amount described in Subsection (b)(2)(A) or (B).

Sec. 370.353. PUBLIC HEARING ON FARE AND SERVICE CHANGES: EXCEPTIONS. (a) In this section, "experimental service change" means an addition of service to an existing transit route or the establishment of a new transit route.

(b) A public hearing under Section 370.352 is not required for:

(1) a reduced or free promotional fare that is instituted daily or periodically over a period of not more than 180 days;

(2) a headway adjustment of not more than five minutes during peak-hour service and not more than 15 minutes during nonpeak-hour service;

(3) a standard seasonal variation unless the number, timing, or type of the standard seasonal variation changes; or

(4) an emergency or experimental service change in effect for 180 days or less.

(c) A hearing on an experimental service change in effect for more than 180 days may be held before or while the experimental service change is in effect and satisfies the requirement for a public hearing if the hearing notice required by Section 370.354 states that the change may become permanent at the end of the effective period. If a hearing is not held before or while the experimental service change is in effect, the service that existed before the change must be reinstituted at the end of the 180th day after the change became effective and a public hearing must be held in accordance with Section 370.352 before the experimental service change may be continued.

Sec. 370.354. NOTICE OF HEARING ON FARE OR SERVICE CHANGE. (a) After calling a public hearing required by Section 370.352, the authority shall:

(1) at least 30 days before the date of the hearing, publish notice of the hearing at least once in a newspaper of general circulation in the territory of the authority; and

(2) post notice in each transit vehicle in service on any transit route affected by the proposed change for at least two weeks within 30 days before the date of the hearing.

(b) The notice must contain:

(1) a description of each proposed fare or service change, as appropriate;

(2) the time and place of the hearing; and

(3) if the hearing is required under Section 370.352(c), a description of the latest proposed change and the previous changes.

(c) The requirement for a public hearing under Section 370.352 is satisfied at a public hearing required by federal law if:

(1) the notice requirements of this section are met; and

(2) the proposed fare or service change is addressed at the meeting.

Sec. 370.355. CRIMINAL PENALTIES. (a) An authority by resolution may prohibit the use of the transit system by a person who fails to possess evidence showing that the appropriate fare for the use of the system has been paid and may establish reasonable and appropriate methods, including using peace officers under Section 370.181(c), to ensure that persons using the transit system pay the appropriate fare for that use.

(b) An authority by resolution may provide that a fare for or charge for the use of the transit system that is not paid incurs a penalty, not to exceed $100.

(c) The authority shall post signs designating each area in which a person is prohibited from using the transit system without possession of evidence showing that the appropriate fare has been paid.

(d) A person commits an offense if:

(1) the person or another for whom the person is criminally responsible under Section 7.02, Penal Code, uses the transit system and does not possess evidence showing that the appropriate fare has been paid; and

(2) the person fails to pay the appropriate fare or other charge for the use of the transit system and any penalty on the fare on or before the 30th day after the date the authority notifies the person that the person is required to pay the amount of the fare or charge and the penalty.

(e) The notice required by Subsection (d)(2) may be included in a citation issued to the person by a peace officer under Article 14.06, Code of Criminal Procedure, in connection with an offense relating to the nonpayment of the appropriate fare or charge for the use of the transit system.

(f) An offense under Subsection (d) is a Class C misdemeanor.

(g) An offense under Subsection (d) is not a crime of moral turpitude.

SUBCHAPTER J. ACQUIRING TRANSIT SYSTEMS

Sec. 370.361. TRANSFER OF TRANSIT SYSTEMS. (a) In this section, "unit of election" means a political subdivision that previously voted to join the service area of a transit provider.

(b) An authority may request in writing a transit provider to transfer the provider's transit system and taxing authority to the authority if the board determines that the traffic needs of the counties in which the authority operates could be most efficiently and economically met by the transfer.

(c) On receipt of a written request under Subsection (b), the governing body of the transit provider may authorize the authority to solicit public comment and conduct at least one public hearing on the proposed transfer in each unit of election in the transit provider's service area. Notice of a hearing must be published in the Texas Register, one or more newspapers of general circulation in the transit provider's service area, and a newspaper, if any, published in the counties of the requesting authority. The notice shall also solicit written comments on the proposed transfer. The transit provider may participate fully with the authority in conducting a public hearing.

(d) A board may approve the acquisition of the transit provider if the governing body of the transit provider approves transfer of its operations to the authority and dissolution of the transit provider is approved in an election ordered under Subsection (e). Before approving the acquisition, the board shall consider public comments received under Subsection (c).

(e) After considering public comments received under Subsection (c), the governing body of the transit provider may order an election to dissolve the transit provider and transfer all services, property, funds, assets, employees, debts, and obligations to the authority. The governing body of the transit provider shall submit to the qualified voters in the units of election in the transit provider's service area a proposition that reads substantially as follows: "Shall (name of transit provider) be dissolved and its services, property, funds, assets, employees, debts, and obligations be transferred to (name of regional mobility authority)?"

(f) An election under Subsection (e) shall be conducted so that votes are separately tabulated and canvassed in each participating unit of election in the transit provider's service area.

(g) The governing body of the transit provider shall canvass the returns and declare the results of the election separately with respect to each unit of election. If a majority of the votes received in a unit of election are in favor of the proposition, the proposition is approved in that unit of election. The transit provider is dissolved and its services, property, funds, assets, employees, debts, and obligations are transferred to the authority only if the proposition is approved in every unit of election. If the proposition is not approved in every unit of election, the proposition does not pass and the transit provider is not dissolved.

(h) A certified copy of the order or resolution recording the results of the election shall be filed with the department, the comptroller, and the governing body of each unit of election in the transit provider's service area.

(i) The authority shall assume all debts or other obligations of the transferred transit provider in connection with the acquisition of property under Subsection (g). The authority may not use revenue from sales and use tax collected under this subchapter or other revenue of the transit system in a manner inconsistent with any pledge of that revenue for the payment of any outstanding bonds, unless provisions have been made for a full discharge of the bonds.

Sec. 370.362. SALES AND USE TAX. (a) If an authority acquires a transit provider that has taxing authority, the authority may impose a sales and use tax at a permissible rate that does not exceed the rate approved by the voters residing in the service area of the transit provider's transit system at an election under this subchapter.

(b) The authority by resolution may:

(1) decrease the rate of the sales and use tax to a permissible rate; or

(2) call an election for the increase or decrease of the sales and use tax to a permissible rate.

(c) If an authority orders an election, the authority shall publish notice of the election in a newspaper of general circulation in the territory of the authority at least once each week for three consecutive weeks, with the first publication occurring at least 21 days before the date of the election.

(d) A resolution ordering an election and the election notice required by Subsection (c) must show, in addition to the requirements of the Election Code, the hours of the election and polling places in election precincts.

(e) A copy of the election notice required by Subsection (c) shall be furnished to the commission and the comptroller.

(f) The permissible rates for a sales and use tax imposed under this subchapter are:

(1) one-quarter of one percent;

(2) one-half of one percent;

(3) three-quarters of one percent; or

(4) one percent.

(g) Chapter 322, Tax Code, applies to a sales and use tax imposed under this subchapter.

Sec. 370.363. MAXIMUM TAX RATE. (a) An authority may not adopt a sales and use tax rate, including a rate increase, that when combined with the rates of all sales and use taxes imposed by all political subdivisions of this state having territory in the service area of the transferred transit system exceeds two percent in any location in the service area.

(b) An election to approve a sales and use tax or increase the rate of an authority's sales and use tax has no effect if:

(1) the voters in the service area approve the authority's sales and use tax rate or rate increase at an election held on the same day on which a municipality or county having territory in the jurisdiction of the service area adopts a sales and use tax or an additional sales and use tax; and

(2) the combined rates of all sales and use taxes imposed by the authority and all political subdivisions of this state would exceed two percent in any part of the territory in the service area.

Sec. 370.364. ELECTION TO CHANGE TAX RATE. (a) At an election ordered under Section 370.362(b)(2), the ballots shall be printed to permit voting for or against the proposition: "The increase (decrease) of the local sales and use tax rate for mass transit to (percentage)."

(b) The increase or decrease in the tax rate becomes effective only if it is approved by a majority of the votes cast.

(c) A notice of the election and a certified copy of the order canvassing the election results shall be:

(1) sent to the commission and the comptroller; and

(2) filed in the deed records of the county.

Sec. 370.365. SALES TAX: EFFECTIVE DATES. (a) A sales and use tax implemented under this subchapter takes effect on the first day of the second calendar quarter that begins after the date the comptroller receives a copy of the order required to be sent under Section 370.364(c).

(b) An increase or decrease in the rate of a sales and use tax implemented under this subchapter takes effect on:

(1) the first day of the first calendar quarter that begins after the date the comptroller receives the notice provided under Section 370.364(c); or

(2) the first day of the second calendar quarter that begins after the date the comptroller receives the notice, if within 10 days after the date of receipt of the notice the comptroller gives written notice to the board that the comptroller requires more time to implement tax collection and reporting procedures.

SECTION 2.77. Section 370.302, Transportation Code, is amended by adding Subsections (h) and (i) to read as follows:

(h) If an authority enters into an agreement with a private entity that includes the collection by the private entity of tolls for the use of a transportation project, the private entity shall submit to the authority for approval:

(1) the methodology for:

(A) the setting of tolls; and

(B) increasing the amount of the tolls;

(2) a plan outlining methods the entity will use to collect the tolls, including:

(A) any charge to be imposed as a penalty for late payment of a toll; and

(B) any charge to be imposed to recover the cost of collecting a delinquent toll; and

(3) any proposed change in an approved methodology for the setting of a toll or a plan for collecting the toll.

(i) An agreement with a private entity that includes the collection by the private entity of tolls for the use of a transportation project may not be for a term longer than 50 years.

SECTION 2.78. Section 391.252(a), Transportation Code, is amended to read as follows:

(a) A [~~Subsequent to the effective date of this subchapter, a~~] person may not erect an off-premise sign that is adjacent to and visible from:

(1) U.S. Highway 290 between the western city limits of the city of Austin and the eastern city limits of the city of Fredericksburg;

(2) State Highway 317 between the northern city limits of the city of Belton to the southern city limits of the city of Valley Mills;

(3) State Highway 16 between the northern city limits of the city of Kerrville and Interstate Highway 20;

(4) U.S. Highway 77 between State Highway 186 and State Highway 44;

(5) U.S. Highway 281 between State Highway 186 and Interstate Highway 37;

(6) State Highway 17 between State Highway 118 and U.S. Highway 90;

(7) State Highway 67 between U.S. Highway 90 and Farm-to-Market Road 170;

(8) Farm-to-Market Road 170 between State Highway 67 and State Highway 118;

(9) State Highway 118 between Farm-to-Market Road 170 and State Highway 17;

(10) State Highway 105 between the western city limits of the city of Sour Lake to the eastern city limits of the city of Cleveland;

(11) State Highway 73 between the eastern city limits of the city of Winnie to the western city limits of the city of Port Arthur;

(12) State Highway 21 between the southern city limits of the city of College Station and U.S. Highway 290; [~~or~~]

(13) a highway located in:

(A) the Sabine National Forest;

(B) the Davy Crockett National Forest; or

(C) the Sam Houston National Forest; or

(14) Segments 1 through 4 of State Highway 130.

SECTION 2.79. Section 395.001(a), Transportation Code, is amended to read as follows:

(a) This subchapter applies only to:

(1) the governing body of a toll road authority:

(A) in which a county with a population of 3.3 [~~2.4~~] million or more is located; or

(B) that is adjacent to a county with a population of 3.3 million or more and in which a municipality with a population of more than 60,000 is located; and

(2) an outdoor sign.

SECTION 2.80. Section 395.051(a), Transportation Code, is amended to read as follows:

(a) This subchapter applies only to a county with a population of more than 3.3 million or a county adjacent to a county with a population of more than 3.3 million in which a municipality with a population of more than 60,000 is located.

SECTION 2.81. Section 451.554, Transportation Code, is amended to read as follows:

Sec. 451.554. BOARD APPROVAL OF ANNEXATION: EFFECTIVE DATE. (a) The addition of territory annexed under Section 451.551, or approved under Section 451.552 or 451.553, does not take effect if, before the effective date of the addition under Subsection (b), the board of the authority gives written notice to the governing body of the municipality that added new territory to the

authority by virtue of annexation, or to the governing body of the municipality or the commissioners court of the county that held the election, that the addition would create a financial hardship on the authority because:

(1) the territory to be added is not contiguous to the territory of the existing authority; or

(2) the addition of the territory would impair the imposition of the sales and use tax authorized by this chapter.

(b) In the absence of a notice under Subsection (a), the addition of territory takes effect on the 31st day after the date of the:

(1) municipal ordinance, if annexed by a municipality under Section 451.551; or

(2) election, if approved under Section 451.552 or 451.553 [~~approved under Section 451.552 or 451.553 takes effect on the 31st day after the date of the election~~].

SECTION 2.82. Section 472.031, Transportation Code, is amended by adding Subsection (c) to read as follows:

(c) A legislative member of a policy board may not be counted as absent at a meeting of the policy board during a legislative session.

[SECTION 2.83 reserved]

SECTION 2.84. Section 451.071, Transportation Code, is amended by adding Subsection (f) to read as follows:

(f) A referendum on a proposal to expand a system approved under this section may be held on any date specified in Section 41.001, Election Code, or a date chosen by order of the board of the authority, provided that:

(1) the referendum is held no earlier than the 62nd day after the date of the order; and

(2) the proposed expansion involves the addition of not more than 12 miles of track to the system.

SECTION 2.85. Subchapter D, Chapter 502, Transportation Code, is amended by adding Section 502.1515 to read as follows:

Sec. 502.1515. OUTSOURCING PRODUCTION OF RENEWAL NOTICES; PAID ADVERTISING. The commission may authorize the department to enter into a contract with a private vendor to produce and distribute motor vehicle registration renewal notices. The contract may provide for the inclusion of paid advertising in the registration renewal notice packet.

SECTION 2.86. Section 551.301, Transportation Code, is amended by amending Subdivision (2) and adding Subdivision (3) to read as follows:

(2) "Motor assisted scooter":

(A) means a self-propelled device with:

(i) [~~(A)~~] at least two wheels in contact with the ground during operation;

(ii) [~~(B)~~] a braking system capable of stopping the device under typical operating conditions;

(iii) [~~(C)~~] a gas or electric motor not exceeding 40 cubic centimeters;

(iv) [~~(D)~~] a deck designed to allow a person to stand or sit while operating the device; and

(v) [~~(E)~~] the ability to be propelled by human power alone; and

(B) does not include a pocket bike or minimotorbike.

(3) "Pocket bike or minimotorbike" means a self-propelled vehicle that is equipped with an electric motor or internal combustion engine having a piston displacement of less than 50 cubic centimeters, is designed to propel itself with not more than two wheels in contact with the ground, has a seat or saddle for the use of the operator, is not designed for use on a highway, and is ineligible for a certificate of title under Chapter 501. The term does not include:

(A) a moped or motorcycle;

(B) an electric bicycle or motor-driven cycle, as defined by Section 541.201;

(C) a motorized mobility device, as defined by Section 542.009;

(D) an electric personal assistive mobility device, as defined by Section 551.201; or

(E) a neighborhood electric vehicle.

SECTION 2.87. Subchapter D, Chapter 551, Transportation Code, is amended by adding Section 551.304 to read as follows:

Sec. 551.304. APPLICATION OF SUBCHAPTER TO POCKET BIKE OR MINIMOTORBIKE. This subchapter may not be construed to authorize the operation of a pocket bike or minimotorbike on any:

(1) highway, road, or street;

(2) path set aside for the exclusive operation of bicycles; or

(3) sidewalk.

SECTION 2.88. Section 101.022, Civil Practice and Remedies Code, is amended to read as follows:

Sec. 101.022. DUTY OWED: PREMISE AND SPECIAL DEFECTS. (a) Except as provided in Subsection (c), if [~~If~~] a claim arises from a premise defect, the governmental unit owes to the claimant only the duty that a private person owes to a licensee on private property, unless the claimant pays for the use of the premises.

(b) The limitation of duty in this section does not apply to the duty to warn of special defects such as excavations or obstructions on highways, roads, or streets or to the duty to warn of the absence, condition, or malfunction of traffic signs, signals, or warning devices as is required by Section 101.060.

(c) If a claim arises from a premise defect on a toll highway, road, or street, the governmental unit owes to the claimant only the duty that a private person owes to a licensee on private property.

SECTION 2.89. Subchapter C, Chapter 791, Government Code, is amended by adding Section 791.033 to read as follows:

Sec. 791.033. CONTRACTS TO CONSTRUCT, MAINTAIN, OR OPERATE FACILITIES ON STATE HIGHWAY SYSTEM. (a) In this section, "state highway system" means the highways in this state included in the plan providing for a system of state highways prepared under Section 201.103, Transportation Code.

(b) A local government may enter into and make payments under an agreement with another local government for the design, development, financing, construction, maintenance, operation, extension, expansion, or improvement of a toll or nontoll project or facility on the state highway system located within the boundaries of the local government or, as a continuation of the project or facility, within the boundaries of an adjacent local government.

(c) An agreement under this section must be approved by the Texas Department of Transportation.

(d) Notwithstanding Section 791.011(d), to make payments under an agreement under this section, a local government may:

(1) pledge revenue from any available source, including payments received under an agreement with the Texas Department of Transportation under Section 222.104, Transportation Code;

(2) pledge, levy, and collect taxes to the extent permitted by law; or

(3) provide for a combination of Subdivisions (1) and (2).

(e) The term of an agreement under this section may not exceed 40 years.

(f) Any election required to permit action under this section must be held in conformance with the Election Code or other law applicable to the local government.

(g) In connection with an agreement under this section, a county or municipality may exercise any of the rights and powers granted to the governing body of an issuer under Chapter 1371.

(h) This section is wholly sufficient authority for the execution of agreements, the pledge of revenues, taxes, or any combination of revenues and taxes, and the performance of other acts and procedures authorized by this section by a local government without reference to any other provision of law or any restriction or limitation contained in those provisions, except as specifically provided by this section. To the extent of any conflict or inconsistency between this section and any other law, this section shall prevail and control. A local government may use any law not in conflict with this section to the extent convenient or necessary to carry out any power or authority, expressed or implied, granted by this section.

SECTION 2.90. Subchapter C, Chapter 1232, Government Code, is amended by adding Section 1232.111 to read as follows:

Sec. 1232.111. CERTAIN PROJECTS BY TEXAS DEPARTMENT OF TRANSPORTATION. (a) The authority may issue and sell obligations to finance one or more projects described by Section 201.1055(a), Transportation Code. Notwithstanding Section 1232.108(2), the estimated cost of the project must be specified in the General Appropriations Act or other law.

(b) Any provision of this chapter that relates to the issuance or sale of obligations to finance the acquisition or construction of a building, including provisions relating to form, procedure, repayment, actions that may be taken to ensure that the payment of the principal of and interest on the obligations is continued without interruption, and other relevant matters, applies to the issuance or sale of obligations under this section to the extent that the provision may be appropriately made applicable.

(c) The legislature may appropriate money from any available source, including the state highway fund, to the Texas Department of Transportation to make lease payments to the authority for space occupied by the department in a building acquired or constructed under Section 201.1055(a), Transportation Code.

SECTION 2.91. Subtitle I, Title 9, Government Code, is amended by adding Chapter 1479 to read as follows:

CHAPTER 1479. COUNTY BONDS FOR FACILITIES ON STATE HIGHWAY SYSTEM

Sec. 1479.001. DEFINITION. In this chapter, "state highway system" means the highways in this state included in the plan providing for a system of state highways prepared under Section 201.103, Transportation Code.

Sec. 1479.002. AUTHORITY TO ISSUE BONDS. (a) A county may issue bonds to provide funds for the design, development, financing, construction, maintenance, operation, extension, expansion, or improvement of a toll or nontoll project or facility on the state highway system located in the county or, as a continuation of the project or facility, in an adjacent county.

(b) To provide for the payment of bonds issued under this section, a county may:

(1) pledge revenue from any available source, including payments received under an agreement with the Texas Department of Transportation under Section 222.104, Transportation Code;

(2) pledge, levy, and collect taxes subject to any constitutional limitation; or

(3) provide for a combination of Subdivisions (1) and (2).

(c) Any election required to permit action under Subsection (b) must be held in conformance with the Election Code or other law applicable to the county.

(d) A county that issues bonds under this section may exercise any of the rights and powers granted to the governing body of an issuer under Chapter 1371.

(e) A bond issued under this section must mature not later than 40 years after its date of issuance.

(f) This section is wholly sufficient authority for the issuance of bonds, the pledge of revenues, taxes, or any combination of revenues and taxes, and the performance of other acts and procedures authorized by this section by a county without reference to any other provision of law or any restriction or limitation contained in those provisions, except as specifically provided by this section. To the extent of any conflict or inconsistency between this section and any other law, this section shall prevail and control. A county may use any law not in conflict with this section to the extent convenient or necessary to carry out any power or authority, expressed or implied, granted by this section.

SECTION 2.92. Section 2166.302, Government Code, is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

(a) Except as provided by Subsections [~~Subsection~~] (b) and (c), the commission shall adopt uniform general conditions to be incorporated into all building construction contracts made by the state, including a contract for a project excluded from this chapter by Section 2166.003, but not including a contract for a project excluded from this chapter by Section 2166.004.

(c) Subsection (a) does not apply to a project constructed by and for the Texas Department of Transportation.

SECTION 2.93. Section 2262.002(b), Government Code, is amended to read as follows:

(b) This chapter does not apply to contracts of the Texas Department of Transportation that:

(1) relate to highway construction or highway engineering; or

(2) are subject to Section 201.112, Transportation Code.

SECTION 2.94. Section 21.042, Property Code, is amended by adding Subsection (g) to read as follows:

(g) Notwithstanding Subsection (d), if a portion of a tract or parcel of real property that, for the then current tax year was appraised for ad valorem tax purposes under a law enacted under Section 1-d or 1-d-1, Article VIII, Texas Constitution, and is outside the municipal limits or the extraterritorial jurisdiction of a municipality with a population of 5,000 or more is condemned for state highway purposes, the special commissioners shall consider the loss of reasonable access to or from the remaining property in determining the damage to the property owner.

SECTION 2.95. Section 11.11, Tax Code, is amended by adding Subsection (j) to read as follows:

(j) For purposes of this section, any portion of a facility owned by the Texas Department of Transportation that is part of the Trans-Texas Corridor, is a rail facility or system, or is a highway in the state highway system, and that is licensed or leased to a private entity by that department under Chapter 91, 223, or 227, Transportation Code, is public property used for a public purpose if the rail facility or system, highway, or facility is operated by the private entity to provide transportation or utility services. Any part of a facility, rail facility or system, or state highway that is licensed or leased to a private entity for a commercial purpose is not exempt from taxation.

SECTION 2.96. Section 25.06, Tax Code, is amended by adding Subsection (c) to read as follows:

(c) This section does not apply to:

(1) any portion of a facility owned by the Texas Department of Transportation that is part of the Trans-Texas Corridor, is a rail facility or system, or is a highway in the state highway system and that is licensed or leased to a private entity by that department under Chapter 91, 227, or 361, Transportation Code; or

(2) a leasehold or other possessory interest granted by the Texas Department of Transportation in a facility owned by that department that is part of the Trans-Texas Corridor, is a rail facility or system, or is a highway in the state highway system.

SECTION 2.97. Section 25.07, Tax Code, is amended by adding Subsection (c) to read as follows:

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

(1) any portion of a facility owned by the Texas Department of Transportation that is part of the Trans-Texas Corridor, is a rail facility or system, or is a highway in the state highway system and that is licensed or leased to a private entity by that department under Chapter 91, 227, or 361, Transportation Code; or

(2) a leasehold or other possessory interest granted by the Texas Department of Transportation in a facility owned by that department that is part of the Trans-Texas Corridor, is a rail facility or system, or is a highway in the state highway system.

SECTION 2.98. (a) The Texas Department of Transportation shall conduct a study to determine how to maximize the use of highway rights-of-way by public utilities. The department shall submit a written report of its findings to the appropriate legislative committees not later than December 31, 2006.

(b) This section expires January 1, 2007.

[SECTION 2.99 reserved]

SECTION 2.100. Notwithstanding any law to the contrary, neither the Texas Department of Transportation nor a regional mobility authority may acquire property, enter into a contract, grant a franchise, or lease or license property for the purpose of constructing or operating an ancillary facility to be used for a commercial purpose under Chapter 228 or 370, Transportation Code. This section does not apply to a segment of highway under the jurisdiction of a regional mobility authority if the regional mobility authority awarded a comprehensive development agreement for the improvement of that segment before September 1, 2005. This section does not apply to a segment of the state highway system in Travis or Williamson County if the Texas Department of Transportation awarded an exclusive development agreement for the improvement of that segment before September 1, 2005. This section expires September 1, 2007.

SECTION 2.101. The following provisions of the Transportation Code are repealed:

(1) Section 201.6061;

(2) Section 222.102;

(3) Sections 224.155-224.158 and 224.160;

(4) Section 284.009, as added by Chapter 953, Acts of the 78th Legislature, Regular Session, 2003;

(5) Section 284.009, as added by Chapter 1325, Acts of the 78th Legislature, Regular Session, 2003;

(6) Section 361.002;

(7) Sections 361.031 and 361.050;

(8) Subchapter C, Chapter 361;

(9) Sections 361.131-361.136, 361.1375, 361.140, and 361.141;

(10) Sections 361.175, 361.180, and 361.191;

(11) Sections 361.231, 361.232, and 361.234-361.238;

(12) Section 361.251;
(13) Sections 361.302-361.306;
(14) Subchapter J, Chapter 361;
(15) Sections 362.002 and 362.008;
(16) Sections 366.035 and 366.165(d); and
(17) Sections 370.035 and 370.163(b).

SECTION 2.102. Section 370.161(b), Transportation Code, is repealed.

SECTION 2.103. The changes in law made by this Act to Chapter 370, Transportation Code, apply to a regional mobility authority created or participated in by a municipality described by Section 370.031(c), Transportation Code, as added by this Act, or Section 370.161(b), Transportation Code, as it existed before the effective date of this Act, in the same manner as they apply to any other entity that creates or participates in a regional mobility authority.

ARTICLE 3. VEHICLES

SECTION 3.01. (a) Article 45.051(f), Code of Criminal Procedure, is amended to read as follows:

(f) This article does not apply to:

(1) an offense to which Section 542.404 or 729.004(b), Transportation Code, applies; or

(2) a violation of a state law or local ordinance relating to motor vehicle control, other than a parking violation, [~~traffic offense~~] committed by a person who holds a commercial driver's license.

(b) The change in law made by this section applies only to an offense committed on or after September 1, 2005.

(c) An offense committed before September 1, 2005, is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before September 1, 2005, if any element of the offense was committed before that date.

SECTION 3.02. Section 382.133, Health and Safety Code, is amended by adding Subsection (d) to read as follows:

(d) A mass transit hydrogen-fueled fleet vehicle may be used to satisfy the percentage requirement under this section.

SECTION 3.03. Subchapter H, Chapter 201, Transportation Code, is amended by adding Section 201.618 to read as follows:

Sec. 201.618. HYDROGEN-FUELED VEHICLES AND REFUELING STATIONS. (a) The department may seek funding from public and private sources to acquire and operate hydrogen-fueled vehicles and to establish and operate hydrogen refueling stations as provided by this section.

(b) If the department secures funding under Subsection (a), the department may establish and operate at least five hydrogen refueling stations. A refueling station established under this subsection must be located in an urbanized area along a major state highway and be accessible to the public.

(c) If the department secures funding under Subsection (a), the department may purchase to operate in an area in which a refueling station is established under Subsection (b) vehicles capable of operating using hydrogen, including, at a minimum:

(1) four vehicles with internal combustion engines that run on hydrogen; and

(2) three fuel-cell vehicles, one internal combustion engine bus that runs on hydrogen, or one fuel-cell bus.

(d) A vehicle purchased to meet the requirements of Subsection (c) may be used to satisfy the alternative fuels percentage requirement under Subchapter A, Chapter 2158, Government Code.

(e) The department may establish hydrogen refueling stations on the Trans-Texas Corridor under Chapter 227.

(f) The department shall:

(1) ensure that data on emissions from the vehicles and refueling stations purchased under this section and from the production of hydrogen for the vehicles and refueling stations are monitored and analyzed and compared with data on emissions from control vehicles with internal combustion engines that operate on fuels other than hydrogen; and

(2) report the results of the monitoring, analysis, and comparison to the Texas Commission on Environmental Quality.

(g) The department may charge the public a reasonable fee to use a hydrogen refueling station operated under Subsection (b). The amount of the fee shall be based on the department's estimate of the number of customers that will use the refueling stations and the direct and indirect costs that will be incurred by the department to operate the refueling stations. Fees collected by the department under this section shall be deposited in the state highway fund, may be appropriated only to the department to implement this section, and are exempt from the application of Section 403.095, Government Code.

SECTION 3.04. (a) The Study Commission on Availability of Pre-Owned Heavy Duty Commercial Motor Vehicles is created as provided by this section.

(b) The commission is composed of three members as follows:

(1) one member appointed by the governor;

(2) one member appointed by the lieutenant governor; and

(3) one member appointed by the speaker of the house of representatives.

(c) Each member of the commission serves at the will of the person who appointed the member.

(d) The members of the commission shall select the presiding officer.

(e) A member of the commission is not entitled to receive compensation for service on the commission but is entitled to reimbursement of the travel expenses incurred by the member while conducting the business of the commission, as provided by the General Appropriations Act.

(f) The commission may accept gifts and grants from any source to be used to carry out a function of the commission.

(g) The commission shall conduct public hearings and study public policy implications relating to any act by the Texas Department of Transportation that would close existing businesses in this state because of the ownership structure of businesses that sell pre-owned heavy duty trucks that weigh in excess of 11,000 pounds. The commission shall determine whether such actions by the department could impact the use and operation of rail and highway transportation facilities in this state by heavy duty trucks.

(h) The study shall include:

(1) a review of the laws of other states regarding whether there are restrictions on ownership structure of businesses that sell heavy duty commercial trucks;

(2) a review of whether safety of pre-owned heavy duty trucks on highways in this state could be compromised if the Texas Department of Transportation closes businesses that currently sell such trucks;

(3) a review of whether the Texas Department of Transportation's application of Section 2301.476, Occupations Code, could negatively impact competition in the pre-owned heavy duty truck market as well as the impact that such a decision could have on small, independent pre-owned truck dealerships and independent owner/operators of trucking businesses in this state; and

(4) other issues that the commission considers relevant to protecting the public interest regarding safety and availability of pre-owned heavy duty trucks that operate on the highways of this state.

(i) Not later than December 1, 2006, the commission shall issue a report to the governor, lieutenant governor, speaker of the house of representatives, and chair of the committee in the house and senate with jurisdiction of transportation issues. The report shall summarize the following:

(1) any hearings conducted by the commission;

(2) any studies conducted by the commission;

(3) any legislation proposed by the commission; and

(4) any other findings and recommendations of the commission.

SECTION 3.05. (a) In order to ensure the safety of persons and transportation in this state, the Texas Department of Transportation shall conduct a study of systems for issuing temporary tags for use on unregistered motor vehicles. In studying the systems, the department shall:

(1) compare the current system to other potential systems, including systems used in other states;

(2) seek input from interested parties, including members of the public, dealers, converters, and law enforcement; and

(3) consider issues of public and transportation safety, homeland security, costs, efficiency, and reliability.

(b) The department shall report its findings and recommendations to the governor, lieutenant governor, and speaker of the house of representatives not later than November 1, 2006.

ARTICLE 4. COORDINATION OF PUBLIC TRANSPORTATION FOR HEALTH AND HUMAN SERVICES PROGRAMS

SECTION 4.01. Sections 455.004(a) and (b), Transportation Code, are amended to read as follows:

(a) A public transportation advisory committee consisting of 11 [~~nine~~] members shall:

(1) advise the commission on the needs and problems of the state's public transportation providers, including the methods for allocating state public transportation money;

(2) comment on rules involving public transportation during development of the rules and before the commission finally adopts the rules unless an emergency requires immediate commission action;

(3) advise the commission on the implementation of Chapter 461; and

(4) perform any other duty determined by the commission.

(b) The commission shall appoint members of the advisory committee. The membership of the committee shall include:

(1) four members who represent a diverse cross-section of public transportation providers;

(2) three members who represent a diverse cross-section of transportation users; [~~and~~]

(3) three [~~two~~] members who represent the general public; and

(4) one member with experience in the administration of health and human services programs.

SECTION 4.02. Section 461.012(g), Health and Safety Code, is amended to read as follows:

(g) The commission shall contract with the Texas Department of Transportation for the Texas Department of Transportation to deliver public transportation services to [~~assume all responsibilities of the commission relating to the provision of transportation services for~~] clients of eligible programs, except that the Texas Department of Transportation may not assume responsibility for client case review, case management, or coordination or authorization of benefits.

SECTION 4.03. Section 533.012(b), Health and Safety Code, is amended to read as follows:

(b) The department shall contract with the Texas Department of Transportation for the Texas Department of Transportation to deliver public transportation services to [~~assume all responsibilities of the department relating to the provision of transportation services for~~] clients of eligible programs, except that the Texas Department of Transportation may not assume responsibility for client case review, case management, or coordination or authorization of benefits.

SECTION 4.04. Section 22.001(e), Human Resources Code, as added by Section 2.129, Chapter 198, and Section 13.06, Chapter 1325, Acts of the 78th Legislature, Regular Session, 2003, is amended to read as follows:

(e) The department shall contract with the Texas Department of Transportation for the Texas Department of Transportation to deliver public transportation services to [~~assume all responsibilities of the department relating to~~

~~the provision of transportation services for~~] clients of eligible programs, except that the Texas Department of Transportation may not assume responsibility for client case review, case management, or coordination or authorization of benefits.

SECTION 4.05. Section 40.002(f), Human Resources Code, is amended to read as follows:

(f) The department may contract with the Texas Department of Transportation for the Texas Department of Transportation to deliver public transportation services to [~~assume all responsibilities of the department relating to the provision of transportation services for~~] clients of eligible programs, except that the Texas Department of Transportation may not assume responsibility for client case review, case management, or coordination or authorization of benefits.

SECTION 4.06. Section 91.021(g), Human Resources Code, is amended to read as follows:

(g) The commission shall contract with the Texas Department of Transportation for the Texas Department of Transportation to deliver public transportation services to [~~assume all responsibilities of the commission relating to the provision of transportation services for~~] clients of eligible programs, except that the Texas Department of Transportation may not assume responsibility for client case review, case management, or coordination or authorization of benefits.

SECTION 4.07. Section 101.0256(b), Human Resources Code, is amended to read as follows:

(b) The department shall contract with the Texas Department of Transportation for the Texas Department of Transportation to deliver public transportation services to [~~assume all responsibilities of the department relating to the provision of transportation services for~~] clients of eligible programs, except that the Texas Department of Transportation may not assume responsibility for client case review, case management, or coordination or authorization of benefits.

SECTION 4.08. Section 111.0525(d), Human Resources Code, is amended to read as follows:

(d) The commission shall contract with the Texas Department of Transportation for the Texas Department of Transportation to deliver public transportation services to [~~assume all responsibilities of the commission relating to the provision of transportation services for~~] clients of eligible programs, except that the Texas Department of Transportation may not assume responsibility for client case review, case management, or coordination or authorization of benefits.

SECTION 4.09. Section 301.063(f), Labor Code, is amended to read as follows:

(f) The commission shall contract with the Texas Department of Transportation for the Texas Department of Transportation to deliver public transportation services to [~~assume all responsibilities of the commission relating to the provision of transportation services for~~] clients of eligible programs, except that the Texas Department of Transportation may not assume responsibility for client case review, case management, or coordination or authorization of benefits.

SECTION 4.10. Chapter 459, Transportation Code, is repealed.

ARTICLE 5. REGIONAL TRANSIT SYSTEM REVIEW COMMITTEE

SECTION 5.01. (a) In this section, "region" means the region formed by two contiguous counties each containing a municipality having a population of at least 530,000 and the counties adjacent to one or both of those counties.

(b) The Regional Transit System Review Committee is created to conduct public hearings regarding, and study the implications of, implementing regional transit service in the region.

(c) The committee consists of:

(1) each member of the legislature who represents a district that contains territory in the region;

(2) each mayor of a municipality in the region;

(3) each county judge and commissioner in the region; and

(4) the executive director of each transportation authority in the region.

(d) In conducting hearings and studies the committee shall:

(1) examine whether a seamless system of transit systems should be offered throughout the region;

(2) examine whether there should be a mechanism for additional counties to participate in the regional transit system; and

(3) perform a review of funding and financing options.

(e) The initial meeting of the committee shall take place before September 30, 2005. At the initial meeting the committee shall adopt rules governing the committee and establish a work plan and schedule for future meetings.

(f) The committee may accept gifts, grants, technical support, or any other resources from any source to carry out the functions of the committee.

(g) Not later than September 1, 2006, the committee shall issue a report summarizing:

(1) hearings conducted by the committee;

(2) studies conducted by the committee;

(3) any legislation proposed by the committee; and

(4) any other findings or recommendations of the committee.

(h) This section expires September 1, 2007.

ARTICLE 6. CARRIERS TRANSPORTING HOUSEHOLD GOODS

SECTION 6.01. Section 643.051, Transportation Code, is amended to read as follows:

Sec. 643.051. REGISTRATION REQUIRED. (a) A motor carrier may not operate a commercial motor vehicle, as defined by Section 548.001, or a tow truck on a road or highway of this state unless the carrier registers with the department under this subchapter.

(b) A motor carrier may not operate a vehicle, regardless of size of the vehicle, to transport household goods for compensation unless the carrier registers with the department under this subchapter.

SECTION 6.02. Section 643.153(b), Transportation Code, is amended to read as follows:

(b) The department may adopt rules necessary to ensure that a customer of a motor carrier transporting household goods is protected from deceptive or unfair practices and unreasonably hazardous activities. The rules must:

(1) establish a formal process for resolving a dispute over a fee or damage;

(2) require a motor carrier to indicate clearly to a customer whether an estimate is binding or nonbinding and disclose the maximum price a customer could be required to pay;

(3) create a centralized process for making complaints about a motor carrier that also allows a customer to inquire about a carrier's complaint record; and

(4) require a motor carrier transporting household goods to list a place of business with a street address in this state and the carrier's registration number issued under this article in any print advertising published in this state[~~;~~

[~~(5) require motor carriers that are required to register under Subsection (c) to file proof of cargo insurance in amounts to be determined by the department that do not exceed the amount required for a motor carrier transporting household goods under federal law and allow alternative evidence of financial responsibility, through surety bonds, letters of credit, or other means satisfactory to the department, for contractual obligations to customers that do not exceed $5,000 aggregate loss or damage to total cargo shipped at any one time;~~

[~~(6) require motor carriers that are required to register under Subsection (c) to conspicuously advise consumers concerning limitation of any carrier liability for loss or damage as determined under Subdivision (7); and~~

[~~(7) determine reasonable provisions governing limitation of liability for loss or damage of motor carriers required to register under Subsection (c), not to exceed 60 cents per pound per article~~].

SECTION 6.03. Section 643.155(c), Transportation Code, is amended to read as follows:

(c) The committee shall[~~:~~

[~~(1)~~] examine the rules adopted by the department under Sections 643.153(a) and (b) and make recommendations to the department on modernizing and streamlining the rules[~~;~~

[~~(2) conduct a study of the feasibility and necessity of requiring any vehicle liability insurance for household goods carriers required to register under Section 643.153(c); and~~

[~~(3) recommend a maximum level of liability limitation under Section 643.153(b)(7) that does not exceed 60 cents per pound~~].

SECTION 6.04. Section 643.252(a), Transportation Code, is amended to read as follows:

(a) The department may suspend or revoke a registration issued under this chapter or place on probation a motor carrier whose registration is suspended if a motor carrier:

(1) fails to maintain insurance or evidence of financial responsibility as required by Section 643.101(a), (b), (c), or (d) [~~or 643.153(b)~~];

(2) fails to keep evidence of insurance in the cab of each vehicle as required by Section 643.103(b);

(3) fails to register a vehicle requiring registration;

(4) knowingly provides false information on any form filed with the department under this chapter; or

(5) violates a rule adopted under Section 643.063.

SECTION 6.05. Sections 643.253(a), (b), and (e), Transportation Code, are amended to read as follows:

(a) A person commits an offense if the person fails to:

(1) register as required by Subchapter B [~~or Section 643.153(e)~~];

(2) maintain insurance or evidence of financial responsibility as required by Subchapter C [~~or Section 643.153~~]; or

(3) keep a cab card in the cab of a vehicle as required by Section 643.059.

(b) A person commits an offense if the person solicits the transportation of household goods for compensation and is not registered as required by Subchapter B [~~or Section 643.153~~].

(e) An offense under Subsection (b) or (d) is a misdemeanor punishable by a fine of not less than $200 or more than $1,000 per violation.

SECTION 6.06. Section 643.153(c), Transportation Code, is repealed.

ARTICLE 7. TEXAS DEPARTMENT OF TRANSPORTATION MOTOR VEHICLE DIVISION

SECTION 7.01. Sections 2301.002(2) and (10), Occupations Code, are amended to read as follows:

(2) "Board" has the meaning assigned by Section 2301.005 [~~means the Motor Vehicle Board of the Texas Department of Transportation~~].

(10) "Director" means the director [~~of the board and~~] of the division.

SECTION 7.02. Section 2301.005, Occupations Code, is amended by amending Subsection (a) and adding Subsection (e) to read as follows:

(a) A reference in law, including a rule, to the Texas Motor Vehicle Commission or to the board means the director, except that a reference to the board means the commission if it is related to the adoption of rules [~~board~~].

(e) A reference in this chapter to a rule or to a board rule means a rule adopted by the commission, except that all board rules that were in effect on June 1, 2005, remain in effect until amended or repealed by the commission.

SECTION 7.03. Section 2301.101(c), Occupations Code, is amended to read as follows:

(c) The director serves at the will of the executive director [~~board~~].

SECTION 7.04. Section 2301.103, Occupations Code, is amended to read as follows:

Sec. 2301.103. PERSONNEL. [~~(a) The director shall appoint and employ personnel necessary to carry out the duties and functions of the director and the board under this chapter.~~

[~~(b) A division employee is an employee of the department and is subject to the human resource rules and policies of the department and the transportation commission, except that, as applied to a division employee, any powers granted to the executive director by those rules and policies shall be exercised by the director.~~

[~~(c)~~] A division employee is subject to dismissal if the employee has an interest in or is related within the first degree by consanguinity or affinity, as determined under Chapter 573, Government Code, to a person who has an interest in a business that manufactures, distributes, converts, sells, or leases motor vehicles.

SECTION 7.05. Section 2301.154, Occupations Code, is amended to read as follows:

Sec. 2301.154. DELEGATION OF POWERS. The director [~~board~~] may delegate any of the director's [~~its~~] powers to[~~:~~

[~~(1) one or more of its members;~~

[~~(2) the director; or~~

[~~(3)~~] one or more of the division's [~~its~~] employees.

SECTION 7.06. The following provisions of the Occupations Code are repealed:

(1) Subchapter B, Chapter 2301; and

(2) Sections 2301.102, 2301.104, 2301.158, and 2301.159.

ARTICLE 8. TRANSITION PROVISIONS; EFFECTIVE DATE

SECTION 8.01. Section 101.022, Civil Practice and Remedies Code, as amended by this Act, applies only to a cause of action that accrues on or after the effective date of this Act. A cause of action that accrued before the effective date of this Act is governed by the law in effect at the time the cause of action accrued, and that law is continued in effect for that purpose.

SECTION 8.02. (a) On the effective date of this Act:

(1) the State Aircraft Pooling Board is abolished, and all powers, duties, obligations, rights, contracts, bonds, appropriations, records, and real or personal property of the State Aircraft Pooling Board are transferred to the Texas Department of Transportation;

(2) a rule, policy, procedure, or decision of the State Aircraft Pooling Board continues in effect as a rule, policy, procedure, or decision of the Texas Department of Transportation until superseded by an act of the Texas Department of Transportation;

(3) a reference in law to the State Aircraft Pooling Board means the Texas Department of Transportation;

(4) all temporary employees of the Texas Department of Transportation who were previously employed by the State Aircraft Pooling Board on August 31, 2003, become regular full-time employees of the Texas Department of Transportation; and

(5) notwithstanding Section 31.01, Chapter 3, Acts of the 78th Legislature, 3rd Called Session, 2003, any memorandum of understanding or interagency contract entered into between the Texas Department of Transportation and the State Aircraft Pooling Board for the operation of state aircraft expires.

(b) Before the executive director of the Texas Department of Transportation or the director's designee may authorize a person to use a state-operated aircraft, the person must sign an affidavit stating that the person is traveling on official state business. On filing of the affidavit, the person may be authorized to use

state-operated aircraft for official state business for a period of one year. A member of the legislature is not required to receive any other additional authorization to use a state-operated aircraft.

SECTION 8.03. 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 2702 - STATEMENT OF LEGISLATIVE INTENT

REPRESENTATIVE KOLKHORST: Mr. Krusee, we've been working, and I know Representative Hegar has been working long and hard hours, and you know, one of my biggest concerns is the rural areas and some of the things we are doing on the Trans-Texas Corridor. Before we get to the Trans-Texas Corridor, I just want to ask a couple of questions to make sure that I've read the bill correctly. On page 18, line 9, it talks about state highways and RMAs and their ability—what they can and cannot do. I see that on page 18, line 9, they can "provide a location for auxiliary facilities that is intended to generate revenue for use in the design, development, financing, construction, maintenance or operation of a toll project, including a gas station, garage, stores, hotel, restaurant or other commercial facility." Now is that on any state highway that becomes a tolling facility, Mr. Krusee?

REPRESENTATIVE KRUSEE: That is directly, that is a part of the recodification, that is not new law. That was taken from Chapter 361, and that is a part of the recodification where it's put into Chapter 201 which is the definition section of the transportation code. In other sections of the code where this is implemented it is severely restricted. For example, in the Trans-Texas corridor they are not allowed to do hotels or restaurants. In RMA, there is a two or more year moratorium on doing any of them. In other parts of the bill, we are restricted from putting any auxiliary facilities or condemning land for auxiliary facilities outside of the corridor, and there are other restrictions as well that the house put on, all those restrictions remain intact in this bill. This is not new language and it is restricted by everything we have put on in the house.

KOLKHORST: And there is moratorium on RMAs currently? Is there an exception, did we do a carve-out for Williamson County?

KRUSEE: Yes, ma'am, we did.

KOLKHORST: Now that is Williamson and Travis, or just Williamson?

KRUSEE: Williamson and Travis.

KOLKHORST: And we did a carve-out, can you explain that carve-out to everybody?

KRUSEE: We did a carve-out because there have already been contracts let, and the bonds have already been awarded for 183A, Williamson County, which is Leander and Cedar Park. And then we carved out an exception for development of 130 in Travis and Williamson, because they are trying to envision central

Texas in a certain way, and to build particular types of buildings out there. So those have already been started, so it's kind of like a grandfather, but for the rest of the state, there is a moratorium.

KOLKHORST: So, in those highways that you have specifically noted there will be the ability to have the state involved in, I think it is, hotels, restaurants, other commercial facilities, gas stations, garage and stores, am I correct?

KRUSEE: They will be able to lease facilities, yes, but, and within those facilities all of our restrictions apply such as advancing of development rights, approval of the county commissioner's court, and so on.

KOLKHORST: Okay, now moving to the Trans-Texas Corridor, those particular types of stores, what are we allowing in the Trans-Texas Corridor?

KRUSEE: We allow convenience stores and gas stations, and that's all. Those convenience stores and gas stations are not allowed within 10 miles of the interstate intersection. The commissioner's court has to approve. The property owners maintain their development rights.

KOLKHORST: So, in essence, and I am going to skip forward real fast, is that on Trans-Texas Corridor we have some stipulations that are very different from the RMAs, is that correct?

KRUSEE: Yes, ma'am. It is more restrictive.

KOLKHORST: And lastly, on my accountability issue which I think I filed on **HB 1273** which talked about TxDot having to approve any tolling increases. We don't have that provision in the bill, it is only that TxDot has to approve the methodology, am I right on that?

KRUSEE: Yes, ma'am. As you put in the amendment to **HB 2702**, we retained that amendment in full.

REMARKS ORDERED PRINTED

Representative Kolkhorst moved to print remarks between Representative Krusee and Representative Kolkhorst.

The motion prevailed.

Representative Krusee moved to adopt the conference committee report on **HB 2702**.

A record vote was requested.

The motion to adopt the conference committee report on **HB 2702** prevailed by (Record 984): 120 Yeas, 9 Nays, 2 Present, not voting.

Yeas — Allen, A.; Allen, R.; Alonzo; Anchia; Bailey; Berman; Blake; Branch; Brown, B.; Brown, F.; Callegari; Campbell; Casteel; Chisum; Cook, B.; Cook, R.; Corte; Crabb; Crownover; Davis, J.; Dawson; Delisi; Denny; Deshotel; Driver; Dunnam; Dutton; Edwards; Eiland; Eissler; Escobar; Farabee; Farrar; Flynn; Frost; Gallego; Gattis; Geren; Giddings; Gonzales; Gonzalez Toureilles; Goolsby; Griggs; Guillen; Haggerty; Hamilton; Hamric; Harper-Brown; Hegar; Herrero; Hill; Hochberg; Hodge; Homer; Hopson; Howard; Hughes; Hunter;

Hupp; Isett; Jackson; Jones, D.; Jones, J.; Keel; Keffer, J.; King, P.; King, T.; Kolkhorst; Kuempel; Laney; Leibowitz; Luna; Madden; Martinez; Martinez Fischer; McCall; McReynolds; Menendez; Miller; Morrison; Naishtat; Nixon; Oliveira; 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; Truitt; Turner; Uresti; Van Arsdale; Veasey; Villarreal; Vo; West; Wong; Woolley; Zedler.

Nays — Burnam; Castro; Chavez; Davis, Y.; Elkins; Hardcastle; Merritt; Noriega, M.; Olivo.

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

Absent, Excused — Goodman.

Absent — Anderson; Baxter; Bohac; Bonnen; Coleman; Dukes; Flores; Grusendorf; Hartnett; Hilderbran; Keffer, B.; Krusee; Laubenberg; McClendon; Moreno, P.; Mowery; Thompson.

STATEMENTS OF VOTE

When Record No. 984 was taken, I was in the house but away from my desk. I would have voted yes.

Anderson

When Record No. 984 was taken, I was in the house but away from my desk. I would have voted yes.

Baxter

When Record No. 984 was taken, my vote failed to register. I would have voted yes.

Bohac

When Record No. 984 was taken, I was in the house but away from my desk. I would have voted yes.

Dukes

When Record No. 984 was taken, I was in the house but away from my desk. I would have voted yes.

Hilderbran

I was shown voting present, not voting on Record No. 984. I intended to vote yes.

Hope

When Record No. 984 was taken, my vote failed to register. I would have voted yes.

Krusee

When Record No. 984 was taken, I was in the house but away from my desk. I would have voted yes.

McClendon

When Record No. 984 was taken, I was in the house but away from my desk. I would have voted no.

Thompson

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. 9).

SB 1227 - RULES SUSPENDED

Representative Morrison moved to suspend all necessary rules to consider the conference committee report on **SB 1227** at this time.

The motion prevailed.

SB 1227 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Morrison submitted the conference committee report on **SB 1227**.

Representative Morrison moved to suspend all necessary rules and to adopt the conference committee report on **SB 1227**.

A record vote was requested.

The motion to adopt the conference committee report on **SB 1227** prevailed by (Record 985): 105 Yeas, 41 Nays, 1 Present, not voting.

Yeas — Allen, A.; Allen, R.; Alonzo; Anderson; Bailey; Baxter; Berman; Blake; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Callegari; Campbell; Casteel; Chisum; Cook, B.; Cook, R.; Corte; Crabb; Crownover; Davis, J.; Dawson; Delisi; Denny; Deshotel; Driver; Dunnam; Edwards; Eiland; Eissler; Elkins; Farabee; Flores; Flynn; Frost; Gallego; Gattis; Geren; Giddings; Gonzalez Toureilles; Goolsby; Griggs; Grusendorf; Guillen; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Hegar; Hilderbran; Hill; Hope; Hughes; Hupp; Isett; Jackson; Jones, D.; Keel; Keffer, B.; Keffer, J.; King, P.; Kolkhorst; Krusee; Laubenberg; Leibowitz; Luna; Madden; Martinez; McCall; McClendon; McReynolds; Menendez; Miller; Morrison; Nixon; Oliveira; Orr; Otto; Paxton; Peña; Phillips; Pickett; Quintanilla; Reyna; Riddle; Ritter; Rose; Seaman; Smith, T.; Smithee; Solomons; Straus; Swinford; Talton; Taylor; Truitt; Van Arsdale; Villarreal; West; Wong; Woolley; Zedler.

Nays — Anchia; Burnam; Castro; Chavez; Coleman; Davis, Y.; Dukes; Dutton; Escobar; Farrar; Gonzales; Haggerty; Herrero; Hochberg; Hodge; Homer; Hopson; Howard; Hunter; Jones, J.; King, T.; Kuempel; Laney; Martinez Fischer; Merritt; Moreno, P.; Mowery; Naishtat; Noriega, M.; Olivo; Puente; Raymond; Rodriguez; Smith, W.; Solis; Strama; Thompson; Turner; Uresti; Veasey; Vo.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Goodman.

Absent — Pitts.

STATEMENTS OF VOTE

I was shown voting yes on Record No. 985. I intended to vote no.

Gonzales Toureilles

I was shown voting no on Record No. 985. I intended to vote yes.

Raymond

I was shown voting yes on Record No. 985. I intended to vote no.

Truitt

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. 33).

STATEMENT BY REPRESENTATIVE LUNA

I have supported the Representative Irma Rangel College of Pharmacy since the idea was first passed in **HB 1640** by the 77th Legislature, authored by the Honorable Irma Rangel.

In the past, I worked to secure $14.5 million in bonds for the construction of the pharmacy school building on the campus of A&M–Kingsville and a total of $4.2 million for the initial operations. The construction is now complete and the building is ready to receive students. All that remains is the funding to operate the program.

There are over 500 students vying for admission into the first class at the pharmacy school. This program will serve students from all over the region and ensure an adequate number of pharmacists are trained.

This has been one of my highest priorities, and I have worked to make sure this priority was recognized by the state leadership. As the 79th Legislative session comes to an end, the Representative Irma Rangel College of Pharmacy has not been fully funded. I will continue to work with the Texas A&M system to find a way to fund this program and fill the classrooms and laboratories at the college of pharmacy. This program is too important to abandon the investment made up to this time by the State of Texas.

ADJOURNMENT

Representative West moved that the house adjourn until 11 a.m. today, May 30, in memory of the Honorable Pat McKinney Baskin of Midland.

The motion prevailed.

The house accordingly, at 12:05 a.m., adjourned until 11 a.m. today, May 30.

ADDENDUM

SIGNED BY THE SPEAKER

The following bills and resolutions were today signed in the presence of the house by the speaker:

House List No. 55

HB 107, **HB 120**, **HB 164**, **HB 192**, **HB 225**, **HB 261**, **HB 401**, **HB 467**, **HB 603**, **HB 607**, **HB 677**, **HB 747**, **HB 840**, **HB 853**, **HB 916**, **HB 934**, **HB 975**, **HB 988**, **HB 1012**, **HB 1077**, **HB 1092**, **HB 1114**, **HB 1274**, **HB 1294**, **HB 1317**, **HB 1366**, **HB 1399**, **HB 1483**, **HB 1544**, **HB 1546**, **HB 1575**, **HB 1582**, **HB 1583**, **HB 1606**, **HB 1644**, **HB 1672**, **HB 1701**, **HB 1718**, **HB 1737**, **HB 1740**, **HB 1751**, **HB 1767**, **HB 1826**, **HB 1829**, **HB 1867**, **HB 1940**, **HB 1959**, **HB 1986**, **HB 2026**, **HB 2104**, **HB 2180**, **HB 2257**, **HB 2267**, **HB 2303**, **HB 2344**, **HB 2381**, **HB 2430**, **HB 2463**, **HB 2630**, **HB 2639**, **HB 2667**, **HB 2694**, **HB 2759**, **HB 2767**, **HB 2772**, **HB 2815**, **HB 2819**, **HB 2883**, **HB 2894**, **HB 2965**, **HB 3024**, **HB 3112**, **HB 3162**, **HB 3262**, **HCR 30**, **HCR 194**, **HCR 215**

Senate List No. 33

SB 150, **SB 293**, **SB 419**, **SB 427**, **SB 495**, **SB 563**, **SB 565**, **SB 569**, **SB 578**, **SB 624**, **SB 810**, **SB 907**, **SB 990**, **SB 1063**, **SB 1107**, **SB 1113**, **SB 1122**, **SB 1133**, **SB 1137**, **SB 1139**, **SB 1147**, **SB 1151**, **SB 1202**, **SB 1204**, **SB 1205**, **SB 1206**, **SB 1226**, **SB 1271**, **SB 1275**, **SB 1282**, **SB 1339**, **SB 1353**, **SB 1370**, **SB 1377**, **SB 1395**, **SB 1421**, **SB 1426**, **SB 1450**, **SB 1458**, **SB 1498**, **SB 1507**, **SB 1533**, **SB 1589**, **SB 1591**, **SB 1592**, **SB 1663**, **SB 1673**, **SB 1686**, **SB 1692**, **SB 1730**, **SB 1769**, **SB 1809**, **SB 1811**, **SB 1826**, **SB 1828**, **SB 1844**, **SB 1846**, **SB 1850**, **SB 1853**, **SB 1866**, **SB 1867**, **SB 1870**, **SB 1875**, **SB 1883**, **SB 1889**, **SB 1894**

MESSAGES FROM THE SENATE

The following messages from the senate were today received by the house:

Message No. 1

MESSAGE FROM THE SENATE
SENATE CHAMBER
Austin, Texas
Sunday, May 29, 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:

HCR 189 Homer SPONSOR: Eltife
In memory of J. E. "Gene" Buster of Paris.

HCR 190 Homer SPONSOR: Eltife
In memory of Floyd Weger of Paris.

HCR 213 Dunnam SPONSOR: Eltife
Honoring Carroll Hall Shelby for his lifetime achievements.

HCR 217 Homer SPONSOR: Eltife
Congratulating Carol Rhodes on earning the 2005 Texas Crime Victim Clearinghouse Award.

HCR 224 Homer SPONSOR: Eltife
Congratulating Eddie Almond on his retirement as director of the Regional Controlled Substance Apprehension Program Drug Task Force.

THE SENATE HAS CONCURRED IN HOUSE AMENDMENTS TO THE FOLLOWING MEASURES:

SB 1605 (31 Yeas, 0 Nays)

THE SENATE HAS ADOPTED THE FOLLOWING CONFERENCE COMMITTEE REPORTS:

HB 265 (31 Yeas, 0 Nays)

HB 873 (31 Yeas, 0 Nays)

HB 969 (30 Yeas, 1 Nay)

HB 1357 (31 Yeas, 0 Nays)

HB 1610 (31 Yeas, 0 Nays)

HB 1800 (31 Yeas, 0 Nays)

HB 1855 (31 Yeas, 0 Nays)

HB 2668 (31 Yeas, 0 Nays)

HB 3485 (31 Yeas, 0 Nays)

HB 3526 (31 Yeas, 0 Nays)

SB 1604 (31 Yeas, 0 Nays)

SB 1830 (31 Yeas, 0 Nays)

THE SENATE HAS DISCHARGED ITS CONFEREES AND CONCURRED IN HOUSE AMENDMENTS TO THE FOLLOWING MEASURES:

SB 39 (31 Yeas, 0 Nays)

Respectfully,
Patsy Spaw
Secretary of the Senate

Message No. 2

MESSAGE FROM THE SENATE
SENATE CHAMBER
Austin, Texas
Sunday, May 29, 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:

HCR 201 Isett SPONSOR: Duncan
Honoring the employees of Southwest Airlines at the Lubbock International Airport.

HCR 218 Driver SPONSOR: Wentworth
In memory of Frank Elder, assistant chief of the Driver License Division of DPS.

HCR 232 Homer SPONSOR: Eltife
In memory of U.S. Army Specialist Michael Greg Karr, Jr., of Mount Vernon.

THE SENATE HAS CONCURRED IN HOUSE AMENDMENTS TO THE FOLLOWING MEASURES:

SB 39 (31 Yeas, 0 Nays)

SB 410 (31 Yeas, 0 Nays)

SB 1605 (31 Yeas, 0 Nays)

SB 1830 (31 Yeas, 0 Nays)

THE SENATE HAS ADOPTED THE FOLLOWING CONFERENCE COMMITTEE REPORTS:

HB 10 (28 Yeas, 3 Nays)

HB 1634 (31 Yeas, 0 Nays)

HB 3518 (31 Yeas, 0 Nays)

SB 408 (31 Yeas, 0 Nays)

SB 1863 (22 Yeas, 9 Nays)

Respectfully,
Patsy Spaw
Secretary of the Senate

Message No. 3

MESSAGE FROM THE SENATE
SENATE CHAMBER
Austin, Texas
Sunday, May 29, 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 ADOPTED THE FOLLOWING CONFERENCE COMMITTEE REPORTS:

SB 6 (30 Yeas, 1 Nay)

Respectfully,
Patsy Spaw
Secretary of the Senate

Message No. 4

MESSAGE FROM THE SENATE
SENATE CHAMBER
Austin, Texas
Sunday, May 29, 2005 - 4

The Honorable Speaker of the House
House Chamber
Austin, Texas

Mr. Speaker:

I am directed by the senate to inform the house that the senate has taken the following action:

THE SENATE HAS PASSED THE FOLLOWING MEASURES:

HCR 158 Hupp SPONSOR: Fraser
Honoring Lampasas County on the occasion of its 150th anniversary.

THE SENATE HAS ADOPTED THE FOLLOWING CONFERENCE COMMITTEE REPORTS:

HB 7 (31 Yeas, 0 Nays)

HB 182 (31 Yeas, 0 Nays)

HB 260 (31 Yeas, 0 Nays)

HB 266 (31 Yeas, 0 Nays)

HB 468 (31 Yeas, 0 Nays)

HB 580 (31 Yeas, 0 Nays)

HB 585	(31 Yeas, 0 Nays)
HB 664	(31 Yeas, 0 Nays)
HB 880	(31 Yeas, 0 Nays)
HB 955	(31 Yeas, 0 Nays)
HB 1068	(31 Yeas, 0 Nays)
HB 1690	(31 Yeas, 0 Nays)
HB 2201	(31 Yeas, 0 Nays)
HB 2233	(31 Yeas, 0 Nays)
HB 2421	(31 Yeas, 0 Nays)
HB 2525	(31 Yeas, 0 Nays)
HB 2928	(31 Yeas, 0 Nays)
HJR 80	(31 Yeas, 0 Nays)
SB 34	(31 Yeas, 0 Nays)
SB 265	(31 Yeas, 0 Nays)
SB 330	(31 Yeas, 0 Nays)
SB 409	(31 Yeas, 0 Nays)
SB 444	(31 Yeas, 0 Nays)
SB 809	(31 Yeas, 0 Nays)
SB 982	(31 Yeas, 0 Nays)

Respectfully,
Patsy Spaw
Secretary of the Senate

Message No. 5

MESSAGE FROM THE SENATE
SENATE CHAMBER
Austin, Texas
Sunday, May 29, 2005 - 5

The Honorable Speaker of the House
House Chamber
Austin, Texas

Mr. Speaker:

I am directed by the senate to inform the house that the senate has taken the following action:

THE SENATE HAS PASSED THE FOLLOWING MEASURES:

HCR 157 Hilderbran SPONSOR: Fraser
Directing the Texas Building and Procurement Commission to have a Texas Youth Commission facility in San Saba County named after John Shero.

THE SENATE HAS ADOPTED THE FOLLOWING CONFERENCE COMMITTEE REPORTS:

HB 698	(31 Yeas, 0 Nays)
HB 836	(31 Yeas, 0 Nays)
HB 872	(31 Yeas, 0 Nays)
HB 2027	(31 Yeas, 0 Nays)
HB 2048	(31 Yeas, 0 Nays)
HB 2161	(30 Yeas, 0 Nays, 1 PNV)
HB 2309	(31 Yeas, 0 Nays)
HB 2572	(31 Yeas, 0 Nays)
HB 2604	(31 Yeas, 0 Nays)
HB 2876	(31 Yeas, 0 Nays)
SB 712	(31 Yeas, 0 Nays)
SB 988	(31 Yeas, 0 Nays)
SB 1142	(31 Yeas, 0 Nays)

Respectfully,
Patsy Spaw
Secretary of the Senate

Message No. 6

MESSAGE FROM THE SENATE
SENATE CHAMBER
Austin, Texas
Sunday, May 29, 2005 - 6

The Honorable Speaker of the House
House Chamber
Austin, Texas

Mr. Speaker:

I am directed by the senate to inform the house that the senate has taken the following action:

THE SENATE HAS PASSED THE FOLLOWING MEASURES:

SCR 42 Deuell
Instructing the enrolling clerk of the senate to make technical corrections to **SB 568**.

SCR 43 Zaffirini
Instructing the enrolling clerk of the senate to make corrections in **SB 39** relating to forensic evidence training for students enrolled in certain medical or nursing degree programs.

THE SENATE HAS CONCURRED IN HOUSE AMENDMENTS TO THE FOLLOWING MEASURES:

SB 1055 (31 Yeas, 0 Nays)

THE SENATE HAS ADOPTED THE FOLLOWING CONFERENCE COMMITTEE REPORTS:

HB 843 (31 Yeas, 0 Nays)

HB 1116 (31 Yeas, 0 Nays)

HB 1207 (31 Yeas, 0 Nays)

HB 1225 (31 Yeas, 0 Nays)

HB 1772 (31 Yeas, 0 Nays)

HB 1773 (31 Yeas, 0 Nays)

HB 1820 (31 Yeas, 0 Nays)

HB 2217 (31 Yeas, 0 Nays)

HB 2221 (31 Yeas, 0 Nays)

HB 2423 (31 Yeas, 0 Nays)

HB 2702 (31 Yeas, 0 Nays)

HB 3333 (31 Yeas, 0 Nays)

HB 3539 (31 Yeas, 0 Nays)

HB 3563 (31 Yeas, 0 Nays)

SB 11 (31 Yeas, 0 Nays)

SB 52 (31 Yeas, 0 Nays)

SB 334 (31 Yeas, 0 Nays)

SB 771 (31 Yeas, 0 Nays)

SB 805 (31 Yeas, 0 Nays)

SB 882 (31 Yeas, 0 Nays)

SB 1176 (31 Yeas, 0 Nays)

SB 1188 (31 Yeas, 0 Nays)

SB 1273 (30 Yeas, 1 Nay)

SB 1670 (31 Yeas, 0 Nays)

THE SENATE HAS DISCHARGED ITS CONFEREES AND CONCURRED IN HOUSE AMENDMENTS TO THE FOLLOWING MEASURES:

SB 568 (31 Yeas, 0 Nays)

Respectfully,
Patsy Spaw
Secretary of the Senate

Message No. 7

MESSAGE FROM THE SENATE
SENATE CHAMBER
Austin, Texas
Sunday, May 29, 2005 - 7

The Honorable Speaker of the House
House Chamber
Austin, Texas

Mr. Speaker:

I am directed by the senate to inform the house that the senate has taken the following action:

THE SENATE HAS ADOPTED THE FOLLOWING CONFERENCE COMMITTEE REPORTS:

HB 1126	(31 Yeas, 0 Nays)
HB 2129	(31 Yeas, 0 Nays)
HB 2491	(31 Yeas, 0 Nays)
HB 2510	(31 Yeas, 0 Nays)
HB 2793	(31 Yeas, 0 Nays)
SB 567	(31 Yeas, 0 Nays)
SB 1189	(31 Yeas, 0 Nays)
SB 1297	(31 Yeas, 0 Nays)

Respectfully,
Patsy Spaw
Secretary of the Senate

Message No. 8

MESSAGE FROM THE SENATE
SENATE CHAMBER
Austin, Texas
Sunday, May 29, 2005 - 8

The Honorable Speaker of the House
House Chamber
Austin, Texas

Mr. Speaker:

I am directed by the senate to inform the house that the senate has taken the following action:

THE SENATE HAS ADOPTED THE FOLLOWING CONFERENCE COMMITTEE REPORTS:

SB 14 (31 Yeas, 0 Nays)

SB 1227 (31 Yeas, 0 Nays)

Respectfully,
Patsy Spaw
Secretary of the Senate

Message No. 9

MESSAGE FROM THE SENATE
SENATE CHAMBER
Austin, Texas
Sunday, May 29, 2005 - 9

The Honorable Speaker of the House
House Chamber
Austin, Texas

Mr. Speaker:

I am directed by the senate to inform the house that the senate has taken the following action:

THE SENATE HAS CONCURRED IN HOUSE AMENDMENTS TO THE FOLLOWING MEASURES:

SB 568 (31 Yeas, 0 Nays)

THE SENATE HAS ADOPTED THE FOLLOWING CONFERENCE COMMITTEE REPORTS:

HB 2120 (31 Yeas, 0 Nays)

Respectfully,
Patsy Spaw
Secretary of the Senate

APPENDIX

ENROLLED

May 28 - HB 34, HB 51, HB 148, HB 164, HB 178, HB 192, HB 269, HB 412, HB 541, HB 602, HB 616, HB 677, HB 731, HB 765, HB 790, HB 809, HB 823, HB 831, HB 840, HB 914, HB 934, HB 972, HB 975, HB 1012, HB 1079, HB 1092, HB 1238, HB 1294, HB 1353, HB 1366, HB 1483, HB 1575, HB 1606, HB 1644, HB 1737, HB 1740, HB 1767, HB 1771, HB 1799, HB 1823, HB 1826, HB 1867, HB 1939, HB 1959, HB 1986, HB 2026, HB 2104, HB 2257, HB 2266, HB 2339, HB 2376, HB 2463, HB 2593, HB 2667, HB 2767, HB 2883, HB 2941, HB 3024, HB 3093, HB 3112, HB 3235, HB 3426, HB 3469, HB 3528, HCR 30, HCR 154, HCR 166, HCR 172, HCR 193, HCR 204, HCR 207, HCR 214, HCR 215, HCR 216, HCR 222, HCR 225, HJR 54

SIGNED BY THE GOVERNOR

May 28 - HB 1418, HCR 89, HCR 120